



Equal Access to Justice in Southern Sudan Assessment Report 2007

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*Photo front cover: Trial under a mango tree, Southern Sudan
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Mandate of Avocats Sans Frontières

Because Justice Matters!

Avocats Sans Frontières (ASF) is an independent international non-governmental organisation contributing to the creation of fair and equitable societies, in which law and legal institutions serve society's most vulnerable groups.

ASF pursues the following goals:

- Ensure efficient and effective judicial aid to the most vulnerable groups and the creation of a legal system capable of protecting these groups;
- Promote the respect for fundamental human rights with in particular, the right to defence and the right to fair trial;
- Promote increased responsibility and accountability of public and private actors, also in the social and economic field;
- Contribute to poverty reduction through providing people with access to socially conscious justice systems in the spirit of an international redistribution of resources and competences.

ASF mainly intervenes in post-conflict areas. The organisation was created in 1992 and is composed of lawyers and all parties concerned about justice as a pre condition for conflict prevention, restoration of peace and sustainable development.

Mandate of RCN Justice et Démocratie

To promote justice as human value

RCN Justice & Démocratie aims to contribute to guarantee the respect of the fundamental rights of each person, in defending the right to justice, as well as the protection of rights recognized by international agreements.

It is in this spirit that the organization focuses on activities that are directed toward those authorities engaged in the process of installing or restoring the rule of law in a certain country and/or towards the civil society in that country.

RCN's activities centre on the promotion of justice as a human value, particularly by supporting judges and parties; training actors in the justice system; defending the rights of victims of crimes against humanity; fighting impunity; and helping to implement a collective "memory" with regards to crimes that continue to have an impact on a nation's psyche.

The organisation develops its activities alone or in partnership, politically independent from both national and international authorities. It takes into account justice mechanisms in their respective cultural, social, and political contexts. At the same time, RCN researches the compliance of national justice systems with fundamental rights.

LIST OF ACRONYMS

| | |
|--------|---|
| ASF | Avocats Sans Frontières |
| CPA | Comprehensive Peace Agreement |
| DPP | Directorate of Public Prosecutions |
| GoS | Government of Sudan |
| GoSS | Government of Southern Sudan |
| ICSS | Interim Constitution of Southern Sudan |
| INC | Interim National Constitution |
| JoSS | Judiciary of Southern Sudan |
| MoLACD | Ministry of Legal Affairs and Constitutional Development |
| NCP | National Congress Party |
| NLC | National Liberation Council |
| RCN | Réseau des Citoyens- Citizen Network Justice & Démocratie |
| SPLA/M | Sudan People's Liberation Army / Movement |
| UNDP | United Nations Development Fund |
| UNMIS | United Nations Mission in Sudan |

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1 http://www.unsudanig.org/library/mapcatalogue/sudan/data/planning/Map%20375%20Sudan%20General_May%202004.pdf

EXECUTIVE SUMMARY

By signing the Comprehensive Peace Agreement (CPA) on the 9th of January 2005, the Government of Sudan, the Sudan People's Liberation Army (SPLA) and its political arm, the Sudan People's Liberation Movement (SPLM), agreed to divide representation across all sectors of government and opted for a decentralized system of government with significant devolved powers. At the end of the six-and-a-half-year long Interim Period, the SPLM and the Government of Sudan will jointly organize an internationally monitored referendum for the people of South Sudan that will determine the south's political status.

On the basis of the CPA, a new Interim National Constitution (INC) was drafted and entered into force on 9 July 2005. The Interim Constitution of Southern Sudan (ICSS) was approved by the Southern Sudan Legislative Assembly on 5 December 2005.

The present study aims to contribute to establishing a secure foundation for the judicial system through an analysis of the functioning of the courts and the legal aid system two years after the signing of the CPA. The goal of the project is not to monitor the human rights situation in South Sudan, but to observe and map the current functioning of the judicial system, to understand the role of every stakeholder in the judicial process, to identify the main challenges faced by all stakeholders and the possible barriers restricting access to justice for the population, and to formulate recommendations for the rule of law institutions which could be useful to further the implementation of an effective and accessible justice system.

After a brief description of the project in the general context of Sudan (**Part I**), a closer look will be taken at every stakeholder of the judicial system of Southern Sudan (**Part II**). The current functioning of every institution is compared to that which is provided for by the legal framework.

The main Rule of Law Institutions in Southern Sudan are the Judiciary of Southern Sudan and the Ministry of Legal Affairs and Constitutional Development, whose functions and duties include the representation of all

levels of government in public prosecutions. The police service plays a large role in many areas, as do the prisons service and the advocates.

The GoSS has not yet been able to guarantee effective access to justice for its citizens. A range of obstacles, including the absence of legal aid, financial and physical constraints has to be addressed. Meanwhile a vast majority of the people continue to rely on customary law and courts **(Part III)**.

Despite the many challenges and obstacles described in the present study, it has to be highlighted that the courts do work. Legal professionals try to find ways to render justice, and the court organization and judgments are motivated by principles of equity, fairness and good sense rather than based on legal provisions.

The field study shows that although the new structure of the courts hierarchy has been replicated everywhere in the South, major aspects of the administration of justice are handled differently in the former GoSS-held areas and in the former SPLA-held areas.

But some challenges are common to both areas **(Conclusions and Recommendations)**.

Although there is strong political will in Southern Sudan to institute a system of justice based on common law with English as the main working language, the transition from a Sharia-based to a secular common-law based system, and from Arabic to English appears to be difficult to achieve on the short term. South Sudan is a fledgling state in the process of being built and there is little or nothing to fall back on in terms of experience or institutional memory. The authorities are in process of developing skills to determine strategies, to plan and to budget.

The rule of Law cannot be strengthened until legislation is enacted by the Legislative Assembly. Essential bills such as the Judiciary Act, the Code on Criminal Procedure, the Penal Code, Civil Procedure Act, Police Act, Prison Act or Public Prosecution Act, have not yet gone through the legislative process. All stakeholders in the judicial process are eagerly awaiting the passage of those bills.

Meanwhile, not only is the structure and organization of the judicial apparatus unclear, but moreover, is there confusion and disagreement about the currently applicable laws so that different laws are applied from one area to another.

Furthermore the number of potential recruits for the legal system with specialized skills or a professional legal background is insufficient. Those that were recruited often have insufficient knowledge of both the common law system and (legal) English. They have been trained in the Islamic system in Khartoum in Arabic. There is a need for professional training of all legal actors, but no legal education is currently provided locally in the South.

Due to the absence of public attorneys in a majority of States, it appears that the police carry out this function, but they have insufficient knowledge about the tasks and procedures of the criminal justice process. While this gap in human resources remains unfilled, there is an overarching need for coordination among all rule of law stakeholders at all levels. The Ministers in charge could issue guidelines for the police services acting de facto as public prosecutors to ensure respect for minimum standards during the process of arrest, investigation and pre- trial detention.

Although the political will to promote English as the only official working language, including as the official language of the judicial system, is strong, knowledge of English among the population is not widespread.

The infrastructural needs are enormous, as in most states there are no court buildings at all. Distances are vast, the road network is limited, and public transport is only beginning to emerge. Not only the people, but also the public attorneys and advocates have limited means of reaching the courts.

At the same time as a new formal judicial system is being developed, customary law remains the fundamental source of justice for large sections of the population and around 90% of disputes are settled before the customary courts.

A lot of barriers create a distance between the people and the formal justice system. No legal aid system has been developed to dispense information and legal advice among the people to make justice effective and bring it closer to

all groups of population. Ignorance, mistrust, impecuniosity and limited mobility are other barriers restricting access to justice for the most vulnerable groups. The absence of civil society active in the rule of law sector makes it a hard task to bring justice closer to the citizen. No NGOs are monitoring the court system. Last but not least, there is no culture of legal representation in the courts.

PART I. THE PROJECT IN THE GENERAL CONTEXT OF SUDAN

I. THE ASSESSMENT PROJECT

A. Introduction and History of the project

In February 2006, ASF and RCN submitted a project proposal with the objective of assessing and determining the present state and needs of the legal system in Southern Sudan. In mid-2006, the Belgian Ministry of Foreign Affairs approved the proposal, which is funded under the budget line "Preventive Diplomacy".

The specific objectives of the project were defined as follows:

1. Evaluate the level of access for vulnerable groups and individuals to the legal system in Southern Sudan and identify the barriers, if any that stand in the way of such access to justice.
2. Study and evaluate the state of affairs in the legal system.
3. Map and evaluate existing programs, if any, on access to justice; legal aid; and the fight against impunity conducted by the state, international organisations and local and international civil society actors.

From July to November 2006 ASF and RCN worked on the preparation of the assessment project. At an early stage both organisations found out that it was necessary to adapt the project and split the project in two phases. In this respect, it was decided to undertake a first fact-finding mission in November (Phase I), allowing the adaptation of the project to the realities in the field.

Phase I of the assessment was conducted from the 3rd to the 18th of November 2006 by two consultants representing ASF and RCN in Nairobi and Juba.

During the first fact-finding mission, ASF and RCN studied, analysed and evaluated the state of affairs in the legal system in Southern Sudan.

The mission mainly focused on:

- Information gathering on the Justice system in Southern Sudan;
- The analysis of some relevant stakeholders;
- Provision of legal services in the legal system;
- Availability and organisation of legal aid services (INGOs, UN agencies, local NGOs, bar association/Law society, other institutions);
- The mapping of existing programmes on access to justice.

Concluding this phase, ASF and RCN decided to reorient the project and its implementation slightly, adapt the methodology and update the initial calendar.

The specific objective of the project was fine-tuned: the study aims to contribute to establishing a firm foundation for a legal system through an analysis of the functioning of the courts and the legal aid system.

The goal of the project is to observe, map and understand the functioning of the legal system in practice, to identify the challenges faced by all stakeholders and the barriers restricting access to justice for the population, and to formulate recommendations for the rule of law institutions which could be useful to further the implementation of an effective and accessible justice system. Phase II of the assessment project was carried out from January until March 2007.

The preparation of the second mission consisted of:

- The compilation and analysis of the data gathered during the first mission;
- Data collection, study of available material and research;
- Establishing contact with relevant stakeholders outside Southern Sudan;
- Drafting of a questionnaire to use during the field visit.

The field study was conducted in Juba and Rumbek from the 10th of February to the 3rd of March 2007.

B. Activities carried out

Three activities were identified to achieve the specific objective and carried out during Phase II:

- The analysis of the functioning of a court at each level in two different areas;
- The analysis of the legal aid programs and the demand for legal services in two different areas;
- The drafting of practical guidelines for the competent authorities on a specific issue;
- The issue that has been identified during the assessment was the role of the police in the criminal justice process in jurisdictions where no public prosecutor is present.

C. Field study

1. Choice of two locations

Two locations were chosen for the present study: Juba and Rumbek (Lakes State).

Juba is the capital city of Southern Sudan and of the State of Bahr el Jebel. The Government of Southern Sudan is established in Juba. All Rule of law institutions at this level can be found in Juba. Most NGOs and international agencies have their headquarters in Juba too. The main tribe is the Bari. Most people speak Arabic. The city was a garrison town held by the Government of Sudan during the war.

Rumbek was at one time intended to become the capital of Southern Sudan, but this role went to Juba in the end. Rumbek is the State capital of Lakes State. The main tribe is the Dinka, and Dinka is the most commonly spoken language. Rumbek was held by the SPLA during the war, and is still an important political base for the SPLM.

These cities were identified for the following reasons:

- Comparison of the situation in areas held respectively by the Government of Sudan and by the SPLA during the war;

- Observation in two different states, each one part of a different cluster of states (Bahr el Jebel is part of Greater Equatorial States, Lakes of the Greater Bahr el Ghazal States);
- Both cities are resorting under a different and are each is the location of a Court of Appeal (the third Court of Appeal in Malakal);
- Both cities are state capitals, and each is the location of a High Court;
- Presence of the GoSS and various stakeholders and NGOs.

2. Methodology

In each location, the following activities were conducted:

- Observations of court hearings at every court level (Court of Appeal, High Court, County Courts at first and second level, customary court)
- Visits to the court buildings (clerk's room, archives, cells, ...);
- Separate discussions with every stakeholder separately, based on the prepared questionnaire (justices, judges, legal counsels, advocates, clerks, other support staff);
- Analysis of court materials (forms, stationery);
- Meetings with government officials at state level and at the level of the government of Southern Sudan;
- Meeting and data-gathering with other relevant actors (NGOs, international agencies, civil society);
- Mapping of existing laws and regulations;
- Mapping of stakeholders and NGOs or other international agencies working in the rule of law sector.

3. Limitations of the assessment

The assessment does not accurately represent the current functioning of all courts in Southern Sudan, as its scope has been limited to two cities. The field study was done in urban areas only, in two of the more developed cities of Southern Sudan.

Most courts resumed their operations only three months ago or less.

The field study focused on interviews with actors in the legal process at every level rather than community consultation and contacts with the beneficiaries of the legal system.

The present assessment does not focus on the issue of development, recording and harmonization of customary law.

The study does not pretend to be comprehensive but tries to illustrate the different solutions and approaches adopted by the courts to manage the functioning of a court during this transitional period from old to new, when the legal framework for the organization of the legal system is not finalized, there is no consensus on the interpretation of current laws, the human resources are insufficient, infrastructure is very basic and the people are not well-informed about the changes yet.

It is extremely difficult to find exact data and figures on the number of staff, especially support staff, but also on judges, legal counsels, public attorneys or advocates. Some members of staff were hired by the GoS or the SPLM and are still in post. No clear registers of personnel are accessible and human resources departments are not in place. All figures given in the present report are approximate and subject to change at any time given that recruitment of staff is still ongoing, at the JoSS as well as at the MoLACD.

II. THE CONTEXT OF SUDAN

A. Historical and political perspective

Sudan is not only the largest country in Africa, but also holds the dubious record of having staged the continent's longest-running civil war. Only six years after Sudanese independence in 1956, the country spiralled into its first internal war. Since then, it has been the scene of intermittent conflict. A fragile peace concluded in 1972 collapsed eleven years later when then-President Jaffer Nimairi abrogated the peace agreement, thus triggering a second civil war, mostly along North-South lines, that would last some 21 years. In June 1989, a group of Muslim army officers and the National Congress Party, NCP

(under its previous name National Islamic Front, NIF), staged a coup against Sadiq al-Mahdi. This group has been in power ever since.²

The most recent peace process between the North and the South came to an interim conclusion in January 2005 with the signing of a Comprehensive Peace Agreement (CPA) by the government and the Sudan People's Liberation Army (SPLA) and the SPLA's political arm, the Sudan People's Liberation Movement (SPLM).³ Under the Power Sharing Agreement that forms part of the CPA, the parties agreed to divide representation across all sectors of government (including the executive, the legislature, and the judiciary).

In accordance with the Machakos Protocol, both parties agreed upon a decentralized system of government with significant devolved powers. During the interim period, the structure of governments in Sudan is the following:

- The National level of Government which exercises authority to protect and promote national sovereignty of Sudan;
- The Southern Sudanese level of government which exercises authority in respect of the people and states in the South;
- The States throughout Sudan which exercise authority at state level;
- Local government throughout the Sudan.

Southern Sudan consists of ten states with the following state capitals: Lakes (Rumbek), Warrap (Kuajiok), Northern Bahr el Ghazal (Aweil), Western Bahr el Ghazal (Wau), Unity (Bentiu), Jonglei (Bor), Upper Nile (Malakal), Eastern Equatoria (Kapoeta), Western Equatoria (Yambio) and Bahr el Jebel (Juba).

² Douglas H. Johnson, *The Root Causes of Sudan's Civil Wars* (Indiana University Press, 2004): 39; 84-85.

³ The full text of the CPA of 9 January 2005 comprises annexes: The Machakos Protocol of 20 July 2002; the Power Sharing Agreement of 26 May 2004; the Wealth Sharing Agreement of 7 January 2004; the Agreement on the Resolution of the Abyei Conflict of 26 May 2004; the Agreement on the Resolution of the Conflict in Southern Kordofan and Blue Nile of 26 May 2004; the Security Arrangements of 25 September 2003; and the Permanent Ceasefire and Security Arrangements Implementation Modalities of 31 December 2004.

The linkage between the National government and the states in Southern Sudan goes through the Government of Southern Sudan.

A six-month pre-interim period ended on the 8th of July 2005, marking the start of a six-year long interim period. At the end of the agreed Interim Period (7th of July 2011) the SPLM and the Government of Sudan will jointly organize an internationally monitored referendum for the people of South Sudan that will determine the south's political status⁴. Southerners will have the choice either to confirm the unity of Sudan and adopt the form of government established under the peace agreement, or to vote for secession.

Meanwhile, elections on a national, regional, and local level will be held toward the second half of the Interim Period.⁵

On the basis of the CPA, a new Interim National Constitution (INC) was drafted and entered into force on 9 July 2005.⁶ This Constitution is the supreme law of the land, and the Southern Sudan and state constitutions must comply with it.

The Interim Constitution of Southern Sudan (ICSS) was approved by the Southern Sudan Legislative Assembly on 5 December 2005.

Two years have passed since the signing of the Comprehensive Peace Agreement. The peace held, although certain southern militias excluded from the peace agreement continued to fight. The presence of the Ugandan armed political group the Lord's Resistance Army increased in south Sudan, as did the number of attacks it mounted against civilians and, occasionally, humanitarian workers. More than three million internally displaced people (IDPs) and half a million refugees were expected to return to the South⁷.

⁴ CPA, Chapter I, Machakos Protocol, Part B, 2.5.

⁵ Ted Dagne, "Sudan: humanitarian crisis, peace talks, terrorism, and U.S. policy (CRS Report for Congress: Received through the CRS Web)," *Congressional Research Service (CRS) Reports and Issue Briefs*, 2006, last updated 27 July 2006, NA., General Reference Center Gold, Thomson Gale, accessed on 31 October 2006.

⁶ Interim National Constitution, 7 July 2005.

⁷ Amnesty International Report 2006 – Sudan, 23th of May 2006.

On 24 March 2005⁸ the UN Security Council established the UN Mission in Sudan (UNMIS), with, among others, the task of supporting the Comprehensive Peace Agreement.

Sadly, at the same time as peace between the North and the South came within reach for the first time in decades, further fighting broke out in the Sudan's western province of Darfur and unrest has rekindled in the east of Sudan. These conflicts, in particular Darfur, have captured international attention and somewhat diverted resources away from programmes in the south.

B. The Sudan in Figures and Keywords⁹

The Republic of the Sudan has some 41 million inhabitants¹⁰: 52% black Africans, 39% Arab, 6% Beja, 2% foreigners, and 1% other. In the south, there are at least 63 different indigenous communities, of which the most prominent are the Dinka and the Nuer.¹¹

Some 70% of Sudanese are Sunni Muslim (in the North), while 25% follow indigenous beliefs and 5% are Christian (mostly in the South and Khartoum). The official language is Arabic, but in the South, Arabic as well as English are official working languages for the government and are official languages for education. Other widely-spoken languages in the south are Dinka, Nuer, and Shilluk. All indigenous languages are recognized as national languages by the ICSS, and in addition to English and Arabic, the legislature of any lower level of government in Southern Sudan may adopt any other national language as an additional official working language or for teaching in schools at its level.

The head of state and head of national government is President Umar Hassan Ahmad al-Bashir (since 1993), assisted by First Vice President Salva Kiir of the SPLM (since 4 August 2005) and Vice President Ali Osman Taha (since 20 September 2005). The NCP dominates al-Bashir's cabinet, despite

⁸ Resolution 1590 of the UN Security Council

⁹ Unless otherwise stated, the information in this section is taken from the CIA World Factbook, see <https://www.cia.gov/cia/publications/factbook/geos/su.html> (accessed October 31, 2006).

¹⁰ July 2006 estimate of the CIA World Factbook.

¹¹ See Schedule for the South Sudan Constitution, December 2005.

protests by the SPLM with regards to the distribution of key economic ministerial portfolios. The SPLM secured the ministries of foreign affairs, cabinet affairs, labor, transportation, health, education, humanitarian affairs, and trade, but the NCP kept both the energy and Finance ministries. Many members of the SPLM and its supporters say that most key ministries went to the NCP—a situation that seems to have strengthened the position of southern separatists.

The new National Assembly was inaugurated on 31 August 2005—on the basis of the CPA, places were allocated on an appointment basis. The NCP has taken up 52% of the seats (234), the SPLM 28% (126), and the northern and southern opposition groups the remaining 20%. Some parties (most notably Hassan al-Turabi's Popular National Congress (PNC) and Sadiq al-Mahdi's Umma party) claim that the CPA was not inclusive and have therefore decided to boycott the National Assembly and the National Unity Government. Elections are next to be held no later than July 2009 under the terms of the CPA.

Sudan's legal system is based on English common law and Sharia law. In 1991, Sharia law was imposed in Sudan and applies to all residents regardless of their religion. Following the CPA, the principle of "one country, two systems" was adopted for the legal system. Sharia law does not apply in the South anymore, where a separate legal system is developing. Sudan as a whole has a Constitutional Court of nine judges, a National Supreme Court; National Courts of Appeal; and other national courts. South Sudan, in addition, has separate legal institutions, which are set out in more detail below.

C. The situation in Southern Sudan

The 21-year civil war, drought, and raids by government-backed militias and rebel groups have of course left their trace on the south. UNHCR observes that *"the war killed millions, devastated the land and froze all development in what was anyhow one of the world's most underdeveloped regions."*¹²

Among the challenges which South Sudan faces today are, in particular:

- An almost complete lack of infrastructure and services (health, water, education);
- Transforming a rebel movement into a functioning state authority;
- The ongoing troubling security situation (particularly close to the Ugandan border where the Lord Resistance Army continues to operate);
- Disputes over land/property that are likely to increase with IPD and refugee returns;
- Difficulties in accessing and travelling through the south (roads are heavily mined, have been destroyed, or are non-existent);
- Lack of opportunities for returnees.

These conditions will be exacerbated by the imminent return of South Sudanese refugees and displaced people to their homeland, which puts an additional strain on limited resources (UNHCR estimate: 500,000 refugees plus 4 million internally displaced persons)¹³.

It is hard fully to appreciate the extent of this lack of resources and the scale of reconstruction that will be needed. In essence, the South must build a state almost from scratch.

D. The Government of Southern Sudan (GoSS)

According to the CPA and the ICSS, The Government of Southern Sudan¹⁴ shall consist of three organs: the Legislature, the Executive and the Judiciary.

¹² See UNHCR website on South Sudan at <www.unhcr.org/cgi-bin/texis/vtx/southsudan?page=intro> (accessed on 31 October 2006).

¹³ Ibid.

¹⁴ CPA, Chapter II : Power sharing, Part III; article 53 ICSS

The city of Juba is the capital of the Southern Sudan and the seat of the GoSS¹⁵.

The work of the Executive and the Legislature will not be described in this assessment.

¹⁵ Article 53 (4), ICSS

PART II. THE JUDICIAL SYSTEM IN SOUTHERN SUDAN

The main stakeholders in the Rule of Law in Southern Sudan are:

- The Judiciary of Southern Sudan (JoSS);
- The Ministry of Legal Affairs and Constitutional Development (MoLACD);
- The Southern Sudanese Police;
- The Prison Service of Southern Sudan;
- Advocates.

I. APPLICABLE LAW

A. Statutory law

1. The Comprehensive Peace Agreement¹⁶

The CPA prescribes that the National Constitution of Sudan shall be the supreme law of the land. All laws must comply with it.

It further states that legislation enacted at national level having effect only in respect of the states outside Southern Sudan shall have as its source Sharia and popular consensus. Legislation enacted at national level applicable to Southern Sudanese states or to the southern region shall have as its source popular consensus, the values and the customs of the people of Sudan, including their traditions and religious beliefs, and shall have regard to Sudan's diversity.

Where national legislation is currently in operation or is enacted and its source is religious or customary law, then a state or region, the majority of whose residents do not practice such religion or custom may either introduce legislation to allow or provide for institutions or practices in that region consistent with their religion or customs, or refer the law to the Council of State for the Council of State to approve it by two thirds, or initiate national legislation which will provide for such necessary alternative institutions as are appropriate.

¹⁶ CPA, Chapter I: Machakos Protocol, Part C, 3.2.

All levels of government throughout the country shall comply fully with obligations under the international human rights treaties to which they are or become a party¹⁷.

2. The Interim Constitution of Southern Sudan

According to the ICSS, the sources of legislation in Southern Sudan shall be¹⁸:

- (a) The Interim National Constitution;
- (b) The Interim Constitution of Southern Sudan;
- (c) Customs and traditions of the people of Southern Sudan;
- (d) Popular consensus of the people of Southern Sudan; and
- (e) Any other sources.

The Interim Constitution further provides that *“all current laws shall remain in force and all judicial and civil servants shall continue to perform their functions, unless new actions are taken in accordance with the provisions of this Constitution”*¹⁹.

3. Currently applicable laws

When trying to determine the currently applicable legislation in Southern Sudan, one is confronted by an unclear situation where the highest authorities of Southern Sudan do not agree on the interpretation of above-mentioned provisions of the CPA and the ICSS, and thus on the currently applicable laws.

On the 15th of July 2006, the Minister of Legal Affairs and Constitutional Development (MoLACD) issued a circular to the Rule of law institutions,

¹⁷ These include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of all forms of Racial Discrimination; the Convention of the Rights of the Child; the Slavery Convention, and the African Charter on Human and People's Rights. See CPA, point 1.6.

¹⁸ ICSS, art. 5.

¹⁹ Article 208 (3), ICSS

interpreting the provision as follows: *“since the laws of Southern Sudan are supposed to be non Sharia based laws, and since all the National laws, especially the punitive laws are Sharia based, then “All the current laws” shall be interpreted to mean the non Sharia based New Sudan laws, to the exclusion of National Sharia based laws”.*

This means, according to the MoLACD, that pending enactment of Southern Sudanese laws by Southern Sudan Legislative Assembly, the following laws shall continue to operate in Southern Sudan:

- All the New Sudanese laws 2000 to 2004 that fall within the competences of the GoSS;
- The GoS laws of 1974 that fall within the competences of the GoSS in the areas that are not covered by the New Sudanese laws;
- Customary laws;
- Principles of justice, equity and good governance.

The New Sudanese laws of 2000-2004 are in fact provisional orders signed by the SPLA Chairman. These laws or 'provisional orders' were subject to approval by the National Liberation Council (NLC), but this never went through.

The MoLACD circular is, among others, addressed to the President of the Supreme Court of Southern Sudan, to circulate to all the courts in Southern Sudan.

The JoSS does not recognize the authority of this circular issued by the MoLACD on the applicable laws, arguing that the CPA and the ICSS confirms the independency of the judicial power and that the executive has no power to give instructions to the judiciary.

The position of the Judiciary is that the SPLA laws of 2003 have no legitimacy and should not be applied, for they have never been approved by the Legislative Assembly. Until new Acts are passed, the “current laws” are the National laws of the former Government of Sudan.

The direction of public prosecution seems to follow this interpretation as well.

In the judicial system this creates massive confusion, given that there is no agreement on which criminal act, criminal procedure act, civil procedure act, act on the judiciary police act or prison act are currently applicable, as those matters have been covered by National laws as well as by SPLA/M provisional orders.

There is a tendency to apply the current laws from the former National Government of Sudan in the areas held by the North during the war (and especially in the garrison towns Juba, Wau and Malakal), and to apply the SPLA 2003 acts the former SPLA held areas.

In Rumbek, whenever an area of law was covered by an SPLA Act of 2003, this act would be applied. This concerns in particular civil and criminal procedure, and the penal code.

In the courts observed in Juba, the judges unanimously applied the laws of the former national government, except the provisions that relate to Sharia law. This leaves a lot of discretionary power to the judge to decide which rules apply and to what extent. It is not always clear whether a provision derives from the Sudanese customary traditions or from Sharia²⁰.

The legislation applied can differ between courts within one state²¹. The Courts of Appeal each have jurisdiction for three or four states. Depending where the case was judged at first instance, the High Courts and Courts of Appeal are then confronted with cases judged according to different legal systems. The forging of precedents in these circumstances is evidently utopia.

B. Customary law

Customary law is the expression of the customs, beliefs and practices of people. There are over fifty tribes in Southern Sudan, most of which have their systems of customary law systems, reflecting individual tribal identities. Customary law has been the principal source of social order and stability

²⁰ For example, corporal punishment as a sentence applied by the statutory courts.

²¹ For instance, in Juba the 1991 are applied, in Yei the 2003 laws, whereas both cities are in the state of Bahr el Jebel.

within the region during the war and still remains the predominant source of law²².

The basic tenet of customary law is reconciliation, a vital tool in conflict resolution. Conflict resolution through customary law will be essential to a peaceful and fair society.

Customary law is currently challenged from many directions, particularly by statute law and international human rights law. The majority of Southern Sudanese customary law systems illustrate plainly a conflict between international human rights laws and limited rights granted to women and children under customary law.

It appears that certain fields that were formerly dealt with under customary law have now moved to the jurisdiction of mainstream courts. These are mainly land disputes, because the issue is of vital importance for returnees, refugees and IDPs. Since the CPA, the value of land has started to rise and land has started to have a commercial value, raising questions that go beyond the inter-tribal disputes.

Furthermore, very few customary law systems exist in written form. Only Dinka customary law has been codified and written. Traditionally there has been resistance within southern Sudanese society to recording customary law but there is now a strong and growing opinion at all levels, that customary laws should be documented, disseminated and harmonized with international law.

The Minister of Legal Affairs and Constitutional Development plans to set up a center for the development of customary Law, but no concrete undertakings have yet been given for the establishment of such an institute.

²² In March 2004, over 90% of day-to-day criminal and civil cases were still executed under customary law (see A Study of Customary Law in Contemporary Southern Sudan, World Vision International, 2004).

The present assessment does not focus on the issue of the development, recording and harmonization of customary law. Other organizations are present in Southern Sudan with the specific aim of working on this topic²³.

Reference to customary law and courts is made only in relation to the current functioning and organization of statutory courts.

II. THE JUDICIARY OF SOUTHERN SUDAN

The mission of the judiciary is to ensure the establishment of effective judicial institutions that will render justice in an accessible, effective and efficient manner free from arbitrary interference from the legislative and executive branches of government²⁴.

A. Legal Framework

1. Comprehensive Peace Agreement

In the CPA, parties agreed that there should be, at the Southern Sudan level,;
²⁵

- A Supreme Court of Southern Sudan;
- Courts of Appeal;
- Any such other courts and tribunals as deemed necessary in accordance with the Southern Sudan Constitution and the law.

2. Interim Constitution of Southern Sudan (ICSS)

According to the ICSS²⁶ the Judiciary of Southern Sudan shall be established and organized as follows:

- The Supreme Court of Southern Sudan;
- Courts of Appeal;
- High Courts;
- County Courts and

²³ World Vision International, US Institute for Peace.

²⁴ See The Judiciary of Southern Sudan Institutional Workplan 2006-2007

²⁵ CPA, chapter II, part III, point 3.7.1

²⁶ ICSS, articles 126 to 138

- Other courts or tribunals as deemed necessary in accordance with the provisions of the constitution and the law.

The ICSS further states that the state judiciary and administration of justice at state level, including maintenance and organization of state Courts, is an exclusive power of the states, subject to national norms and standards, and civil and criminal procedure. Article 171 provides that in the states, judicial power shall vest in the state judiciary and the constitution of each state shall provide for the establishment of a state judiciary consisting of High Courts, County Courts and any other courts and tribunals as shall be determined by law.

State courts are to have civil and criminal jurisdiction in respect of state, Southern Sudanese and national laws, save that a right of appeal shall lie as provided for in the ISCC. However, the Southern Sudan Legislative Assembly is to determine the civil and criminal procedures in respect of litigation or prosecution under Southern Sudanese laws in accordance with the constitution.

Each state is to determine the jurisdiction of its customary law courts.

The constitution and legislation of each state is to provide for:

- The appointment, removal and other terms and conditions of service of judges and lay magistrates and
- Guarantees for the independence and impartiality of the state judiciary, immunity of judges and magistrates, and measures to ensure that they are not subject to political or other interferences.

The structures and powers of the courts of the states of Southern Sudan are to be subject to the provisions of the ICSS and the constitution of the state concerned.

Notwithstanding the provisions of Article 171, and pending the establishment of judiciaries in the states within four years of the interim period, state judges and magistrates shall be employees of the Southern Sudan Judiciary

appointed by the President of the Government of Southern Sudan on the recommendation of the President of the Supreme Court of Southern Sudan²⁷.

3. Judiciary of Southern Sudan Act (JoSS Act) and JoSS Service Commission Act

The constitution does not set out the powers of each court. This has to be regulated by law.

The JoSS Act will outline the judicial power at the GoSS, state and local government levels as well as define the jurisdictional competence of each category of court.

The JoSS Service Commission Act will establish the Judicial Service Commission which will be the highest administrative body of JoSS.

At the time of the assessment, drafts of those two acts were being discussed at the level of the JoSS and the MoLACD, but had not yet been submitted to the Legislative Assembly.

At the state government level, legislation on judicial matters has not been passed yet either.

B. Current Structure and composition

Although the organization and jurisdiction of each level of court is not yet defined in law, the courts started recently to operate. The Judiciary of Southern Sudan has appointed most of the judges since October 2006. They were recently sworn in and left for their posts in the different states. Most of the courts started to function between October 2006 and January 2007.

The structure of the new judicial system as described in the CPA and the ICSS is not so different from what existed before²⁸, and the former system slowly will be transformed into the new system.

²⁷ Article 172, ICSS

²⁸ The previous judicial order was comprised a supreme court in Khartoum, courts of appeal, province courts, county courts and popular courts.

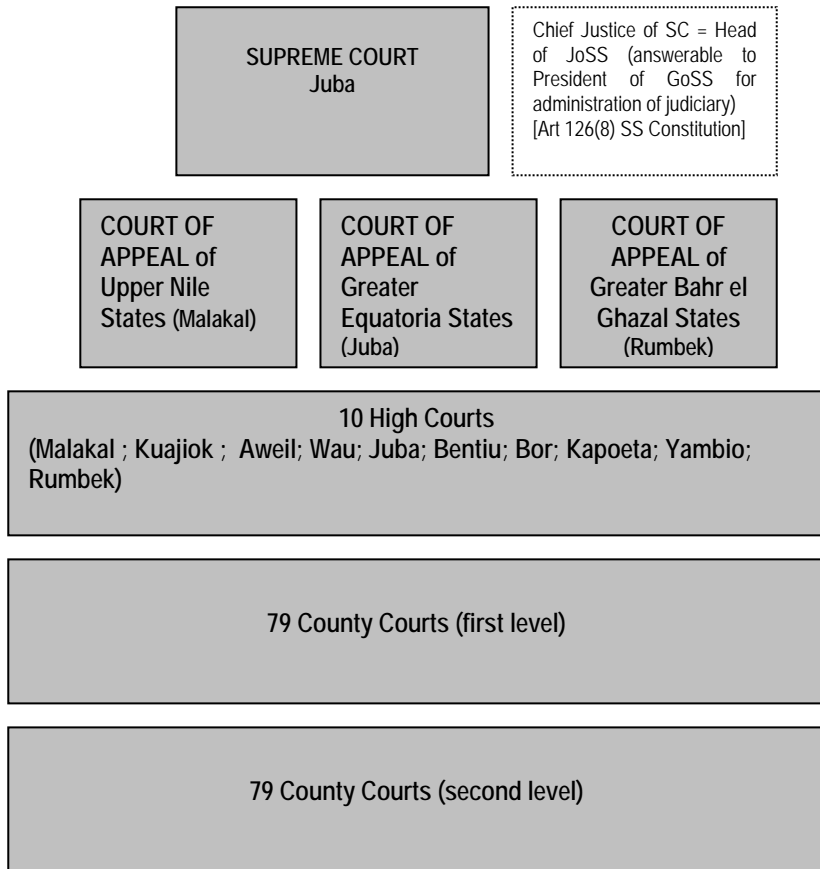
The Judiciary is currently organized into the following courts:

- The Supreme Court, composed of 7 judges, is established in Juba
- 3 Courts of Appeal, respectively in Juba for Greater Equatoria, in Rumbek for Greater Bahr el Ghazal and in Malakal for Upper Nile, composed of three judges each;
- 10 High Courts established in each of the ten States, composed of two judges each;
- 79 County Courts (first level);
- 79 County Courts (second level), some composed of judges and some of lay magistrates.

The Constitution of Southern Sudan further envisages the establishment of "*other courts or tribunals as deemed necessary*", which aims to include customary courts.

It appears that the traditional justice system still plays a predominant role and continues to function in every single community, from the smallest administrative entity upwards. Whenever possible, disputes will be settled at this level. Only when no conciliation can be achieved or when the matter is not within the jurisdiction of the customary courts, the case will be referred to the statutory courts.

Given that the jurisdiction of each customary and statutory court is not yet defined in law, judges and customary chiefs maintain a large 'margin of appreciation' to set the limits of their jurisdiction.



C. Current functioning of the courts

The following chapter tends, at the one hand, to reflect the way the courts are functioning in early 2007 although there is neither clear legal framework nor legislation, insufficient human resources and a lack of infrastructure.

On the other hand, it aims to share the insights and knowledge judges, public attorneys and support staff have from their respective functions and duties.

These findings aim to pinpoint some practices that need attention, and might help to assist the JoSS and MoLACD in the implementation of a fair and accessible system of justice.

1. Structure and organization of the courts

(a) The different types of courts and their structures

Ordinary Courts

The formal court hierarchy as described in the previous chapters is replicated across Southern Sudan. There is no division into civil and criminal courts. All courts currently deal with both.

Customary Courts

The structure of the customary courts does vary from one area to another.

In Rumbek for instance, the structure (lowest to highest) is as follows:

- (a) Chiefs' Executive Court²⁹;
- (b) Regional Court ³⁰ ;
- (c) Payam Courts³¹.

In Juba, the structure (lowest to highest) is as follows:

- (a) 'A' Court and
- (b) 'B' Court.

The customary courts are the traditional method of dispute resolution and, as such, are used by the majority of the population. They are recognized by the Constitution, although they are referred to generically rather than specifically. The customary courts are considered to be part of the formal court system and are recognized as such by the professional judges. Although the rules applied by the courts differ from the higher courts in that they refer only to tribal customs, the customary court is viewed as the court of first instance.

²⁹ Around 20 Chiefs Executive Courts under the Rumbek County Court.

³⁰ 9 Regional Courts under the Rumbek County Court.

³¹ 4 Payam Courts under the Rumbek County Court.

The state (through the police force) enforces customary court judgments on the seizure and liquidation of assets and appeals from the customary courts are heard by the higher courts. When higher courts hear an appeal from a judgment of a customary court, a transcript of the file, or at least of the decision, will be transmitted to the appellate court. Although the Chiefs' Executive Courts and the Regional Courts deal with customary law only, they may at times deal with criminal law. The Payam Court applies customary as well as some common law. Appeals from the Payam Court will be referred to the County Courts.

Where the case is outside the jurisdiction of the customary court, the Chief concerned will make a formal referral to the Attorney General or to the Higher Courts.

The customary courts hear the greater proportion of disputes between Southern Sudanese citizens. The use of customary courts is not limited to any particular tribe but differs from one tribe to another in structure, organization and rules. Every tribe has its own set of customary laws.

Due to their location, the customary courts are the only courts available to a large proportion of the population of Southern Sudan. Only conflicts that cannot be resolved by the customary courts or that are reported and investigated by the police, will be referred to the higher courts.

Serious criminal cases cannot be brought before the customary courts. If such a case is brought before the customary courts, the Chiefs will refer the case to the Attorney General who will then pass the case on to the higher courts.

Chiefs will also refer a matter to the formal courts if the value of the dispute exceeds a certain value.

Sometimes criminal cases (for example drunk and disorderly behavior, adultery ...) are regarded as civil matters and within the customary courts' jurisdiction. The dispute will be settled by compensation rather than by criminal punishment.

Specialized courts

Special courts may be set up to deal with specific violent disputes. The courts are made up of a High Court judge and Chiefs from the customary courts³². The current legislation does not envisage any option of trial by jury.

Military Courts

Where both parties are military personnel, the case will be dealt with by the military courts.

If any civilian is party to a civil or criminal case, the ordinary courts (or customary courts) will deal with it. Where one of the parties to a dispute is a member of the military, permission must be obtained from his commanding officer for leave to attend the hearing. The commanding officer will ensure that his subordinate does attend the hearing and obeys the court order.

(b) The powers and the jurisdiction of each level of court with regard to handling a general caseload and the criminal caseload

Given that the law does not clearly set down the extent of jurisdiction, during the field study every judge was asked to describe his own jurisdiction.

There is general consensus that all cases that are investigated or reported to the police are brought in the formal courts. Some commercial cases are also brought directly in the formal courts. All other civil and criminal cases are treated at the customary level first. Only when they cannot be resolved at any of the customary courts levels, will they be brought to the County Court.

³² For example, when from February to March 2004 Lakes State experienced a disturbing escalation in the number of violent conflicts between and among different Dinka groups, special courts were set up "to clear the backlog of serious tribal fight cases that if left unresolved would have continue to lead to people taking the law into their own hands, to address the environment of impunity and demonstrate the rule of law, to restore looted cattle or any other property to their owners, to give justice to the aggrieved and to ensure and consolidate the transition from military justice to civil justice".

Criminal cases are brought to the County or High Court depending on the offence. County Court judges consider themselves authorized to deal with all criminal cases except murder.

Civil cases are dealt with by the County or the High Court according to the value of the case. However, the limit is not clearly set.

(c) Distribution at court level

All cases are referred to the president of the relevant court. Incoming cases are recorded by the court clerk. The president then allocates the cases depending on the type of case and workload. A judge may not request a specific case.

County Court

In practice, civil cases brought before the formal courts are attributed to first or second level judges according to the value of the case. The President of the County Court can assign cases to first or second level judges or lay-magistrates, but can also refer the case to the customary courts. Cases with a higher value and cases involving companies or organizations are assigned to the higher level County Courts.

High Court and Court of Appeal

The President of the High Court assigns cases to individual judges according to their caseload.

(d) Appeal and review processes across the different levels

Given the current transition going on from old to new judicial system, judges tend to show a lot of flexibility where delays are concerned. Normally a defendant or litigant has either two weeks or one month following the decision to lodge an appeal with the court, but even late appeals will be considered when there is a reasonable explanation for the delay (which can be distance, ignorance of the law, etc.).

Appeals from the highest customary courts must be heard in the County Courts. According to some judges, only second level lay-magistrates when present, otherwise second level judges, can hear appeals from the customary courts. Other judges however consider that appeals, even from customary courts, always have to be heard by first level County Court judges.

All appeals from the 2nd or 1st level County Courts, including appeals against decisions made by a 2nd level County Court lay judge, are heard in the State High Court.

An appeal from the state High Court is passed to the Regional Court of Appeal and from there to the Supreme Court of Southern Sudan.

Cases before the Courts of Appeal are generally decided by review of the case file without a hearing. However, the judges of the Regional Courts of Appeal have the right to call the parties and other relevant parties to the Regional Court of Appeal if they so desire.

2. Statistics ³³

(a) Court statistics

Statistics are collected at the Judiciary of Southern Sudan on a quarterly basis. An office of statistics is in charge of this record keeping. Every Court holds its own statistics³⁴. All courts observed in Juba and Rumbek hold hearings every weekday from 9 am to 5 pm. About five cases are heard daily by the customary courts.

Approximately 5 to 10 cases are heard by every judge in the County Courts. Around five cases per day are referred to High Court.

(b) Type of cases

³³ An office of statistics exists in the judiciary's building in Juba. However, the officer responsible could not be found. Statistics are drawn from discussions with other staff members.

³⁴ See annex 2 for a sample.

It appears that civil cases mainly concern land and cattle disputes, given that other civil matters as family law, inheritance, child custody and so on are dealt with by customary courts. Land disputes sometimes still appear in customary courts, but this is changing. The commercial value of land and the movement of large population groups during and after the war make land issues one of the root causes of many tribal conflicts. A land commission will be established, but meanwhile the disputes are still referred to the customary and lower courts.

Recently traffic incidents have formed an increasingly part of the civil caseload.

Some commercial and labor cases also come to the formal courts.

The most common criminal offences handled by the courts are murder, robbery, theft, adultery and abduction. It has to be said that, when no police record has been obtained, many criminal offences are treated as civil cases, leading to compensation of the victims rather than punishment of the defendant.

3. Management authority and fiscal control

(a) Management

Every County Court has a President, who sits as a first level County Court judge and is responsible for court management at the County Court level.

The President of the High Court is responsible for court management at the High Court level and is the head of the State Judiciary.

The Chief Administrator or Court Registrar is responsible for court management at the Court of Appeal level.

The Chief Administrator is responsible for the administrative management of the courts and the Registrar for executive management at Supreme Court level. The Chief Justice of the Supreme Court is the head of the Judiciary of Southern Sudan.

Strategic planning for the judiciary as a whole is done at the level of the Supreme Court, responsible for the Judiciary of Southern Sudan (JoSS)

(b) Fiscal Control

(i) Budget and funding

The JoSS files a budget and receives funding from the GoSS Ministry of Finance on an annual basis. The funds are received by the Supreme Court and passed down to the three regional Courts of Appeal. Currently the Ministry of Finance is still monitoring the budget closely, so that the independence of the JoSS in this regard can be questioned.

It appears that the courts below the regional Courts of Appeal do not have their own budgets but are supplied with funds by a more senior court.

(ii) Fees, costs and fines

Each court receives fees, costs and fines. In each case, these monies are sent to the GoSS Ministry of Finance.

Each court fee and fine received by the court is received by the court accountant who records the payment in an account register.

The way in which fees are determined varies from court to court. In some courts, fees are fixed to a specific amount payable when filing a petition. In others, the judge determines the fee for each case, usually according to the value of the case. The level of fee varies between 2% and 10% of the value of the case.

Sometimes a fee is asked for when filing the case and a supplementary payment will be ordered by the judge depending on the judgment.

Another fee can be asked for the petition writing by the court clerk. This will not be considered as a fee, but as a payment for a personal service offered by the court clerk.

To obtain an order for execution of a judgment, a fee is also due and determined by the judge.

Whereas some judges told us that no fees were due for criminal cases, others do charge defendants.

Labor cases are sometimes free of charge.

4. Staffing

(a) Court personnel

(i) Qualification of the judges.

All judges above 2nd level County Court Lay Judge had to produce a degree in law and a certificate from the Bar in order to be officially as a judge. The judges have nearly all been educated in Khartoum or Cairo.

Some judges had been practicing as judges, public attorneys or advocates before being appointed as judges of the Judiciary of Southern Sudan.

They were appointed and sworn in by the Chief Justice of the Supreme Court of Southern Sudan.

Since they were appointed, no specific training has been given to the judges in Southern Sudan since no local trainings are currently available.

Some judges were sent to the Law Development Center in Kampala to complete a legal training course. Others followed an intensive English language course at the British Council in Nairobi.

Judges of the Supreme Court were trained in Germany by Max Planck Institute.

(ii) Remuneration

Salaries are generally paid on time at each court level. Senior judicial staff agrees that their salary is reasonable and allows them to live comfortably. This was not the case for the junior judicial staff we met.

Some support staff are actually getting paid less now than they were during the war.

Accommodation is supposed to be provided but, in many cases, it has not been built yet.

(iii) Nationality (ethnic group) and main residence

Judges at County Court level and above are moved from their home regions to become judges in different places to ensure impartiality³⁵. There is also diversity in religious origin. Some judges are Christian, others Muslim.

Women are well represented at the county court level, but not in the higher courts³⁶.

(iv) Security for judges and judicial officers

Armed police officers are present at each level of court from the Chiefs' Executive Court up to the Supreme Court to provide security for the judges.

Due to recent insecurity in Rumbek, High Court judges have been traveling with escorts but they are trying to reduce the use of escorts.

Some judges told us that they often received threats but these were rarely acted upon. Those threats usually came from members of the military.

³⁵ Judges sitting in Rumbek for example, are originally from Darfur, Upper Nile, or Equatoria, and belong to the Bari and Shilluk tribes, whereas the main tribe in the area is the Dinka. In each case, the judges are removed from their place of origin and deal with cases relating to different tribes (in this case, the Dinka).

³⁶ Half of the country judges in Rumbek and Juba are women; none were assigned to the visited High Courts, Courts of Appeal or Supreme Court.

(a) Support staff

(i) Qualification

Support staff in the higher courts includes petition receivers, petition writers, case file staff, stationery store staff, catering staff, administrative staff and court clerks, accountants, staff with multiple functions, interpreters and translators.

At the moment, most support staff do not receive any specific training. In 2007, some of the support staff of the Highest Courts will go to the British Council to receive English language training. Other specialized training for senior staff is planned in South Africa.

Support staff in the lower courts did not receive any training and have to learn on the job. The clerks and other staff dealing with record keeping did not receive proper training and are instructed by senior staff. This has been highlighted as a training need by a number of people.

They requested for more training, especially on:

- Petition-writing;
- Filing and record-keeping skills;
- Case-management;
- English language;
- Ethics.

The number of support staff is still limited. Some were already working in the courts before the CPA and remain in post. This results in a mixture of staff hired by the North and former SPLM staff. Data on support staff is scarce. In general, support staff consists of accountants, court clerks, interpreters and translators.

(ii) Bilingual or multilingual staff who speak ethnic minority languages

Staff members speaking national languages other than English or Arabic are recruited by the courts. These staff members are often used to interpret into

the local dialects and languages in courts, even if they have not been hired as interpreters (for example clerks, watchmen ...).

5. Court Services

(a) Copy of the decree and execution of judgments

All parties to a case are given free copies of the judge's decree, immediately after the judgment. This copy is transcribed on a standard form, in English (former SPLA areas) or in Arabic (former garrison towns)³⁷. No copies in the local dialects are available.

If a court user wishes to obtain a copy of a court order that was handed down a long time ago, they must petition a judge. If the judge approves the petition, the court user then takes the approved petition to the court staff who will prepare a copy for the court user. Copies of orders are free unless the judgment was particularly long.

A litigant who wants to give effect to a court order will have to petition the judge for an Execution Order. He will be charged for this court order. The judges determine the fee, which is usually a percentage of the value of the case.

(b) The Rights of Suspects and the Accused

(i) Visit of prisons or police cells

The County Court judges visit detention centers in order to check:

- Who has been arrested;
- For what reason;
- Whether they have officially been charged;
- Who is awaiting trial or on remand;

³⁷ For an example of both types of standard forms, see Annex 5.

- If there are any delays and whether or not the investigations can be expedited;
- If the correct procedures have been followed and
- To conduct their own investigations.

These visits are even more important in Lakes State given that there is no representative of the Public Prosecutor at all in this State. The police are taking over the functions of the Prosecutor in criminal cases. In Lakes State, the judges stated that they conduct visits to the prison on a weekly basis.

In Juba, visits by the judges seem to be less frequent, and are done only on a case-to-case basis. The Public Attorney claims to visit the police stations on every day, and the prison weekly.

(ii) Legal representation

Legal representation does not currently exist in Southern Sudan. The judge takes the role of investigator calling witnesses and parties to provide their versions of events. He does not enquire whether the accused knows his rights or desires any legal assistance or representation.

It is almost impossible for an accused person to obtain legal advice and information unless he can afford the expensive services of a private lawyer.

No NGO is currently monitoring the courts in Southern Sudan.

(c) Special services for victims and witnesses

(i) Coordination of witnesses and their appearances in court

Witnesses can be called to attend the court by any party to the case or can be summoned by the court. Witnesses can also present themselves to the court during the hearing of the case or can be called by one of the parties at the request of the judge. The parties are initially summoned to appear at court. Then, at the end of each hearing, the judge will schedule and announce the date of the next hearing. At the end of the final hearing, the judge makes his

judgment and a free copy of the order is prepared and distributed to the parties.

The judges often ask the victims how they feel about acts and statements made by the accused. Every person present at a hearing can express himself freely, even if not summoned, if they give details of their identity. These statements can influence the judge's actions and decisions as judgments are made on a more consensus basis than in other countries.

Witnesses can be cross-examined by all parties.

(ii) Restitution or compensation for victims within a criminal case under the law

Compensation is a fundamental pillar of the customary law system. Statute law still being in the making, no information on the place compensation will have can be given at this stage.

(d) Interpretation

The main languages used in court vary according to the area.

In Juba, Arabic is the most common language spoken by the people and the judges³⁸. The language used during most hearings at County Court level, is Arabic.

An interpretation service is available if one of the parties does not speak Arabic, but there is no accreditation process, and no training, for interpreters. In practice, any other stakeholder can interpret when necessary. We witnessed a policeman acting as interpreter for one of the parties.

The records of the hearings and the judgments are written in Arabic by the judges. All registers and forms are also printed in Arabic. The copy of the decree given to the parties is also in Arabic. This can be problematic as many people speak, but do not read, Arabic.

³⁸ Three out of the four County Court judges met did not speak English at all, or only very little.

The forms used date from the former national judiciary, the Judiciary of Sudan. No new forms or registers have been designed nor printed for the Judiciary of Southern Sudan (JoSS).

In Rumbek for instance, Dinka is the most common language. In most cases, the local tribal language would be used by the court users. English or Arabic would be the most common language used by the judges, as they have been moved away from their region of origin, but these are seldom known by the local population. The judges are not usually able to speak to the local population without an interpreter unless English or Arabic is spoken by that population.

Interpreters were used in all cases observed at County Court level and above. Interpreters are available at the courts. The interpreters are usually members of the court, exercising another function as support staff. This could be either the watchman or clerk employed by the court, or an attending police officer who speaks the local language and English or Arabic.

Interpretation services are provided in criminal and civil proceedings. The service is provided at all stages and for whichever language is spoken by the participants.

The registers and forms are written in English. The court recording is done by the judges in English or in Arabic. When in Arabic, the judgment will be translated by the court clerk, and the parties will receive a copy of the decree in English.

The forms and registers are the ones designed for the Judiciary of the New Sudan.

(e) Public Hearings

The County Courts and High Courts are conducting hearings daily from 9 am till 5 pm.

The customary courts are generally attended by all the parties and witnesses appearing before the court that day and by passers-by. Any party may attend hearings at the customary courts. The hearings are generally conducted under a tree or in a rudimentary building.

Although the courtrooms of mainstream courts are open, only the parties or any person concerned by the case is allowed to enter or leave the court while the judge is sitting in court. The cases are called to the judge one by one.

In addition, Sharia courts are not open to the public as they may discuss sensitive issues relating to women.

The public and the media do not usually attend proceedings at the courts.

6. Information Management

(a) Records

Civil cases may be initiated by the submission of a petition to the court staff. Petitions are written by private clerks outside the court. Some court clerks also act as private clerks to write petitions for litigants.

Criminal cases are initiated by the public prosecution or by a petition from a complainant.

There is an efficient system for recording incoming cases, and all records are kept in proper case files. Each case is given a unique reference number.

The case records are kept by the court registry, maintained by an administrator or court clerk. The court registry is also in charge of organizing the sessions of each judge.

The civil cases are stored in the court registry, in a storage room, or often in the clerk's office.

The criminal cases are mainly kept by the police, and only brought to court for the hearings.

The public are not allowed access to the case files. Access is given only to the attorneys of parties involved and then only with permission from a judge. Lawyers are allowed to remove the files from the file room provided they have signed them out in the record book.

There are no clear rules about the keeping and disposal of records. Often, closed cases are kept in the same place as pending cases.

Supplies are scarce so that even maps often are lacking. In these cases, all documents relating to a case are stapled together so that the file can easily be found.

(b) Standard forms

The standard forms that were used before the CPA are still in use. No standard forms have been developed by the Judiciary of Southern Sudan. In the former garrison towns, the Arabic printed forms of the Judiciary of Sudan are still in use, while in the former SPLA areas the English printed forms of the judiciary of the New Sudan are standard.

All standard forms will be completed by the court clerks, but signed by the judge.

(c) Court Reporting

All court proceedings are recorded by the judge himself during the hearings. There are no official court reporters or registrars present in the courtrooms.

The judge's notes are stored in the file. These comprise the majority of the documents in a case file.

(i) Storage of recordings of proceedings

Case files are often stored in the clerk's office in filing cabinets or in piles on the floor. The filing systems are not very well organized. The rooms where they are kept are constantly accessed by the public.

(ii) Transcripts for appeal

When a case goes to appeal, the higher court makes a request to the lower court for delivery of the case file. The complete file or a transcript of the court order is transmitted to the appellate court.

(iii) Compilation of law reports

It is planned to establish a technical office responsible for recording and reporting the decisions of the Supreme Court and Courts of Appeal, but this service is not functioning yet.

7. Case Flow Management

(a) The backlog of the criminal / civil caseload

Both criminal and civil cases are heard fairly soon after the case is referred to the court.

In Juba, the time limit for summons in civil cases is seven days. Criminal cases are usually heard within one or two days of the case being referred to the court by the Public Prosecution.

In Rumbek, we were told that the first hearing of a case at the High Court usually happens within seven days of receiving the case file.

However, we were also told that there were a large number of pending cases due to the lack of appointed judges and the fact that a large number of them had only just started work³⁹.

Most courts resumed operating only a couple of months ago. No mention was made of pending cases or investigations initiated before the appointment of the new judges in 2006. It can be expected that some files opened before the

³⁹ Most of the judges were appointed since October 2006 and started work at the beginning 2007.

CPA are still pending. Special attention will have to be paid to those cases, especially those involving detainees.

(b) Pending cases

In Juba, we were told that there were a large number of pending cases because of the lack of judges, who had only just started to be appointed.

In Rumbek, we were told that the courts do not have a large number of pending cases. Once a case is transmitted to the court, a hearing is scheduled within a couple of days. However, there are sometimes long delays in police investigations that mean that defendants spend long periods in prison prior to trial.

Most cases are dealt with at the first hearing. Complicated cases can last for hours on one day, or be adjourned to another hearing. Adjournments are also ordered when witnesses have to be summoned.

The judge can pronounce judgment and sentence immediately, or inform the parties of when he will pronounce his judgment. This is never more than a couple of days after the last hearings.

Sometimes the sentence is carried out immediately after it has been pronounced, for example whipping. This practice raises questions regarding the right of every person to appeal a court decision.

In other cases, the complainant has to petition the judge for an order of execution if he wants to proceed with the execution of the judgment.

(c) Expediting trials

Where a defendant has been imprisoned before trial and the police investigation is taking a long time, the judge can make 'encouraging' suggestions to the police to speed up their investigation. However, there does not seem to be a formal way of expediting a trial.

(d) Delays in the court process in the handling of criminal cases and causes for those delays

The unanimous opinion among different stakeholders is that the main cause of delays is lengthy police investigations due to the lack of investigators. Various judges stated that the police have not been properly trained in investigation techniques.

Some stakeholders mentioned the nature of the crime and the difficulties of investigation, for example, when there is a need for medical or other expertise.

In most states, no public prosecutor is present to oversee the investigation, and the judges are wholly dependent on the quality of the police work. To guarantee this quality and to improve it where necessary, the Ministers in charge could give guidelines to the police. Some practical proposals have been developed by ASF and RCN are a component to the present report⁴⁰.

In some areas delays are due to a shortage of appointed and trained judges. This results in an increasing number of pending cases.

Due to the size and infrastructure of Southern Sudan, it is often difficult to summon people to the courts within the specified time limits. As a result, the judges take a flexible approach to the time limits and may issue repeated summons. This is a major cause of delays of hearings.

Practical propositions on the role of police in public prosecution procedures, Justice Assessment Project , South Sudan , 2007

8. Trial Support

Court documents as such court orders, summonses or warrant of arrests are prepared by the clerks to the court and signed by the judges.

Summonses are prepared by the Office of Announcements, and served by the police.

As Southern Sudan is such a large region, it is often difficult to contact parties to case action. The delivery of summonses is one of the major barriers to effective access to justice. People live far away from the courts and have no fixed address. Some of them are nomadic and not easy to locate. People are often illiterate and do not understand the content of the summons, and do not appear in court for that reason.

The police are responsible for delivering a summons. There is no real coordination between police stations in organizing the delivery of summonses from the court to distant places. Sometimes they are entrusted to members of the family of the person to be served to be delivered.

Again, the court does not strictly apply the laws on non-attendance following a summons as they wish to be flexible to parties who are often in cattle camps a long way from the administrative centers. In these cases, they will send multiple summonses before proceeding in the absence of a party.

9. Facilities / Equipment

(a) The Court

(i) Location of court facilities

There are around eight County Courts below each state High Court. There are ten states in Southern Sudan. This means that there are around eighty County Courts covering the whole of Southern Sudan which covers an area roughly the size of Western Europe, with very limited infrastructure and almost no public transport. Accordingly, it is often difficult for people to reach the

formal courts, which are mainly located in the urban areas. Many disputes are settled at local level in the customary courts.

Very few brick buildings exist in Southern Sudan, and almost no court buildings had been built before the war. There are colossal infrastructural needs. In most places court buildings are to be built, as well as accommodation for the judges and support staff. The European Commission supports an emergency project to build courthouses in different states. As a result, many courts operate under trees in the open air. As this is a reasonable solution only during the dry season, it is to expect that during rainy season the court activities will be partly suspended.

Where court buildings exist, they are often in a very poor structural and physical condition. However, there are attempts to keep them clean. The lack of development also means that very few signs exist, other than in the state capitals. The Supreme Court building in Juba is clearly signposted and is relatively well maintained. The Supreme Court, Court of Appeal for Greater Equatoria, High Court for Bahr el Jebel, Juba County Court, the Payam Court and some customary courts are located in the same compound, which makes access easier.

(ii) Security measures

The police are responsible for security and order in and around the courts. Although armed policemen are present around the court building and other court locations and in the courtroom itself during criminal cases, there is little control and people can freely move around in and around the court buildings.

The court police are attached to the court but employed by the main law enforcement body.

The boundaries of the court are clearly marked and guarded, even when located in the open air (marks on the ground).

Visitors are not explicitly advised about the ban on carrying weapons.

(iii) Equipment in court offices

There is a shortage of equipment in the courts at every level in Southern Sudan.

Lower courts are mainly equipped with desks, chairs and some filing cabinets. No phones, faxes, copy machines or computers are present. Computers are only provided at the Regional Court of Appeal level and internet access is only available at Supreme Court level.

Most support staff are working in one room with separate desks.

Office supplies are provided to the lower courts by the higher courts upon demand. They mainly consist of maps, paper and carbon, pens.

The forms used in the courts in Juba are produced in, and supplied from, Khartoum. There have been shortages due to lack of funds and also to late deliveries. The forms in Rumbek exist in electronic format and are printed from the computers in the Court of Appeal.

(iv) Storage of files

In the Supreme Court building in Juba, files are kept in the case file room. In most other court they are kept in the clerks' office, either in a filing cabinet or on the floor.

There is not enough storage space in the lower courts. The courts only started their operations a couple of months ago. There will soon be a shortage of storage facilities, and the problem will be even worse when rainy season comes given the poor condition of the court facilities.

(b) The Courtroom

Outside Juba, the courts are operating in whatever buildings are still standing after the war, in half open tukuls or outside under a tree. The courtrooms are not really designed for that purpose. When available they are equipped with a table or desk for the judges and sometimes with a bench or chairs for the parties. In most cases the parties have to stand in front of the judge's desk.

In many cases, the buildings are in such a poor state that the hearings are conducted outside under trees. Accordingly, the buildings suffer from little or no maintenance. They are, however, kept relatively clean.

There are no specific offices or judges' chambers for the judges, who work in the courtrooms in between cases.

In Juba, the court building has proper courtrooms. The judges sit behind an elevated desk, there is sufficient space for the public, and the public is separated from the proceedings by a barrier.

Outside Juba, the courts are generally in buildings that were not specifically designed as courts. The judge generally sits behind a desk on the same level as the participants. Accordingly, they do not have sufficient space for the public or barriers and rails.

There is a court library in the judiciary building in Juba. However, all the books contained in it are very old and related to the Sharia Law system. Some judges in Juba and Rumbek bring their own books to court.

(c) Prisoner Transport

The police service is charged with the transfer of prisoners to and from court.

In the Supreme Court building in Juba there is a single communal holding cell that is approximately 12 feet square and can hold up to twenty detainees at once. In no other courts were cells available. Detainees are guarded by policemen outside the courtroom while awaiting their hearing.

Detainees in the holding cell did not appear to be restrained. In Juba, detainees were not restrained when brought into the courtroom. In Rumbek, some were seen wearing leg-shackles.

(d) Evidence Room / Evidence Registry

In Juba, evidence brought to the court by the investigating police officers is handed over to the court police who hold it in a guarded strong-room. In other courts, no strong rooms are available. Police usually keep the evidence in the police stations.

Each piece of evidence is tagged with the case reference number.

In Juba the court police maintain a register.

10. Partnership, coordination and other actors

In Juba security meetings are held between the police, the DPP and the prisons, but unfortunately the JoSS is not involved in these discussions.

Judges are in contact with the DPP on a case to case basis only, to discuss a specific file.

In Rumbek, the judiciary is involved in committees with the police and the local government to tackle the issue of illegal detention.

III. THE MINISTRY OF LEGAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT (MOLADC)

A. Legal Framework⁴¹

The Southern Sudan Minister for Legal Affairs and Constitutional Development is the chief legal advisor of the Government of Southern Sudan.

He is also the prosecuting authority at the levels of the Government of Southern Sudan and the states and may perform such legal functions as may be prescribed by law.

⁴¹ Article 138, ICSS.

The MoLACD is, *inter alia*, responsible for:

- Drawing up, perusing and making recommending about agreements, contracts, and other documents in which the Government of Southern Sudan or a state government has an interest as specified by law;
- Representing the government in court or any other legal proceedings to which any level of government is a party; and
- Drafting legislation, including secondary legislation, for the government.

All executive institutions and organs of government in Southern Sudan must comply with legal advice duly given by the MoLACD

In the interests of justice and effectiveness in the execution of their legal duties, the National Ministry of Justice and MoLACD of Southern Sudan must co-ordinate, cooperate and assist each other in the fulfillment of their functions and may to this end, establish the necessary mechanisms and channels of implementation.

B. Mission

The MoLACD is the other main rule of Law institution. Its mission is to lay a strong foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law⁴². Its functions and duties include, among others, to:

- Advise all levels of GoSS on legal matters
- Represent all levels of GoSS in public prosecutions (see II.B.2)
- Draft legislation for all levels of the government in Southern Sudan
- Organize legal aid (see IV.A)

The Southern Sudanese Minister for Legal Affairs and Constitutional Development is the Chief Legal Advisor of the Government of Southern Sudan. Within the Ministry, this aspect of his work is covered by the *Directorate of Civil Legislation and Legal Opinion*.

⁴² MoLACD March 2006 Policy Paper

Furthermore, the Minister is the prosecuting authority at the levels of the Government of Southern Sudan and the states. This work is organized through the Directorate of Public Prosecution.

The MoLACD comprises a number of other directorates:

- Directorate for administration and finance;
- Chief registrar, business, associations, societies and NGOs;
- Directorate for international conventions and treaties, human rights and legal aid;
- Government contracts and public trustees;
- Directorate for training and research.

Only the Directorate of Public Prosecution will be discussed in the present report.

C. The Directorate of Public Prosecutions

Within the Ministry, the prosecution has been delegated to the *Directorate of Public Prosecutions*. One level down, three regional states' Attorney's Offices cover the whole of Southern Sudan, in charge respectively of Greater Equatoria (3 States), Greater Bahr el Ghazal (4 States) and Upper Nile (3 States). At state level, the legal administration will comprise Legal Counsel assisted by Legal Assistants (Public Attorneys) for each county. These lawyers have the power to arrest and to prosecute.

The services of the Public Attorneys and Legal Advisors are decentralized, and personnel are employed directly by the Government of Southern Sudan and the states⁴³.

The functions, immunities, emoluments, terms and conditions of service of the public attorneys and legal advisors at all levels of government in Southern Sudan are to be prescribed by law. No law has been enacted to this day.

The Public Attorneys and legal advisors at levels of the Government of Southern Sudan and states are employed and serve under the authority of the

⁴³ ICSS, Article 138

Southern Sudanese MoLACD for the first four years of the Interim Period. At the end of this four-year period, the MoLACD will relinquish its authority and powers over state public attorneys and legal advisors and transfer these powers to the state governments. The terms and conditions of service of Public Attorneys and legal advisors in the states are to be regulated by state law⁴⁴.

At the time of writing, regional states' Attorney's Offices have been established in Upper Nile, Greater Equatoria and Bahr el Gazal, but the total number of Public Attorneys for the whole of Southern Sudan is only 13, mainly concentrated in the above mentioned offices and based in the former garrison towns Juba, Wau and Malakal⁴⁵.

The MoLACD is in the process of recruiting legal assistants, but potential recruits are scarce. This means that currently, in a majority of States, justice has to be done without any intervention by a representative of the Public Prosecutor.

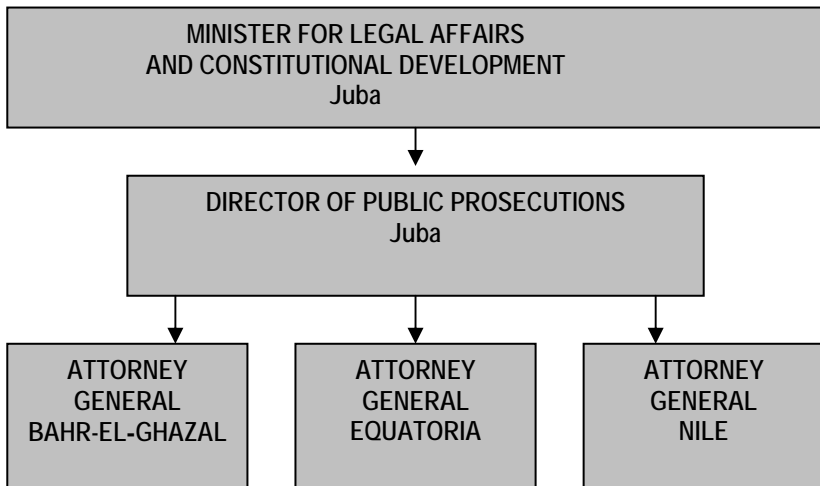
Meanwhile, the police is filling the gap as the prosecuting authority in criminal cases when no public attorney is available, as detailed below

The support staff of the legal administration comprises accountants and administrative staff⁴⁶. In Juba some policemen are deployed and have an office at the legal administration, where they keep the files of criminal cases under investigation, and all other records on criminal proceedings, arrests and detention.

⁴⁴ ICSS, article 139

⁴⁵ Four for Greater Equatoria, all based in Juba; four for greater Bahr el Gazal, three in Wau and one in Aweil; five for Upper Nile, based in Malakal, Bor, Rang, Bentiu and Maluut.

⁴⁶ The Legal Administration in Juba comprises five support staff and six policemen are attached to the office.



D. Current functioning of the public prosecution

Different working schemes were observed in different areas depending on whether the Directorate of Public Prosecutions (DPP) is represented there or not. Where no public prosecutor is present, the police have to link up directly with the court judges, even during the phases of arrest and investigation.

Furthermore, different procedures are followed depending on which law is applied. In Juba, the Criminal Procedure Act of 1991 is in force whereas in Rumbek, stakeholders refer to the Code of Criminal Procedure of 2003.

Most of the information below was given to the experts by members of the public prosecution but way their service functions in practice could not be verified.

1. Arrest, custody and pre-trial detention

According to different stakeholders, a person can be arrested under a warrant of arrest issued by a judge or a Public Attorney. The issue of a warrant can be initiated by a statement made under oath by a complainant before the public

prosecutor or a judge, or at the instigation of the public prosecution or the police.

The police can arrest a suspect without warrant and keep him in custody for 24 hours. Every arrest has to be recorded in an appropriate register. The public attorney is supposed to visit the police stations daily to check the records, where a Criminal Officer officiates as link between the police investigators and the public prosecutor.

The Public Prosecutor has to be informed of any arrest within 24 hours. He can confirm the custody and extend the detention for 72 hours if this is necessary for further investigation. After this time, only a judge can extend detention, on recommendation of the Public Prosecutor, on the basis that is necessary for further investigation.

When no Public Attorney is present in the county, the police are supposed to bring the case to a higher level where there is a representative of the Public Prosecutor's representative. They can also refer the case straight to the judge, who can issue a warrant of arrest and extend the detention. When no judge is yet appointed in the area, the police decide on arrest and detention.

In practice, we observed that in court, the authorization of extension of the detention during investigation is merely a formality. We witnessed a policeman bringing in the file to court. The judge signed for extension of the detention for seven days, without going through the file, in absence of the detainee, his legal representation or a public attorney. We were told the extension had been recommended by the public attorney. No appeal can be made against this decision.

The judge or the Public Attorney can authorize bail at any time and determine the amount of the security except in cases of murder, offences against the state or state security. The security required depends of the nature of the crime. Any person can stand surety for a detainee.

2. Investigation

Although the police are leading the investigations, the Public Prosecution is overseeing them, after a maximum of 24 hours of police custody, or when a complainant comes to file a petition at the public prosecutor's office.

When there is no Public Prosecutor, the judge has the duty of overseeing the investigations.

The Public Prosecutor and the judge are not bound by the police investigations and can dismiss a case at any moment if they consider there is not enough evidence against a suspect.

3. The trial

The Public Prosecutor transmits the file of the investigation to the court. When none is assigned in the jurisdiction, the police will do this.

Even in areas where the Public Prosecutor was present (Juba), we never saw a Public Attorney in court. The prosecution in court was done by the police. This was also the case in areas where no public attorney has been assigned.

According to a Legal Counsel, they attend the hearings only regarding offences against public property or national security.

The judge takes a very inquisitorial role and interrogates accused, witness, victims.

4. Case and caseload management of the Public Prosecutor

All incoming cases are registered by the police at the Legal Administration. In Juba, around 35 cases come in each day, brought to the Public Prosecutor by the police or directly by complainants.

The most common offences they deal with are murder, theft and traffic offences.

All cases are assigned when they arrive to a Public Attorney by the senior Legal Counsel.

The Legal Counsels in Juba have enough space in which to work, but their offices are open, so that files or evidence can not be kept in their offices. Registers, files and evidence are kept by the police who have an office in the compound.

IV. THE POLICE OF SOUTHERN SUDAN

A. Legal Framework

The police of Southern Sudan⁴⁷ is a decentralized professional force whose mission is to prevent, combat and investigate crime, maintain law and public order, protect the people of Southern Sudan and their property and uphold and enforce the constitution and the law.

The police service will be organized at Southern Sudanese and state level; its organization, structure, functions, powers, terms and conditions of service will be regulated by law. As yet no police act has been passed.

The police are headed by an inspector general of police, appointed by the GoSS on proposal of the Minister in charge, which is the Minister of Interior.

B. Current functioning of the police

The police forces currently comprise 18 000 policemen, but their number should reach 20 000 in the coming year. Most of the policemen are former military (SPLA), who have a low level of education. Some training is given by UNDP and UNMIS Civpol, but the training needs are still huge.

As set out above, in most jurisdictions, no representatives of the Public Prosecution have yet been assigned. Due to this shortage of Public Prosecutors, police officers de facto assume the role of the Public Prosecution in criminal proceedings during arrest, detention, investigation and trial.

⁴⁷ ICSS, Article 162

Different actors mentioned the lack of knowledge of criminal procedure, investigation skills and so on of police officers. Although police forces are currently trained, there is an acute need to structure their interventions when they substitute for the Public Prosecution when the latter are not present in the area.

Furthermore, the police play a number of different, key roles in court:

- They ensure court security and order;
- They transfer detainees to court and guard them;
- They present the charge and prosecute in criminal cases, and take an active part in the hearing;
- In some areas, criminal files are kept by the police and only brought to court for the hearings;
- They sometimes act translators;
- They execute sentences in court (ex.: whipping);

Police forces should be fully trained on criminal procedure and time limits, especially regarding arrest, bringing the accused before a court, extension of detention and speeding up investigations.

Furthermore, they should be subject to the same duties, obligations and ethics as other Legal Counsel and legal assistants when they play the role of Public Prosecutor.

The Minister of Legal Affairs and Constitutional Development, as the chief of the Public Prosecution, and the Minister of Interior, as the Minister in charge of the police service, should jointly inform the police forces of their tasks and duties when they are de facto acting as Public Prosecutors, in absence of properly assigned Legal Counsel and legal assistants.

A proposal that could serve as a guideline for an official communication from both Ministers to the competent police forces is annexed to the present study.

V. THE PRISONS SERVICE OF SOUTHERN SUDAN⁴⁸

The prisons service of Southern Sudan is organized at the Southern Sudan and state levels. Its mission is correctional, reformatory and rehabilitative, and is to be exercised with respect for the will of the people, the rule of law and order, civilian government, democracy and human rights.

The prisons service is headed by Director-General appointed by the President of the Government of Southern Sudan on the recommendation of the Minister of Interior and approval of the council of ministers.

The functions of the prisons service are, *inter alia*, to manage, operate and maintain the prisons of Southern Sudan, and to administer the internment and care for the health of prisoners and inmates. The ICSS contains a reminder that prisons authorities must treat prisoners humanely. Any treatment that is cruel, inhuman, degrading to the dignity of prisoners, or that may endanger their health is prohibited and punishable by law.

The organization, powers, terms and conditions of service of the prisons service are to be prescribed by law, but as for the other rule of law institutions, this has not been done yet.

Currently Southern Sudan hosts eight State prisons, 15 County prisons, and numerous other detention facilities (holding cells in police stations, military detention centers and other detention facilities).

⁴⁸ ICSS, article 163.

PART III. ACCESS TO JUSTICE

I. LEGAL INFORMATION, COUNSELLING AND REPRESENTATION

A. Legal Framework

The establishment of a legal aid system is part of the mandate of the Minister of Legal Affairs and Constitutional Development. This task has been delegated to a Director of International Conventions and Treaties, Human Rights and legal Aid within this Ministry.

Little has been done to address the issue on institutional or legislative level, and it does not appear high on the list of current priorities and planning.

According to the Criminal Procedure Act of 1991 and the New Sudan Code of Criminal Procedure of 2003, in the case of serious offences if the accused is a pauper the Attorney General, on application by the accused and if satisfied that it is necessary in the interest of justice, can appoint an advocate to defend the accused and pay all or part of the costs. But these provisions are not applied nowadays, and no new legislation has been enacted regarding legal aid.

Although no services are offered by the MoLACD, the Minister is not eager to see other agencies set up "paralegal" aid.

The reality is that the population has almost no access to legal information, counseling and representation, and that many barriers maintain the distance between the people and the courts.

B. Barriers to access to justice

1. Absence of legal aid and representation

The complete lack of an institutional system to dispense legal aid is the first major obstacle to access to justice.

The very limited number of advocates is definitely one of the main difficulties for the implementation of any legal aid structure at this stage. When lawyers

are available, only very wealthy people can afford to consult them. Since there is no body of advocates, no legal services are organized by the lawyers.

In the courts, the judges are not used to lawyers, and some will not even allow a party to have a lawyer speak for them in court. The lack of a culture of legal representation is another barrier that has to be taken into account.

Barriers to access to mainstream justice further appear to exist in the form of mistrust, lack of knowledge, and impecuniosity.

2. Knowledge of court system and rights

It appears from community surveys that there is a general understanding of local customary court structures and laws⁴⁹. In the customary justice system, every single tribe has its own customary law, so that most people have an understanding of the local rules. The chief plays an important role in counseling. Any party can be assisted by any person during trial.

But many people seem reluctant to take recourse to the mainstream justice system or even afraid of facing judges and court officials in the higher courts. Others may simply be unaware of the existence of mechanisms outside of the traditional justice apparatus, or unable to afford them.

Whereas in civil cases, disputes can be settled without going to the formal courts, this is not the case when it comes to criminal matters.

There is a fairly good understanding of the formal legal system among the population. This knowledge is found to a lesser extent in the villages than in the cities. Even if the transition to the new legal order is ongoing, the judicial system remains quite stable and is understandable to the beneficiaries.

The knowledge of legal rights however is very limited, especially because the applicable legislation differs from one place to another, and no advocates are available to facilitate access to justice.

⁴⁹ Community perception Report for Southern Sudan, 28 July 2006, UNDP/UNMIS Rule of law

The role of the police and of the military in the administration of justice contributes to the mistrust people have of justice. To date, some military and police forces follow their own rules outside any legal framework and it is not always clear who leads the process of delivering justice.

The current dichotomy of applicable laws impeaches equal justice given that the people do not know which procedures are applicable to their case and according to which provisions they will be judged.

Accused people suffer because of a total absence of legal assistance, counseling or other assistance unless they can afford to pay high fees for a private advocate. Legal aid is almost totally unavailable during investigation, detention or trial.

3. Financial access and physical access

Although court fees are not particularly high, most people can not afford to go to court. One has to pay for the petition writing, for court fees, and fees are asked after the judgment to obtain an execution order and to enforce it.

The ways fees are determined are not clear and judges have discretionary power to fix the fees. Sometimes court clerks do ask for fees for writing documents. Legislation is needed to fix fees or methods of calculation of fees.

There is no possibility of waiving fees for indigents. The legislator will have to define provisions to ensure financial access to justice for all people including the poor.

Distances are vast and public transport scarce so that physical distance discourages people from going to the formal courts. Instead, solutions are sought within the customary system. With insecurity in many areas, and almost no physical infrastructure or communication facilities, people's access to legal institutions is severely limited.

4. Right to appear and jurisdictional restrictions

Women are deprived of justice in many cases. Most laws, especially customary laws, do not protect them adequately, and when there is provision

for equal rights, the laws are not always equally enforced. As women have no property, they are commonly imprisoned because they have no means of paying compensation.

Juvenile justice is not addressed at all. No legislation exists protecting juvenile offenders and no special courts are envisaged in the new judicial system. Detention facilities do not allow for separation of adults and juveniles.

The absence of civil society organisations active in the rule of law sector makes it a hard task to bring justice closer to the citizen. No NGOs are monitoring the court system.

C. Stakeholders

1. Advocates

Advocacy is an independent private profession and it is to be regulated by law. Advocates may render legal aid for the needy in accordance with the law⁵⁰.

No law on advocacy has been endorsed by the Legislative Assembly following the CPA. There are no regulations on practice as an advocate and no Body of Advocates has yet been established. The SPLM/A provisional order The Advocacy Act of 2003, is subject to the same concerns as to its legitimacy as all other SPLA/M orders of 2003. The advocates interviewed did not consider this act a valid law regulating their profession and requested clear policies.

According to the above-mentioned Advocacy Act, the Minister of Legal Affairs and Constitutional Development has the power to authorize lawyers to practice as advocates. Only such certification granted by the Minister is recognized for practicing in Southern Sudan. To obtain this certificate, a lawyer has to hold a law degree or any other higher qualification from a recognized university or a legal institution, and hold a legal professional certificate. The Certificate issued in Khartoum universities is not recognized by the Minister any more, because the legal studies and practice there are based on Sharia Law.

⁵⁰ ICSS, article 140

Because the law faculty of the University of Juba is still in Khartoum, and no faculty or training center provides legal education and professional training in Southern Sudan, lawyers are requested to obtain a legal professional Certificate abroad. Lawyers currently have to attend a nine-month legal practice training in the Law Development Center in Kampala (Uganda) if they want to practice as an advocate.

Currently only around 20 advocates have been licensed to practice in the whole of Southern Sudan. Almost all of them practice in Juba. Those advocates practice mainly commercial or company law (registration of companies, contracts...), and ask impressively high fees⁵¹.

At the moment, there is no official body of advocates, bar or other professional association of advocates. A new law should be enacted quickly, permitting the creation of an independent body of advocates, and regulating access to, and practice of, the profession.

Some advocates gather in private associations to practice as commercial advocates. Others have joined the Greater Equatorial Legal Forum.

2. The South Sudan Law Society (SSLS)

The South Sudan Law Society (SSLS) was formed in 1994 and established fully in 1995 at a time when the war was raging through Southern Sudan. SSLS was founded by members of the SPLM/A and other liberation movements in the South and gathered legal professionals from a diverse range of activities. The vision and mission of the SSLS for the establishment of the rule of law and respect for human rights by all cut across political affiliations and the diversity of its membership. In 1999 the SPLM/A National Executive Council at its session in New Cush mandated the SSLS to operate within SPLM controlled areas.

The number of members went up to 90 lawyers, of which fewer than ten were private practitioners.

⁵¹ The advocates we met were asking fees going from 50 to 400 US dollars an hour

The SSLS is now in process of transformation, as after the CPA, most members took positions in the government, or were appointed as judges or public attorney, or recruited by international organizations. The headquarters of the SSLS are still in Rumbek, with branch offices in Yei, Aweil and recently Juba.

The Secretary General is the only one keeping the society alive for the moment. He plans to call a general meeting with all former members, to decide upon the transformation of the SSLS into a real Bar Association. It is uncertain whether he will be supported by other advocates in this initiative. This possible change of status will also depend on the legislation to be enacted on the profession of advocate.

In the meantime, the SSLS works with different NGOs and international agencies on promoting access to justice and monitoring human rights⁵².

3. International organizations and NGOs

Some NGOs and international agencies promote access to justice through the implementation of their programs:

UNDP has a vast two-pronged "Rule of Law" strategy. The first limb is to supply institutional support to the rule of law institutions (JoSS, MoLACD, prison and police), providing technical assistance, capacity building and infrastructure. The second limb aims to promote access to justice by supporting community and civil society initiatives better to understand and use formal and traditional institutions for the administration of justice. UNDP's "Access to Justice Program" is linking communities to providers of justice through activities including awareness-raising, education and training in communities; advocacy on legal and policy reform; capacity-building of civil society; establishment of and support for 'Rule of Law Fora and 'Justice and Confidence Centers'. Some projects are implemented by other local or foreign

⁵² Justice and Confidence Centers run with UNDP in Yei and Aweil; gender-based violence prevention project with CHF in Juba.

NGOs⁵³. UNDP has a field presence in six States of Southern Sudan (Northern Bahr el Gazal, Western Upper Nile, Jonglei, Central Equatoria, Upper Nile and Western Bahr el Gazal).

International Rescue Committee (IRC) has a Rule of Law program in Juba. They established a 'Justice and Confidence Center' that provides counseling and advice, and is linking up with public service lawyers from the Greater Equatorial Lawyers Forum when legal representation is needed.

IRC also supports the "Rule of Law Promotors association", whose members provide legal services within communities.

They also organize workshops on human rights, and broadcast a radio program to promote access to justice.

Norwegian Refugee Council (NRC) is about to launch an Information, Counseling and Legal Assistance program targeting refugees, returnees and IDPs, mainly on land issues and disputes. The program will start in three states: Northern Bahr-el-Gazal, Upper Nile and Western Equatoria.

PACT supported local actors in the organization of special courts in Lakes in 2004, in an effort to ease tribal tensions and avoid a backlog of cases for the new judicial system. PACT is no longer active in the rule of law sector.

Cooperative Housing Foundation (CHF) started a project on awareness-raising on gender-based violence in Juba, implemented with the Southern Sudan Law Society.

These initiatives do not cover all the needs. Apart from them,, little is done to bring justice closer to the citizen. In Rumbek for example, no local or international body is involved in such activities.

4. Other legal aid models

When a new judicial system is emerging in a post-conflict situation, ensuring access to legal services for the entire population is always a delicate issue.

⁵³ International Rescue Committee supports the Justice and Confidence Center in Juba; in Yei and Aweil these centers are operated by the Southern Sudan Law Society.

Most people are poor, resources are limited and the institutional capacities are weak.

In other African countries, a variety of solutions were developed to alleviate the effects of the absence of advocates while guaranteeing minimum legal services to the people at limited costs.

Southern Sudan could take inspiration from some of these models, for instance:

Justice Centres in South Africa

In South Africa, the Legal Aid Board (LAB) is an independent body responsible for implementing those provisions of the Constitution that require the State to ensure access to legal services. The LAB has established a network of 'one stop' Justice Centres staffed by lawyers ('professional assistants') and recently graduated law students ('candidate attorneys'). They offer advice and representation on civil and criminal matters. The LAB is also entering into agreements with university law clinics and NGOs to provide the outreach it cannot. The costs of the Justice Centre were estimated to be 30% less than the former legal scheme (which involved contracts with private lawyers).

Legal aid Clinic of the Law Development Centre in Uganda

Legal aid programmes were developed, using law students to assist prisoners.

Assistance at police stations in Angola

The Bar Association of Angola (OAA) has developed a programme of assistance to suspects in police custody in police stations in Luanda district whereby graduate lawyers attend police stations with public prosecutors to advise an accused person at interview. The project focuses on poor people at the initial stage of the investigative process where most abuses take place in police stations in the Luanda area.

Paralegal services in Malawi

Paralegal Advisory Service (PAS) works with paralegals in the prisons and police stations. The paralegals are centrally co-ordinated by a PAS national coordinator and employed by NGOs working in partnership with the Malawi

Prison and Police Services and the courts to offer legal education, advice and assistance in the prisons, police stations and courts

India

In Bihar, India, judicial officials periodically visit prisons to review cases and issue rulings on the spot. These 'camp courts' only handle matters involving minor offenders. The courts are seen as a useful way to reduce overcrowding, speed up the delivery of justice, and restore the 'hope' factor in the life of prisoners.

D. Access to justice for the most vulnerable groups

The CPA has some significant defects in matters of human rights, including the absence of any mechanism to ensure accountability for abuses committed during the twenty-one year war waged mostly in Southern Sudan.

The Government of Southern Sudan (GoSS) confirmed its willingness to take accountability and to prosecute any human rights violation committed after the CPA.

According to the CPA, all levels of government throughout the country must comply fully with their obligations under the international human rights treaties to which Sudan is or becomes a party⁵⁴. Sudan is party to, among others, the African Charter on Human and People's Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

⁵⁴ CPA, Chapter II, point 1.6, Power Sharing Agreement, signed at Naivasha on the 26th of May 2004. These include also the International Convention on the Elimination of all forms of Racial Discrimination and the Slavery Convention. For a comprehensive list of international human rights treaties signed by Sudan, See *International Human Rights Treaties – Sudan*, Max Planck Institute for comparative public law and international law, Dr. Armin von Bogdandy and Dr. Dr. h.c. Rüdiger Wolfrum.

Furthermore, Sudan has signed, but has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵⁵. Article 18 of the Vienna Convention on the Law of Treaties provides that a state is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it has made its intention clear not to become a party to the treaty. Sudan's ratification of the Convention Against Torture must be encouraged and should be considered as a priority. But meanwhile, even if Sudan is still not bound by this treaty, it has to refrain from acts that could defeat the object or purpose of it under the Vienna Convention.

The CPA as well as the ICSS includes an extensive bill of rights, guaranteeing among other fundamental rights and freedoms:

- Equality before the law⁵⁶;
- Equal rights of men and women⁵⁷;
- Rights of children⁵⁸;
- Freedom from discrimination⁵⁹;
- Personal liberty⁶⁰;
- Right to litigation⁶¹;
- Right to be protected from interdiction of torture and inhuman or degrading treatment⁶².

Although the government of Southern Sudan is in its infancy and the state organs and structures are not fully developed yet, special attention should be paid to the most vulnerable groups, who are the first victims of human rights violations if no adequate measures are taken to protect them.

⁵⁵ G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987.

⁵⁶ CPA, Chapter II, 1.6.2.12; ICSS, art. 18; ACHPR, art. 3.

⁵⁷ CPA, Chapter II, 1.6.2.16; ICSS, art. 20.

⁵⁸ CPA, Chapter II, 1.6.2.15; ICSS, art. 21.

⁵⁹ CPA, Chapter II, 1.6.2.13.

⁶⁰ CPA, Chapter II, 1.6.2.2; ICSS, art. 16; ACHPR, art. 6.

⁶¹ ICSS, art. 24

⁶² CPA, Chapter II, 1.6.2.4; ICSS, art. 22; ACHPR, art. 5.

When it comes to access to justice, different vulnerable groups have been identified in Southern Sudan, especially women, children and detainees.

1. Women

Within Southern Sudanese society the role and status of women appears to be a reflection of a culture that places a premium on the cohesion and strength of the family as a basis of society. The male is the undisputed head of the family and marriage a means of strengthening the bonds between families and clans within tribes. The role of women in this social pattern is that of cementing family ties through 'bride-wealth' and of producing children. To the outside observer, particularly one whose culture is based upon the rights of the individual, the status of women in this role is that of property.

But as family and domestic issues are mainly dealt with in customary courts under customary law, the absence of protective law results in denying justice to women, as customary law is slow to change.

There is virtually no recourse for a victim of domestic violence. High dowries limit women's ability to leave an abusive marriage, and also cause husbands to view their wives as possessions. Suspected adultery is yet another cause for wife-beating and confirmed cases can result in a woman's imprisonment, where she may be at risk of police harassment and other injustices. The inheritance of wives is another abuse of women's rights, as is the lack of property rights. Early and forced marriages were also identified as pervasive forms of gender-based violence⁶³.

The consensus amongst Southern Sudanese leaders is that change must come from within and at a pace that does not threaten to destabilize a society already under pressure from a myriad of external and internal sources⁶⁴.

⁶³ Report of a Preliminary Assessment of Gender-based Violence in Rumbek, Aweils (East and West), and Rashad County, Nuba Mountains, USAID, March 2005.

⁶⁴ See A Study of Customary Law in Contemporary Southern Sudan, World Vision International, March 2004.

Property ownership, divorce rights, forced/early marriage, adultery, wife inheritance, child custody, and domestic violence, were repeatedly identified by legal experts as issues urgently in need of legal redress⁶⁵.

The legislator should intervene when developing new legislation, to promote the access of women to justice in an early stage.

2. Children

Although Sudan acceded to the Convention of the Rights of the Child and the ICSS states that in all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration must be the best interests of the child, it appears that the current administration of justice is not taking into account the need to treat children differently from adults.

Family matters are mainly regulated by customary law. The best interests of the child are not a criteria in civil matters. Standards are set, for example regarding child custody. In most tribes, children remain with their mother until they are seven years of age. Thereafter their custody passes to their father if he has paid a dowry or to the maternal uncle if the father did not pay.

Under the laws of Southern Sudan, children who commit an offence are treated in the same way as adults. This area needs immediate attention. A bill on juvenile rights has been drafted in June 2006, but at this time has not been endorsed yet. No specific laws or courts deal with juvenile issues. Their cases fall under the general jurisdiction of the courts. This is evidently not in the best interests of the child.

Youth offenders do not benefit from any measures or sentences adapted to their age. The detention of juveniles has to be addressed without delay. There are no separate detention facilities or detention areas within the prisons. Children as young as nine years old are found in the state prisons, sometimes

⁶⁵ See World Vision, *Promoting Peace and Justice for Sudanese Women and Children: A Report of the Conference on the Legal Status of Women and Children in Sudan*, November 2004.

even without having been charged. Others have been awaiting trial for more than a year.

Infants stay in prison with their mothers. While this is understandable as long as the mothers are breastfeeding them, children as old as six years old were reported to stay in prison with their mothers. The presence of children in jail should be closely monitored and reported to the competence child welfare authorities.

3. Detainees

- A number of issues need urgent attention regarding the detained persons: Illegal arrest and detention
- Unduly long pre-trial detention
- Complete absence of legal assistance
- Poor prison conditions

(a) Illegal arrest and detention

Article 16 of the ICSS states that every person has the right to liberty and security of person and that no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with procedures prescribed by law.

In Southern Sudan, a number of people are detained in different state prisons without charge. The detention of a person without a specified reason is illegal and such detainees should immediately be released.

Some prisoners, sentenced to capital punishment, are awaiting confirmation from the Supreme Court since many months.

Even more alarming is that civilians are arrested and detained by the military in alternative detention facilities. Mention was made of such cases in Akot, Lakes State. According to the governor, more than 1000 civilians have been arrested since November 2006. Many of them have not been charged. No representative of the Director of Public Prosecution is present in this State. Access to the detention center is being denied not only to human rights

observers of the UNMIS, but also to members of the judiciary. Those detainees are denied any access to justice. Neither legal assistance nor judicial control are exercised in the detention center. Such treatment is contrary to all the above-mentioned rights that are guaranteed to every citizen, especially the rights to personal liberty and a fair trial.

These detentions were confirmed and justified by the State security authorities, in the person of the local SPLM commander. He explained that the detention of some youths in Akot is part of increased security measures to prevent out-of-state militia groups from recruiting youths in cattle camps during the dry season⁶⁶.

Close coordination between police forces, prison authorities, public attorneys and judges is necessary to avoid further illegal arrests or detention. Given that detainees have no access to legal assistance, they have no other means of ensuring respect for their rights.

Urgent steps have to be taken to ensure the individual treatment of every case, to release the people who have been arrested without warrant or are not charged, and whose detention has lasted longer than the legally prescribed periods.

Suspects charged should be brought to court without delay where a fair trial must be held.

Effective control over the legality of arrest and detention can only be exercised if every arrest is recorded and reported immediately to the Public Prosecutor, or in his absence, to a judge. Only these authorities can ensure that no one is kept in prison without a warrant of arrest. Extension of detention during investigation can only be done by a judge.

⁶⁶ "On 23 January 2007, the Lakes State security authorities informed UNMIS in Rumbek that the security situation has stabilized due to their effective law enforcement measures. In a related development the detention of some youths in Akot part of stepped-up security measures to prevent out-of-state militia groups from recruiting youths in cattle camps during this dry season.", *United Nations Sudan Bulletin 24 Jan 2007 Unified Mission Analysis Centre (UMAC), United Nations Mission in Sudan (UNMIS)*.

In Juba some security meetings are taking place between police, prison authorities and the public prosecution. The judiciary should also be involved in those meetings. UNMIS initiated a pre-trial detention working group in order to gather all instances involved in the rule of law.

The establishment of Justice Sector Coordination Committees is planned but these do not function yet. It appears as to be a priority to make these operational without delay.

The issue of illegal arrest and detention is more acute because public attorneys are not present in all counties. The police are in charge of the arrest and investigation of cases, without supervision by the public prosecution. That is why police forces should work closely with the judiciary, investigation phase, especially if the suspect is detained.

(b) Pre-trial detention

Article 23 of the ICSS confirms the principles of a fair trial. These comprise the following rights:

- (1) An accused is presumed to be innocent until his or her guilt is proved according to the law.
- (2) Any person who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her.
- (3) In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent court of law in accordance with procedures prescribed by law.
- (4) No person shall be charged with any act or omission which did not constitute an offence at the time of its commission.
- (5) Every accused person shall be entitled to be tried in his or her presence in any criminal trial without undue delay; the law shall regulate trial in absentia.
- (6) Any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice and to have legal aid assigned to him or her by the government where he or she is unable to defend himself or herself in serious offences.

The lack of sufficient investigators in the police forces and, in some areas, the absence of judges, lead to long pre-trial detention periods.

The statistics for January 2007 show that the average percentage of detainees in the state prisons under investigation or awaiting trial is around 42 %, and as high as 68 % in some prisons⁶⁷.

Articles 9 and 14 of the International Covenant on Civil and Political Rights require that prisoners be brought to trial and the proceedings completed within 'a reasonable time' or that the prisoners are released on bail. The CPA and the ICSS confirm this right to be tried without undue delay⁶⁸. This reflects other principles, namely that every person prosecuted for a criminal offence shall be presumed innocent until proven guilty and that the deprivation of liberty must be an exceptional measure.

Over-reliance on pre-trial detention may cause an already fragile criminal justice system to grind to a halt by overwhelming the system with cases.

The size of the pre-trial population in prison is a measure of the efficiency of the criminal justice system as a whole. The use or abuse of detention is a measure of the quality of justice the system provides to the poorest section of the community.

Pre-trial detention should be a measure of last resort applied only to protect society or ensure that a serious offender attends trial at a future date. Time spent on remand should be kept to a minimum and should be deducted from any sentence that may eventually be imposed. Further analysis is required to determine whether the decision to remand a person is applied judiciously and whether due weight is given to other options.

Using pre-trial detention as a preliminary form of punishment is never acceptable. The International Covenant on Civil and Political Rights, Article 9.3, states this principle clearly: "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to

⁶⁷ See Annex 3, Statistics of the prison population, January 2007.

⁶⁸ CPA, Chapter II, 1.6.2.5. (d); ICSS, art. 23(5).

guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement."

Pre-trial prisoners are a special category of prisoner who should be kept separate from convicted prisoners. Currently no separate detention facilities are provided.

The effects of pre-trial detention on prison overcrowding are huge. Overcrowding in prisons and overloaded case-lists skew the criminal justice system. Court administrators and registries are put in a state of crisis management. Lengthy delays in bringing cases to trial deny timely justice to the accused as well as his/her victim(s). Families deprived of the principal breadwinner suffer disproportionately and this creates even greater social pressure on poorer communities. The costs are not only incurred by family members, but also by the government who have to house these people. In addition, there is the health hazard posed by prisons harbouring large numbers of people in unhealthy conditions. Prisons become 'incubators' of disease which are transmitted by prison officers and prisoners on release to people outside.

For reform to have any impact on the penal and justice systems, the criminal justice sector must be viewed and approached as a whole, involving all agencies, since overcrowding in prison results from a whole chain of decisions made by a range of different actors.

Co-ordination between criminal justice agencies involved in the detention, investigation and trial of people suspected of having committed an offence is essential to tackle the problems relating to detention before trial.

To overcome obstacles, there needs to be a coordinated strategy and mechanisms for implementing that strategy at senior levels. Much can also be done at the local level to improve communication, co-operation and co-ordination between the various criminal justice actors so that scarce resources can be used more effectively.

Sometimes all that is needed is to invite the stakeholders - judges, prison staff, police officers and social workers – to meet regularly to discuss the problems observed, identify the bottlenecks and propose immediate solutions.

They could also ensure that all the information they need to deal with the cases is in fact at their disposal and shared between all. It could also mean being creative in bringing judges and those to be tried closer together. For example, court sessions could be set up inside the prisons themselves so that judges could examine the cases of prisoners who are remanded in custody. Thus, in appropriate cases, a release on bail or unconditional release could be granted if the person has been in detention awaiting trial for a period exceeding that permitted by law. Problems related to escorting prisoners are also avoided and many cases could be settled more quickly and at a lower cost.

(c) Examples of actions taken in neighboring countries⁶⁹

Malawi

To reduce the backlog of cases and the overcrowding in the prisons, paralegals held clinics in prison for remand prisoners accused of homicide. As a result of explaining the difference between murder and manslaughter, 32 prisoners indicated they wished to plead guilty to manslaughter. Following consultations with legal aid lawyers, the cases were listed before the High Court for plea. Twenty-nine prisoners entered a plea and were sentenced, resulting in savings to the judiciary of more than \$33,000. As a result of this exercise, 230 remand prisoners have indicated their intention of entering an early plea of guilty to manslaughter.

The "Caseflow Management Committees" or "Court Users Committees", implemented in Malawi, Kenya, Uganda and Tanzania

The Committees operate at local level, with representatives from the police, probation service, prosecution, the prisons and the regional/provincial and national levels of the judiciary to identify problems and come up with local solutions. They meet monthly at the local level, quarterly at the regional/provincial level and annually at the national level. They have proved effective in improving communication, co-ordination and communication between criminal justice agencies and settling local crises.

⁶⁹ "Reducing Pre Trial Detention - An index on good practices developed in Africa and elsewhere", Penal Reform International, 2005
website: <http://www.penalreform.org/publications/man-2005-pretrial-detention-en.pdf>

The Committees require little in the way of funding: \$10 per meeting is budgeted for in Malawi (cost of local transport and some refreshments). The CUC provides practitioners with a forum to address temporary crises as in the example above and also to continue to discuss ways of reducing the caseload by referring appropriate cases to the Community Service Officers (who also attend these meetings); or back to traditional authorities for local settlement – as well as encouraging the police to speed up investigations and gather the evidence before the person is remanded in custody rather than afterwards.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions and main challenges faced by the Rule of Law Institutions

Despite the many challenges and obstacles described in the present study, it must be emphasized that the courts do work. Legal professionals try to find ways to deliver justice, and their court organization and judgments are motivated by principles of equity, fairness and good sense rather than the letter of the law.

It might be premature to assess the functioning of the legal system in Southern Sudan when many aspects are not yet set out in law.

But the findings of the field study show that in Sudan, the principle of “*one country, two systems*” in the judicial sphere applies not only between the north and the south, but is also true within Southern Sudan between the former GoS-held and SPLA-held areas. Although the new structure of the court hierarchy has been replicated everywhere in the South, major aspects of the administration of justice are still handled according to the former systems of the Judiciary of Sudan in Juba and the New Sudan Judiciary in Rumbek respectively.

For instance:

- A different set of laws apply;
- Different fees are asked;
- Different standard forms are used;
- Different procedures apply;
- Some staff are still hired by the SPLM or other actors, and not by the JoSS;
- Different languages are used in court;
- No officers of the public prosecution have been assigned in Rumbek.

In the former GoS-held garrison towns, courts apply the current laws of the former National government of Sudan, they use the standard forms of the Judiciary of Sudan, and the legal system operates mainly in Arabic. In the

SPLA/M held areas, the SPLA Acts of 2003 are applied, courts use the standard forms of the Judiciary of the New Sudan, and the legal system operates mainly in English. The common factor is that customary courts still play a predominant role in both areas and are recognized as such by the formal courts.

But some challenges are common to both areas.

Although there is a strong political will in Southern Sudan to institute a system of justice based on common law, with English as the main working language, the transition from a Sharia-based to a secular, common-law-based system, and from Arabic to English appears to be difficult to achieve in the short term. The major challenges faced by the rule of law institutions can be summarized as follows.

1. Lack of legislation

Almost no legislation has been passed by the legislative assembly since the CPA has entered into force. No official gazette is printed so that, even when new acts are passed, they cannot be publicised by the MoLACD. At this time, the structure and organization of the judiciary, the public prosecution and the police have not been established by laws. Actors are eagerly waiting for those laws to be finalized. A clear legal framework is a prerequisite for the proper administration of justice.

Given that the competencies and authority of each stakeholder in the judicial system is not yet defined by law, the legitimacy of those stakeholders can be questioned. It is difficult for the recruited staff to establish the limits of their duties.

The question of the jurisdiction of the different courts is very urgent. The competence of each court in civil and criminal matters has to be defined, the calculation of court fees has to be uniform and civil and there must be certainty as to criminal procedure.

2. Currently applicable laws

While the enactment of new legislation by the Legislative Assembly is awaited, there is confusion and disagreement about the currently applicable laws, and different laws are applied from one area to another. While the new judicial order is being established and developed, two systems are still very much alive and used in parallel. This makes the administration of justice unequal, and the appellate courts are confronted with cases judged according to different laws.

The development of the common law and of a law of precedent in this situation is hard to achieve. Furthermore, no system of case recording, compilation and distribution exists at this stage so that it is simply impossible for judges to know what precedents have been set.

3. Lack of qualified people and training needs

Southern Sudan faces a large-scale lack of qualified people: the number of potential recruits for the justice system having specialized skills or a professional legal background is insufficient. At the time of the assessment most of the judges in the higher courts had been appointed - a number still have to be recruited at the county court level. There remains a significant deficit when it comes to the public prosecution: less than public attorneys are currently assigned in the South, Only 95 out of the 300 planned Legal Counsels had been recruited.

Those that have been recruited often have insufficient knowledge of both the common law system and (legal) English. They have been trained in the Islamic system in Khartoum in Arabic language. This seems to be the case particularly for the lower-level judicial institutions, as well as for state attorneys and support staff at all levels.

There is a need for professional training of legal actors, especially of judges and court support staff, the members of the public prosecution and of the police investigators⁷⁰.

No legal education is currently delivered locally in the South. The law faculty of the University of Juba is in Khartoum and no steps have been taken to move it back to the South. At the moment, practising certificates have to be obtained abroad.

Existing staff members are often unable to use modern communication tools, e.g. unable to type or use the internet.

In addition, after decennia of civil war, many staff members are not used to regular working hours or to demands at work. There is a lack of a real work ethic.

4. Language⁷¹

Although according to the ICSS, English and Arabic should be the working languages without discrimination, at the level of the governments of Southern Sudan and the States, there is a unanimous and explicit political will to promote English as the only official working language, including as the official language of the judicial system. But although the political will is strong, knowledge of English among the population is not widespread. The most common languages are the national languages (tribal languages) and in some areas Arabic. The same is true among legal professionals and other officials. Most legally educated people studied in Cairo or Khartoum in Arabic.

5. Criminal justice process

Due to the absence of public attorneys in a majority of States, it appears that the police play this role. They have insufficient skills and knowledge on the tasks and procedures to be followed in the criminal justice process.

While this gap in human resources remains unfilled, there is an overwhelming need for coordination among all rule of law stakeholders in this field. There

⁷⁰ Different training needs assessments have been carried out, among others by UNDP for the JoSS and the MoLACD.

⁷¹ ICSS, Article 6

are no guarantees of effective control on the process of arrest, detention and investigation, unless the police forces coordinate closely with the judiciary in these cases. The judiciary, public prosecution, police and prison services should meet regularly at all levels of government to discuss such issues as pre-trial detention and criminal proceedings.

6. Infrastructure and equipment

Lack of infrastructure hampers the functioning of the courts. There are only few buildings in the South, and most of them are in need of renovation. Almost no court buildings or offices are available, or accommodation for magistrates and support staff, which makes it difficult for the courts to start functioning in the different states⁷².

The equipment in the courts is rudimentary, mainly consisting of desks and tables, paper and carbon. Telephones, faxes, or even typewriters are not available.

7. Customary law and courts

At the same time as a new formal judicial system is being developed, customary law remains the fundamental source of justice for large sectors of the population and around 90% of disputes are settled before the customary courts. The diversity of customary law and the interaction between customary law and statute law has to be taken into account and the coexistence of a formal and a traditional justice system creates an even greater need for clarification of the jurisdiction and competence of each court.

8. Institutional capacity

South Sudan is a fledgling state in the process of being built. There is little or nothing to fall back on in terms of experience or institutional memory. The authorities are in process of developing skills to determine strategies, plan and budget. However, this is a slow process though and it is difficult to have a view of the medium and long term development.

⁷² When the CPA was signed, court buildings existed only in Juba, Rumbek and Malakal.

9. Access and mobility

Distances are vast, the road network is limited, and public transport only beginning to emerge. Not only the people, but also the public attorneys and advocates have limited means of reaching the courts.

The difficulty of serving summons in those circumstances causes serious delays in the proceedings.

10. Legal information, advice and representation

A lot of barriers create a distance between the people and the formal justice system. No legal aid system has been developed to provide information and legal advice to the people to make the system of justice effective and bring it closer to all groups in the population.

Ignorance, mistrust, impecuniosity and limited mobility are other barriers restricting access to justice for the most vulnerable groups.

The absence of civil society groups active in the rule of law sector makes it a hard task to bring justice closer to the citizen. No NGOs are monitoring the court system.

Last but not least, there is no culture of legal representation in the courts.

B. Recommendations

1. Legislation and other measures to enhance the coherence of the Justice system

Actors most concerned by the following recommendations:

- *MoLACD*
- *JoSS*
- *Parliament*

To tackle the existence of two parallel systems in the Southern Sudan justice system, the priority is without doubt the enactment of new legislation by the Legislative Assembly. Priorities include the JoSS Act and JoSS Service Commission Act, the Code of Criminal procedure, the Penal Code, the Code of Civil procedure, the Police Act, the Prison Act and the organization of the public prosecution and legal administration.

Those Acts must be promptly promulgated and published by the MoLACD in an Official Gazette that should be widely distributed, at least among professionals.

Diversity of customary law and the interaction between customary law and statutory law has to be respected and taken into consideration by the legislator. While customary law is in the process of changing to incorporate some aspects of statutory, human rights and international law, and because that process is slow, the legislator should include some safeguards in the new laws to be passed to ensure respect for fundamental rights and effective access to the courts and to justice, especially for women and children.

Case recording procedures must be defined. Compilation of cases and their distribution among professionals must be organized to facilitate the development of precedent.

2. Human resources and training

Actors most concerned by the following recommendations:

- *MoLACD;*
- *JoSS;*
- *University of Juba – Ministry of Education;*
- *Training partners;*
- *Ministry of Finance and donors.*

Staffing the different services of the MoLACD and the JoSS must be considered as a priority.

A call to invite southerners of the diaspora abroad or residing in Khartoum to return to the South, could enhance the pool of potential recruits for all legal professions. Induction sessions should be organized in order to inform the “newcomers” of the realities of the situation in the south, test their professional abilities and train them on the legislative and regulatory frameworks applicable in the South.

All stakeholders in the legal system request training. Training curricula for the police, prosecutors, judges, magistrates and prison service staff should be developed. To avoid creating a backlog and slowing down the functioning of the institutions, “on-the-job” training modules should be developed to enable legal professionals to be trained without delaying the proper administration of justice.

As for legal training in general, it should be considered as a priority to relocate the Law Faculty of the University of Juba to Southern Sudan.

3. Language

Actors most concerned by the following recommendations:

- *MoLACD;*
- *JoSS;*
- *University of Juba;*
- *Training partners.*

Basic and technical English language courses will have to be widely delivered, given the little knowledge people, including legal professionals have of this language.

English should become the main language used in the Law Faculty of the University of Juba.

Meanwhile it is vital to ensure access to justice by permitting the use of other languages, the hiring of interpreters and translators and the publication and dissemination of legal materials and information in other languages.

4. Criminal Justice Process

Actors most concerned by the following recommendations:

- *MoLACD – Directorate of Public Prosecution;*
- *Ministry of Interior – Police Service;*
- *Prisons Service;*
- *JoSS.*

The staffing of the public prosecution has to be completed urgently. In the meantime, while the police are filling the gap and acting as a public prosecuting authority, they should be guided in these tasks. A temporary solution could involve an official joint communication from both the Minister of Legal Affairs and Constitutional Development and Interior, to guide the police in these tasks. To this end, a document comprising "*practical propositions on the role of police in public prosecution procedures*"⁷³ has been prepared and is attached to the present report. This proposal could serve as a basis for a communication from Ministers to the police.

Assigned Legal Counsel should try to be as peripatetic as possible, and regularly visit all detention centers and police stations in their jurisdiction to have oversight of arrests and investigations. Until Legal Counsel has been assigned to every jurisdiction, a pool of peripatetic Legal Counsel could be formed to ensure, not a permanent but at least a regular presence in every jurisdiction.

Access to all detention centers where civilians are detained has to be granted to members of the judiciary, to guarantee respect for the rights of every person to personal liberty, access to justice and fair trial.

⁷³ Practical propositions on the role of police in public prosecution procedures, op.cit

Pre-trial detention should be closely monitored not only to ensure respect for every detainee's fundamental rights but also to avoid overcrowding in the prisons and the creation of a bottleneck and backlog of cases.

5. Legal aid

Actors most concerned by the following recommendations:

- *MoLACD;*
- *Advocates;*
- *Civil Society organizations/NGOs;*
- *Ministry of Finance – Donors.*

A system of legal information, counseling, assistance and representation has to be developed. Ideally, an independent Bar Association should be in charge of providing this assistance.

A system of services provided for free by trainee lawyers should be implemented to provide access for people who cannot afford the usual costs of an advocate.

Until a formal system of free legal assistance by advocates can be implemented, alternative methods of legal aid should be developed to guarantee minimal services and access to justice for all. The training and involvement of paralegals within the communities and the detention centers should be encouraged in the meantime. Civil society representatives should also be involved in the publication and dissemination among the population of information on basic rights and the functioning of the legal system.

Advocates should be regulated so that an independent official body can be established and assume its responsibilities for bringing justice closer to all citizens.

6. Coordination and information

Actors most concerned by the following recommendations:

- *MoLACD;*

- *JoSS;*
- *Judges*
- *Public Attorneys;*
- *Police investigators and officers;*
- *Prison directors or managers.*

Coordination and transmission of information between the different rule of law institutions at all levels should be encouraged. Joint Justice Coordination Committees or equivalent fora should be established in all States regularly to gather together all stakeholders in the legal system, from the lowest level upwards.

For instance, regular meetings between police officers in charge of investigations or custody, prison staff, prosecution services and Magistrates could allow them to exchange information and deal promptly with pre-trial detention issues or even facilitate the all criminal justice process. Representatives from civil society, the Bar Association or even individual advocates could also be invited to these meetings.

7. Fees, forms, case recording and documentation

Actors most concerned by the following recommendations:

- *MoLACD;*
- *JoSS.*

There is a need for harmonization of court fees and the methods used to determine fees, since there are significant and unforeseeable differences from one court to another. The possibility of waiving fees for indigents should be part of the developing legislation.

On a practical level, standard forms should be developed for the Judiciary of Southern Sudan, to avoid the continued use of two different sets of forms in different areas.

Legal actors request clear and uniform rules on record keeping and disposal.

As soon as all court levels operate at “cruise speed”, case reporting and the publication of case law will be of major importance and case reports should be made available to all judges.

Legal materials, volumes of case law and other documentation have to be developed and made accessible to all legal actors. The competent authorities should consider publishing these in languages other than English.

8. Infrastructure and equipment

Actors most concerned by the following recommendations:

- *MoLACD;*
- *JoSS;*
- *Ministry of finance and Donors.*

Existing court buildings should be rehabilitated and new construction or the use of pre-fabricated buildings should be planned when needed.

Offices, basic equipment and accommodation for magistrates and support staff should also be provided.

These measures must be planned for based on the schedule for the deployment of staff.

**ANNEX 1 List of persons met during the assessment and field study
(November 2006- March 2007)**

| | Name | Title | Organisation | Location |
|-----|--------------------|--|---|-----------------|
| 1. | Caesar Mazzolari | Bishop of the Diocese of Rumbek | Catholic Church | Rumbek |
| 2. | Natsnet Ghebrehhan | Program Manager | CHF | Juba |
| 3. | Chief Denis | n.a | Chief's Executive Court, Kator | Juba |
| 4. | Philippe Gourdin | Political and Governance Advisor | European Commission | Nairobi Juba |
| 5. | Jose Lopez | Technical Advisor JoSS | European Commission | Juba |
| 6. | Gilbert Addy | Technical Advisor JoSS | European Commission | Juba |
| 7. | Ilaria Mussetti | n.a | European Commission | Juba |
| 8. | Jeffrey Hatcher | n.a | FAO | Juba |
| 9. | Joy Kwaje | Chairperson | Human Rights Commission of Southern Sudan | Juba |
| 10. | Natacha Pugin | Administrator | ICRC | Juba |
| 11. | Michela Telatin | Head of Subdelegation | ICRC | Juba |
| 12. | Georg Blomeyer | Legal Consultant | IDLO | Juba |
| 13. | n.a | Private clerk outside Southern Sudan Judiciary | Independant | Juba |

| | | | | |
|-----|----------------------|---|--------------------------------|---------|
| 14. | William Kon Bior | Advocate | Independent | Juba |
| 15. | Richard Mulla | Advocate | Independent | Juba |
| 16. | Shadrack Asalache | Entrepreneur | Independent / Muthaiga | Juba |
| 17. | Alfred Lokuji | Professor | Independent Consultant | Nairobi |
| 18. | Tiernan Mennan | Rule of law Coordinator | International Rescue Committee | Juba |
| 19. | Rachel de Souza | Field coordinator | International Rescue Committee | Rumbek |
| 20. | Marisia Pechaczek | Governance and Rule of law | Joint Donors Office | Juba |
| 21. | Abdoalal Gordon Komi | President and first grade justice at the County court of Rumbek | JoSS | Rumbek |
| 22. | Awar Moyak Deng | First grade justice at the County court of Rumbek | JoSS | Rumbek |
| 23. | Mohamed Ahmed | Second grade justice at the County court of Rumbek | JoSS | Rumbek |
| 24. | Benjamin | Court clerk at the County court of Rumbek | JoSS | Rumbek |
| 25. | James Alala Deng | Justice at the Court of Appeal for Greater Bahr el Ghazal, Rumbek | JoSS | Rumbek |
| 26. | Richard Gwolo | Court clerk at the | JoSS | Rumbek |

| | | | | |
|-----|------------------------------|--|------|--------|
| | | High Court, Rumbek | | |
| 27. | Alaka Makalele Nyajok | President of the High Court, Rumbek | JoSS | Rumbek |
| 28. | Charles Abyei | President of High Court of Aweil | JoSS | Juba |
| 29. | Luris Richard Mulla | County Court Judge, Juba | JoSS | Juba |
| 30. | Ambrose Rinii Thiek | Chief Justice of the Supreme Court of Southern Sudan | JoSS | Juba |
| 31. | Ruben Madol Arol | Justice of the Supreme Court | JoSS | Juba |
| 32. | George Lado | Justice of the Supreme Court | JoSS | Juba |
| 33. | Richard Gwolo | Court clerk at the High Court of Lakes State, Rumbek | JoSS | Rumbek |
| 34. | William Tombe Kalista | Chief of Criminal Unit (Registry) | JoSS | Juba |
| 35. | Kuc John | Justice at the Supreme Court | JoSS | Juba |
| 36. | Chief Christopher Tombe Jada | President of Logo West 'A' Court (customary court) | JoSS | Juba |
| 37. | Chief Aquilino Ladolilani | President of Kansuk 'A' Court (customary court) | JoSS | Juba |
| 38. | Andrea Mayom | Finance Clerk for the High Court of Lakes State | JoSS | Rumbek |
| 39. | Wade Manyiel Cindut | 2nd Grade Lay Judge for Rumbek County | JoSS | Rumbek |

| | | | | |
|-----|--------------------------|--|---------------------------|---------|
| | | Court | | |
| 40. | Alex Tombe | Chief Administrator | JoSS | Juba |
| 41. | Daniel Aweit | Governor of Lakes State | Lakes State Government | Rumbek |
| 42. | Christoph Jaeger | Program Manager | Max Planck Institute | Nairobi |
| 43. | Michael Makuei Lueth | Minister of Legal Affairs and Constitutional Development | GoSS, MoLACD | Juba |
| 44. | Thomas Gabriel | Director of Public Prosecutions | MoLACD | Juba |
| 45. | Mousa Dar Elbait | Attorney General | MoLACD | Juba |
| 46. | Filberto Mayot Mareng | Counsel General, Acting Director of Public Prosecution | MoLACD | Juba |
| 47. | Jacob Deng Mayom de Biör | Gazette | MoLACD | Juba |
| 48. | Deng Biong | Director for Training and Research | MoLACD | Juba |
| 49. | Majok Mading | Undersecretary | MoLACD | Juba |
| 50. | Alor Malek | Senior Legal Counsel | MOLACD | Juba |
| 51. | Asjborn Lode | ICLA National Manager | Norwegian Refugee Council | Juba |
| 52. | n.a | Head of education program | Norwegian Refugee Council | Rumbek |
| 53. | Emmanuel Pitia | Land and property program assistant | Norwegian Refugee Council | Juba |
| 54. | Marv Knoop | Country Director | PACT | Juba |

| | | | | |
|-----|-----------------------|-------------------------------------|-------------------------------------|---------|
| 55. | Goanar Chol | Reverend | Presbyterian Church, Iowa | Nairobi |
| 56. | Dengtiel | Advocate | Southern Sudan Associated Advocates | Juba |
| 57. | Lawrence Korbandy | Advocate | Southern Sudan Associated Advocates | Juba |
| 58. | Samuel Dong Luak | Secretary-General | Southern Sudan Law Society | Juba |
| 59. | Andrea | n.a | Southern Sudan Law Society | Rumbek |
| 60. | Eigil Kvernmo | Resident Coordinator's Officer | UN | Rumbek |
| 61. | Nelson Mbu | Programme Manager Access to Justice | UNDP | Juba |
| 62. | Michele Washington | Technical Advisor to MoLACD | UNDP | Juba |
| 63. | Sue Tatten | Head of Rule of Law Unit | UNDP | Juba |
| 64. | Marc Aiken | Police/Prison Programme Assistant | UNDP | Juba |
| 65. | Ele Pawelski | Judiciary Programme Assistant | UNDP | Juba |
| 66. | n.a | Coordinator | UNDP | Rumbek |
| 67. | Rubya Mehdi | Professor | University of Copenhagen | Juba |
| 68. | Philippe Aban Fashoda | Acting Deputy Administrator | University of Juba | Juba |
| 69. | Fatima Persson | Judicial Affairs Officer | UNMIS | Juba |

| | | | | |
|-----|-----------------------|---|----------------------------|------------------|
| 70. | David Pimentel | Head of Rule of Law | UNMIS | Juba |
| 71. | Issayah Lauro | Human Rights Unit | UNMIS | Juba |
| 72. | Aggrey Nyapola | Correction adviser | UNMIS | Juba |
| 73. | Aina Solomon | Correction adviser | UNMIS | Juba |
| 74. | Ikram Hussein | Human Rights Officer | UNMIS | Rumbek |
| 75. | Wisdom Nyaedhe | Team leader Civpol | UNMIS | Rumbek |
| 76. | Omar | Training officer | UNMIS Police | Rumbek |
| 77. | Christina Jones-Pauly | Rule of Law Sudan, project Coordinator | US Institute of Peace | Nairobi/ Juba |
| 78. | Stefan Lehmeier | Program Manager Peace Building and Protection | World Vision International | Nairobi |

ANNEX 2 Prison population statistics ⁷⁴

| | Rumbek ⁷⁵ | | Wau | | Juba | | Aweil | | Bor | | Malakal | |
|-----------------------------|----------------------|----|-------------|----|-------------|----|-------------|----|-------------|---|------------|---|
| | M | F | M | F | M | F | M | F | M | F | M | F |
| Convicted | 45 | 6 | 246 | 15 | 151 | 35 | 53 | 22 | 41 | 5 | | |
| Condemned | 4 | 1 | | | 21 | | | | | | | |
| On remand | 124 | 8 | 69 | 7 | 212 | | 34 | 12 | 24 | 3 | | |
| Juveniles | 4 | | | | 18 | | | | | | | |
| Insane | 1 | 1 | 8 | | 30 | 8 | 2 | 3 | 1 | | | |
| Total | 178 | 16 | 323 | 22 | 432 | 43 | 89 | 37 | 66 | 8 | 181 | 3 |
| Grand total | 194 | | 345 | | 475 | | 126 | | 74 | | 184 | |
| Children with mother | 5 | | 4 | | 10 | | 6 | | 3 | | | |
| Percentage on remand | 68 % | | 22 % | | 47 % | | 36 % | | 36 % | | NA | |

Average number of detainees/prisoners under investigation or awaiting trial: **41, 8 %**

Statistics to distinguish between prisoners whose case is still under investigation and those whose case is awaiting trial are not available.

Southern Sudan hosts eight State prisons, 15 County prisons, and numerous other detention facilities (holding cells in police stations, military detention centres...).

⁷⁴ Figures by UNMIS, Correction Unit, January 2007

⁷⁵ According to the County Judge of Rumbek, the number of detainees in February 2007 was 267, whereof at least 87, but most probably a vast majority of them, are illegally detained (without charge) or on remand.

ANNEX 3 Statistics of a County Court, October-December 2006

| | Incoming | Trials (convicted) | Awaiting trial or pending | Acquitted | Dis- missed | Referred to High Court |
|---------------------------|------------|-----------------------|---------------------------------|-----------|----------------|------------------------------|
| Criminal cases | | | | | | |
| Murder | 12 | 1 | 6 | | 1 | 4 |
| Rape | 7 | 5 | | | | 2 |
| Theft | 32 | 24 | 7 | | 1 | |
| Adultery | 35 | 29 | 2 | | 4 | |
| Civil cases | 47 | 10 | 15 | | | 22 |
| Traffic cases | 25 | 15 | 5 | | 3 | 2 |
| TOTAL | 158 | 84 | 35 | | 9 | 30 |

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