**The Interdependence and Indivisibility of the Right to Life and Economic and Social Rights: An illustration of pre-trial detention in DR Congo**

**Written Submission for the General Discussion on the Preparation for a General Comment on Article 6 (Right to Life)**

**Submitted by Avocats Sans Frontières**

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1. Avocats Sans Frontières (ASF) is an international non-governmental organization with headquarters in Brussels, Belgium and activities in over ten post-conflict and fragile countries.[[1]](#footnote-1) We support construction of the rule of law through improved access to justice for people in vulnerable situations. ASF welcomes the opportunity to contribute to the Human Rights Committee’s General Discussion preparing a General Comment on Article 6 of the International Covenant on Civil and Political Rights, and thanks the Committee for the extended deadline for contributions.
2. ASF’s has over twenty years first-hand experience working in countries ranging from Burundi to Zambia, Myanmar to Tunisia. Among various activities, we work with local bar associations, ministries of justice, civil society and communities to establish quality legal aid services that are sustainably funded and respond to the needs of justice seekers; we represent victims before the International Criminal Court and promote complementarity mechanisms on the national level to ensure that those affected the most can meaningfully participate in justice mechanisms; we work with lawyers to improve their support for people affected by pre-trial detention, violations of their freedom of expression, and other human rights, including economic and social rights; and we defend lawyers when they are threatened for their work.
3. ASF has been working in the Democratic Republic of Congo (DRC) since 2002, and has been implementing projects related to illegal pre-trial detention since 2006. It is based on our direct experience in this field that we would like to contribute to the Committee’s discussion on the right to life. Unless otherwise stated, all information provided here can be found in ASF’s forthcoming publication “Commodification of detainees in DR Congo”.[[2]](#footnote-2)
4. ASF is a member of ESCR-Net, and would like to signal our full support for, and agreement with, the joint submission of ESCR-Net, the Social Rights Advocacy Centre, and the Global Initiative for ESCR,[[3]](#footnote-3) to the Committee.
5. In their joint submission, the authors emphasised the importance of reaffirming the interdependence and indivisibility of civil and political rights with ESC rights (paragraph 2), and discusses the obligation for States to take positive measures to ensure that people can realise their ESCR (paragraph 3-4).
6. In DRC, the rate of prison detainees in pre-trial detention while awaiting judgment is over 80%. Overcrowding in these prisons can reach alarming rate, such as 400% in the Makala prison in Kinshasa and 350% in the central prison of Matadi (Bas-Congo province). Conditions, especially because of this overcrowding, do not meet any of the internationally recognised standard minimum rules for the treatment of prisoners.
7. The poor condition of the prisons is alarming. In the Matadi central prison, for example, each cell houses dozens of detainees, without any water supply, or sanitary facilities. At night, prisoners are forced to urinate and defecate on the ground of their cells. The faeces are cleared out in the morning and thrown into the immediate vicinity of the prison, where it accumulates, exposing both the prison population and those living near the prison, to vector-borne diseases.
8. In Mbandaka’s central prison (Equateur province), the detainees are often half-naked, having been forced to use their own clothing as fuel for cooking fires.
9. In these Congolese prisons, the overcrowded situation in which the detainees live lead to extremely hazardous health and sanitary conditions, and severe illnesses such as malaria, typhoid fever, tuberculosis and STDs spread rapidly and easily. For example, in 2014, eight people died in the Matadi prison in the Bas-Congo province of DRC as a result of the illnesses they contracted while in detention.
10. Beyond the serious illnesses contracted within the prisons, cases of torture and inhuman and degrading treatment committed against the prisoners are frequent, and it is not unusual for this treatment to be responsible for deaths in the prisons. In 2012, in the entire DRC, there were 211 deaths of various in prisons recorded by Congolese authorities. It is important to note that these are just the deaths officially recorded.
11. In addition, Congolese prisons do not always provide food for the detainees; when the authorities do, it is insufficient, often consisting of one serving of rice per day per detainee. Water provided is also largely insufficient, often less than one litre per day per detainee. Those who eat more than what is provided by prison officials are those who can afford to pay for food, or who have family bring them food. It is often the case that the prisoners in charge of prison security, the “kapitas”, take “commission” on the food brought from outside the prison. The severe malnutrition of the detainees has an extremely negative impact on their health, and sometimes their lives. Most deaths go unrecorded. One case that did make the Congolese news was that of a one-year old girl who was with her father when he was detained by police in Kinshasa. Despite requests to release the girl, the father was ignored, and with no food or water provided, the girl died three days later.[[4]](#footnote-4)
12. While DRC is but one country, and the situation of detainees, especially pre-trial detainees, is a specific one, ASF hopes that practical illustrations of the impact of non-realisation of various economic and social rights on the right life will be useful in the Committee’s deliberations. These detainees are some of the most vulnerable and excluded groups in DRC and the world, and at the root of their vulnerability are the systemic violations of human rights in the Congolese justice system.
13. ASF is working with Congolese civil society organisations, particularly lawyers’ associations, supporting these pre-trial detainees to invoke not only human rights principles of fair trial and personal liberty, but also the violations of economic and social rights that these detainees face, as they work to ensure that these detainees can enjoy all their human rights. Being able to call upon international jurisprudence that emphasises the importance of State obligations, especially positive obligations related to civil, economic, political and social rights equally, for the enjoyment of the right to life, would strengthen the lawyers’ argument. If the lawyers can refer to the Committee’s General Comment on State (in)action, both intentional and the unintentional consequences of policies,[[5]](#footnote-5) they will be more likely to draw the judge’s attention to the systemic human rights violations pre-trial detainees face, and importance of addressing the interdependence of various human rights to solve the urgent situation that pre-trial detainees in DRC face.
14. At the centre of ASF’s work on this issue are of course the rights-holders. As we work with them to deal with their cases, we emphasise enhancing the detainees’ ability to act effectively as full-fledged stakeholders. This is done through awareness-raising activities and legal advice in the prisons. The Committee should not underestimate its own importance, and the symbolic power it has for many rights-holders. These detainees are in extremely difficult painful situations, but knowing that there are experts somewhere far away who recognise the extent of their problems, and who care enough to tell their government (through clear international human rights standards in this case) that their situation is unacceptable sends a powerful message to these detainees. This is relevant not only to the detainees in DRC, but everywhere.
15. Finally, as part of the work to end the human rights violations related to pre-trial detention, ASF works with State officials in DRC. Having a general comment that recognises the importance of ESCR for the right to life is useful to ensure that those involved in providing access to justice in DRC will have clear guidance as they establish both penal and penitentiary systems that respect the rule of law and human rights principles.

1. For more information, please see www.asf.be [↑](#footnote-ref-1)
2. The initial findings from the report can be found here: http://www.asf.be/fr/blog/publications/commodification-of-detainees-in-dr-congo/ [↑](#footnote-ref-2)
3. ESCR-Net, SRAC, GI-ESCR, 2015 “Recognizing the Interdependence and Indivisibility of the Right to Life with ESC Rights: Written submissions for the General Discussion on the Preparation for a General Comment on Article 6 (Right to Life))”. [↑](#footnote-ref-3)
4. http://www.rfi.fr/afrique/20140708-rdc-scandale-apres-mort-bebe-cachot-kinshasa-rdc/ [↑](#footnote-ref-4)
5. See above cited joint submission from ESCR-Net, SRAC and GI-ESCR, recommendation 3. [↑](#footnote-ref-5)