



Deprivation of Liberty in South Sudan

January 2023 – May 2024

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Acronyms

UNMISS HRD	United Nations Mission in South Sudan Human Rights Division
MoJCA	Ministry of Justice and Constitutional Affairs
NAS	National Salvation Front
NSS	National Security Service
NPS	National Police Service
NPSSS	National Prison Service in South Sudan
OHCHR	Office of the United Nations High Commissioner for Human Rights
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan
SPLA-IO	Pro-Machar Sudan People's Liberation Army in Opposition
SSPDF	South Sudan People's Defence Forces
SSP	South Sudanese Pounds
TCSS	The Transitional Constitution of South Sudan
TNLA	Transitional National Legislative Assembly
UNMISS	United Nations Mission in South Sudan

A. Executive Summary

1. The United Nations Mission in South Sudan (UNMISS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) jointly publish this report pursuant to the United Nations Security Council Resolutions 2677 (2023) and 2729 (2024). The report focuses on cases of arbitrary¹ and unlawful² detention of civilians as well as associated violations committed by Government security elements, namely, the National Security Service (NSS), South Sudan People's Defense Forces (SSPDF), National Police Service (NPS), and National Prison Service in South Sudan (NPSSS), as well as on the unlawful detention of civilians by organized armed groups/non-state parties. In the context of South Sudan, organized armed groups include groups such as the National Salvation Front (NAS) and its splinter groups.
2. This report highlights serious human rights concerns related to arbitrary arrests and detention of civilians in South Sudan recorded by the UNMISS Human Rights Division (HRD) from January 2023 to May 2024.
3. UNMISS HRD verified and documented cases of arbitrary and unlawful arrests of women and girls detained by order of customary courts for refusing arranged marriages or fleeing such arrangements and/or adultery or for seeking divorce, often to compel the return of the bride price to the husband. Such practices not only highlight the use of gender as a tool of control but also reinforce harmful practices, ultimately stripping women and girls of their agency and autonomy. Once in detention, women and girls also endure harsh conditions that violate international standards, such as the lack of adequate healthcare concerning sexual and reproductive health. Men make up the majority of the victims subjected to arbitrary arrests and detention and associated violations (891 out of 1,140 total victims), resulting in wives and elderly parents bearing the primary responsibility of fending for the family at home.
4. Further, political motives have propelled arbitrary and/or unlawful deprivation of liberty, such as the detention of political opponents and other individuals indicating their intentions to be

¹ In the view of the Working Group on Arbitrary Detention, “the minimum requirement for respect by States of the prohibition of arbitrariness is that deprivation of liberty must not be manifestly disproportionate, unjust, unpredictable, or discriminatory” (Working Group on Arbitrary Detention, Deliberation 7, E/CN.4/2005/6, at para. 54(b)). The Working Group on Arbitrary Detention also refers to five categories in determining whether deprivation of liberty is arbitrary, namely : 1) lack of legal basis justifying the deprivation of liberty; 2) deprivation resulting from exercising rights guaranteed under the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights; 3) serious violations of fair trial rights; 4) prolonged administrative detention of asylum-seekers, immigrants, or refugees without review; and 5) deprivation of liberty based on the grounds of any kind of discrimination, violating international law (A/HRC/36/38, paragraph 8; A/HRC/22/44). See also Working Group on Arbitrary Detention, Deliberation 9, [A/HRC/22/44](#).

² Article 9 (1) of the ICCPR guarantees the right to liberty and prohibits arbitrary arrest or detention. Paragraph 1 stipulates that deprivation of liberty must be carried out with respect for the rule of law. The second sentence of paragraph 1 of Article 9 prohibits arbitrary arrest and detention, while the third sentence prohibits unlawful deprivation of liberty, i.e., deprivation of liberty that is not imposed on such grounds and in accordance with such procedure as are established by law. The two prohibitions overlap, in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally permitted but arbitrary, or both arbitrary and unlawful. Arrest or detention that lacks any legal basis is also arbitrary. Unauthorized confinement of prisoners beyond the length of their sentences is arbitrary as well as unlawful; the same is true for unauthorized extension of other forms of detention. Continued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful. See also General Comment 35 of the Human Rights Committee, paragraph 10-23 CPR/C/GC/35.

part of the political processes as South Sudan prepares for the general elections in December 2026.

5. In the absence of accountability as well as weak justice systems, the continued practice of arbitrary and unlawful detention contributes to the erosion of the rule of law. Such practice undermines respect for human rights and the rule of law, as well as deepens poverty, disrupts economic development, and contributes to the prevalence of diseases.
6. Cases of detention for extended periods, with no access to family, medical care, legal counsel, or due process of law, were verified and documented by the UNMISS HRD in this report, which may amount to arbitrary detention. Also, UNMISS HRD observed that in some cases, detention conditions were extremely poor in prisons and police, military and other detention facilities.
7. Owing to a lack of community-based support and public health-care facilities in South Sudan, persons with mental health conditions or psychosocial disabilities are often imprisoned, even when they have not committed any offence or have been found not to be criminally responsible. Incarceration for the above reasons amounts to arbitrary detention in violation of international norms and standards.³
8. UNMISS HRD further documented serious human rights abuses and violations of international humanitarian law committed against civilians in unlawful detention by non-state organized armed groups such as elements of the NAS.
9. While acknowledging the Government's recent efforts to enhance justice delivery, the report recommends an end to arbitrary and unlawful detentions and provides recommendations to both the Government of South Sudan and non-state armed groups to address these concerns. Further, the report recommends prompt independent investigations and prosecutions of those responsible for human rights violations, including for the arbitrary and unlawful deprivation of liberty. Against the backdrop of the elections, the report emphasizes the critical need for ongoing technical assistance and capacity-building initiatives to strengthen the administration of justice at both national and state levels.

B. Contextual Background

10. Despite notable improvements in the human rights situation since the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (Revitalized Agreement) in 2018, civilians still face targeted killings, conflict-related sexual violence disproportionately

³ International Covenant on Civil and Political Rights, arts. 9, 11, 17, para. 1, and 18, para. 1; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 109. See also the United Nations Common Position on Incarceration, page.4 https://www.unodc.org/res/justice-and-prison-reform/nelsonmandelarules-GoF/UN_System_Common_Position_on_Incarceration.pdf

affecting women and girls, movement restrictions, looting/property destruction, and arbitrary arrests and detentions by parties to the conflict.⁴

11. Since South Sudan gained independence in 2011, efforts to strengthen its institutions for effective and efficient service delivery have remained the primary concern of the Government, UNMISS, and other development partners. Institutions established during the pre-independence period have been weakened in the post-conflict setting, including critical institutions connected with justice delivery. These institutions are under-resourced, have significant administrative and logistical challenges and poorly trained personnel.
12. The weakening of the rule of law institutions due to localized conflicts has resulted in significant human rights violations. At the commencement of the conflict in 2013, and as the conflict spread to other regions such as Unity, Jonglei, and Upper Nile States, including Raja (Western Bahr el Ghazal), judges, prosecutors, and prison officers fled along with other civilians. Consequently, in these areas, reliance on customary and traditional courts rather than statutory justice mechanisms, even for serious offences such as rape and murder, contravening with the Local Government Act of 2009, remains a significant concern. Over time, this has increased due to the limited presence of judicial actors in most areas of the country⁵, and the tendency of customary court judges with no jurisdiction in criminal cases to order detentions⁶, exacerbated the existing logistical and administrative issues, thereby contributing to the arbitrary detention of suspects in police custody and prisons. In addition, the deterioration of the country's economic situation that began in 2015, which is also related to the conflict, has contributed to the ineffectiveness of existing judicial mechanisms.
13. Despite the signing of the Revitalized Agreement, hostilities of different dimensions have continued to occur across the country. Notably, in Tambura County, Western Equatoria State⁷; Koch, Leer and Mayendit Counties, Unity State⁸ ⁹; and Greater Upper Nile region¹⁰, which resulted in significant human rights violations and abuses as well as violations of international humanitarian law. The highly political nature of the above-mentioned conflicts involved SSPDF forces loyal to President Salva Kiir fighting against opposition forces termed the SPLA-In Opposition (SPLA-IO), loyal to First Vice President Riek Machar. The World Health Organization reported that the humanitarian, economic, social, and political crises, which began with the brutal civil conflict in 2013, have been exacerbated by the recent influx of

⁴ See, e.g., Annual brief on violence affecting civilians available in [annual brief on violence affecting civilians 2023.pdf \(unmissions.org\)](#); Secretary-General's Report on the situation in South Sudan available in [secretary-generals report on south sudan 11 september 2023.pdf \(unmissions.org\)](#); Report of the Secretary-General's pursuant to paragraph 31 of Security Council Resolution 2677(2023) available in [sg report on para 31 of sc resolution 2677 2023.pdf \(unmissions.org\)](#); Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General available in [A/HRC/52/26 \(ohchr.org\)](#), Security Council Resolutions S/RES/2327 (2016); S/RES/2304 (2016).

⁵ Recent mapping of Justice Chain Actors conducted by the UNMISS Human Rights Division in collaboration with other UNMISS components (September – November 2023) has revealed the absence of judges in most areas in Malakal, Bentiu, Lakes and Jonglei States.

⁶ Section 98(2) of the Local Government Act, 2009 provides that a Customary Court shall not have the competence to adjudicate on criminal cases except those criminal cases with customary interface referred to it by a competent Statutory Court.

⁷ UNMISS/OHCHR report on '[Attacks on Civilians in Tambura County, June – September 2021](#)' 1 March 2022.

⁸ Press Release: [UNMISS calls for immediate end to fighting and mobilizations in Leer County, Unity State](#), 30 November 2023.

⁹ UNMISS/OHCHR report on '[Attacks against civilians in Greater Upper Nile State – August to December 2022](#)', 1 December 2023.

refugees from Sudan and South Sudanese returnees due to the ongoing war between rival militias there- with over 820,000 arrivals since April 2023.¹⁰

14. UNMISS HRD also observed a trend where civilians are arrested and detained by state authorities, including governors, county commissioners, and other executive officials, without due process to suppress civic space and political opponents. Preparations for the expected elections have led to the intensification of repression of political dissent and a continued narrowing of the civic and political space through restricting freedom of expression and the right to participation in political processes. Detention is being used as a tool of intimidation against mostly male journalists, human rights defenders, specific high-profile political figures, and others who hold dissenting views. Entities such as UNMISS,¹¹ the United Nations Security Council and the United Nations Human Rights Council, have repeatedly noted arbitrary arrests and detentions, among others, as human rights violations of great concern in the country, particularly since the start of the conflict.¹²

C. Methodology

15. Information included in the present report was gathered using the human rights monitoring methodology developed by OHCHR. UNMISS HRD obtained information from victims, witnesses, relevant government, and opposition officials; visited incident sites; and reviewed available documentation such as medical records and data from other interlocutors and other UNMISS components. Findings are based on verified information collected from primary and secondary sources that are assessed as credible and reliable. They are included in the report where the “reasonable grounds to believe” standard of proof is met, namely where, based on a body of verified information, an ordinarily prudent observer would have reasonable grounds to believe that the facts took place as described and where legal conclusions are drawn, that these facts meet all the elements of a violation. Information gathered is confidential and reported only if informed consent is obtained. Information was not reported if a protection risk was posed by its disclosure. In addition, the principle of "do no harm" was observed.¹³
16. While examples of cases of arbitrary detention presented in the report are considered emblematic, they are not the only cases monitored by UNMISS HRD during the reporting period. The inclusion of cases is determined by whether the victims, witnesses and sources

¹⁰ <https://news.un.org/en/story/2024/07/1152106> ; South Sudan Commission on Refugee Affairs, United Nations High Commissioner for Refugee in South Sudan, and International Organization for Migration data. Accessed on 14 October 2024 at: <https://app.powerbi.com/view?r=eyJrIjoiZTMwNTljNWYtYmVhYi00ZGI2LTgwYzAtN2UyNDZmZTRINjBkIiwidCI6IjE1ODgyNjJkLTZmItNDNiNC1iZDZILWJjZTQ5YzhINjE4NiIsImMiOiJh9&pageName=ReportSection95859b8850a76994e6fb>

¹¹ UNSC Resolutions 2677 and 2729 of 2023 and 2024 respectively mandates UNMISS to monitor, investigate, verify, and report immediately, publicly, and regularly on abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity; and, where possible, to monitor, investigate, verify, and report immediately, publicly, and regularly on the chains of command and the decision-making structures that led to abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity.

¹² See, e.g., United Nations Security Council Resolutions 2327 (2016), ; S/RES/2304 (2016); S/RES/2241 (2015); S/RES/2206 (2015); ; S/RES/2187 (2014); ; S/RES/2155 (2014); and Human Rights Council Resolutions HRC/RES/S-26/1 (2016) ; HRC/RES/31/20 (2016); HRC/RES/34/25 (2017); HRC/RES/37/31 (2018); HRC/RES/40/19 (2019); HRC/RES/46/23 (2021); HRC/RES/49/2 (2022); HRC/RES/52/1 (2023).

¹³ The principle of "do no harm" means that Human Rights Officers have an obligation not to jeopardize the life, safety, freedom and well-being of victims, witnesses and other cooperating persons.

provided consent for public reporting purposes and whether protection risks exist, potentially preventing or limiting the extent of disclosure of information. As a result, some of the most egregious cases, including those involving publicly known individuals for whom protection risks were high, are not presented in narrative form, however, included in the overall statistics. In some instances, narratives were limited to publicly known information for the same reasons. Further, the report includes examples of cases of arbitrary detention that commenced prior to the reporting period; however, the detention ended or continued during this period. Victims' testimonies cited throughout the report are verbatim excerpts from notes of interviews conducted by Human Rights Officers. Due to translation, these may differ from the exact words the interviewees provided.

17. During the monitoring and investigations leading to this report, the UNMISS HRD team experienced some difficulties in accessing detention facilities or conducting interviews with detainees. Several actors highlighted in this report, particularly the NSS, SSPDF and non-state armed groups, have routinely denied UNMISS HRD access to detention facilities and to monitor the relevant facilities or meet with detainees. This posed significant challenges to the verification of some incidents and raised further concerns about the potential for serious human rights violations and abuses during detention.
18. In addition, while UNMISS HRD conducted regular human rights monitoring of police detention cells and prison facilities generally with the cooperation and support of Government officials, including prison administrators, access was denied to some facilities during the reporting period. However, emphasis was placed on interviewing victims wherever possible, including upon their release, but in some cases, released detainees were determined to have fled the country or were otherwise unreachable.

D. National and international legal framework

- *International Legal Framework*

19. The Government of South Sudan is obligated to promote and protect human rights within its territory. South Sudan is a State party to several international and regional human rights instruments, including the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984) (CAT), which South Sudan ratified together with its Optional Protocol (2002) in 2015. South Sudan ratified the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol (CEDAW OP) in January 2015, and the UN Convention on the Rights of the Child (CRC) on April 30, 2015. In February 2023, South Sudan acceded to the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. In February 2024, South Sudan acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and their respective First Optional Protocols. South Sudan is a signatory to the 1949 Geneva Conventions and the two Additional Protocols of 1977. At the regional level, since 2013, South Sudan has been a State party to the African Charter on Human and Peoples' Rights (1981). Similarly in June 2023, South Sudan deposited instruments of ratification to the Protocol to the African Charter on Human and

Peoples' Rights on the Rights of Women in Africa, also referred to as the Maputo Protocol, becoming the 44th Member State of the African Union (AU) to ratify the Treaty.

20. In 2015, the General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), which represent the universally acknowledged blueprint for prison management in the 21st century. They outline minimum prison conditions, provide guidance, and set clear benchmarks for prison staff on how to uphold safety, security and human dignity.¹⁴ The General Assembly encouraged member States of the United Nations to endeavour to improve conditions in detention, consistent with the Nelson Mandela Rules.¹⁵
21. International Human Rights Law prohibits arbitrary and unlawful detention and protects the right to security of the person.¹⁶ This implies that no one shall be deprived of his or her liberty except on such procedures as are established by law; informed of the reasons for the arrest; brought before a judge and should be entitled to trial within a reasonable time or be released from detention. In addition, people deprived of their liberty shall be entitled to take their cases before the court in order that the court may decide the lawfulness of the detention or make an order of release if not lawful; and where the court finds detention unlawful, the victim shall be entitled to compensation.¹⁷
22. Similarly, International Human Rights Law prohibits torture and cruel, inhuman or degrading treatment of detainees.¹⁸ South Sudan is a State party to the Convention Against Torture (CAT), and it is obligated to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.¹⁹ Further, as South Sudan is presently in a non-international armed conflict, all parties to a non-international armed conflict, including non-state armed groups, must respect their obligations under international humanitarian law and international human rights law. They must also repress violations committed by their forces.²⁰ Enforced disappearance also violates a range of basic human rights principles and may constitute a particularly aggravated form of arbitrary detention.²¹
23. Available data shows that a total of 10% of the prison population of South Sudan are female²², many of whom are arbitrarily detained and victims of sexual violence and abuse. In accordance with the Convention on the Elimination of All Forms of Discrimination Against Women

¹⁴ [The Nelson Mandela Rules](#)

¹⁵ General Assembly resolution [A/RES/70/175 \(2015\)](#)

¹⁶ See Article 9, ICCPR; see also Article 37(b), CRC; Article 14, CRPD; and Article 6, African Charter on Human and Peoples' Rights.

¹⁷ See Article 9(1-5) of ICCPR.

¹⁸ See Article 7, ICCPR; see also Articles 2 and 16, CAT.

¹⁹ See Article 2, CAT.

²⁰ Common Article 3 of the Geneva Conventions; see also Additional Protocol II, Article 4(2)(a) (applicable between South Sudan and the SPLA-IO); and ICRC Customary International Humanitarian Law Database, Rule 90. Under international standards, the terms "arrest" and "detention" are defined broadly and are not limited to deprivation of liberty in connection with a criminal charge or a specific detention facility but rather apply to all forms of deprivation of liberty. The concept of arbitrary detention in international human rights and humanitarian law has no fixed definition. The presence of any one of several elements, however, might suggest that a detention is arbitrary.

²¹ See International Convention for the Protection of All Persons from Enforced Disappearance. See also General Comment 35 of the Human Rights Committee, paragraph 17 CPR/C/GC/35.

²² South Sudan | World Prison Brief ([prisonstudies.org](#)).

(CEDAW)²³, to which South Sudan is a state party since 2015 and the United Nations Security Council Resolutions on Women, Peace, and Security,²⁴ South Sudan has an obligation to prevent sexual violence, hold perpetrators accountable, and provide comprehensive support to survivors.²⁵

24. International Human Rights Law prohibits the unlawful or arbitrary detention of children.²⁶ As a State party to the CRC, South Sudan is obligated to ensure that the arrest, detention, or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time.²⁷ Further, South Sudan must ensure that every child deprived of liberty is treated with humanity and respect, and in a manner which takes into account the needs of their age. In particular, South Sudan must ensure that every child deprived of their liberty is separated from adults unless it is considered in the child's best interest not to do so.²⁸ Moreover, South Sudan should endeavour to comply with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which are intended to establish minimum standards for the protection of juveniles deprived of their liberty, consistent with human rights and fundamental freedoms.²⁹
25. All parties to the non-international armed conflict in South Sudan, including non-state armed groups, must comply with International Humanitarian Law. International Humanitarian Law prohibits arbitrary deprivation of liberty in accordance with the requirement of humane treatment of civilians and persons *hors de combat* during armed conflict.³⁰ Further, International Humanitarian Law provides for basic minimum standards of treatment for all persons deprived of their liberty, including the prohibition of torture and cruel, inhuman or degrading treatment³¹; the provision of basic necessities³²; the separate accommodation of women and children³³; as well as certain procedural guarantees.
26. Further, international criminal law may apply to some of the acts described in this report. While South Sudan is not a party to the Rome Statute of the International Criminal Court (1998), the

²³ See Article 2 of CEDAW.

²⁴ See Article 11 of the UN Security Council Resolution 1325 (2000).

²⁵ The United Nations Rules for the Treatment of Female Prisoners and Non-Custodial Measures for Women Offenders (the 'Bangkok Rules') adopted by the UN General Assembly in 2010 also gives guidance to policy makers, law makers, sentencing authorities and prison staff to reduce the imprisonment of women, and to meet the specific needs of women in case of imprisonment.

²⁶ See Article 37(b), CRC.

²⁷ See Article 37(b), CRC.

²⁸ See Article 37(c), CRC; see also ICCPR, Article 10.

²⁹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the UN General Assembly on 14 December 1990.

³⁰ Common Article 3 of the Geneva Conventions; see also Additional Protocol II, Article 4(1); and the ICRC Customary International Humanitarian Law Database, Rule 99.

³¹ Common Article 3 of the Geneva Conventions; see also Additional Protocol II, Articles 1 and 2 ; and the ICRC Customary International Humanitarian Law Database, Rule 90.

³² Additional Protocol II, Article 5(1); see also ICRC Customary International Humanitarian Law Database, Rule 118.

³³ For separation of women, see Additional Protocol II, Article 5(2)(a) see also the ICRC Customary International Humanitarian Law Database, Rule 119; for separation of children see the ICRC Customary International Humanitarian Law Database, Rule 120.

relevant crimes set out in the Statute generally reflect customary international law.³⁴ Arbitrary detention, torture and enforced disappearances may amount to crimes under international criminal law. Acts of alleged torture and ill-treatment described in this report have occurred in the context of armed conflict; as such, they may amount to war crimes as well as crimes against humanity.

- ***National Legal Framework***

27. The 2011 Transitional Constitution of South Sudan (TCSS) governs the actions of state actors and serves as the supreme law of the land. The TCSS and other statutes provide procedural protections surrounding detention and limit the authority of various actors to carry out detention. The TCSS provides for the mandates of the SSPDF, NSS, and the police. Laws, including the South Sudan People's Liberation Army Act (SPLA Act) 2009, the National Security Service Act (NSS Act) 2014, and the Code of Criminal Procedure Act (CCPA) 2008, govern the conduct of entities carrying out detention in South Sudan. The Penal Code Act (2008) defines offences providing the basis for detention, while the Local Government Act (2009) defines the jurisdiction of customary courts,³⁵ and the Judiciary Act (2008) governs the judiciary.
28. The NPS³⁶ is responsible for law enforcement and maintenance of order within the country while the SSPDF is responsible for providing security throughout the country and ostensibly operates under the Ministry of Defense and Veteran's Affairs. During the reporting period, it was observed that the NPS was still primarily composed of former SSPDF soldiers. According to a source, the NPS, as presently constituted, is under-resourced, corrupt, and widely distrusted, with a national illiteracy rate of approximately 90 per cent.³⁷ Arising from the cases covered in this report, police authorities often base detentions on accusations rather than official investigations.
29. The TCSS guarantees the rights to personal liberty, the security of the person, freedom from torture, and a fair trial. Both the TCSS and the SPLA Act exclude SPLA from having a law enforcement mandate except as requested by civilian authorities when necessary. In contrast, the NSS Act conflicts with the TCSS in granting its officials broad powers of arrest without

³⁴ Though South Sudan is not yet a party to the Rome Statute, a State not a party may decide to accept the jurisdiction of the Court on an *ad hoc* basis. See <https://www.icc-cpi.int/sites/default/files/Joining-Rome-Statute-Matters>.

³⁵ Customary courts are established under the Local Government Act (2009). "Customary law courts" are presided over by traditional chiefs and have the jurisdiction to adjudicate on "customary disputes and make judgments by the customs, traditions, norms and ethics of the communities." Local Government Act Sec. 98(1). According to the Local Government Act, customary law courts do not have jurisdiction over criminal cases except those with a customary aspect and those referred by a statutory court. *Ibid.*, Sec. 98(2).

³⁶ Section 10 of the Police Act 2023 provides that the Police shall be deployed for the prevention and detection of crime and prosecution of offenders on behalf of the Attorney General and shall report back to the same on all steps taken in that regard. The Police shall also be responsible for apprehension of offenders, maintenance of public order and public security, safety of persons and property, fulfillment of any obligations under law and regulations it shall also be responsible for the custody of any unclaimed properties.

³⁷ Workforce shortage: inadequate funding, corruption, inadequate logistic support and infrastructure, and a lack of serviceable information and technological equipment to cover all areas of the State are responsible for the current State of the police. See <https://paanluelwel.com/2019/06/25/policing-the-community-the-challenges-and-prospects-of-community-policing-in-south-sudan/>.

warrant in contravention of international standards.³⁸ The Local Government Act provides customary courts the power to exercise a mediation function. It does not expressly authorize them to adjudicate criminal cases or pass custodial sentences and strictly limits the types of criminal cases that customary courts can consider to cases that interface with customs adequately referred by a competent court. The Code of Criminal Procedure mandates greater procedural protections as expected in the formal justice context, including internationally recognized minimum standards relevant to criminal proceedings.³⁹

30. In states with no statutory courts to deal with the backlog of cases in detention facilities, customary courts have emerged as alternatives for adjudicating criminal and civil cases. Despite having no jurisdiction to hear criminal cases except for those referred by a court of competent jurisdiction, the customary courts continue to take on criminal cases *motu proprio*, in contravention of section 98(2)⁴⁰ of the Local Government Act of South Sudan (2009), as well as the due process and fair trial guarantees provided in the TCSS and international human rights instruments binding on the Government of South Sudan, in particular, article 14 of the International Covenant on Civil and Political Rights. Detention further to decision of customary courts in such cases is manifestly unlawful and accordingly arbitrary.

E. Arbitrary detentions by government security agencies, including those occasioned by inadequacies in the administration of justice

31. The TCSS 2011 prohibits arbitrary detentions.⁴¹ However, during the reporting period, it was observed that the Government continued to arbitrarily arrest and detain persons. In the period under review, UNMISS HRD conducted 439 monitoring visits to prisons and police detention centers in Greater Equatoria, Greater Bahr el Ghazal and Greater Upper Nile to assess prison conditions and the protection of basic rights for accused and inmates.
32. Often overshadowed by conflict-related human rights violations and abuses, arbitrary and unlawful deprivation of liberty is a frequently overlooked human rights violation that affects many South Sudanese and some foreign nationals. During the period under review, UNMISS HRD documented and verified 262 cases of arbitrary and unlawful deprivation of liberty affecting 1,140 civilians (891 men, 162 women, 77 boys, 10 girls), primarily committed by government security elements (NSS, NPS, NPSSS and SSPDF).⁴² Lakes State was the most

³⁸ National Security Service Act (2014) (NSS Act), Section 54 (providing for arrests without a warrant). While Section 55 does provide for the issuance of warrants, neither this nor Section 54 appears to specify when a warrant is required. *Compare with* the Transitional Constitution of South Sudan (2011), Art. 159(e) (referring to "National security"). Article 160(5) provides that NSS' mandate shall be regulated by law. It is presumed that this means within the boundaries of the overall "national security" mandate as provided in Art. 159. The TCSS also allows NSS to be distinct from the armed forces and law enforcement.

³⁹ *Compare* the Code of Criminal Procedure Act (2008), Sections 6 and 7, *with* the Local Government Act (2009), Section 98.

⁴⁰ Section 98(2) of the South Sudan Local Government Act of 2009 provides, among others, that a customary court shall not have the competence to adjudicate criminal cases except those with a customary interface referred to it by a competent statutory court.

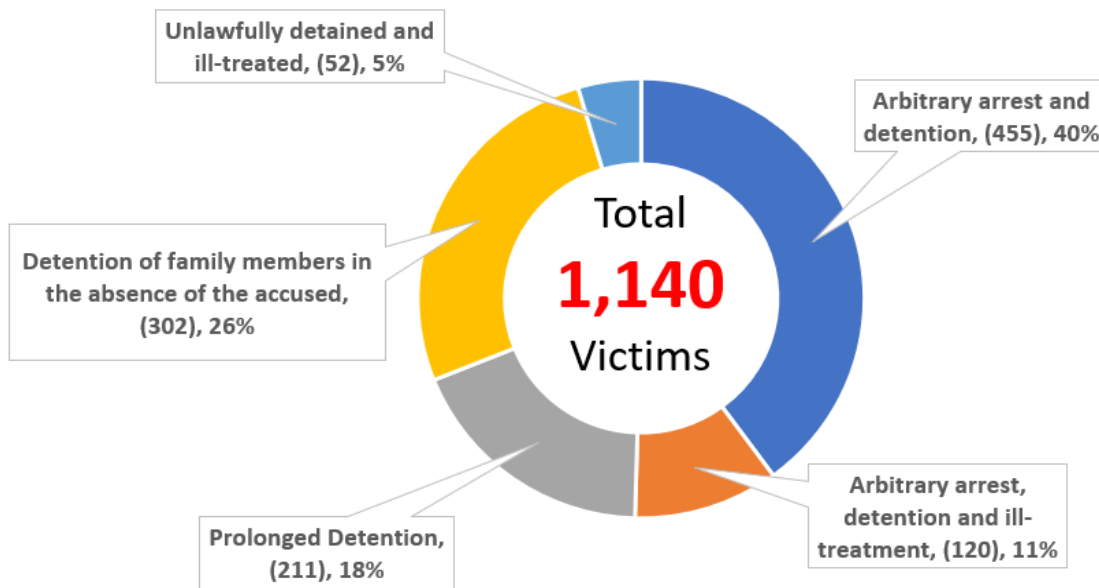
⁴¹ See Article 12 of the TCSS

⁴² These detentions have been assessed and have been interpreted broadly within the definition of Arbitrary Detentions under the five categories of the Working Group on Arbitrary Detentions to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. In the period under review, UNMISS HRD documented and verified 170 cases of arbitrary detention involving 769 civilians (640 men, 103 women, 20 boys and six girls) committed by government security elements.

affected area, accounting for 34 percent of the victims (383 individuals) recorded throughout South Sudan, followed by Central Equatoria State (17 percent or 196 individuals) and Jonglei State (nine percent or 99 individuals).

33. These incidents highlight the prevalence of cases of arbitrary and/or unlawful arrest and detention of civilians in prisons and detention centers due to inadequacies in justice administration, including the delay in court hearings, access to legal aid; as well as orders from customary courts and/or state authorities. They also include arbitrary arrest and detention of political opponents, individuals exercising their fundamental freedoms, and efforts to intimidate civic space. Reported cases also encompass arrests and detention of family members in the absence of the accused criminal,⁴³ prolonged detention, ill-treatment during arrest and detention. (see below the chart – victims of deprivation of liberty by type of violence).

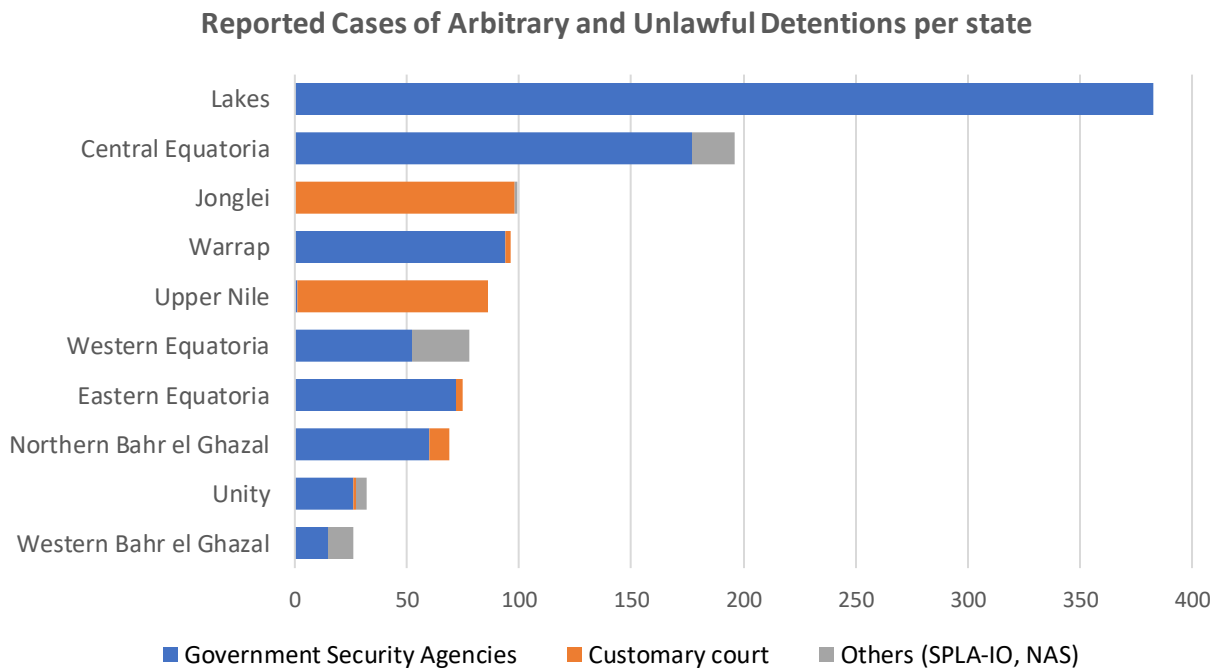
Victims of deprivation of liberty by types of violence



34. Several factors contribute to the prevalence of arbitrary and unlawful detention in South Sudan. Chronic weaknesses throughout the justice chain, including inadequate budgetary allocations

⁴³ In the South Sudanese context, proxy arrest refers to the practice of arresting and detaining individuals for an offense committed by someone else. Typically, family members such as a mother, father, or siblings are detained to pressure the suspected offender, who may be on the run or in a different location, into surrendering.

and a shortage of trained personnel in the police, prosecution services, courts, and prison/correctional institutions, compounded by insecurity, significantly perpetuate this issue. UNMISS HRD also observed that the delayed handling of cases by prosecutorial authorities, combined with many detainees awaiting trial, has exacerbated the overcrowding in prisons and detention centers. Likewise, the absence of complainants and witnesses in criminal cases, notably rape and murder, impeded the advancement of these cases within the justice system, leading to arbitrary detention of suspects. Such absence is caused by various factors, including the lack of resources for complainants and witnesses to travel and attend trials, especially for those in remote areas, as well as fear of retaliation and stigma associated with rape cases in the absence of any victim and witness protection programs.

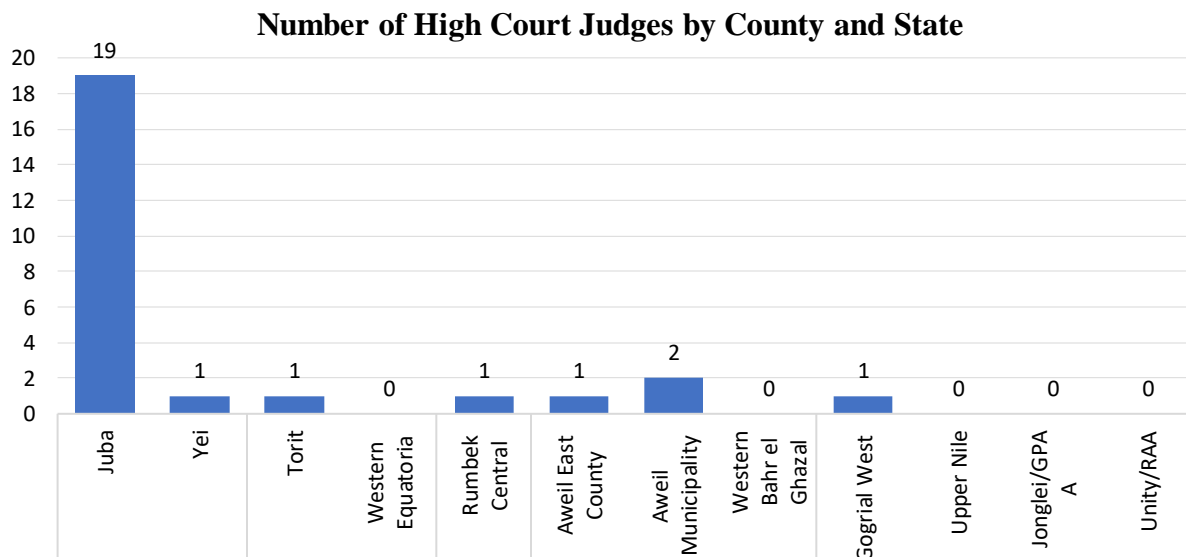


F. Pre-trial detention

35. Under international human rights law, the person detained is entitled to trial within a reasonable time or to release. This requirement applies specifically to periods of pretrial detention, that is, detention between the time of arrest and the time of judgment at the first instance. Persons not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence. Impediments to the completion of the investigation may justify additional time, but general conditions of understaffing or budgetary constraints do not. When delays become necessary, the judge must reconsider alternatives to pre-trial detention.
36. The excessive resort to pretrial detention has been identified as a main contributor to prison overcrowding in South Sudan. While pretrial detainees should be presumed innocent until

proven guilty by a court of law, and treated as such, conditions in pretrial detention are often worse than those for convicted prisoners, and are characterized by, inter alia, poor infrastructure and poor service and program delivery.⁴⁴

- 37.** The sparse judicial infrastructure, marked by an inadequate presence or complete absence of judges in remote areas, exacerbates the duration of pretrial detention of suspects. For instance, in Warrap State, only one county judge covers both Tonj South and Tonj North Counties on a rotational basis, resulting in a significant backlog of capital cases in both areas.
- 38.** The UNMISS HRD led the mapping of justice chain actors between October and November 2023, in collaboration with other UNMISS components, aimed at understanding the baseline and capacity of justice institutions and the gaps that inhibit the existing framework in South Sudan. The mapping tool mainly collected data on the number of courts (High Courts, County Courts), judges (male/female), and other relevant details for understanding the current institutional framework for justice delivery at the national and sub-national levels. The mapping exercise revealed the absence of statutory courts in the ten state capitals plus two administrative areas and seventy-nine county headquarters (*see the graph below on the presence of high judges per state and number per county*).



- 39.** The absence of high Court and county court judges in Malakal (Upper Nile State) and Bentiu (Unity State) has resulted in a backlog of cases and prolonged pre-trial detentions. The intermittent deployment of mobile courts to these areas has reduced some of the backlog cases, however, many individuals remain in protracted detention and are cut off from the outside world.⁴⁵ In Malakal Central Prison, nine of the 34 cases of pre-trial detentions were related to

⁴⁴ The Common Position, page 5.

⁴⁵ See Rule 3 Basic Principles of Mandela Rules.

capital offences, but the investigations had been stalled as the Government (the complainant) reportedly lost interest in the cases. In Renk, Upper Nile State, 28 cases had been on remand/pre-trial detention for a period ranging between three months to three years without trial by a court, declared the resident judge.

“On 17 September 2023, a thief came to our house to steal. My husband caught him, and they argued. My husband had a riffle, and there was a fight between them. I tried to separate them. My husband shot the intruder in the heart, and he died. We both went immediately to the police station to report ourselves, and the police took our statement. I spent 14 days in the police station cell. My husband was taken to SSPDF as he is a soldier. I was informed that the judge needs to come from Juba, and we cannot go to Court before then. I have been in Prison since October 2023, and there is no information on when the judge will arrive. I know I am accused of murder, but there are no witnesses. I have not been offered legal aid and do not know about a lawyer.”

- Statement of victim of prolonged pre-trial detention in Malakal, Upper Nile State given to UNMISS HRD on 14 February 2024

G. Detention conditions, including health in prison

40. UNMISS HRD regularly conducts monitoring visits to prison and detention facilities to assess prison standards and protect the fundamental rights of inmates. Overall, prison conditions are harsh, over-congested and life-threatening, although the South Sudan Prisons Act provides for the adherence to the United Nations Standard Minimum Rules for the Treatment of Prisoners. In addition, most detention facilities lack proper infrastructure with adequate ventilation and sewage system, as well as basic supplies such as food, mattresses, mosquito nets and cleaning materials. Generally, the detainees/inmates depend on the food supply from their families and relatives who live near the detention facilities. Those who have no families or relatives starve or rely on the substandard food intermittently supplied by the prison authorities. In Koch (Unity State), the prison authorities charged the inmates a fee for removing their chains once their release was ordered. In Yei, Central Equatoria State, the prison facilities are understaffed and lack holding cells for minors, medical personnel, medicines and means of transportation for sick inmates to and from the hospital.
41. In Renk, Upper Nile State, the lack of transportation for witnesses and complainants to attend court proceedings and for inmates to be taken to the hospital in case of a medical emergency was a major challenge.
42. HRD also documented arbitrary arrest of individuals suffering from mental illnesses. For instance, during HRD monitoring visit to Aweil State (Northern Bahr el Ghazal) to assess the

conditions of vulnerable inmates, nine prisoners suffering from mental illnesses⁴⁶, convicted of crimes ranging from murder to causing bodily harm, with sentences varying from three months to ten years, were identified. Two of these cases were inmates with mental disabilities who continued to be held in custody beyond their sentences, reportedly due to the reluctance of their families to take them back. Additionally, HRD noted cases where the incarceration of individuals with mental health conditions driven by familial concerns regarding their potential risk to themselves or others.

43. This dire prison situation in South Sudan, exacerbated by the typically poorer health status of prisoners at the time of admission and poor linkages with public health facilities, often leads to a higher mortality rate and the prevalence of communicable and non-communicable diseases in prisons. Those diseases not only affect prisoners, their families, visitors and prison officers, but also put an increased health burden on society at large. Unsurprisingly, prison settings have been hit particularly hard by the coronavirus disease (COVID-19) and continue to be at severe risk of amplified transmission and outbreaks of many other diseases.
44. The disproportionate impact of COVID-19 in prison settings has demonstrated what can happen when already overburdened and ill-equipped prisons are confronted with crises. Addressing the challenges associated with incarceration, including insufficient coordination between the justice and health sectors, should be a key part of the prison reform effort in South Sudan.

H. Access to lawyer and legal aid

45. Under international human rights law, the individuals must be assisted in obtaining access to effective remedies for the vindication of their rights, including initial and periodic judicial review of the lawfulness of the detention, and to prevent detention conditions incompatible with the international human rights law.⁴⁷ States have obligations to permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.⁴⁸
46. Cases of pre-trial detention mainly due to the absence of courts were prevalent, whereas access to legal aid services for inmates was lacking. One inmate on remand for a long period due to the unavailability of courts in Malakal Central Prison, Upper Nile, narrated his experience:

“I am a sergeant with SSPDF Division 2. I cannot remember the exact day of the incident, but it happened around August or September 2023 at 7 pm. I was showering when four people came to my house.... I spent ten days in the SSPDF detention cell, then three nights in the police station and then in Prison for the last six months. I have been informed of the charge against me, and an investigation was carried out, but I was not brought before any

⁴⁶ HRD corroborated the claim that the inmates were mentally incapacitated based on information provided by both prison officials and fellow inmates. Testimonies from prison staff, along with observations and statements from other incarcerated individuals, supported the assertion of the inmates' mental health condition.

⁴⁷ CCPR/C/GC/35. Para. 19.

⁴⁸ CCPR/C/GC/35, para. 35.

court. Two weeks ago, the county court judge came to the Prison, but he did not have the jurisdiction to adjudicate my case, so I was informed to wait for the mobile Court. I have not spoken to a lawyer nor received information about any legal aid support. I have worn the same clothes since I arrived because those on remand are not provided with prison uniforms.”

- *An adult male inmate in arbitrary detention at Malakal Central Prison, Upper Nile State gave his statement to UNMISS HRD on 14 February 2024.*

I. Arbitrary arrest and detentions of family members of the accused

47. Egregious examples of arbitrary detention include detaining family members of an alleged criminal who are not themselves accused of any wrongdoing.⁴⁹
48. The regular monitoring of detention and prison facilities by UNMISS HRD also revealed that family members are arbitrarily arrested and detained in the absence of a fleeing alleged criminal. In the South Sudan context, such arrest involves detaining individuals, often family members like parents or siblings, for a crime allegedly committed by someone else. This practice is used to coerce the suspected offender, who may be avoiding capture or is in a different location, into surrendering to authorities. However, this practice contradicts Article 19 of TCSS, which guarantees the rights to personal liberty, security of the person, and a fair trial, and with South Sudan’s obligations under the international human rights law.
49. In Unity State, arbitrary arrest and detention of family members was justified by the local authorities as an effective tool for maintaining public order as it prevents intra-communal conflicts and is an effective way to bring in people running from the law. Individuals who did not commit any crime are subject to arbitrary arrest and detention until the actual suspects surrender to the police. UNMISS HRD documented 42 cases involving 302 (166 men, 80 women, 54 boys and two girls) victims of such arbitrary detention of family members in police stations as well as prisons.
50. On 17 March 2023, a 46-year-old woman was detained at Rumbek Central police station, Lakes State, for over four days in lieu of her son, who was accused of eloping with a 15-year-old girl. Similarly, on 20 March 2023, a 58-year-old woman who had been imprisoned at the Panda military detention facility in Lakes State for over three months was transferred to the Rumbek Center Police station, where she spent over seven days in proxy for her son, who was accused of cattle theft and remains at large. The victim was subsequently released by the police with a charge.
51. Further, on 9 October 2023, a 32-year-old breastfeeding woman with her baby was detained at the police detention facility in Bentiu IDP camp, Unity State, in proxy for her 15-year-old son who was accused of stealing 100,000 South Sudan Pounds (SSP) in August 2023. UNMISS

⁴⁹ CCPR/C/GC/35, para.16.

HRD engaged with the officers in charge and the Criminal Investigation Department to advocate for the release of the woman; however, the police responded that they were merely executing orders, and if they failed to do so, both the police and the victims would face backlash from the complainants and community members.

52. On 18 August 2023, one 50-year-old man was arrested and detained at the Cueibet police station, Lakes State, in proxy for his son, who was accused of elopement. The victim was arrested on orders of a traditional court despite having paid six of the seven cows he was ordered to pay on behalf of his son. In another instance, a 55-year-old man was sentenced to one-month imprisonment by the local Customary Court in Rubkway (Unity State) in July 2023 in proxy for his nephew, who had allegedly impregnated a girl and thereafter fled Rubkway.
53. On 15 November, one adult male individual was arrested and detained at the Koch Police Station, Unity State, in proxy for his brother, who allegedly committed a criminal offence in the past. Subsequently, UNMISS HRD engaged with the Koch Police Commander to advocate for the victim's release, citing the Ministerial Order issued by the Ministry of Local Government and Law Enforcement Agencies in 2023⁵⁰ which prohibits proxy detention. However, the police commander refused to release the detainee, stating that “*he would be in trouble*” with the County Commissioner.
54. The practice of arrest and detention of family members of the accused is a common practice within Warrap State, where some of the justice actors and county commissioners argue that detention of family members in the absence of the accused helps to break cycles of violence. According to them, complainants would take justice into their own hands if no arrests were made in their cases. However, during the UNMISS and UNDP-supported circuit court deployment to Tonj South in May 2024, the High Court President reprimanded prison officers and police for such detention and ordered the release of the family members of the accused on detention. In these cases, the Judge ruled a no case to answer, ordered the immediate release, and explained to the members of the court that they should not detain people who are not accused of having committed a crime.

J. Arbitrary arrest and detentions of women and girls

55. As of 2015, the data published by World Prison Brief, 5 Edition, put the population of females at 710, 10.9% of the prison population of South Sudan.⁵¹ However, during the reporting period, UNMISS HRD documented and verified cases involving 162 women and 10 girls who were victims of arbitrary and unlawful arrest and detention.⁵² These cases included instances of unlawful arrest of female family members in the absence of the alleged accused, prolonged detention without trial, and ill-treatment during arrest and detention by government security

⁵⁰ Ministerial Order No. 02 of 2023, issued by the State-level Minister of Local Government and Law Enforcement Agencies on 12 April 2023, specifically bans the practice of proxy detentions in Unity State.

⁵¹ World Prison Brief, World Prison Female Imprisonment List, 5th Edition available at https://www.prisonstudies.org/research-publications?shs_term_node_tid_depth=27.

⁵² The data presented are cases monitored, documented and verified by human rights officers within the period covered by this report.

forces. Additionally, two cases of unlawful detention and sexual abuse, including using them as sexual slaves,⁵³ by armed non-state actors affecting two women were documented. Notably, women were often subjected to unlawful arrests and detention in the absence of their husbands, who were suspected of committing crimes. Further, women and girls were arrested and detained, sometimes for prolonged periods, by order of customary courts for adultery or seeking divorce. They were often compelled to return some or all of the bride price to the husband. In other instances, women and girls were arbitrarily arrested and detained by the police following complaints from family members for refusing arranged marriages or fleeing from such arrangements.

- 56.** UNMISS HRD also documented and verified cases where women were subject to unlawful detention and ill-treatment as retribution for acts committed by a relative. In one instance, a woman from the Azande community in Yambio County, Western Equatoria, was unlawfully detained and ill-treated by SPLA-IO members on 22 September 2023 in the absence of a relative who was reportedly defected from the SPLA-IO to the SSPDF. The victim was taken to the SPLA-IO barracks, where she was flogged before being released the same day after her relatives paid 25,000 SSP.
- 57.** On July 27, 2023, an underage girl and her mother were arrested and detained for six days by the SSPDF in Terekeka, Central Equatoria, to compel the girl's father to surrender to the SSPDF, wanted for allegedly issuing FORM 8⁵⁴ to a fugitive involved in the June 2023 clash between a contingent of SSPDF and Mundari youth. Similarly, women and girls have been held in police custody as a protective measure, often in cases involving domestic violence or forced marriage.
- 58.** On 19 June 2023, a three-month pregnant 18-year-old woman was detained for 24 days by an order issued by a County Court Grade 1 in Aweil town, Northern Bahr el Ghazal State in proxy for her husband, who allegedly stole three million SSP. She was released on 31 July 2023 with no charges brought against her. In another instance, a customary court in Aweil South County, Northern Bahr el Ghazal State ordered the indefinite detention of a 57-year-old woman in the absence of her daughter who left her husband and escaped to Sudan. The high court judge subsequently ordered the woman's release four months later following advocacy by UNMISS HRD.
- 59.** On 8 November 2023, two women were arrested and detained at Warrap Town Police Station in Tonj North County, Warrap State, on charges of adultery on the orders of the Customary Court while the case should have been forwarded to the county court. However, the law only allows one day of detention based on the order of the customary Court before transferring the case to the County Court for adjudication.

⁵³ https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_CRP_4.pdf

⁵⁴ It is form that is issued by the police, as proof of a complaint or case involving an accident or a particular crime. It is obtained free of charge and often used to get treatment during emergencies at all hospitals.

60. A 40-year-old internally displaced woman from the Bentiu IDP camp accused of aiding her daughter (aged 18) to flee her marital home was sentenced to one-month imprisonment by the Rikona Customary Court. She was sentenced to pressure her daughter, allegedly in Juba, to return; however, the daughter reportedly refused to return and claimed the court falsely accused her mother.
61. Women and girls in detention also endure harsh prison conditions that violate international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders. Harsh conditions in prisons in South Sudan include overcrowding and inadequate access to food, clean water, sanitation, and medical care.
62. Challenges observed at the Malakal Central Prison, for instance, were the lack of basic dignity kits for the female inmates, as well as limited restrooms for both male and female wards, whereby the prison authorities must assign a timetable to avoid conflicts between the inmates. Female adults and juveniles are not separated due to the large number of female inmates. Also, the lack of adequate healthcare, particularly concerning sexual and reproductive issues, disproportionately impacts women and girls, violating their fundamental rights to health and dignity. Similarly, women and girls in prison seldom receive legal advice, resulting in prolonged detention.
63. In addition, arrest and detention procedures often overlook the specific needs and circumstances of women and girls' prisoners/suspects. UNMISS HRD documented a case where a 20-year-old pregnant woman, arrested on 29 March 2023 after her family reported her to a customary court for refusing an arranged marriage, had induced childbirth at Aweil Central Prison (Northern Bahr el Ghazal).

K. Arrest and detention by executive order

64. During the reporting period, cases of alleged unlawful arrest and detention of civilians in prison, police detention cells and military barracks upon the order of state and county officials without formal legal proceedings were documented. These included the arrest and detention of civilians suspected of criminal offenses, involved in civil matters, as well as detention of family members of the alleged accused on the instructions of state and county authorities. This practice violates international standards, which require that arrest, detention, or imprisonment be conducted strictly in accordance with legal provisions and carried out by competent and authorized officials.⁵⁵ These standards are also upheld as rights within the TCSS.⁵⁶
65. For instance, on 30 September 2023, a 70-year-old man was arbitrarily arrested and detained at Koch town prison, Unity State, on the orders of the Koch County Commissioner, without a proper legal procedure. The victim was accused of witchcraft practices. In another instance, on

⁵⁵ Please refer to GC35.

⁵⁶ See Section 19(5).

7 May 2024, four Dinka Nyang civilians and three Dinka Apuk SSPDF military personnel (all men) who were arrested and detained by the SSPDF in a 20-foot metallic container near Kuajok town, Warrap State reportedly suffocated to death. The four civilians were reportedly arrested and detained at the orders of the State Governor in connection to an attack in Tonj North County in mid-April 2024 in which one individual was killed.

66. Further, on 7 November 2023, a male humanitarian worker from the Nuer Jagai community was arrested at the instructions of the Commissioner of Koch County. He was accused of incitement to violence for comments he posted in a family WhatsApp group about blood compensation. Following the engagement of UNMISS HRD with the State Prosecutor and Police Investigator, he was brought before a customary court on 9 November 2023, convicted of incitement to violence, and sentenced to six months in prison and a fine of one million SSP. However, later that day, the State Prosecutor ordered his release, citing a lack of complainants and grounds for the case. On 10 November 2023, the victim was re-arrested on the orders of the Koch County Commissioner, who asked him to apologize for his comments and the involvement of UNMISS and other humanitarian actors. The victim complied and was subsequently released.

L. Detention by orders of Customary Courts

67. The customs and traditions of the people of South Sudan remain a veritable source of law in all communities. People rely on customary courts because they are affordable, easily accessible, have familiar procedures, are conveniently located, and deliver decisions widely accepted by the community. By law, these courts have the jurisdiction to adjudicate on “customary disputes and make judgments by the customs, traditions, norms and ethics of the communities.”⁵⁷
68. Under international human rights law, Article 14 of the Covenant on Civil and Political Rights is also applicable where a State, in its legal order, recognizes courts based on customary law, or religious courts, to carry out judicial functions. It must be ensured that such courts cannot hand down binding judgments recognized by the State as such, unless proceedings before lawfully constituted, competent courts meet the basic requirements of fair trial and other relevant guarantees of the Covenant, and can be challenged before the State’s courts for lawfulness under procedures also meeting the requirements of article 14 of the Covenant. These principles run alongside the general obligation of the State to protect the rights under the Covenant of any persons adversely affected by the operation of customary and religious courts.⁵⁸
69. In Unity State, due to the absence of statutory courts throughout the State, the administration of justice continues to rely on customary courts despite having no jurisdiction over most criminal cases. Further, the County Commissioners exert a significant influence in the

⁵⁷ See Sections 98(1) of the Local Government Act 2009. According to the Local Government Act of 2009, customary law courts do not have jurisdiction over criminal cases except those with a customary interface and referred by a statutory court. However, the absence of statutory courts in most communities in South Sudan has resulted in increased patronage given to customary courts. Contrary to the provisions of the Local Government Act, the exercise of jurisdiction by customary courts in criminal cases has resulted in many detentions that are not permitted under the law.

⁵⁸ General Comment 32 of the Human Rights Committee (CCPR/C/GC/32).

administration of justice as they are the ones who control the appointments of customary court judges, thereby undermining the independence of their decisions. As a result, there is excessive use of punitive punishments such as imprisonment for offences that do not amount to criminal cases like impregnations, elopements, and the non-cancellation of outstanding debts. This practice disproportionately affects women as well as older persons, especially when the cases involve minors. Further, economic gains incentivize the persistence of traditional authorities in judging criminal offences as they continue to profit from the blood compensation orders, whereas the victims often receive a small amount of the ordered compensation. The collection of the cattle for blood compensation usually results in arbitrary seizures of property from the families and neighbours of the accused/convicted persons or in arbitrary arrests and detention of the family members of the alleged debtors whenever a debt cannot be collected. Therefore, many accountability efforts fail to effectively address the victims' needs, often resulting in other injustices.

70. On 16 July 2023, a 57-year-old woman of Aweil South (Northern Bahr el Ghazal State) was ordered to indefinite detention in Aweil South Prison by a customary court after her daughter abandoned her marriage and fled to Sudan. The victim was released four months later with no formal charges brought against her.
71. On 27 November 2023, a breastfeeding mother and her seven-month-old son were arrested and detained for 30 days at Rubkona Prison on the written orders of the Head Chief from her area of residence, Unity State. The victim was detained in proxy for her husband, who allegedly killed a Bul Nuer man from Mayom in 2009. In 2013, the Unity State High Court sentenced her husband to five years in prison and 120 heads of cattle as blood compensation. He served three years in Bentiu Central Prison; however, he was released in 2013 due to the collapse of the prison system amid the conflict, without paying compensation.

M. Arbitrary detentions by the SSPDF, NSS, and NAS

72. During the reporting period, UNMISS HRD documented 80 incidents of arbitrary arrest and detention of 273 civilians (256 men, 14 women and 3 boys) committed by the SSPDF and NSS. In addition, 33 unlawful detentions by SPLA-IO and NAS affecting 52 victims (49 men and 2 women) were documented between January 2023 and May 2024. The forms of arbitrary detention of civilians by these actors include detention on political grounds, detention on allegation of alliances with NAS, detention amounting to enforced disappearance, detention during disarmament exercises as part of intimidation of civilians to communities, and detention of United Nations and humanitarian workers, as well as deaths in custody, torture, and inhumane and degrading treatment.
73. On 10 and 11 October 2023, two civil society activists were arrested and detained in Juba, Central Equatoria State at 77 Joint Forces Detention Facility near Nyakuron by NSS personnel in relation to their advocacy for information on one of their colleagues' whereabouts, who was allegedly taken away by security operatives on 4 October 2023.⁵⁹ The victims were

⁵⁹ He disappeared upon his return from abroad, following a three-day workshop on elections that he conducted in Juba without obtaining approval from NSS. His whereabouts remain unknown.

unconditionally released on 12 October 2023 without any charges brought against them in a competent court of law. On 27 October 2023, the victims requested NSS's permission to hold a press conference on the disappearance of their colleague, which was however denied without any explanation. While the motive for his disappearance remains unclear, sources have indicated that it could be linked to their planned registration of their organization on the UN Partner Portal to enable them to apply for funding and support. The two civil society members and two of their female colleagues were further arrested and detained on 4 and 11 January 2024 by the NSS and released on 26 January 2024 on bail. On 14 February 2024, the four were re-arrested and detained together with three others in relation to the case and released on bail on 13 March 2024.

74. On 30 January 2023, a local religious leader (male) was arrested for allegedly being a NAS sympathizer and detained at the Kergulu SSPDF unit. The victim was reportedly going to investigate the death of two civilian men from Nyangiriba village who were allegedly killed in Mudeba village in Yei River County by joint SSPDF during an operation against NAS elements following the killing of one SSPDF soldier in the area. On 7 June 2023, a 27-year-old civilian man from the Kakwa tribe was arrested by the SSPDF during clashes between the SSPDF and NAS in Mugwo Payam, Yei River County and detained at the Yei town SSPDF barracks, on suspicion of being a corroborator of the NAS elements. He was subsequently released without proper charges brought against him

75. In another incident, on 30 March 2024, NSS agents arbitrarily arrested the former Mayor of Juba City, allegedly in relation to his vocal opposition to the ongoing land-grabbing practice in Juba and detained him incommunicado at the NSS 'Blue House' facility. On 2 May 2024, the legal representative of the victim reported the threats he faced from armed individuals, allegedly affiliated with the NSS, after he initiated legal proceedings at the East African Court of Justice on behalf of the victim. UNMISS HRD engaged with State authorities to ascertain the official status of the arrest and his current whereabouts and advocated for due process. Following advocacy by UNMISS and other international partners, former Mayor was released from detention on 6 September 2024 and reunited with his family.

76. On 09 June 2023, two women aged 46 and 26 were forcibly taken by NAS elements armed with AK 47 rifles. They wore civilian clothes from their homestead in Hai Erap, Yei Town (Central Equatoria), to an unknown destination. The assailants took their mobile phones and other personal belongings. The 46-year-old woman managed to escape from captivity but suffered injuries from the beating. The 26-year-old woman and three other girls, aged 17, 7, and 4, years who were also taken by NAS elements from their homes in the same location to another location approximately five hundred meters away, where they were beaten and had their personal belongings taken from them. At approximately 9.00 pm on the same day, the assailants released them from captivity.

N. Detentions involving torture or cruel, inhuman or degrading treatment

77. During the period under review, UNMISS HRD documented 33 cases involving 107 victims (98 men, five women, three boys and one girl) of arbitrary detention, where victims were also subjected to some form of torture and ill-treatment by Government security agents including

NSS, SSPDF, NPSS, NPS. Further, UNMISS HRD documented five cases of ill-treatment in detention affecting 13 victims (eight men and five women) attributed to other armed groups (SPLA-IO and NAS). These incidents reveal patterns of torture, ill-treatment, and sexual violence perpetrated by government security agencies and non-state armed groups, which constitute severe violations and abuses of human rights. For instance, flogging, cold exposure, and restraints were used to physically and psychologically torture the victim, a form of cruel, inhuman, and degrading treatment. Interviews with victims also revealed that fear of reprisal discouraged victims from seeking legal redress, highlighting impunity for Government Security elements for violations committed during arrest and detention.

- 78.** On 6 February 2023 two members of the Criminal Investigations Department of the Police arrested an adult male civilian from his shop in Yambio town, Western Equatoria State and took him to the Criminal Investigations Department facility. A female trader reportedly accused the victim of physical threats after a dispute over money. He was reportedly flogged, water was poured on his whole body and detained overnight in the cold with both his hands and legs tied. The victim was released the next day following the intervention of a local community leader. The victim did not open a case against the Criminal Investigations Department due to fear of reprisals.
- 79.** On 28 March 2023, the SSPDF arrested 20 male civilians from Akuach residential area in Rumbek town, Lakes State, for protesting the destruction of their homes and detained them at the Rock City military detention facility in Rumbek town,⁶⁰ on the instructions of a city official. The victims were reportedly severely beaten by the SSPDF while in detention.
- 80.** On 3 June 2023, a 20-year-old male Didinga civilian was arrested in Ngauro market, Ngauro Payam, Budi County, Eastern Equatoria State by three armed SSPDF soldiers on accusation of involvement in five past murders without being provided with details or evidence linking him to the crimes. During his arrest, he was beaten with large sticks and kicked by the soldiers, who then detained him at the SSPDF detention facility in Ngauro town. The victim was released on 5 June 2023 after the authorities realized it was a case of mistaken identity.
- 81.** On 26 August, a 32-year-old female civilian from the Azande ethnic group in Western Equatoria was forcefully taken from her farm in by a soldier from a SPLA-IO military section based in the area and repeatedly raped throughout the night. The SPLA-IO soldier freed the victim the following morning and instructed her to never share her ordeal with anyone. The victim sought medical support at the Lirangu local health facility where however, she opted not to pursue any legal process due to fear on her parents who are residents of Mumboi and are not far from the SPLA-IO base in the area.
- 82.** On 2 November 2023, SSPDF soldiers, reportedly on the instructions of a senior state official, arrested a 40-year-old man from his house in Pan-bark village, Malek-look Payam, Rumbek East County, Lakes State without informing him of the reasons for his arrest, and detained him

⁶⁰ Rock City detention facility is an abandoned building located in Rumbek town, Lakes State, built by the United Nations Development Programme (UNDP) which has been converted by the SSPDF to a detention facility.

at the Panda military barracks in Rumbek town. He was reportedly held in "shell one"- a cell that is notorious for its inhumane and degrading conditions, including the lack of ventilation.

O. Detention of civilians for dissent, use of civic space or political affiliations

83. International law provides clear protections against the detention of civilians based on dissenting views, use of civic space, or political affiliations. The ICCPR prohibits arbitrary detention and underscores the importance of safeguarding civil liberties, especially in times of political unrest. Under the Geneva Conventions and their Additional Protocols, civilians are protected from arbitrary arrest and detention during both international and non-international armed conflicts. This protection is crucial in preventing the misuse of detention as a tool to suppress political dissent or limit the exercise of fundamental freedoms, such as freedom of expression, association and political affiliations. The use of detention to silence dissenting voices or restrict civic engagement violates these international norms, which are essential for maintaining an open civic space where individuals can express their views and participate in political processes without fear of retaliation.

84. UNMISS HRD documented emblematic cases where civilians were arrested and detained for expressing views on social, political, and human rights issues on social media or during meetings and for exercising their right to freedom of association. Arrests and detentions by NSS and SSPDF elements, often ordered by state authorities, were frequently justified as addressing the dissemination of false information. Further, members of Civil Society Organizations (CSOs) were arrested and detained by NSS elements for assembling without obtaining formal permission from the security agency in advance.

85. On 10 January 2023, two NSS personnel stormed a meeting organized by CSOs at a hotel in Yambio, Western Equatoria State and ordered them to stop the meeting for failing to obtain approval from the Security office in advance. Two of the CSO leaders were apprehended and transferred to the NSS facility in Yambio, where they underwent interrogation and were detained. Upon their release, one NSS soldier allegedly warned them of dire consequences should they attempt similar activities in the future.

86. On 28 January 2024, security operatives, reportedly from the NSS, arbitrarily arrested and detained one political party activist (a member of the United South Sudan Party (USSP) political party based in Jonglei State) in Juba, and subjected him to three hours of intense interrogation, intimidation, mental torture, and harassment. The victim was reportedly coerced and threatened to resign from the USSP party and join the SPLM. In a press statement, the head of the opposition Common People Alliance (CPA) denounced the continuous harassment and detention of opposition members by agents of the state security forces.

87. On 14 February 2024, seven civil society activists (four women and three men) who had been released from arbitrary detention on 26 January 2024 were re-arrested and detained at Juba Central Prison in relation to the case of the disappearance of another civil society activist in October 2023. Separately, in October 2023, three activists were summoned to the SSPDF Directorate of Counter Military Intelligence office in Yei Town for questioning regarding a social media post related to the activities of the ruling SPLM party. The activists were

interrogated about their potential connections with opposition parties or rebel groups. Although there was no harassment or direct threats, the military advised against writing similar posts in the future, as they were deemed contrary to patriotism.

88. In December 2023, the NSS arbitrarily arrested and detained one civil society activist twice (detained 6 December 2023, released on 20 December 2023; rearrested and detained on 23 December) after he posted a video clip on social media platforms criticizing the Director General of the NSS. The victim was eventually released on 1 January 2024 on the condition that he quits politics and apologizes to the senior NSS official.
89. In March 2024, UNMISS HRD documented one incident of infringement of freedom of religion, in which the NSS arbitrarily arrested a member of a religious congregation on 18 February 2024 and detained him at an NSS detention facility in Juba after he filed a case in the East African Court of Justice regarding a longstanding land dispute between his church and the Reconstituted Transitional National Legislative Assembly (RTNLA), and made a post on social media criticizing the Speaker of RTNLA. The victim was released on 9 March 2024.
90. In Warrap State, undue restrictions on political and civic space and obstruction of the activities of political parties at the county level intensified, indicative of political intolerance and interference by the national security forces in civic and political participation. On 1 February 2023, the SSPDF and NSS arbitrarily arrested, detained, and ill-treated three members of the Sudan People's Liberation Movement-In Opposition (SPLM-IO), including a member of the Warrap State Legislative Assembly, due to their involvement in party mobilization activities in Tonj North and Tonj South Counties. The member of the Legislative Assembly was subsequently released after two days in detention following the intervention of other state and national government officials, whereas the other two victims were released after two weeks following advocacy efforts by UNMISS HRD. Relatedly, on 2 February 2023, the NSS arbitrarily arrested, detained, and ill-treated a youth leader in Rualbet Payam, Tonj North County, following remarks he made during a public event regarding the involvement of national security forces in human rights violations, including sexual violence, arbitrary arrests, torture, and enforced disappearance of youths in Rualbet Payam. He was subsequently released following UNMISS HRD's advocacy.

P. Detention of Humanitarians and United Nations Staff

91. Humanitarian workers and United Nations personnel in South Sudan face significant challenges in carrying out their mandate, including targeted violence, threats, asset looting, and arbitrary arrest and detention.⁶¹ International law prohibits the arbitrary deprivation of liberty, and requires that all parties to an armed conflict must respect and protect humanitarian personnel,⁶² which includes acts of harassment, mistreatment and unlawful arrest or detention. Furthermore, under the Statute of the International Criminal Court, intentionally directing attacks against personnel involved in humanitarian assistance or peacekeeping missions in

⁶¹ [file:///C:/Users/slulseged/Downloads/South%20Sudan%20Access%20Snapshot%20Feb 2024.pdf](file:///C:/Users/slulseged/Downloads/South%20Sudan%20Access%20Snapshot%20Feb%202024.pdf)

⁶² ICRC, Customary International Humanitarian Law database, Rule 31.

accordance with the United Nations Charter, as long as they are entitled to the protection given to civilians under international humanitarian law,⁶³⁶⁴

92. On 31 August 2023, SSPDF detained a humanitarian worker and his 40-year-old civilian brother in Nyosugorom village, Yei River County of Central Equatoria State. Reports received by UNMISS HRD revealed that the SSPDF, at about 03:00, broke into the home of the victims, forced them to lie down, and handcuffed them before they were taken to Morsak military barracks, where they were detained on unclear charges.
93. On 6 April 2023, a national staff member of UNMISS was detained at Panda Hotel military detention facility in Rumbek town, Lakes State, by the NSS during the visit of South Sudan's Fourth Vice President for Service Cluster. The victim was part of the media team that received the Vice President at the Airport and at the Rumbek Freedom Square to cover the event where military intelligence officers confronted him after identifying himself as staff of UN Radio Miraya. He was later released after one hour in detention. The victim was interrogated, and his belongings were confiscated during the period of incarceration. Earlier that week, in a public statement, the National Minister of Information and Communication stated that Radio Miraya was not legally registered under South Sudan laws and, thus, should not be present at any state event.

Q. Government efforts to improve justice delivery

94. An effective justice delivery system in South Sudan remains under development, which means that legal practitioners and citizens face significant difficulties accessing justice. Amid ongoing political uncertainty, which has led to sporadic clashes and perpetuated the cycle of violence, the Government of South Sudan, with the attention of its people and the international community focused on peace and accountability for human rights violations, is taking steps to address the shortcomings in its justice delivery system in collaboration with the United Nations and development partners.
95. The Ministry of Justice and Constitutional Affairs (MoJCA) is at the centre of criminal justice reforms and through its three strategic priorities⁶⁵ is poised to respond to these shortfalls for an

⁶⁴ Rome Statute, Article 8(2)(e)(iii).

⁶⁵ To improve investigations and the disposal of criminal cases, the MoJCA provides training for prosecutors and police on the proper investigation of crimes, develops guidelines on case management to ensure adequate and prompt handling of cases by public prosecutors, and develops appropriate technology to facilitate information sharing and the monitoring of cases. Through the reduction in congestion in prisons and detention facilities, it seeks to improve conditions in prisons and detention facilities, adopt penal policies by using non-custodial sanctions and preventive measures for certain types of persons and offences, and create conditions for broader application of simplified procedures, including alternative dispute settlement methods. Through the improved processes and mechanisms within the justice system regarding juveniles and women, the MoJCA seeks to train public prosecutors and police investigators in handling juvenile cases, increase the capacity of the women and juvenile unit at the Ministry, and develop guidelines on the treatment of juveniles and women within the criminal justice system.

effective criminal justice system by first articulating specific departments and directorates under its Ministry.⁶⁶

- 96.** The Government of South Sudan has recognized the need for an independent judiciary and functional judicial process that upholds equal access to justice, the rule of law, and respect for human rights irrespective of age, ethnic group, or political affiliation. On 28 July 2022, the Government of South Sudan inaugurated an *ad hoc* Judicial Reform Committee.⁶⁷ The Committee, among other things, is tasked with reviewing relevant laws, advising on judicial reforms, and reshaping the judiciary to enhance its effectiveness. Although the Committee's report has yet to be made public, some recommendations are expected to establish an independent and effective judicial system that promotes equal access to justice, is inclusive and gender-sensitive, and protects vulnerable groups from violence and discrimination.
- 97.** UNMISS and other UN Agencies partnered with the MoJCA to provide technical assistance to the Ministry on disseminating transitional justice knowledge and activities to the public to learn about the various peace initiatives generated from the implementation of Chapter V of the Revitalized Agreement. The support provided to the Ministry resulted in the creation of a website for the Ministry where transitional justice initiatives could reach the public and reinforce the culture of peace in South Sudan. The website will greatly support the Ministry to execute its mandate, especially in developing, promoting, and protecting the human rights of the citizens of South Sudan.
- 98.** Despite its limited resources, the MoJCA strives to provide free legal aid in civil and criminal matters for poor and vulnerable people who cannot afford legal representation for a case in any court or tribunal. Recognizing the challenges posed by the current uncoordinated legal aid system in South Sudan, the MoJCA, with the support of the United Nations Development Programme (UNDP) on December 14, 2023, held a consultative meeting in Juba to discuss the proposed Legal Aid Policy for South Sudan. Dr Gabriel Isaac Awow, the undersecretary at the Justice Ministry, while addressing the stakeholders in Juba, among others, emphasized that the primary goal of the proposed Legal Aid Policy includes promoting equality before the law, fostering a culture of legal literacy, and providing legal services and representation for all in court.
- 99.** The Government of South Sudan continues to enhance the framework for human rights promotion and protection by ratifying or acceding to various human rights instruments at regional and international levels.

⁶⁶ With directorates of public prosecutions, training and research, and human rights, the MoJCA is poised to provide services such as continuous training for its prosecutors, free legal aid, and compensation for crime victims.

⁶⁷ Lord Justice James Ogoola and Lady Justice Joyce Aluoch, two eminent jurists from the region with vast experience in judicial reforms, led the Judicial Reform Committee.

- 100.** Despite the controversy over the broad powers of arrest of crime suspects without a warrant granted to the NSS under the National Security Service Act 2014 (Amendment Bill), the MoJCA continues to maintain the need for the containment of the NSS's powers and the adherence to due process guarantees in the exercise of their functions. In a memorandum to the Transitional National Legislative Assembly, MoJCA highlighted concerns with sections 54 and 55, stating that the Act grants extensive powers to National Security personnel to arrest without clear safeguards against unlawful detention and guarantees of a fair trial. MoJCA recommended prohibiting the NSS from operating their detention facilities and subjecting them to strict oversight if arrest powers are granted. In addition, MoJCA emphasized the need for explicit guarantees of due process rights and custodial safeguards, as well as oversight equivalent to law enforcement agencies. This includes judicial review of any deprivation of liberty and measures to prevent arbitrary arrest and inhumane treatment.
- 101.** The Government of South Sudan continues to collaborate with UNMISS in strengthening the rule of law and justice mechanisms by deploying *ad hoc* courts, such as mobile circuit courts and Court Martials, to areas with minimal or no judicial presence. For instance, UNMISS HRD supported these ad hoc courts, including the Military Court Martial in Yei River County, Central Equatoria State, and mobile courts in Malakal, Upper Nile State, and Bentiu, Unity State. The support encompasses facilitating victims' and witnesses' access and protection, preparing a list of cases marked for trial, and monitoring fair trial guarantees during court proceedings. Similarly, through programmatic funding, UNMISS HRD also provided technical support to Prison Administration through an action-oriented joint prison monitoring project initiative. This project implemented in Jonglei and GPAA, Northern Bahr el Ghazal and Central Equatoria aims to mitigate the overcrowding of prisons and detention facilities, reduce the backlog of cases in the judicial system, and address arbitrary detention in the criminal justice chain.

R. Conclusion and recommendations

P.1. Conclusion

- 102.** Arbitrary and unlawful detentions of civilians remain a primary human rights concern in South Sudan. This report is a tip of the iceberg on considerable human suffering caused by arbitrary detention practices, both in the context of the armed conflict and the significant weakness in the justice sector. Detention of individuals who are politically active continues to undermine the civic and political space, which is highly needed as the country prepares for its first general elections. Detention-related violations documented in this report confirm the absence of respect for the rule of law and human rights by security institutions in South Sudan. To ensure a steady progression from the current cycle of violation there is a dire need for continuous sensitization, awareness raising and training programmes targeting both actors in the justice chain. This will require significant political will from all interested parties.
- 103.** In addition to institutional reforms and accountability measures, there is a need to strengthen civilian oversight mechanisms for detention facilities to expose violations to public scrutiny and enable effective remedies. Similarly, robust human rights monitoring

mechanisms, including strong state institutions, national human rights institutions, civil society organizations, and parliamentary oversight, must be in place. The powers of arrest of the military, police, and NSS must be clearly defined in conformity with the Constitution and international and regional human rights treaties acceded to or ratified by the Government of South Sudan. Judges, prosecutors, and access to legal counsel, including through legal aid, must be provided with the resources to exercise their judicial functions independently from the Government's interference. This, besides sustaining a wide-ranging capacity building, is also critical.

- 104.** The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which South Sudan which has been a State party since 2015, establishes a system of regular visits to places of deprivation of liberty to prevent torture and ill-treatment at the national level. The visits are undertaken by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and by so-called national preventive mechanisms, which are independent national bodies that States parties are required to establish in accordance with the Optional Protocol.
- 105.** Against this background, the following recommendations are made to the Government of South Sudan, /NAS, and UN and international community.

P.2. Recommendations

a) To the Government of the Republic of South Sudan

- Ensure that the SSPDF, NSS, NPS and NPSS senior leadership give clear guidance to all its commanders to issue the limits of SSPDF and NSS powers on the arrest and detention of civilians and ensure that these instructions are widely disseminated and enforced by every commander. In compliance with the Convention Against Torture and its Optional Protocol, conduct prompt, thorough, independent, and impartial investigations into all allegations of enforced disappearance, torture or ill-treatment, and other violations in SSPDF and NSS, NPS and NPSS detention facilities and ensure that those found responsible are brought to justice in line with international and national obligations.
- Fast-track the implementation of judicial reforms, as outlined in Article 1.17 of the Revitalized Agreement. These reforms mandate the Judicial Reform Committee to ensure South Sudan's judiciary is independent and adheres to the principles of separation of powers and the rule of law. According to Article 1.17.2, this includes reviewing the Judiciary Act during the transition and enhancing the capacity of judicial personnel and infrastructure.
- Assure that those detained, including political detainees who are legitimately suspected of an offence, have access to due process, and particularly to a fair, transparent, and speedy trial without recourse to the use of the death penalty.

- Ensure that persons deprived of liberty whom the SSPDF and NSS currently detain are transferred to police custody and investigated and or released immediately.
- Engender gender-sensitive approaches to arrest, detention, and prison management, in line with international human rights standards, including the Bangkok Rules, for the protection of the rights and dignity of women and girls in detention, ensuring that they are not subjected to further harm due to their gender.
- Adopt positive measures (legal and institutional) that expand the civic/political space and promote inclusive processes to ensure equal participation of the people in the ongoing electoral processes.
- Ensure that Police Commissioners issue and enforce instructions that prohibit arresting people solely for their family ties or other relations with a suspect (proxy detention) or for conduct that is not a crime, such as civil matters.
- Clarify the mandate of the customary courts and their relationship with the formal justice system, ensuring regular oversight by the judiciary over their jurisdictional competence, particularly concerning the deprivation of liberty.
- Ensure that detainees have access to legal representation. Ensure that anyone arrested is brought before a judge or magistrate within 24 hours for review of the legality of the detention and that judges or magistrates always see a detainee in person when reviewing the legality of the arrest or renewing a detention order.
- Address resource challenges, capacity deficiencies, and other critical challenges in the justice sector, including those impacting detention conditions, and ensure respect for established court procedures.
- Ensure that police are trained to attend to the specific needs of women and girls in detention, as well as those of other groups in vulnerable situations such as refugees and persons with disabilities.
- Guarantee additional considerations are given to women and girls incarceration such as, gender-responsive prison design, management practices and non-custodial measures for women offenders, taking into account their specific circumstances, the often non-violent nature of the offences they commit and any wrongful criminalization; and in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).
- Develop a program for action to the prevention of torture and ill-treatment of women deprived of their liberty in line with the relevant guidance (CAT/OP/27/1) of the UN Sub-Committee on Prevention of Torture, including holding security personnel accountable for committing acts of torture under the law.

- Ensure accountability for acts of sexual violence and all other forms of violence against women and children in line with the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child, including ensuring criminal prosecution for non-state actors carrying out arbitrary detention.
- Provide UNMISS, the South Sudan Human Rights Commission, State Human Rights Commissions, relevant CSOs, and other oversight bodies unrestricted access to SSPDF, NSS detention facilities, and other official and unofficial detention places. Ensure that all detaining authorities are informed in writing that UNMISS may conduct unannounced visits and interview detainees privately.
- Facilitate the establishment by the African Union of the Hybrid Court for South Sudan and ensure that the Hybrid Court for South Sudan, the Commission for Truth, Reconciliation and Healing, and the Compensation and Reparation Authority will give attention to cases of arbitrary detention, enforced disappearances and torture committed by all parties to the conflict.
- Facilitate a visit of the Sub-Committee on Prevention of Torture; positively respond to the special procedure request, such as, the Working Group on Arbitrary Detention's request to visit South Sudan
- Ensure that all allegations of arbitrary detention and other serious human rights violations and abuses, including those which may amount to international crimes, are promptly, independently and impartially investigated. The findings of such investigations should be made public, and criminal investigations should be initiated against alleged perpetrators in accordance with international standards.

b) To the National Salvation Front and the Sudan People's Liberation Movement-in-Opposition

- All non-state armed groups should comply with their obligations under International Humanitarian Law, including the prohibition against arbitrary detention, torture or cruel, inhuman or degrading treatment, and all other provisions relevant to the conditions of detention as well as end all human rights abuses of detained civilians.
- Ensure that civilians and others who are currently detained by NAS and SPLA-IO elements are transferred to police custody and or released immediately.
- Provide unrestricted access to UNMISS, relevant CSOs, the South Sudan Human Rights Commission, States Human Rights Commissions, and other oversight bodies, as well as access to detention facilities under the control of armed groups. Guarantee the safety and security of UNMISS staff members or staff of other oversight bodies during such visits.

c) To the United Nations

- Provide necessary technical cooperation for prison reform, in line with the United Nations Common Position on Incarceration⁶⁸, including advocate and support at the national level for developing the South Sudan Legal Aid Strategy and a Legal Aid Act.
- Promote and support proportionate and individualized sentencing policies and alternatives to conviction or punishment in appropriate cases, including minor drug-related offences; and advocate for the decriminalization of acts that are protected by international human rights law; and provide support in the implementation of the African Union Principles on the Decriminalization of Petty Offences in Africa.
- Advocate at the national level for the deployment of judges, including female (high and county court judges), to areas where they do not currently exist to address the backlog of cases and lack of access to justice, including guaranteeing the fair trial of inmates and detainees.
- Provide support to the Judiciary and the Ministry of Justice and Constitutional Affairs, to address the overlap between conventional and traditional court systems to ensure fair and equitable justice including, reviewing the provisions and implementation of the South Sudan Local Government Act concerning the jurisdiction of customary courts.

d) To international donors and partners

- Use existing multi-donor funding mechanisms to support the Government of South Sudan in strengthening the rule of law and justice institutions through development and humanitarian programmes to address structural shortcomings in the justice sector.
- Support the judicial reform programmatic activities, including capacity-building initiatives on human rights for judicial officers, military, police, national security, prison personnel and prosecutors. Similarly, build the capacity of government officials at national, state, and local levels on the use of human rights-based approaches.

⁶⁸ [United Nations System Common Position on Incarceration, April 2021.](#)

REPUBLIC OF SOUTH SUDAN
MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS



Office of the Minister

Re: Response of the Government of South Sudan to the Report of The Office of High Commissioner for Human Rights and United Nations Mission in South Sudan (UNMISS) January 2023- May 2024

The Government of South Sudan read the Report of the Office of the High Commissioner for Human Rights/UNMISS. The Report mainly covered the period from January, 2023, however the Report has not provided any incidences of human rights violation from May 2024. Therefore, the Government will generally respond to the allegations of human rights violations as enshrined from January 2023 Report. Some of the alleged human rights violations relating to arbitrary detention, pre-trial detention, arrest and detention of family members of an accused family, arrest and detention of women and girls' detention and arrest by the executive order were not shared with the Government in 2023, and therefore, the cases might have been tried, or settled, by the Mobile Courts or the General Court Martial.

Para (12): The challenges faced by the rule of law institutions in South Sudan, projected in the report has been superseded by the establishment of mobile courts, mobile military court martial and the Gender-based Violence and Juvenile Court to try and prosecute related human rights cases. With recent conclusion of Report of the Judicial Reform, the Committee has recommended for amendment of the Local Government Act, 2009, especially, the on matters of customary and chief courts. Therefore, the Government is seriously undertaking a general institutional reform and establishment of the transitional justice institutions in accordance with provisions of Articles 4.2, 1.17, 5.1.1 and 5.4 of the Revitalised Agreement of the Resolution of the Conflict in the Republic of South Sudan (R-A, RCSS), 2018.

Para(13): The Government would like to state that since the beginning of the year 2024, there haven't been any report of hostilities between different dimensions of continued conflict across the country, notably in Tambura in Western Equatoria State, Koch, Leer or Mayendit counties of Unity State. The Government has installed new administrations in these areas which has positively calmed any security lapses in the past.

Para(30): To overcome backlog of cases, the Government with support from UNDP and UNMISS established Mobile Courts, Court Martial and Sexual and Gender-based Violence Courts to try the cases. The Judicial Reform Committee established in accordance with Article 1.17 of the R-ARCSS has recommended amendment of the Local Government Act, 2009 with aim of bringing changes to the customary courts system in the country. The JRC Report is under implementation process which certainly bringing on board a wider rule of law sector reforms.

Para (32): on allegations of detention of civilians by elements of the security personnel, the Government would like to state that there has been deployment of mobile courts to the areas mentioned in the Report. Since the beginning of the year 2024, there were no verified reports of cases of arbitrary detention of civilians at the scale provided in the Report.

Para (40) on condition of the detention facilities, since independent from Sudan, the prisons and police detention cells infrastructure are always been a challenge to the Government. These facilities were constructed in 1940s when the number of prisoners were small. A plan to build new facilities require resources and technical assistance . Therefore, The Government has been relying on the UNDP and UNMISS to construct some new detention structures for housing of the prisoners.

In conclusion, the Government would like to generally sum-up its response that the alleged human rights violations enshrined in the Report from January 2023 to May 2024 were superseded by administrative and leadership changes in those counties and the States headquarters, which has positively contributed to improvement of the situation in general, especially in Western Equatoria, Unity and Warrap States.

Therefore, to better coordinate the human rights monitoring by the Office of High Commissioner for Human Rights(OHCR) and UNMISS, the Government takes this opportunity to request the OHCR and UNMISS to share their findings with the Government, especially the Ministry of Justice and Constitutional Affairs, for verification and possible prosecution of any human rights violations situations.

Justice Ruben Madol Arol
Justice Ruben Madol Arol
Minister of Justice and Constitutional Affairs
Juba/RSS

