

South Sudan: Arbitrary Detentions, Dire Prison Conditions
By Human Rights Watch
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(Juba) – Flawed processes, unlawful detentions, and dire conditions in South Sudan's prisons reflect the urgent need to improve the new nation's fledgling justice system, Human Rights Watch said in a report released today.

The 105-page report, "Prison Is Not for Me: Arbitrary Detention in South Sudan", documents violations of due process rights, patterns of wrongful deprivation of liberty, and the harsh, unacceptable prison conditions in which detainees live. The research was done during a 10-month period before and after South Sudan's independence, on July 9, 2011.

"The experience of those in detention in South Sudan reveals serious flaws in the emerging justice system," said Daniel Bekele, Africa director at Human Rights Watch. "South Sudan is a new country and badly needs an effective justice system that upholds human rights and dignity. It is a fundamental building block for establishing rule of law and accountability."

The research was carried out in 12 of the country's 79 prisons, in areas with the largest prison populations. Human Rights Watch interviewed more than 250 inmates and a range of justice officials, correctional officers, police, prosecutors, and traditional authorities.

Researchers documented a litany of human rights concerns throughout the criminal justice system.

A third of South Sudan's prison population of approximately 6,000 has not been convicted of any offense or in some cases even charged with one, but are detained, often for long periods, waiting for police, prosecutors, and judges to process their cases.

The vast majority of detainees have no legal representation, because they cannot afford a lawyer and South Sudan has no functioning legal aid system. Judges pass long sentences and even condemn to death people who, without legal assistance, were unable to understand the nature of charges against them or to call and prepare witnesses in their defense, Human Rights Watch found.

Frustration with, and confusion about, the criminal justice system are common among prisoners. A male inmate accused of murder told Human Rights Watch: "I have stayed here for five years [...] and have not seen a judge. The court has not called the case. The attorney general doesn't know the law. The police don't know the law."

South Sudan's plural legal system, in which formal courts co-exist with customary courts presided over by chiefs, presents concerns relating to the guarantee of due process rights. Human Rights Watch researchers met scores of people sent to prison by chiefs who had no formal legal training, for crimes that do not appear in South Sudan's criminal code. Though these courts are more accessible and efficient in some respects than the formal courts, the courts' criminal jurisdiction and sentencing powers are not sufficiently clear, Human Rights Watch found.

Many inmates interviewed by Human Rights Watch were held for marital or sexual offenses such as adultery and elopement – offenses in both statutory and customary laws that violate internationally protected rights to privacy and to marry a spouse of one's choice. Others were ordered detained for indeterminate periods because they could not pay debts, court-ordered fines, or compensation awards, which are often defined as a number of cattle. They had no idea when they would be released.

Human Rights Watch found that some of those behind bars have not been accused of, much less tried for, any crime at all, and some were detained as proxies to compel the appearance of a relative or friend. About 90 people were in prison solely because they appear to have mental disabilities. The people of South Sudan have endured decades of wartime trauma, but the country has no mental health facilities.

People who show signs of mental disability are often summarily sent to prison, in the absence of any health facility where they can get appropriate care.

“Many of South Sudan’s prisoners are incarcerated following flawed arrests and prosecutions, detained without any solid legal justification, or sentenced for behavior that quite simply should not be criminalized as to do so is a violation of basic rights and freedoms,” Bekele said. “Such detentions are arbitrary – and therefore illegal – under international law and often violate South Sudan’s own constitution and laws.”

Grim conditions in South Sudan’s prisons compound the injustices related to how and why people are behind bars. Prison infrastructure is rudimentary and in some cases damaged or crumbling. Cells are unhygienic, severely overcrowded, and lack sufficient ventilation.

Inmates do not get enough to eat and in some prisons water also is in short supply. Prisoners are vulnerable to illness and disease, Human Rights Watch found, but when they fall sick, they rarely receive proper care, unless they can pay for medicine themselves. Ten inmates died in Aweil prison and at least five died in Bentiu prison in 2011 alone, most of treatable illnesses.

Inmates reported that prison officers routinely beat them with sticks, canes, or whips for disciplinary infractions. Some inmates are permanently chained in heavy shackles, which violates domestic and international standards for the use of restraints, and also constitutes prohibited cruel, inhuman, and degrading punishment.

In all prisons Human Rights Watch visited, children are detained alongside adults and are not offered rehabilitation programs or sufficient educational opportunities, as required under South Sudan’s Child Act.

While much international donor attention has focused on building prisons, donors should also focus on improving conditions and ensuring that prisons uphold minimum standards. Donor support will also be needed to help cover emergency food and medical needs, particularly in light of recent budget cuts for all government institutions following South Sudan’s decision in February to stop oil production and export.

The Justice and Interior Ministries and the judiciary, with support from international agencies and donors, should make it an urgent priority to review the files of all prisoners, Human Rights Watch said. They should identify prisoners for whom there is no legal basis for their continued detention and release all but those whose continued detention is strictly justified. Case reviews and increased coordination within the justice sector would help eliminate arbitrary detention, which would help reduce prison numbers and would not require substantial expenditure, Human Rights Watch said.

In addition, South Sudan should ensure sufficient training in due process and fair trial standards for police, prosecutors, and judges. Existing training programs lack sufficient breadth and depth, and do not address some of the problems Human Rights Watch identified. The government also needs to establish an effective legal aid system, which will also need donor support, Human Rights Watch said.

Wide-ranging legal and policy reforms are needed to limit pretrial detention periods, clarify the criminal jurisdiction of customary courts, and end imprisonment for adultery and for non-payment of debt. Authorities should also immediately stop arbitrarily imprisoning people because they show signs of mental disabilities, and find a way to ensure access to care for people with mental disabilities.

“People who commit crimes should be punished in accordance with the law,” Bekele said. “But to deprive someone of their liberty is one of the most powerful sanctions a government can impose. It should only happen following due process and in accordance with South Sudan’s laws and international human rights commitments.”