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The Impact of the COVID-19 Pandemic on the Rule of Law – Liberia in a Comparative Perspective

The policy paper captures discussions and recommendations from a Panel discussion moderated by Mr. Ben D. Malor, Chief Editor at UN News (UN Headquarters). The Panel comprised Mrs. Lovette Seidi Sei (Senior Research Officer, Gender-Based Violence Division, Ministry of Gender, Children and Social Protection of Liberia), Mrs. Vivian Neal (Former Supreme Court of Liberia and Director Association of Female Lawyers of Liberia (AFELL), Mr. Emmanuel Joof (Chairman, Human Rights Commission of The Gambia), Her Lordship Justice Matilda Abrakasa-Ayemieye (Judge High Court of Bayelsa, Nigeria), and H.E. Ingrid Wetterqvist (Sweden Ambassador to Liberia).

SUMMARY OF RECOMMENDATIONS

- ✚ Establish a robust task force consisting of all relevant stakeholders that operates on the notion that it is the state's responsibility to protect the rights of women to implement the Anti- SGBV Roadmap.
- ✚ Improved coordination is required to ensure a comprehensive and cohesive response to COVID-related measures and particularly the implementation of the Roadmap.
- ✚ Prioritise human rights and SGBV related cases.
- ✚ Roll out virtual courts to ensure sustained functionality of the courts.

BACKGROUND AND CONTEXT

The global spread of the COVID-19 virus has resulted in profound and far-reaching social, political and economic consequences on Nation States, over-stretching already meagre national budgetary allocations made available to the justice and security sector in developing countries. In Liberia, as with many countries, the COVID-19 pandemic puts additional pressure on already vulnerable institutions, as measures are put in place to control its spread.¹ The Government's national COVID-19 Preparedness and Response Plan which is currently being implemented, places emphasis on the health sector, social cohesion and socio-economic recovery, with minimal reference to the justice and security sectors. Notably, the pandemic and the responses put in place have posed further challenges to the justice and security system in several respects.

¹ As of 2nd November 2020, 1,436 infections and 82 deaths had been recorded in Liberia.

First, the justice and security sectors rolled back operations to protect their staff and members of the public seeking services. This resulted in unavailability of relevant support staff and limited services and response, while the crime rate did not necessarily decrease. The roll back in services resulted in delays in attending to crime and the processing of cases by the police and courts. The police are overstretched, and the courts mostly operate for shorter hours with a reduced number of staff in order to protect their health and wellbeing. The Bureau of Corrections and Rehabilitation (BCR) lacks the capacity to protect inmates from viral contagion in overcrowded and high-risk environments. The rollback of justice and security services resulted in a sense of insecurity and increases public mistrust while at the same time facing adaptability challenges. Consequently, rapid upscale and normalisation of responses were required, having regard to the essential nature of their services to the functionality of the social fabric. The justice and security sectors have been exploring new and innovative ways to respond to the current and future pandemics in a manner that guarantees the safety of personnel who are in the frontline of the response.

Second, incidents of gender-based violence, especially domestic violence as well as sexual and gender-based violence (SGBV) have increased, thereby increasing the vulnerability of already vulnerable groups especially women and girls. Lockdowns provided opportunities for SGBV to occur, and reduced avenues to timely report such cases or at all. The fact that the security personnel are engaged in the response to the pandemic and thus overstretched, increases opportunities for SGBV especially in remote areas.

Third, enforcement of a State of Emergency resulted in increased human rights violations attendant with attempts to enforce lockdowns. Emergency orders, laws, regulations and directives were enacted with immediacy and security personnel were burdened to interpret and implement them at short notice. Opportunities for training and adaptation were not available. Discrimination and stigmatisation of persons suspected to be infected with the virus and their close contacts are reflected in their treatment by the public. Consequently, the pandemic is a source of growing injustice and human rights violations.

SITUATING THE CONVERSATION IN A REGIONAL PERSPECTIVE

Addressing the impact of COVID-19 on the Liberian justice system will benefit from regional comparative perspectives and strengthen programmatic support and responses. By creating a platform for countries with similar contexts and legal traditions - while considering variant peculiarities - practitioners with regional expertise (within the ECOWAS region) were able to share experiences regarding challenges and measures put in place to ensure more responsive justice systems. The exchange of perspectives on responses will influence ideas, reform, innovation that produce solutions to reduce the negative impact of the pandemic on the justice system in Liberia in the immediate to long term.

Consequently, the webinar discussion sought to:

- Share country experiences and implications for rule of law, human rights and SGBV;
- Compare country justice and security responses to the COVID-19 pandemic and reflect on learning and opportunities for knowledge sharing drawing from the examples and experiences of various countries; and
- Proffer recommendations for innovative and creative ideas and ensure immediate and long-term responses having regard to Liberia's national call to end SGBV.

IDENTIFICATION OF THE ISSUES AND COUNTRY EXPERIENCES

Liberia's structural challenges regarding the justice and security sectors are compounded by the COVID-19 pandemic. Existing challenges include insufficient courts, increased case backlog, and the continued phenomena of insufficient number of lawyers in remote areas.

To curtail the spread of the virus, the Government was forced to introduce several measures including the declaration of a State of Emergency to restrict movement. Consequently, a partial lock down was imposed for 60 days wherein people were only permitted outdoors for limited hours to obtain necessities. Public institutions including schools and places of worship were temporarily shut down.

The scale down of public institutions was extended to rule of law, and security agencies, thereby impacting on delivery of services that lie at the fabric of the nation's functionality. For instance, to reduce public gathering, the Judiciary suspended jury trial. In addition, due to the suspension of jury trials, cases could only proceed in instances where defendants dispensed of their right to trial by jury.

This resulted in several cases being brought to a halt, as most defendants preferred trial by jury. Consequently, court dockets have increased significantly with a marked increase in case backlog and pre-trial detention.

Further, 65 percent of judicial staff were sent on vacation, and only two cases were slated for hearing per day. Similarly, the Supreme Court slowed down, dealing only with cases relating to issuing of remedial writs in respect of human rights cases. The slowdown of judicial functions affected timely adjudication of cases, including access to justice for survivors of SGBV. The slow pace of cases resulted in increased use of mediation, especially in respect of less serious cases, resulting in culprits escaping accountability.

The Liberia National Police (LNP) scaled back on support staff while being constrained to deal with crime, violence, and the enforcement of lockdowns. All support staff were sent on leave while only core law enforcement officers remained on duty. Attempts to physically impose these measures has sometimes resulted in confrontations between law enforcement personnel and citizens in search of daily sustenance, a disruption of their normal routines.

The LNP also faced rising cases of SGBV. The Ministry of Gender, Children and Social Protection (MoGCSP) reported 1023 cases of SGBV between January and June 2020, with 75.9 percent being rape cases, out of which 36 percent resulted into pregnancies. This number is assumed to be under-reported and the response rate was initially low as resources have been shifted towards the COVID-19 response.² Consequently, UNDP supported 10 hot lines for SGBV survivors to report cases to the police and in several cases, the police reached out to survivors by using commercial motor bikes due to the lack of resources, mostly using their own funds to pay bikes to get to crime scenes.

Nigeria, like Liberia, shut down almost all social institutions including the courts. Except for urgent matters, court sittings were suspended to allow for preventive measures to be put in place. The pandemic witnessed a marked increase in cases of SGBV.

The Gambia, like Liberia, declared a State of Emergency and promulgated concomitant emergency regulations. Consequently, the country went into partial lock down. Air traffic (except for cargo and medical materials), and land borders were shut down. Limitations were imposed on the number of passengers that commercial transport including ferries could carry (half of capacity). Public places such

² COVID-19 Conflict Early Warning and Response Analysis in Liberia: A Policy Brief, Liberia Peacebuilding Office (PBO) Ministry of Internal Affairs, Republic of Liberia, April 2020 Issue 001, p.1.

as bars, schools, casinos and universities were closed. Restaurants were partially closed and operated only for the purposes of providing take away services. The compulsory wearing of masks in public places was introduced and enforced. Suspected COVID-19 cases were compulsorily quarantined. A curfew was subsequently introduced.

COUNTRY RESPONSES AND THEIR IMPLICATIONS

Violations of human rights resulting from preventive measures

All three countries experienced the limitations of human rights due to the imposition of preventive measures but more so, the fact that the security personnel were ill-equipped to implement them. It must be noted that while emergency powers were necessary, they restrict fundamental rights including civil, political and economic rights, principally, the right to movement, religion, worship, assembly and education were curtailed. The restriction of rights was particularly traumatising for Gambians bringing to the fore memories of the recent era of human rights violations.³ The imposition of restrictions under the current political dispensation that saw the restoration of the right to public demonstration and the increased use of social media, was viewed by many Gambians as a reversal of their recently gained freedoms.

The pandemic accentuated existing economic inequalities in all three countries. Restrictive measures inadvertently affect people's livelihoods and security, their access to health care and their right to education. For instance, despite the closure of schools, students in private schools generally continued with learning through online services while those in public schools had their education interrupted.

The diversion of resources to the COVID-19 response resulted in the neglect of the general health care systems, with implications on the right to health. Consequently, an increased number of women continue to die of childbirth, while the mortality rate of common diseases such as malaria has also increased.

Socio-economic rights and livelihoods were impacted due to the closure of services. Those living on daily livelihood activities including small businesses suddenly had to close. Commercial drivers were particularly hard hit. While the Government of Gambia cut down on the price of fuel to alleviate the plight of commercial drivers, their livelihood was severely affected. Restriction on commercial transport and the attendant increase in prices in the sector has a snowball effect on the prices of basic commodities negatively impacting the purchasing power and socio-economic wellbeing of the common person.

Discrimination and stigmatisation of victims and their family members was common in communities and sometimes, among health personnel. While necessary and legal under the circumstances, quarantine represents a restriction on the entitlement of persons to actively participate in decision-making processes which affect the enjoyment of their rights including while in health care facilities.⁴

The police were ill-prepared in all three countries to enforce new regulations and were heavy-handed in their measures. The scaling down of the courts made the processing of those arrested for failure to comply with the regulations problematic. This resulted in overcrowding in police cells as detainees could not be promptly charged to court.

³ Yahyah Jammeh rule the Gambia from 1994 till 1997 in a period characterised by massive human rights violations including alleged summary executions. He has been indicted by the current Gambian Government.

⁴ By using a human rights-based approach, service providers will improve the quality of care and support, quality of life, and safety of people.

Exploring new and innovative ways to keep the justice sector functional

The pandemic resulted in the rollback of services and the justice sector was no exception. While the pandemic has been characterised as a health crisis, it lay bare the fact that the justice sector provides essential services that are crucial for the continuation of basic social relations and guarantee of personal liberties. The limited functioning of the justice sector posed the threat of an unbearable situation of unintended impunity resulting from the absence of basic services often considered as routine and taken for granted, such as arrested and detained persons being unable to secure bail. Consequently, new and innovative measures were introduced to ensure that the justice sector remained functional. However, the introduction of these measures was not without problems. For instance, to ensure the functionality of the courts in Nigeria, virtual courts were introduced. These courts were intended to ensure that court trials proceed in compliance with social distancing protocols. Having been introduced for the first time, these courts were immediately open to legal challenge and scrutiny. The constitutionality of the courts was challenged on the ground that they did not guarantee the rights of accused persons to a fair trial. This contention was overruled, and the virtual courts provide a valuable means of disposing of cases. Virtual courts were also introduced in the Gambia and are being rolled out to various layers of the court structure.⁵

Prioritisation of cases in the context of limited judicial activity

The dilemma of prioritising cases in the context of limited judicial activity required consideration. In Nigeria, upon the resumption of physical court proceedings, the judiciary decided to prioritise and accelerate criminal cases including cases involving SGBV. The pace of such cases had slowed down with consequences for the rights of accused persons including their subjection to extended detention. While the usual duration of a criminal case ranges from one year to 18 months, judges and magistrates were required to complete such cases within two weeks.

In Liberia, during the limitations imposed on court proceedings, some cases were identified for prioritisation. Consequently, high-profile cases of national concern and cases arising out of allegations regarding violations of human rights received prioritisation. Preference was given to cases regarding personal liberty (related to the writ of habeas corpus) and other matters regarding violations of human rights arising from the State of Emergency. Further, Circuit and specialised courts were required to prioritise the granting of self-bail in respect of bailable offences to avoid defendants being committed to prison.⁶

Measures to decongest prisons

Court cases in The Gambia grounded to a halt due to the very limited operations of the courts. Not only did this affect pending trials, appeals were also suspended. This immediately increased the prison population. In The Gambia and Nigeria, a combination of protective measures and early releases were adopted to reduce the threat of the spread of the virus to prisons facilities. Consequently, The Gambia Human Rights Commission intervened by formally requesting the president through the Ministry of Justice and Interior to exercise his prerogative of mercy to pardon prisoners of certain category in

⁵ UNDP [Gambia] Support to Rule of Law, Newsletter, July-September 2020.

⁶ Judicial Circular No. 8, March 2020.

order to decongest the prisons. After a review conducted by the Ministry of Justice, 125 prisoners serving non-violent crimes and those who had served substantial parts of their sentences were released. However, early release did not apply to sex offenders. Similar, early releases were adopted to decongest prisons in various states in Nigeria. Liberia, on the other hand, did not adopt such measures despite various calls.⁷

The Liberian response to decongest prisons was two-fold. First, as stated previously, the Judiciary instructed all judicial officers to grant self-bail in respect of all bailable offences to avoid defendants being committed to prison.⁸ Unfortunately, this instruction was not followed to a large extent and the Chief Justice continues to remind magistrates of the importance of this directive. Second, the Bureau of Corrections and Rehabilitation developed a comprehensive operational plan. The plan provides standardized guidelines on COVID-19 prevention and response in prison facilities and how prisoners who test positive for COVID-19 should be supported whilst serving prison sentences or on pre-trial detention. The plan indicates specific procedures and guidelines that should receive adherence by corrections staff, prisoners, visitors and anyone who enters and leaves the prisons in order to provide safety and protection from the virus. Prison staff and inmates were trained on relevant responses. Further, corrections facilities were provided with Personal Protective Equipment, including face masks, sanitisers, handwashing buckets and thermometers, while temporary isolation units were also established.

The protection of inmates was particularly crucial, having regard to the exceptional vulnerability of inmates to viral contagion, due to the high-risk environments in which they are held. Persons subjected to lawful incarceration do not forgo their human rights, with the exception of their freedom of movement and personal liberty. They are entitled to all human rights including the right to adequate health care. Treating inmates with humanity and dignity is part of the correctional process and⁹ this includes the right to adequate health services.

SGBV response

Confronted by high incidence of SGBV, all countries under discussion adopted similar measures. Public sensitisation through awareness-raising regarding the scourge and the avenues for securing remedy was increased. Reliance was placed on various media modalities including leaflets, community dialogue, radio and television. Civil society played a significant role in complementing Government efforts. A common factor among the three countries is that girls are unaware of their rights. In The Gambia, reliance was placed on a network of CSOs platform that provided awareness, ensuring that girls are informed about their rights. In Bayelsa state in Nigeria, the awareness campaign “SAY NO TO RAPE”, took root. CSOs are useful for their knowledge of communities and ease of access at the grassroots level. In Liberia, the Liberia National Police (LNP) leveraged on community policing as a mechanism to strengthen awareness at community level in remote areas. In Liberia, the Ministry of Gender also promoted the call centre, which was established to receive emergency calls relating to SGBV on a 24 hours basis. The capacity of safe homes was also strengthened by providing sanitary and other basic materials to ensure that the dignity of survivors is maintained.

⁷ See for instance Advisory Note No.1: Responding to the COVID-19 Pandemic – Proposals for Implementing Decongestion Measures of Prisons Facilities in Liberia, UNDP, 16 April 2020.

⁸ Judicial Circular No. 8, March 2020.

⁹ *Handbook for Prison Leaders: A Basic Training Tool and Curriculum for Prison Managers Based on International Standards and Norms* (2010), UNODC, 26.

In The Gambia, the national response supported institutional professionalism through knowledge development and capacity building. A handbook on SGBV was developed and police received relevant training. The enactment of emergency regulations created knowledge gaps which were addressed through these trainings to ensure that they provide workable solutions.





Judicial responses included prioritising and fast tracking SGBV cases, notwithstanding the limited public services offered in all three countries during the peak of the pandemic.

A significant development in Liberia was the finalisation and validation of the Anti-SGBV Roadmap (2020-2022). The roadmap was the culmination of previous efforts to respond to SGBV in Liberia. It resulted from consultations conducted by an Inter-Ministerial Task Force on SGBV (ITSGBV) set up by the President. The Road Map aims to establish a comprehensive and strategic multi sectoral approach to addressing rape and other forms of SGBV, prioritize approaches and activities, and bring to the fore the rapid rise of cases of rape and other forms of violence in Liberia resulting from the COVID-19 pandemic. Recommendations from high-level consultative meetings with key stakeholders under the leadership of the Ministry of Gender noted that SGBV remains a deep-rooted problem and that the pandemic and lockdown measures posed problems regarding limited access to services and inability to record cases because of the restrictions in movement. Officially launched by the President at a High-Level consultative meeting on 9 September 2020, the Road Map has provided a sense of optimism of political will and sector wide coordination in what should represent a final response that goes beyond rhetoric and bears meaningful and measurable results. As a demonstration of national commitment, the President committed the sum of \$2m towards the implementation of the Roadmap and declared rape as a national emergency at the succeeding cabinet meeting. The Roadmap is inter-ministerial and holistic and promotes sector-wide engagement.

RECOMMENDATIONS

Concluding the webinar, the discussants agreed that the single most challenge facing Liberia was the increase cases of SGBV. So serious was the challenge that SGBV was recognised at “the epidemic within the pandemic.” Moreover, SGBV was underscored as a perennial problem that will outlast the pandemic. Consequently, attention regarding recommendations focused on the Roadmap and options to ensure that it bears results. More specifically, the recommendations include the following:

Prevention

-  Awareness raising is critical to respond to the low-level rights awareness especially among girls who are the primary targets of SGBV and other types of gender-based violence. Increased awareness among girls and communities are critical to the prevention of SGBV. Justice and security personnel who implement COVID-related measures and SGBV responses require orientation to ensure that these measures are effective and implemented with a human rights-based approach and gender sensitive manner.
-  Various institutions including the judiciary, police and religious groups should be supported with resources to ensure that the Roadmap is successfully implemented.
-  Prominent male leaders should move forward and champion the fight against SGBV. In this vein it is important to explore masculinities and build upon the positive role of men in societies. Advocacy solely by women’s groups will not sufficiently send the proper message to communities or change mind sets especially in rural areas.
-  Youths are mostly the perpetrators of crime and SGBV. An enabling environment should be created for them to engage in livelihood activities. Innovative ideas should be created, and

platforms strengthened for youths and children who are mostly affected and involve them in developing preventive mechanisms and ensure that positive behavioural change is promoted.

- ✚ SGBV responses should focus on prevention. In a traditionally male dominated society, where women and girls are not protected and viewed as chattel, it is important to engage with men to influence change in beliefs and values and strengthen the family structure.
- ✚ Implement, assess and finance roadmap. Allocation of national resources is important. Existing institutions should be strengthened and there is no need to reinvent the wheel.
- ✚ Engage traditional and religious leaders to break the silence on SGBV and harmful traditional practices.

Response

- ✚ Punishment is a deterrent. Severe punishment such as life imprisonment should be considered. The practice of out of court settlement of SGBV cases among families should be discouraged. The rehabilitation of survivors should receive priority. Young perpetrators should also undergo rehabilitation.
- ✚ Prioritise human rights and SGBV- related cases.
- ✚ Roll out virtual courts to ensure sustained functionality of the courts.

Coordination

- ✚ Improved coordination is required to ensure a comprehensive and cohesive response to COVID-related measures and particularly the implementation of the Roadmap.
- ✚ Meaningful implementation of the Roadmap requires consideration that influencing and changing of public attitudes is often a prolonged process and requires a multi-pronged approach. The task force should be robust and consist of all relevant stake holders that operates on the notion that it is the state's responsibility to protect the rights of women.
- ✚ Establish a network/platform of CSOs to coordinate SGBV related work.
- ✚ The Roadmap must be reviewed semi-annually to ensure that its implementation is on track and consider re-contextualisation and adaptation.

Policy and legislation

- ✚ The implementation of the Roadmap requires political will. The prevention of grave public problems requires political will to succeed. This will require Government to continuously remain engaged and start to push through the relevant policies and legislations required to establish the institutional framework and structures proposed by the Roadmap.
- ✚ Repeal and or revise all legal ambiguities and inconsistencies for example: The cultural and legal mismatch wherein girls can legally marry at 16 years but the age for consensual sex is 18 years, need to be reconciled.

For further information contact:

Rowland Cole, Chief Technical Advisor - Rule of Law – rowland.cole@undp.org