



HUMAN
RIGHTS
WATCH

“Prison Is Not For Me”

Arbitrary Detention in South Sudan

Summary and Key Recommendations

Inmates in Bentiu Prison, Unity State, sitting in the prison courtyard. As of November 2011, 93 percent of the prison population was male, and 30 percent of inmates were on remand, awaiting the completion of police investigations or trials.

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Male prisoners stand inside their cell at Rumbek Central Prison in Lakes State, South Sudan. This cell housed 67 people and only accommodated 20 beds. As a result of shortage of mosquito nets, some prisoners did not have nets and there are no screens on the windows.

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On July 9, 2011, crowds cheered and danced in the streets, celebrating the independence of the new nation of South Sudan. Meanwhile, close to 6,000 people, including women and children, languished in South Sudan's prisons. Some of these inmates could have joined in the festivities, but are behind bars because of chronic weaknesses across the criminal justice system. In South Sudan arbitrary detention is rife, with those who should not have been detained at all spending months or even years in one of the country's approximately 79 prisons, which are overcrowded and dirty, with food and healthcare in short supply.







Male prisoners stand inside their cell at Rumbek Central Prison in Lakes State, South Sudan. This cell houses 67 people and only accommodates 20 beds. As a result of shortage of mosquito nets, some prisoners did not have nets and there are no screens on the windows.

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(above) The summer in South Sudan is extremely hot and the temperature in the barracks becomes unbearable, so during the warmest hours inmates often sit in the shade of Juba Central Prison's walls.

(left) Chalkboard in the juvenile ward of Juba Central Prison. As of November 2011, there were 168 children incarcerated in South Sudan. Classes, where they occur, are inconsistent, and inmates wanting to learn to read often lack adequate educational materials. According to government figures, South Sudan has an illiteracy rate of 73 percent.

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The signing of the Comprehensive Peace Agreement (CPA) in 2005 between the National Congress Party-led Government of Sudan and the Sudan People's Liberation Movement and Army (SPLM/A) brought an end to 22 years of civil war and granted Southern Sudan regional autonomy. Over the past seven years, the government in Juba has made significant progress in establishing key institutions, including Southern Sudanese police, prisons service, and courts, building necessary infrastructure, and passing new legislation. Yet the legacy of two decades of civil war presents massive challenges to developing a functional criminal justice system,

such as a lack of trained civil servants, including judicial officers and police, and budgetary constraints.

In the face of such severe challenges, at independence, South Sudan's leaders pledged to uphold human rights. President Salva Kiir promised in his independence-day speech to respect and ratify human rights treaties. He also signed into force a new constitution that proclaims the country to be founded on justice, equality, and respect for human dignity and guarantees rights to due process, physical integrity, and protection from unlawful deprivations of liberty.

Despite this new constitution and the relative progress that has been made since the CPA was signed, there are persistent weaknesses in the rule of law in South Sudan, resulting in serious human rights concerns. This report focuses on prison populations and conditions, and documents patterns of arbitrary detention and other human rights abuses in the administration of justice. It challenges the government of South Sudan to ensure that its criminal justice system develops in accordance with human rights norms, rather than allowing systemic weaknesses to fester. An effective and rights-respecting criminal justice system is critical to providing a sense of security, to ending cycles of violence



Acting Prison Director at Rumbek Central Prison William Marian (L), inspects a cell in Rumbek, South Sudan.

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This 40-year-old man was put in shackles upon his arrival at Rumbek Central Prison. When Human Rights Watch met him, he had been in prison and chained for more than seven months while he awaited trial.

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Rumbek Central Prison in Lakes State, South Sudan. Women make up a small number of the prison population and are expected to cook meals for more than 500 prisoners.

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fueled by impunity, and to ensuring accountability while guaranteeing due process rights.

Approximately one-third of prisoners in South Sudan are on remand – that is they have not been convicted of any crime – but are held in prison, often unnecessarily, awaiting the commencement or resolution of their trial. Many remand prisoners were arrested but have not been brought before a judge, and remain in prison because they were never given the option of bail. They wait for police to conclude investigations, for judges to schedule their trial, and for witnesses to appear in court for prolonged periods – sometimes for years.

Some prisoners have not even been accused of any crime. There are inmates detained as proxies, simply to compel the appearance of a relative or friend. As of November 2011, 90

individuals, labeled “lunatics”, were deprived of their liberty because they were said to have demonstrated evidence of mental disability. Some are chained to the floor day and night, naked, and soiled with their own excrement.

The overwhelming majority of prisoners – an estimated 95 percent – go through the criminal justice system without counsel. Most are too poor to pay for a lawyer, and there is no functioning system of legal aid. Most cannot read or write, and with no support from the state, they often have no understanding of the nature of the charges against them or the status of their case. Defendants are sentenced to death even though they have not been able to call and prepare witnesses in their defense.



Rumbek Central Prison in Lakes State, South Sudan. At the time this photo was taken in August 2011, the prison housed 547 prisoners.

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South Sudan operates a plural judicial system, which includes statutory and customary courts. Customary courts are accessible, familiar, and efficient, but their exercise of judicial powers is not sufficiently overseen by the judiciary, and their criminal jurisdiction is unclear. Individuals can be sentenced to prison for crimes such as “pregnancy” that are not precisely defined and have no statutory basis. Chiefs, state-sanctioned community leaders who preside over customary courts, apply the Penal Code without legal training and impose corporal punishment.

In all of the 12 prisons Human Rights Watch visited in researching this report, people were detained because they cannot pay debts, court-ordered fines, or compensation awards. Many have given up hope that family members will

come forward to pay on their behalf, and there is little opportunity to generate income while in prison.

There are people in prison because they are accused or convicted of marital or sexual offenses, such as adultery and elopement. The criminalization of adultery places undue restrictions on the fundamental right to privacy, which includes the freedom to engage in adult consensual sex. Imprisonment for elopement limits the right to marry a spouse of one’s choice.

There are over 150 children in conflict with the law in South Sudan’s prisons. Domestic law allows imprisonment only from age 16, but Human Rights Watch met inmates as young as 13. Children are removed from their families and from school to await trial for extended periods, and sometimes given long sentences for petty offenses such as theft. There are no alternatives to imprisonment, and in all prisons Human Rights Watch visited, children are housed alongside adults.

The prison population has surged since 2005, from approximately 1,500 to almost 6,000 at the end of 2011, according to the Prisons Service. As there has been little expansion of





(above) The “lunatics” ward at Rumbek Central Prison in Lakes State. In South Sudan, there are no mental health facilities in the entire country. Approximately 90 men and women who show evidence of mental disability are imprisoned in South Sudan. Very few are accused of any criminal offense. They are not treated, and are often naked, chained, or in solitary confinement.

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(left) A mentally ill inmate, who has not committed any crime, naked and chained to the ground in Juba Central Prison.

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prison infrastructure, this rise in the number of prisoners has contributed to grim conditions. In the overcrowded prisons, inmates sleep in tightly packed cell-blocks, and as a result have difficulty sleeping at night. Facilities rarely allow convicts to be fully separated from remands, children from adults, or even women from men.

As 93 percent of the Prisons Service’s budget goes towards paying salaries for its staff of over 20,000, it has been unable

to adequately feed the people who are detained. Mothers with young children are offered no extra rations or services. Prisoners sometimes do not have enough water to bathe. Disease and illness spread easily, but go untreated, unless inmates are able to pay for medicine themselves. Beatings are routine, and some inmates are permanently shackled. In one major prison, 10 inmates died in 2011 alone, mostly of treatable illnesses.

The composition of prison populations – particularly the high number of remands – reflects problems at other levels of the criminal justice system. It is urgent that all justice sector actors and all stakeholders take coordinated action to address these various problems with the ultimate goal of reducing the number of inmates who are arbitrarily detained. The Ministries of Justice, Interior, Health, and the judiciary all need to collaborate more effectively to bring about needed improvements. The government should promptly review the cases of all prisoners and release all but those whose continued detention is strictly justified on the basis of an





A cell in Bentiu Prison built entirely of corrugated iron sheeting. Few prisoners have mattresses; most sleep on a single sheet or an old food sack. Ventilation is poor, and prisoners complained that it is very hot at night.

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Sign showing the number of inmates in the women's section of Juba Central Prison.

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appropriate court sentence handed down following a fair trial, or those facing serious criminal charges whose appearance for trial would not be guaranteed if they were to be granted pre-trial release.

To improve the situation in the longer term, resource constraints are a major consideration, but some necessary reforms are resource-neutral. Legal and policy reforms, particularly the enforcement of legal limits on remand detention, ending imprisonment for offenses such as adultery, and abolishing the practice of imprisonment for non-payment of debt, will have an immediate and significant impact on reducing the number of prisoners arbitrarily detained. A zero-tolerance policy on corporal punishment and the chaining of

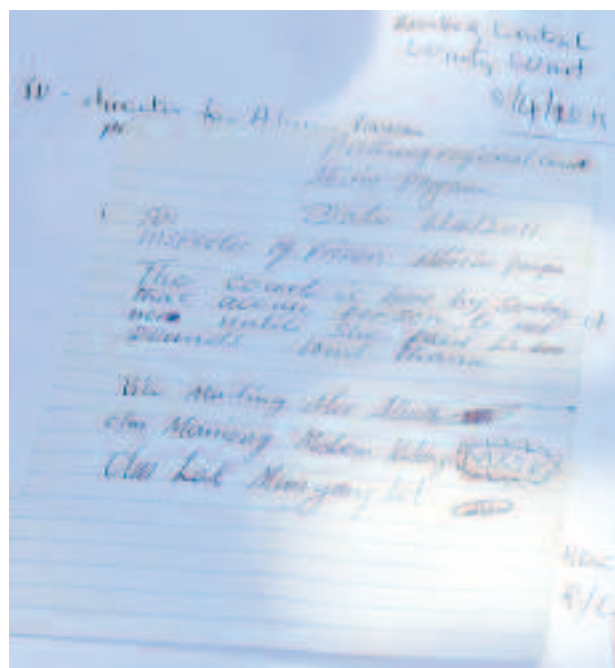
inmates for extended periods of time, a degrading and inhuman treatment, will ease the suffering of many prisoners.

The government, with the support of South Sudan's development partners, should urgently introduce other reforms, such as guaranteeing the right to legal aid, providing proper care for people with mental disabilities outside of prison, and ensuring that rule of law actors are sufficiently trained. Though costly, these changes are crucial components of a criminal justice system that upholds, rather than violates, fundamental human rights.



(above) The Lakes State High Court in Rumbek. South Sudan's statutory justice system faces numerous challenges, including inadequate court infrastructure, and staff shortages.

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(left) A handwritten customary court warrant that sentences a woman to an indeterminate stay in prison until she pays 600 pounds (approximately US\$200). Such sentences for non-payment of debt are common in South Sudan.

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KEY RECOMMENDATIONS

FOR IMMEDIATE IMPLEMENTATION:

- The government should formally acknowledge that South Sudan succeeds to all human rights treaties to which Sudan is a party.
- The Ministry of Interior, Ministry of Justice, and the judiciary should review the files of all prisoners to ensure that every prisoner has a file that includes complete and accurate information of the prisoner's name, age, reason for and date of detention, and length of any sentence. They should ensure that all prisoners are legally detained.
- The Ministry of Justice and the judiciary should order the immediate release of any prisoner who is detained without clear legal authority, lacks necessary paperwork, is in proxy detention, is in detention for failing to fulfill a contractual obligation, or who has overstayed permitted remand periods or a sentence to imprisonment.
- In order to address the current overcrowding, and pending law reform, the Ministry of Justice and the judiciary should consider granting early release to any prisoner whose detention is not on the basis of an appropriate judicial sentence for a serious offense following a fair trial. Prisoners serving sentences for adultery or convicted by customary courts of offenses such as "pregnancy" should be given early release.
- The Ministry of Justice and the judiciary should grant release pending trial for any prisoner whose detention is not justified as necessary to ensure his or her appearance at trial for a serious offense.
- The Ministry of Interior, Ministry of Justice, and the judiciary should develop and implement early release and alternatives to imprisonment such as community service and probation programs.
- The National Legislative Assembly should:
 - amend the Code of Criminal Procedure to require that criminal suspects appear before a judge within 24 hours of arrest, as required by the Transitional Constitution;
 - amend the Penal Codes so that people are not imprisoned for adultery;
 - amend the Judiciary Act and the Local Government Act to ensure adequate monitoring and supervision of customary courts by the judiciary, to clarify and limit the jurisdiction of customary courts over criminal matters, and to establish clear sentencing limits for customary courts; and
 - pass legislation to prohibit the incarceration in prison of people solely on the basis of mental disability and to regulate the commitment and discharge of people with mental disabilities to a medical facility in compliance with international standards.
- The Ministry of Interior, Ministry of Justice, and the judiciary should issue clear instructions for police, prosecutors, and judges to uphold the constitutional requirement that all criminal suspects appear before a judge within 24 hours of arrest. Procedures should be promulgated to implement this rule.

- The judiciary should exercise oversight over pre-trial detention as required under the Code of Criminal Procedure by ensuring that remand detention orders are renewed every seven days and that permission is sought from the Court of Appeal for pre-trial periods that exceed six months.
- The Ministry of Interior, Ministry of Justice, and the judiciary should issue clear instructions prohibiting detention of persons in proxy of criminal suspects and indeterminate and indefinite detention for failure to pay debts.
- The Ministry of Justice and the judiciary should examine the practice of imprisonment for non-payment of debt with a view to abolishing it. So long as imprisonment remains available as a legal consequence for non-payment of debt, it should be strictly limited to situations of non-fulfillment of a court ordered payment, should only be used as a last resort and for as short a period as possible, and in any event, no longer than the six-month limit on imprisonment for debt in the Code of Civil Procedure.
- The Ministry of Health and Ministry of Interior should clarify responsibility for providing health care and medicine for prisoners, ensure improved coordination, and develop a detailed plan for the improvement of prison health services and conditions.
- The Ministry of Health should, in consultation with disabled persons' organizations, develop a national plan for the provision of mental health services, including a medical facility for individuals with mental disabilities and community-based treatment options such as outpatient services.
- The Prisons Service should prohibit corporal punishment in its standing orders and regulations. It should ensure the enforcement of the prohibition by adopting a zero-tolerance policy against its use, holding prison staff accountable for using corporal punishment, and providing prison officers with additional training in the prohibition of corporal punishment.
- The Prisons Service should prohibit the use of chains and leg irons in its standing orders and regulations. It should end the practice of applying other forms of restraints as punishment. Restraints, when used for security measures, should be used only when absolutely necessary, and then for the shortest period of time possible.

“Prison Is Not For Me”

Arbitrary Detention in South Sudan

While ensuring accountability for crimes is a critical aspect of establishing the rule of law, arbitrary detention is rife in South Sudan, with individuals who should not have been detained at all spending months or even years in one of the country’s approximately 79 prisons. There are people in prison detained simply to compel the appearance of a relative or friend; because they were said to show evidence of mental disability; or because they are unable to pay a debt, court fine, or compensation award. Many are serving prison terms for adultery or for customary law crimes such as “elopement” or “pregnancy,” which place undue restrictions on the rights to privacy and to marry a spouse of one’s choice. Legal aid is almost totally absent, leaving individuals charged with crimes—the vast majority of whom are illiterate—unable to follow the status of their case or to call and prepare witnesses in their defense.

In *“Prison Is Not For Me” Arbitrary Detention in South Sudan*, Human Rights Watch documents how, because of weaknesses across the criminal justice system, many of the approximately 6,000 individuals in South Sudan’s prisons are deprived of their liberty arbitrarily and should not be living behind bars. It also describes the grim conditions in which they live—overcrowded and unsanitary, and without adequate health care or food.

In the face of severe underdevelopment and myriad long-term challenges, South Sudan’s leaders have voiced their commitment to uphold human rights. The government should urgently work to reduce arbitrary detentions by enacting legal and policy reforms that limit remand detention and end imprisonment for adultery and for non-payment of debts. It should also find a way to guarantee the right to legal aid, to ensure rule of law actors are sufficiently trained, and to provide proper care for people with mental disabilities outside of prison.



Inmates in Bentiu Prison, Unity State, lining up for the evening prisoner count before entering the cells for the night. There are approximately 250 prisoners in Bentiu Prison.

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