



A Case for Legal Support of Prisoners in South Sudan

BRIEFING NOTE

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Introduction

This briefing note presents the findings of a short research on access to legal aid in Juba Central Prison in South Sudan. While the data collection encountered limitations, nonetheless the research clearly shows some of the weaknesses of South Sudan's legal and prison system and how the provision of legal aid can help address these weaknesses.

The research is part of a larger research project entitled on justice in South Sudan, "Intersections of truth, justice and reconciliation in South Sudan". The project is implemented by the University for Peace Centre The Hague (the Netherlands), South Sudan Law Society (SSLS), and PAX, and started in November 2014. It is funded by the Dutch Ministry of Foreign Affairs as a part of the 'Knowledge Platform Security & Rule of Law', and is administered by the Netherlands Organization for Scientific Research (NWO).¹

Data were collected by a survey among prisoners in Juba Central Prison in April 2016, and interviews with prison staff and lawyers, including lawyers of SSLS involved in the provision of legal aid.

Juba Central Prison: A limited survey

A survey was conducted in Juba Central Prison over a period of three days, among a total of 137 respondents. The survey was conducted on smartphones using KoBo Toolbox, an open source survey tool developed for data collection in challenging environments.²

After three days, access to the prison was unfortunately restricted after prison authorities banned the use of phones in the prison.³ This was the result of an incident with a stolen phone from a UN staff member visiting the prison, and unrelated to the

¹ The project is funded by the Dutch Ministry of Foreign Affairs as a part of the 'Knowledge Platform Security & Rule of Law', and is administered by the Netherlands Organisation for Scientific Research (NWO). See for more: http://www.upeace.nl/index.php?page=Thematic_Programmes-Thematic_Programmes-&pid=154&id=1&projid=39

² <http://www.kobotoolbox.org/>

³ The tool supported other data collection in the project as well, and the form built for this prison survey can also be used by SSLS legal aid staff to register client files.

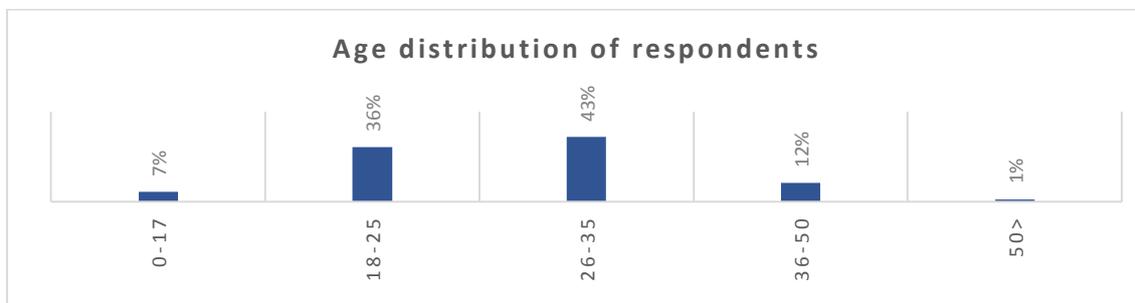
survey. SSLS representatives were in the process of negotiating re-entry, but the crisis of July 2016 prevented this. As a result, a much smaller number of prisoners were interviewed than anticipated. Nonetheless, the findings correspond with the experiences of lawyers and SSLS legal aid staff.

At the time that the research was conducted in April 2016, Central Juba Prison had a population of 1,527 inmates, of which 73 were female and 1,454 male. Out of the 1,454 male prisoners, a total of 824 were convicted of which 123 had received the death penalty. 630 or 43% of all male prisoners remained on remand, and were yet to receive a sentence.

The sample

A total of 137 people were interviewed in Juba Central Prison, of which 90 were on remand, 40 were convicted and one was in appeal. Out of the respondents 17 were female and 120 were male. The majority were South Sudanese (n=118), but there were also inmates from Uganda (n=10), Sudan (n=5), Kenya (n=2), Liberia (n=1) and Nigeria (n=1). Of the respondents with South Sudanese nationality most came from Central Equatoria (n=67), but the sample included respondents from almost all other states.

The majority of respondents were aged between 18 and 35. In total 9 (17%) juveniles were interviewed.



Of the 137 respondents, 10 said they had not been arrested but that they had turned themselves in. Six said they were complainants themselves, and were put in jail when they came to file their complaint.

Circumstances of arrest and incarceration

The 121 prisoners that said they had been arrested were asked follow-up questions about the circumstances of their arrest and incarceration.⁴ The data presented below draw on the responses of this group of 121 prisoners.

⁴ Several of these questions would have been relevant for prisoners that had handed themselves in or were incarcerated when they filed a complaint. The skip logic in the digital form originally omitted these follow-up questions for interviewees that were not arrested. Unfortunately, access to Juba Central Prison was restricted before this could be adjusted.

Most respondents were arrested by the police (59%). Other actors that were reported to have made arrests included other citizens (13%), the army (10%) and the National Security Service (NSS) (7%).

Arrests in groups

In almost one third of the cases (30%), the respondents were arrested together with others. When arrested with others, this was often with 2 or 3 others, but in one case with 7 others. In 8 of these cases, the others are not in prison anymore at the time of the interview, in 6 of these cases some are in prison while others had been released, and in 23 cases the whole group that was arrested was still in prison. This reflects the tendency of police to simply arrest a group of suspects when a particular suspect cannot be singled out.

Outside contact and legal advice

More than half of the respondents (55%) said they had not been given a phone call.⁵ Without a phone call, they are not able to directly contact relatives, family or a lawyer to assist them in their process. Almost a quarter of the respondents (27 respondents, 22%) indicated that their family did not know that they were in prison. This in some cases was a deliberate choice of the suspect, who may be ashamed or for personal reasons decided not to inform his or her family. Out of the 27 respondents whose family was not aware of their imprisonment, 3 said they were offered a phone call and two others received legal advice. The other 22, however, were not given a phone call nor provided with legal assistance, and hence were unable to contact anyone on the outside.

In total, only 24% of the respondents indicated to have received legal advice. This is in violation of the Transitional Constitution of 2011, which states the following:

Any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice or to have legal aid assigned to him or her by the government where he or she cannot afford a lawyer to defend him or her in any serious offence.⁶

Slow legal process

Of the 121 respondents, 35 had received a sentence while the other 86 were considered on remand, or in other words in custody before or during their trials and awaiting their sentence. Out of the respondents that were still on remand, 61 (71%) indicated they had not seen a judge yet. In 3 cases, the respondents indicated just to have arrived in prison on the day the interview was conducted, and one respondent had arrived the previous day. In all other cases – two-third of all respondents on remand – the respondents had spent well over 24 hours in prison, with a median of 70 days.

⁵ A requirement according to Code of Criminal Procedure Act, 2008, Section 93(2), 93(4).

⁶ Transitional Constitution of the Republic of South Sudan, 2011, art 19(7).

This is a clear violation of the constitution, which states that:

A person arrested by the police as part of an investigation, may be held in detention, for a period not exceeding 24 hours and if not released on bond to be produced in court.⁷

The data were self-reported by prisoners, but nonetheless the numbers correspond with the experience of SSLS legal aid staff.

The problems of stalled legal processes

Conversations with prisoners, prison staff and lawyers indicated a combination of factors that caused the large number of cases in which court appearances were delayed.

One key issue was the fact some courts were not functioning properly, or not taking cases at all. As a result, the courts that do function are overloaded. Cases are also stalled when the accused cannot reach the court. Several cases were mentioned where there was no transportation available for the inmate, and they had to arrange their own transportation through relatives. The prison service would provide a guard to accompany them, but no car.

Abuse of the legal system and corruption further contribute to processes being stalled. Many civil cases are also treated as criminal cases in the justice system and courts. According to one source, an estimated 70-80% of the criminal cases in courts in Juba are actually supposed to be civil cases:

If you have lent someone some money, it is easier to go to the police and have them conduct the case, instead of filing a civil case. It is often also cheaper as there are fewer court costs. It would be the task of the public prosecutor to have such cases being denied as a criminal case in court, but since there is often money involved some prosecutors want a part of it.⁸

There are reports of people being arrested at the request of the complainant, even if the case is a civil case and an arrest is not warranted. In some cases, there is no criminal investigation and the accused remains in prison without due process. There are also reports of police investigators and prosecutors being paid by a complainant not to appear in court, in order to have a suspect remain in prison without trial. Another problem is case files being misplaced or lost at the registry, hampering the legal process or possibility of appeal.

⁷ Transitional Constitution of the Republic of South Sudan, 2011, art 19(4).

⁸ Interview, lawyer, 14 April 2016, Juba

Providing legal aid

Circumstances prevented the possibility of a broad and systematic investigation of the benefits of providing legal aid to prisoners. Yet, some cases dealt with by SSLS legal aid staff show that some of the obstacles in the South Sudanese justice process can be overcome when inmates have access to legal aid. Below, a few cases listed to illustrate how legal aid can help assist people who are trapped in the flaws of South Sudan's legal system.

Habeas Corpus

A lady of Kenyan nationality was arrested by the National Security Service (NSS) for allegedly being involved in computer fraud in November 2015. She was detained in the NSS prison for a period of three weeks and was not allowed any visitors. Her family members tried several times to get access to her but were denied. They then reached out to SSLS. In this case SSLS intervened by engaging the NSS, and asked for proper legal procedure to be followed. After a further 3 weeks of follow up, the lady was released without charge.

Another case involved four teachers who were accused of inciting violence in school when they went on strike after having not been paid for several months. This case was referred to the SSLS legal aid clinic by a paralegal trained by SSLS. The SSLS legal officers pursued the matter in the requisite police station, engaging the police officers in dialogue referring to the Constitution and human rights laws. It took about one month for the matter to be resolved, after which the teachers were released without charge.

No charges made

A civil society activist was arrested in March 2016 on his way to work and put in Juba Prison. The matter was brought to SSLS by a colleague. SSLS intervened through their legal aid attorney and started with applying for bail for the activist. Bail was granted on the same day. The SSLS legal aid attorney had by then found that no charges were brought against the activist, and pressed further and applied for his release for lack of any charges. He was subsequently released.

The above case is one of many cases where clients in prison were in custody without any formal charges being made. Some have been there for months and even years.

Underage imprisonment

A girl of 11 years old was arrested and placed in Juba Prison in January 2016 near Kor William. She had been accused of murder of a 4 year old boy who had drowned while playing in Kor William. The case was referred to SSLS by South Sudan Women Lawyers Association. SSLS approached the Public Prosecution Attorney and explained that under the law anyone under 13 years is not culpable of any crime. There was however, some politics involved as the deceased was a child of an army general and thus he threatened to kill the suspect, if she was released. The suspect was finally released to her parents after being incarceration for one month.

The SSLS legal aid attorney was also able to secure the release of several juveniles who had been put in Juba Prison by citing the Child Act of 2008. This Act clearly states that the incarceration of minors should be a last resort. These juveniles that were released had been accused of minor crimes, such as the theft of a second hand t-shirt from a trader. Unfortunately they had stayed in prison for more than 8 months without being brought in front of a judge. Many of the prison inmates exhibited frustration at not being taken to court and many said they did not even know when they would be produced in court. SSLS came about these cases through prison visits. It took two months for the juveniles to be released.

Conclusion and recommendations

While the data collection encountered limitations, nonetheless the research clearly shows some of the weaknesses of South Sudan's legal and prison system and how legal aid can help address these weaknesses.

The relatively large number of cases where whole groups are arrested reflects the prevalence of police simply arresting a group of suspects of a suspect cannot be singled out. This increases the chances that people are arrested for crimes they did not commit, something which is particularly problematic in a context where people often have to wait much longer to see a judge than the 24 hours determined in the constitution.

In fact, research shows that once arrested, many are withheld any contact with relatives or a lawyer. With the harsh conditions in South Sudan's prisons, many prisoners rely on assistance from their family and friends outside to provide some basic comfort, or even to arrange transportation to court. When people are not able to inform their relatives about their imprisonment or receive legal assistance, this obstructs their right to due process and contributes to an inhumane and desperate situation.

It is evident from this brief that the provision of legal aid to inmates in South Sudan's prisons supports South Sudan's legal system. It is of course to the benefit of those arrested, as it helps their cases to proceed and promotes a fair trial. It is also supportive of the prison system and management; many prisons are overcrowded and the release of unfounded suspects through court hearings will decrease the prison population. This will subsequently make it easier to improve living conditions in prisons. Finally, the promotion of fair legal process through legal aid provision helps to improve the functioning of South Sudan's legal system.

In order to strengthen justice provision in South Sudan, this brief therefore recommends the following:

To the (Transitional) Government of South Sudan:

- Develop a policy and legislation that focuses specifically on legal aid in order to increase access to justice. This could be facilitated through the development of a legal aid strategy in consultation with non-state actors and populations throughout the country.
- Invest in the capacity of courts, and ensure they are properly staffed and have sufficient means to meet the high demand for cases. This includes also the training and vetting of judges and legal personnel.
- Invest in the capacity of police investigators to investigate crimes, so that people can gain confidence in the police and their ability to help them to find justice. This includes both providing adequate training, but also adequate resources, including transportation and fuel, for investigators to follow up on crimes.

To donors and (I)NGOs and national civil society:

- Actively support legal aid programming in South Sudan, and make a sustained investment into services that expand the reach of justice beyond what is possible through state action alone.
- Support the (transitional) government in developing a detailed justice reform to stimulate meaningful change in the justice sector, both at national and local levels.