HUMAN RIGHTS WATCH

"What Crime Was I Paying For?"

Abuses by South Sudan's National Security Service

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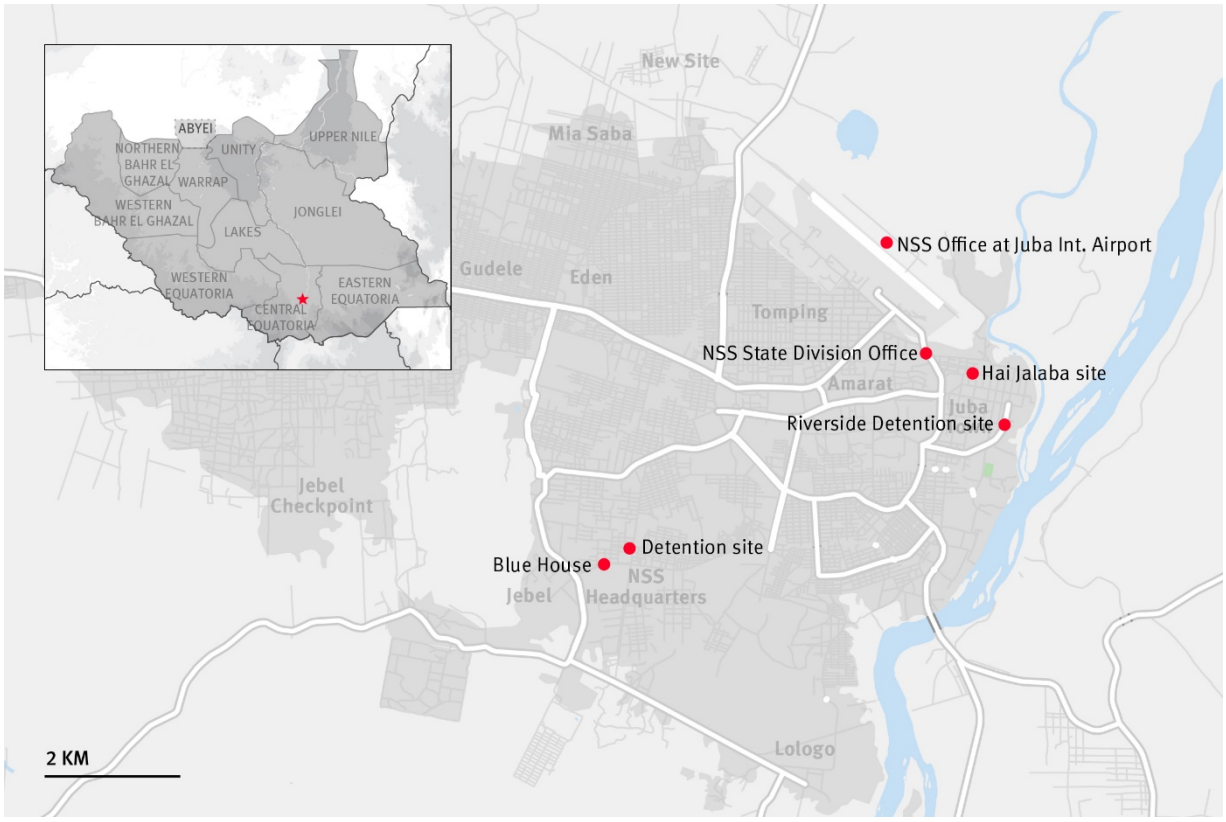
Glossary

Blue House	Headquarters of the National Security Service in Juba and office of the Minister for National Security, which includes the main NSS detention site
CPA	Comprehensive Peace Agreement, which ended Sudan's long civil war in 2005
CTSAMM	Ceasefire and Transitional Security Arrangements Monitoring Mechanism
EACJ	East African Court of Justice
FDs	Former Detainees, a group of South Sudanese political figures accused of plotting a coup in the lead up to fighting in December 2013
GSB	General Security Bureau, a branch of the NSS that deals with countering external/foreign threats
IGAD	Intergovernmental Authority on Development
ISB	Internal Security Bureau, a section in the NSS that deals with countering internal/domestic threats.
MI	Military Intelligence
NISS	National Intelligence and Security Service (Sudan) renamed as General Intelligence Services (GIS) in July 2019
NSS	National Security Service (South Sudan)
SPLM/A	Sudan People's Liberation Movement/Army
SPLM/A-IO	Sudan People's Liberation Movement/Army-in-Opposition
SSHRC	South Sudan Human Rights Commission, a national institution with the constitutional mandate to promote and protect of the human rights
SSPDF	South Sudan People's Defence Forces, the renamed army of South Sudan
TCSS	Transitional Constitution of the Republic of South Sudan of 2011

Map



Locations of detention sites operated by South Sudan's National Security Service in Juba, South Sudan, as of December 2020.

Summary

South Sudan's National Security Service (NSS) was established in 2011, after the country gained independence. The 2011 Transitional Constitution of the Republic of South Sudan, mandates the NSS to collect information, conduct analysis, and advise relevant authorities. But since its establishment, the NSS has gone much further than merely collecting information. Within months of its establishment, its agents were arresting and imprisoning journalists, government critics and others, and conducting physical and telephonic surveillance. Today, it has become one of the government's most important tools of repression.

Based on interviews with 48 former detainees and 37 others including policy analysts, activists, former military, security, and intelligence personnel and family members of people detained by the NSS between 2014 and 2020, this report documents serious human rights violations by the NSS in South Sudan, including torture and other ill-treatment of detainees, arbitrary arrests, unlawful detentions, unlawful killings, enforced disappearances, forced returns and violations of privacy rights. The report describes obstacles to accountability for these abuses, including denial of due process for detainees, the lack of any meaningful judicial or legislative oversight of the agency and legal immunities for NSS agents.

With the outbreak of civil war in December 2013 and a resurgence of fighting in July 2016, the NSS engaged in extensive crackdowns targeting people who are deemed to be anti-government. They also used ethnicity to profile targets with the assumption that people from certain ethnicity belong to armed or political opposition groups. It has targeted government critics, suspected opponents and rebels, aid workers, human rights defenders, businessmen, journalists and students, and routinely used violence and intimidation, including threats, beatings, and surveillance against them.

The NSS has three main facilities in Juba that are considered de facto, "official" Blue House, Riverside, and Hai Jalaba – but also uses "unauthorized" places such as residential homes as detention sites. None of these places of detention are legally recognized.

Detainees interviewed for this report, experienced, or witnessed beatings, being pierced with needles, having melted hot plastic dripped on them, being hung upside down from a rope, shocked with electricity, and raped. The NSS held detainees in prolonged, arbitrary, and incommunicado detention, often in congested cells with inadequate access to food, water, and

medical care. Other authorities cooperate freely with the NSS, even as they commit these abuses. For example, detainees have been transferred to NSS custody from military and police facilities, and vice versa-without relevant paperwork being completed, or due process being followed.

The NSS has also detained people with disabilities, children, and pregnant and lactating women. Many were released without ever being interrogated, charged, or presented in court.

The NSS has extended its reach into neighboring countries. Its agents have harassed, intimidated, and abducted people in Kenya and Uganda whom they deemed to oppose the government, sometimes with the tacit support of authorities from these countries. This has created a climate of fear and suspicion among the diaspora in neighboring countries, in effect stifling criticism of South Sudan's government even outside the country.

It has acquired and deployed intrusive surveillance tools, demanding that telecommunications companies' hand over user data. Its agents have also carried out the functions of the South Sudan National Police Service, taking over law and order duties, including arresting and detaining criminals and maintaining law and order in major towns affected by fighting.

This expansion of NSS's role and mandate has not been accidental. The service is supervised by the president and under his watch the NSS has evolved into an agency that operates outside the law and is used to maintain the government's grip on power.

Human Rights Watch research indicates that efforts to hold NSS officials to account have been too few and opaque. Although South Sudanese law provides victims a right to a remedy, there is in practice little recourse for victims of such abuses.

Human Rights Watch calls on the government of South Sudan to end NSS's de facto powers of detention and close all places of detention used by the NSS. They should immediately release all detainees in NSS custody or bring them before a court of law to be charged with a cognizable offense and either released on bail or remanded to the custody of South Sudan's National Police Service in accordance with the law. They should ensure that all persons in NSS detention who are brought before a court enjoy their full due process rights, including the rights to a lawyer of their choice, to challenge the detention and charges, and, are guaranteed a fair trial.

The Revitalized Transitional National Legislature of South Sudan, once established, should amend the 2014 National Security Service Act and exclude its powers of detention from its mandate and

limit it to intelligence gathering, analysis and provision of advice to relevant authorities, consistent with the country's constitution. South Sudanese authorities should also ensure that former NSS detainees and victims of NSS abuses receive justice and redress, including provision of physical and mental health services.

The NSS's well-documented record of serious crimes warrants a much stronger response from the international community. South Sudan's partners, including the African Union, neighboring countries, the United States, Norway, and the United Kingdom should privately and publicly call on the South Sudanese authorities to end NSS abuses, reform it, and conduct credible and independent investigations into all allegations of abuse.

Recommendations

Immediate Recommendations

To the President of the Republic of South Sudan

- Immediately close all National Security Service detention centers, prohibit NSS from operating detention centers, and ensure NSS releases all detainees in its custody or immediately brings them before an independent court to be charged with a cognizable crime. Instruct the NSS director generals to publish a list of all those in its detention on the date of its order, including the date and location or locations of their detention and the grounds for their detention. If ordered by the court, people on pretrial detention should only be held in official places of detention run by the National Prisons Service.
- Issue public orders warning the NSS immediately to stop carrying out detentions, for which it has no legal basis, and to immediately stop torture, and other forms of cruel, inhuman, or degrading treatment and punishment of detainees.
- Ensure a prompt, transparent, and impartial investigation into all allegations of NSS abuse including all allegations of torture and ill-treatment and ensure that all personnel implicated in abuses, regardless of rank, are appropriately disciplined or prosecuted.
- Ensure findings of investigations into NSS abuses are made public and that victims of torture and other abuses have access to redress. Ensure these victims are provided with compensation and receive appropriate psychosocial support and access to health care.

To the Director of the National Security Service and the Minister for National Security

- Immediately cease carrying out new arrests or detentions.
- Close all NSS places of detention and either release detainees or liaise with the police and other criminal justice actors to immediately bring them before an independent court to be charged with a cognizable crime and transferred to the custody of the National Prisons service. All detainees brought before a judge should be afforded all due process rights.
- Immediately cease the use of all forms of surveillance technologies until a legal and policy framework is put in place to regulate such practices and guarantee that such technologies can only be used in compliance with international human rights law, including the requirements of legality, necessity and proportionality.

Pending closure of NSS detention facilities:

- Ensure that all detainees enjoy full due process rights, including access to legal counsel as required under the constitution. Ensure they have access to legal counsel at any time pending their release or appearance before a judge.
- Collaborate with the Ministry of Justice, Ministry of Interior and the Director of the Prisons Service to publish up-to-date lists of all places that have been and are used for detention by the NSS in a form that is readily accessible to lawyers and members of the public. Establish and maintain a central register of all detainees held in these facilities to ensure the whereabouts of all detainees can be traced.
- Facilitate inspections by independent human rights monitors and appropriate humanitarian agencies to all authorized or unauthorized NSS places of detention, ensuring that they can have access to all detainees.
- Ensure all detainees in NSS custody have regular access to family, lawyers and other visitors.
- Ensure detainees have adequate access to medical care including that detainees are examined by an independent qualified doctors and mental health professionals and monitor the quality of medical care being provided.
- Screen all detainees for all types of disabilities. Provide reasonable accommodations and respond appropriately to the needs of detainees with disabilities, including physical, mental, sensory or intellectual. Ensure detainees with disabilities have adequate access to facilities and support needed for self-care, personal hygiene and mental health.

To the National Constitutional Amendment Committee

- Amend the National Security Service Act and ensure institutional and legislative reform of the NSS to limit its role to intelligence gathering and evidence analysis in accordance with the Transitional Constitution of South Sudan; remove its powers of search, detention and seizure.
- Amend the National Security Service Act limiting the NSS's powers to collect, use, analyze or retain communications and personal data to situations that are justified as strictly necessary and proportionate to fulfill a legitimate national security aim. Ensure appropriate safeguards to prevent abuse of these powers, including exercising them outside of the situations provided for in law.

To the Reconstituted Transitional National Legislative Assembly

- Clearly gazette places of detention and ensure all unauthorized places of detention are closed, prohibit NSS from running detention centers and ensure NSS release all detainees to police and that they are brought before a judge to be charged with a cognizable offence.
- Using the legislature's powers of oversight provided in the Constitution and the National Security Service Act, investigate all allegations of unlawful detention, torture, or ill-treatment by the NSS including those described in this report. The investigation should request access to any place of detention still used by NSS at the time of the investigation, interview detainees and former-detainees in a confidential setting, report publicly on its findings including the government's responses and recommend ways to end the abuses.
- Ensure amendments to the National Security Service Act drafted by the National Constitutional Amendment Committee provide institutional and legislative reform of the NSS to limit its role to intelligence gathering and evidence analysis in accordance with the Transitional Constitution of South Sudan; remove its powers of search, detention and seizure.
- Amend the National Security Service Act limiting the NSS's powers to collect, use, analyze or retain communications and personal data to situations that are justified as strictly necessary and proportionate to fulfill a legitimate national security aim. Ensure appropriate safeguards to prevent abuse of these powers, including exercising them outside of the situations provided for in law.
- Enact laws requiring an independent competent judicial authority to issue a written order before the NSS or other government agencies are allowed conduct data collection or any other surveillance activity on a specific target or targets; the relevant judicial authority should only approve requests for surveillance activities which, at a minimum, have a clear legal basis and for which the government has established they are necessary and proportionate to fulfill a legitimate aim.
- Call on the president and the minister for justice to sign the Memorandum of Understanding with the AU and pass relevant legislation on the Hybrid court for South Sudan, the Commission for Truth, Healing and Reconciliation and the Compensation and Reparations Authority.

To South Sudan's National Commission for Human Rights

- Publicly advocate for the closure of NSS detention facilities and release of all detainees or for them to be brought before a judge and charged with full due process rights.

- Pending closure of NSS facilities, request unfettered access to NSS facilities and undertake regular monitoring visits to ensure that detainees are handed over to the police, charged or released.
- Investigate allegations of enforced disappearances, unlawful and arbitrary detention, and torture in NSS facilities; report publicly on the findings and abuses; publicly condemn abuses and recommend actions for redress.
- Urge the government and parliament to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Urge reforms that would limit the role of the NSS to intelligence gathering and evidence analysis in accordance with the Transitional Constitution of South Sudan.
- Advocate for appropriate limitations to the NSS powers of surveillance including safeguards to limit the nature, scope, and duration of surveillance as outlined above.

To South Sudan's Regional and International Partners

- Call on South Sudanese authorities to immediately implement the recommendations in this report, including shutting down NSS places of detention; directing security personnel to stop unlawful detentions; stop ill-treatment and torture of detainees; and investigate all allegations of abuse of detainees and hold those responsible to account.
- Ensure South Sudanese authorities launch effective independent and transparent investigations into the role of the Minister of Interior, the director generals of the NSS in facilitating abuses by the service.

Medium Term Recommendations

To President of the Republic of South Sudan

- Offer a standing invitation to visit South Sudan to relevant United Nations mechanisms including the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the special rapporteur on the right to privacy, the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the UN Working Group on Arbitrary Detentions; and to the African Commission on Human and People's Rights' special mechanisms including, the special rapporteur on prisons, conditions of detention and policing in Africa, the Committee on the Prevention of Torture in Africa and the Working Group on Death Penalty, Extra-judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa.

- Promptly establish the accountability mechanisms envisioned under the terms of the 2015 and 2018 peace agreements-the hybrid court, the Commission for Truth, Reconciliation and Healing, Compensation and Reparations Authority- to facilitate redress for conflict related abuses that may amount to war crimes and crime against humanity including the arbitrary detentions, torture, unlawful killings, and enforced disappearances committed by security forces including the NSS.

To the Director of the National Security Service, the Minister for National Security, Minister for Justice and Minister for Interior and the Director of the Prisons Service

- Ensure findings of all allegations of abuse of detainees are made public in a timely manner and hold those responsible to account in transparent civilian processes.
- Ensure that NSS personnel and members of NSS oversight mechanisms receive appropriate training that adhere to international human rights standards.

To South Sudan's Regional and International Partners

- Call on South Sudanese authorities to implement, immediately, the recommendations in this report, most urgently shutting down NSS places of detention; directing security personnel to stop unlawful detentions; stop ill-treatment and torture of detainees; and investigate all allegations of abuse of detainees and hold those responsible to account.
- Develop or support programs to respond appropriately to the support needs of former detainees including mental health services.
- Impose an immediate moratorium on the export, sale, transfer, use or servicing of surveillance technologies to South Sudan until a human rights-compliant safeguards regime is in place.
- Press authorities to ensure establishment of the Hybrid Court for South Sudan, the Commission for Truth Reconciliation and Healing and the Compensation and Reparations Authority envisioned in the peace agreements; Ensure adequate political, technical, and financial support to the transitional justice mechanisms provided for by the 2018 peace agreement.
- Under the principle of universal jurisdiction and in accordance with national laws, investigate and prosecute South Sudanese officials accused of abuses including torture, sexual violence and other ill treatment, enforced disappearances and extrajudicial killings.

To the African Commission on Human and People's Rights, UN Work Group on Arbitrary Detention, and the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

- Request an invitation from South Sudan to carry out a fact finding visit to investigate torture and arbitrary detentions of people in NSS custody.
- Prepare a subsequent report and refer the issue of the NSS violations to the Human Rights Council and to the AU Peace and Security Council (AU PSC) in accordance with Article 19 of the Protocol relating to the establishment of the AU PSC.
- Call on South Sudan to conduct credible, effective and impartial investigations into NSS abuses including those documented in this report, make findings public and ensure all officials responsible for abuses regardless of rank are held accountable.
- Urge South Sudan to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.
- Urge South Sudanese authorities to sign the memorandum of understanding with the AU, and to pass relevant legislation on the Hybrid Court for South Sudan, on the Commission for Truth Reconciliation and Healing and the Compensation and Reparations Authority.

Methodology

This report is based on research conducted between 2018-2020 in South Sudan, Uganda, and Kenya. Human Rights Watch researchers interviewed 48 former detainees, including 4 women, held by National Security Service (NSS) between 2014-2020 at the Blue House, Riverside and Hai Jalaba sites in Juba. Researchers also interviewed 37 others, including South Sudanese human rights activists in the country and in exile, journalists, political analysts, opposition party members, civil servants and former military, security and intelligence personnel, family members of victims of NSS abuses, representatives of domestic and international non-governmental organizations, diplomats and United Nations officials. Except for two NSS officers, all former detainees interviewed for this report were civilians.

This report also draws on research published by Human Rights Watch, Amnesty International, South Sudan's Human Rights Commission, the UN Mission in South Sudan, the UN Office of the High Commissioner for Human Rights' (OHCHR) Commission on Human Rights in South Sudan, the UN Panel of Experts on South Sudan and other international and domestic NGOs.

Interviews were conducted in person in Juba, South Sudan; Nairobi, Kenya; Kampala, Uganda; in locations deemed private and secure by researchers and interviewees as well as over the phone and on secure messaging applications. Interviews were conducted in English, Arabic, Bari, Thuuk Naath (Nuer), Thuuk Muonyjang (Dinka) and other local languages with the aid of interpreters as needed. Interviewees were sometimes visibly distressed and emotional as they recounted their experiences. Researchers took care to avoid re-traumatizing them, including by explaining the extent and line of questioning involved before the interview commenced and their right to stop the interview at any point, avoided speaking to detainees immediately after their release and to those who may have been interviewed multiple times by other organizations, researchers or journalists.

Individuals interviewed for this report described being targeted for arrest based on perceived political or ethnic affiliation. They spoke of being targeted for their criticism of the government or specific officials, for their journalistic or human rights work or trumped up accusations for the exercise of civil and political rights. Others were accused of being rebels or supporting rebel groups, of corruption and fraud and murder and other criminal offences that fall under the jurisdiction of the national police service. In some cases, their arrest and detention were preceded by physical and telephonic surveillance undertaken by the NSS. Such surveillance continued even

after detainees were released and, in some cases, prompted them to flee the country fearing re-arrest and other abuses.

Former detainees also spoke of being detained together with NSS, army and police officers accused of various crimes including murder, desertion, fraud and other disciplinary and administrative issues relevant to their units. Most of these officers were also detained for prolonged periods of time without charge or trial, in violation of their due process rights.

Many of the witnesses and victims of NSS abuses who spoke with Human Rights Watch expressed fear about the risk of reprisals and retaliation by the state, including against their relatives. For that reason, names and other identifying information of many of the victims and witnesses have been withheld to ensure their safety and that of their families. Details in some testimonies have been withheld to protect the identity of interviewees.

Researchers explained to each interviewee the purpose of the interview, its voluntary nature, the way in which the information would be used and the fact that no compensation would be provided.

In December 2018, March, August and December 2019 and January 2020, Human Rights Watch requested, verbally and in writing, meetings with two of the top officials of the NSS, the Director General of the Internal Security Bureau and the Director of Legal Administration. These requests all went un-answered.

On July 1, Human Rights Watch sent the summary of findings of this report to Minister for Interior, Obuto Mamur Mete, the Director General of the Internal Security Service, Akol Koor Kuc, the Director General of the External Security Bureau, Thomas Duoth Guet and the Director of Legal Administration, Jalpan Obac, requesting response from the government. At time of writing, the government has not responded. Copies of the letters are included in the appendices section.

On August 31, Human Rights Watch shared similar summary of findings and request for comments with Kenyan authorities - specifically the Ministry of Foreign Affairs, the Ministry of Interior, the Inspector General of the National Police Service - and with Ugandan authorities specifically the Ministry of Foreign Affairs, the Department of Refugee Affairs, Office of the Prime Minister and the Ministry of Internal Affairs. At time of writing, only the National Police Service of Kenya had responded, a copy of which is included in the appendices section.

This report identifies two broad sets of recommendations: one immediate, the other medium term. The former represents pressing measures South Sudanese authorities and other stakeholders should take to remedy the accountability deficit and weaknesses in legislative and judicial oversight of the NSS, while the later outlines, equally important steps and reforms that the government and its international partners should act upon in the next six months to one year.

I. Background

Sudan's National Intelligence and Security Services in the South

Prior to South Sudan's independence in 2011, Sudan's National Intelligence and Security Services operated both in the north and south. The security service under Jafaar Nimeiri's government (1969-1985) was particularly brutal. [1] Under former Sudanese President Omar al-Bashir, the National Intelligence and Security Service (NISS) was no different; officers focused on repressing political dissent— including sympathizers of southern rebel groups such as the Anyanya II and Sudan People's Liberation Movement/Army (SPLM/A)—and were known for unlawful arrests, torture and enforced disappearance of government opponents in secret detention sites all over the country.[2]

The rebel group SPLA on the other hand, ran a separate government in areas outside the control of the national government and had its own intelligence unit.[3] The SPLM/A was also accused of abuses against civilians in these areas including ethnic killings, kidnappings, summary executions and forced recruitment and its intelligence unit, accused of throttling independent and liberal political opinion.[4]

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[1] Human Rights Watch conducted interviews with former senior government official on February 12, 2019 and former members of the SPLM/A on July 23, 2020 who recalled Nimeiri era security services violated civic liberties in the whole of Sudan and even cracked down on supporters of the southern Anyanya I and II rebel movements including southern student and political activists, committing unlawful arrests and summary executions in the process; "Sudan Oil and Conflict Timeline of Events," http://www.sudanupdate.org/REPORTS/Oil/210c.html (accessed July 12, 2020); Salih, Kamal Osman, "The Sudan, 1985-9: The Fading Democracy," *The Journal of Modern African Studies*, vol. 28, no. 2, (1990), p. 199–224, accessed November 2, 2020, https://www.jstor.org/stable/160860.

[2] Human Rights Watch, *Behind the Red Line: Political Repression in Sudan*, May 1, 1996, https://www.hrw.org/report/1996/05/01/behind-red-line/political-repression-sudan. NISS was incredibly powerful, having been granted extensive powers in the National Security Acts of 1999 and 2010; Amnesty International, "Agents of Fear: The National Security Service in Sudan," July 19, 2010, https://www.amnesty.org/en/documents/AFR54/010/2010/en/ (accessed July 21, 2020); Human Rights Watch, World Report *1990 (New York: Human Rights Watch, 1990),* Sudan chapter, https://www.hrw.org/reports/1990/WR90/AFRICA.BOU-11.htm#P647_143999; Alert Series, Sudan: Human Rights Since the 1989 coup, http://hrlibrary.umn.edu/ins/sudan93.pdf, (accessed November 2, 2020); Amnesty International, *Sudan: The Ravages of War: Political Killings and Humanitarian Disaster* (London: Amnesty International, 1993) https://www.amnesty.org/download/Documents/188000/afr540291993en.pdf (accessed July 15, 2020).

[3] This was headed by an intelligence chief (the current president, Salva Kiir Mayardiit) and comprised of external and internal security units which reported to the chairperson and commander of the SPLM/A, John Garang de Mabior. In August 1991, the SPLA divided into two and then three factions. These were known for a time as the Torit and then Mainstream faction, controlled by Garang, the Nasir faction led by Dr Riek Machar, and the SPLA-Unity faction led by William Nyuon Bany. The developments of the intelligence service described here follow that of the SPLA mainstream under Garang; Human Rights Watch interviews with former senior officials in the SPLM/A, December 9, 2019, January 23 and 28,2020.

[4] Africa Watch, Denying "The Honor of Living": Sudan: A Human Rights. Disaster (New York: The Africa Watch Committee, 1990); US Department of State, " Sudan Country Report on Human Rights Practices for 1996, January 30, 1997, https://1997-

In 1995, the SPLM/A renamed the intelligence unit the "General Intelligence Service" and divided it into two branches: a "military intelligence unit" and a "public service organ." The latter dealt with civilian issues.[5] After the Comprehensive Peace Agreement (CPA) was signed in 2005, ending the long Sudanese civil war and paving the way for the independence of South Sudan in 2011, the NISS continued to operate in both the north and the south of the country with deputies heading each branch and reporting to one director general in Khartoum. The southern division began to operate more autonomously during this "CPA period" and was informally spying on its northern counterpart in the lead up to independence.[6]

In 2007, the southern government created the "special branch," a secret intelligence unit exclusively comprising southerners and separate from the NISS, in order to counter potential spies from the north within NISS and in informal civilian spy networks.[7] In 2011, the southern division of the NISS , "special branch" and the "public service organ" were all dissolved. Their members were absorbed into the newly minted National Security Service (NSS) and the army's military intelligence (MI).[8]

The National Security Service in South Sudan

South Sudan gained independence on July 9, 2011. Its first transitional constitution envisioned a National Security Service (NSS) with a mandate to gather intelligence and advise relevant government institutions.[9] The constitution provides that the NSS be comprised of two operational organs: the General Intelligence Bureau, GSB, also known as external security, and the Internal

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2001.state.gov/global/human_rights/1996_hrp_report/sudan.html (accessed June 24, 2020); Amnesty International, "The Tears of Orphans': No Future Without Human Rights," January 1, 1995, https://www.amnesty.org/download/Documents/176000/afr540021995en.pdf (accessed October 21, 2020); Human Rights Watch, *Civilian Devastation, Abuses by All Parties in the War in Southern Sudan,* (New York: Human Rights Watch/Africa, 1994), https://www.hrw.org/report/1994/06/01/civilian-devastation/abuses-all-parties-war-southern-sudan; John Prendergast, Crisis Response: Humanitarian Band-Aids in Sudan and Somalia (London: Pluto Press, 1997*);* Peter Nyaba, The Politics of Liberation in South Sudan: An Insider's View (Kampala: Fountain Publishers, 1997).

[5]Human Rights Watch phone interview with policy analyst, April 20, 2020; Human Rights Watch interview with former senior officials in the SPLM/A, December 9, 2019, January 23 and 28,2020.

[6]Human Rights Watch interview with Senior SPLM figure, Juba, December 9, 2019; Human Rights Watch interview with former senior NISS official, Nairobi, January 23, 2020.

[7]Human Rights Watch interviews with senior SPLM figure, Juba, December 9, 2019, and Senior NISS official, January 23, 2020.

[8]Human Rights Watch interviews, Juba, December 9, 2019, January 24 and 28, 2020; "Sudan: Kiir Dissolves National Intelligence, Special Branch And Public Security Organs," *All Africa*, July 26, 2011, (accessed May 20, 2020), https://allafrica.com/stories/201108020594.html.

[9]Transitional Constitution of the Republic of South Sudan, 2011, art 159. During the independence period, the greatest perceived threat to the new state was the Sudanese armed forces and the Southern government strengthened its security forces in order to counter threat; Brian Adeba, "Oversight Mechanisms, Regime Security, and Intelligence Autonomy in South Sudan," *Intelligence and National Security* 5 (2020): accessed May 1, 2020, doi: 10.1080/02684527.2020.1756624.

Security Bureau (ISB).[10] The NSS, which is under the Ministry of National Security, reports directly to the president and is funded through the office of the president.[11] The budget and operations of the office of the president are not publicly audited, ostensibly for national security reasons, therefore limiting transparency and parliamentary oversight in respect of the agency's operations.[12] Civilian oversight is provided through parliament which conducts an annual evaluation of the performance of the NSS.[13] However this mechanism is weak in practical terms, as the parliament is dominated by the ruling SPLM party.[14] Both the ISB and GSB director generals, appointed by President Kiir in 2011, served under him in the SPLA.[15]

Ineffective oversight combined with broad powers means the NSS is subject to little if any accountability and the structure has created an intelligence service that is subject to extreme political interference.

The ISB, led by Lt. Gen. Akol Koor Kuc, deals with internal threats to national security. Lt. Gen. Akol oversees operations including intelligence gathering, combat, cyber-operations, and detention facilities - both documented and secret sites - across the country.[16]

The GSB role is to counter external threats and insurgencies. Most of its members are posted in foreign countries including in South Sudanese embassies and consulates and thought to work clandestinely much like other intelligence agencies around the world.[17] The Director General of the GSB, since 2011, is Lt. Gen. Thomas Duoth Guet.[18]

The Transitional Constitution required the new government to develop a national security strategy. A committee was appointed by the then Minister of Interior and following extensive consultations,

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[10] Transitional Constitution of the Republic of South Sudan, art 159 (2).

[11] Section 8(2) NSS Act provides that, "The Service shall be an organized national force headed by the Minister who is answerable to the President"; and section 80 provides: "The Service shall have a budget under the Office of the President prepared and approved each year in the national annual budget."

[12] Transitional Constitution of the Republic of South Sudan, art 159 (7); UN Panel of Experts, "Interim Report on South Sudan established pursuant to Security Council resolution 2353 (2017)," November 20, 2017, https://www.undocs.org/S/2017/979 (accessed January 18, 2020), p 21.

[13] National Security Service Act, Section 19.

[14] Brian Adeba, Oversight Mechanisms, Regime Security and Intelligence Autonomy in South Sudan." P 9-10.

[15] Human Rights Watch interview with senior SPLM figure, Juba, December 9,2019.

[16] UN Security Council, Final report of the Panel of Experts on South Sudan, resolution 2428 (2018), April 9, 2019, p 52, https://reliefweb.int/sites/reliefweb.int/files/resources/S_2019_301_E.pdf, (accessed 28, March, 2020).

[17] Human Rights Watch interview with senior SPLM figure, Juba, December 9,2019.

[18] UN Security Council, Final report of the Panel of Experts on South Sudan, resolution 2428 (2018), April 9, 2019, p 52.

produced a draft policy in October 2013. [19] The draft envisioned a professionalized NSS whose role was intelligence-gathering and analysis as stipulated by the constitution. [20] Support for the draft was split between those who wanted a progressive agency with limited powers and those who advocated for an agency modelled on the NISS.[21] The draft was never adopted. Instead, when civil war broke out in December 2013, the National Security Service Act of 2014, which gave the NSS extensive policing, was adopted.

The 2014 National Security Service Act (NSS Act)

Broad and unqualified powers

The 2011 Transitional Constitution provides in section 159 that the NSS should focus on "information gathering, analysis and advice to the relevant authorities." The constitution therefore envisions the NSS's role to be confined to classic intelligence activities and does not vest the NSS with police powers. The 2014 National Security Service Act (NSS Act) modelled after the National Security Act (2010) of Sudan, gives the agency extensive powers of arrest, detention, surveillance, search, and seizure, falling outside the constitutional mandate.[22]

The power to use force, though not explicitly listed in the Act, is implied in the granting of other police powers, and also falls outside the NSS's constitutional mandate. The Act is also vague on key aspects which give the agency further scope for interpretation at their whim. [23]

It also provides no clarity about the circumstances under which these powers can be exercised.[24] Section 7 of the Act grants NSS powers in relation to a broad and vague definition of crimes and offences against the state.[25] Such broad offences, as demonstrated in later sections of this report,

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[19] Transitional Constitution of the Republic of South Sudan, art 160 (1), (2); Human Rights Watch phone interview with South Sudanese academic and researcher, May 5, 2019.

[20] Ibid.

[21] Human Rights Watch interviews with former senior government and intelligence official, Nairobi, January 23, 2020 and with former senior SPLM figure, Juba, February 19, 2019.

[22] National Security Service Act, Section 13: allows the agency to "request any information, statement, document, or any relevant material from any suspect and potential witness"; "monitor, investigate and conduct search of suspect and places"; "seize weapon, machine, tool, automobile or any gadget suspected to be connected with an offence or crime against the state"; "arrest and detain suspects in accordance with the provisions of this Act in crimes related to National Security"; and "monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interest so as to prevent misuse by users."

[23]The National Security Act of 2010 of Sudan gave the NISS extensive powers to search and seize and arrest and detain without judicial oversight.

[24]National Security Service Act, Section 13.

[25]The definition of "crimes against the state" includes "any activity directed at undermining the constitutionally established system of the Government by unlawful means" and "any foreign-influenced activity within or outside which is related to South Sudan that is […] detrimental to the interest of South Sudan." According to the Act, "offenses against the state" are provided for in the 2008 Penal Code, which criminalizes acts including "causing disaffection among police force or defense forces," "publishing or communicating false statements prejudicial to Southern Sudan," and "undermining authority of or insulting President."

have been used to violate freedom of expression, assembly and association, for instance, by unduly restricting or preventing peaceful exercise of political opposition, or public criticism of state policy and actions. The descriptive definition of crimes against the state in particular runs afoul of the principle of legality which requires crimes to be sufficiently precise so that individuals know what conduct is unlawful and the possible consequences of such conduct.

Lack of Judicial and Custodial Safeguards

The NSS has extensively used its powers of arrest and detention, which is the source of most human rights violations described in this report. Though the Act provides that individuals should be brought before a magistrate or judge "as soon as is reasonably practicable within 24 hours", even if investigations are incomplete, it fails to specify that the individual must physically appear in court and be allowed to challenge the legality of their detention and doesn't bar extraordinary circumstances that make it impossible to do so.[26] It also does not indicate that the purpose of this hearing would be for the court to decide on the lawfulness and necessity of continued detention, and to either remand the accused person in an ordinary prison or order his or her release.

The Act does not explicitly state that the 2008 Code of Criminal Procedure will apply to all court proceedings against those in the custody of NSS, or what role the NSS plays in investigations and prosecutions stage vis-à-vis the public attorneys at the Ministry of Justice. The NSS can apply for a warrant from the high court when there are "reasonable grounds to believe that a warrant is required to enable the service to perform any of its functions."[27] Human Rights Watch did not document in this report any case when the NSS used a warrant to arrest an individual or apply for detention.

Although section 13 gives the NSS powers to detain, it fails to specify permissible places of detention for the NSS. Section 67 makes it an offence for an NSS officer who "refuses to deliver to the official authority any member or person arrested or detained or in custody under his or her command" or "unlawfully releases any member or person under his or her guard" but does not spell out who the official authority to whom NSS can hand over detainees to is. However, the Act provides that the Minister of National Security may issue regulations governing the treatment of

[26] National Security Service Act, Section 54 (2).

[27] National Security Service Act, section 55.

detainees.[28] Human Rights Watch is unaware of the existence of such regulations and the NSS did not respond to Human Rights Watch's request for comment on this matter.[29]

Human Rights Watch is also unaware of a law or policy that regulates how the NSS and the police —which under the 2009 Police Service Act is tasked with arrest, investigation, and detention of suspects —can interact on areas of common ground or how the NSS fits into the criminal justice system. [30] Lawyers told Human Rights Watch that the expectation is that even when the NSS makes arrests, civilian suspects should be handed over to the police service for investigation and judicial oversight sought for any pretrial detention.[31]

Weak oversight and accountability mechanisms

The legal department of the NSS is set up by the Act to check excess of power, "ensure that cases being handled by the service are expedited and promptly referred to court" and advise the agency on matters of constitutionalism, human rights and general legal matters. [32] Given the prolonged and arbitrary detentions and other abuses experienced by detainees between 2014-2020, as documented in this report, it is apparent that the legal department is not effectively discharging these functions.

NSS officers enjoy legal immunities. Section 49 of the Act ensures that that no criminal or civil proceedings can be initiated against any member of the service by giving the Minister, in case of the officers above the rank of 2nd Lt., or the Director General in case of other ranks discretionary powers to decide whether to allow investigations or prosecutions, suspend officers or take other disciplinary actions.[33] The provision has placed an undue burden on civilian victims of NSS abuses to provide sufficient evidence for the lifting of such immunities. This has erected as an unsurmountable barrier preventing victims of NSS abuses from getting relief in court or ensuring offending officers are held accountable for their actions.

While sections 56-76 of the NSS Act provide that NSS officers may be prosecuted and sanctioned, including with imprisonment, for a number of offences including abuse of power, indiscipline and

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[28]National Security Service Act, Section 85 (j).

[29]Appendices: HRW letter to South Sudan authorities.

[30]Police Service Act, 2009, section. 3

[31]Human Rights Watch separate phone interviews with lawyers (names undisclosed), October 21, and October 22, 2020.

[32]National Security Service Act, Section 9(4); Section 18.

[33]National Security Service Act, Section 49(1)(4).

improper conduct, and criminal use of force among others, Human Rights Watch is not aware of any NSS officer imprisoned for abusing their powers.

Section 20 of the NSS Act provides for an internal accountability mechanism through the establishment of a complaints board. The complaints board can accept complaints about the procedural actions of the NSS from both the public and NSS agents but lacks independence. The head of the legal department of the NSS is a member of the complaints board, which creates a clear, incompatible conflict of interest between being an employee of the NSS responsible for providing legal advice about the service and holding the NSS to account.

Section 77 provides for two service tribunals where members of the NSS can be charged for summary and non-summary offences including crimes against the state.[34] When civilians are accused of crimes against the state, the ministry of justice is supposed to provide guidance on how and where the case is heard.[35] The establishment of separate mechanisms by the NSS to hear criminal cases against its officers, where the high court would have jurisdiction, creates a parallel legal system where the NSS can cherry pick what option works best for them. This also places accused civilians outside the protection of the law. As discussed in later sections of this report, these processes are opaque (there is very little public information about them) and ultimately allow the NSS to circumvent the civilian justice system and any form of accountability.

The NSS Since South Sudan's Civil War

In December 2013, violence broke out in Juba following a political deadlock between President Salva Kiir, a Dinka, and his deputy, Riek Machar, a Nuer, and other members of the ruling SPLM. When this political dispute turned violent on December 15, the army and security forces split along ethnic lines and within hours, the mainly Dinka government troops carried out large-scale targeted killings, detentions, and torture of mainly Nuer civilians around Juba, the capital.[36] In the following months, fighting spread to Bor, Bentiu, Malakal, and across the Greater Upper Nile region, with civilians targeted by all sides based on their ethnicity and perceived political allegiance. In late 2015, after the parties signed a peace deal in August, the conflict spread to the Equatoria region

[34]National Security Service Act, Section 77.

[35]National Security Service Act, Section 78(2).

[36]Human Rights Watch, *South Sudan's New War: Abuses by Government and Opposition Forces*, August 14, 2014, https://www.hrw.org/report/2014/08/07/south-sudans-new-war/abuses-government-and-opposition-forces, p. 22-44.

as new political and rebel groups formed with varied grievances, while government forces carried out deadly counterinsurgency campaigns in regions south and west of the capital.[37]

As the war escalated, so did the crackdown on dissenting voices and those deemed to support rebel movements either due to their ethnicity or political statements. [38] The government, through the NSS and army, acquired key military and surveillance equipment in 2014 from Israel including wiretapping devices and aerial drones and cameras, further enabling this abusive targeting in country. The NSS also expanded its reach into neighboring countries like Kenya and Uganda, targeting government critics and perceived opponents in neighboring countries.

The NSS also became better resourced, financially and militarily, as President Kiir grew distrustful of the army.[39] The NSS, contrary to its mandate, effectively evolved into a law enforcement agency arresting suspects for criminal offences and maintaining law and order in major towns like Yei and Wau impacted by fighting. In addition, NSS agents have been deployed in combat and counter-insurgency operations alongside the army, South Sudan People's Defense Forces (SSPDF, formerly the Sudan People's Liberation Army, SPLA). [40] NSS was named by the United Nations Panel of

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[37]UNMISS, "Human Rights Violations and Abuses in Yei July 2016 – January 2017," October 2018, p. 15, https://www.ohchr.org/Documents/Countries/SS/UNMISSReportJuly2016_January2017.pdf (accessed June 22, 2019); Human Rights Watch, *South Sudan- Soldiers Attack Civilians in Western Region*, October 24, 2018, https://www.hrw.org/news/2018/10/24/south-sudan-soldiers-attack-civilians-western-region.

[38]By 2019, the strength of the NSS was estimated at 15,000 with 70% of officers from the Dinka ethnic group particularly from Warrap and Northern Bar el Ghazal regions; UN Security Council, Interim Report of the Panel of Experts on South Sudan, November 2019, https://undocs.org/en/S/2019/897 (accessed February 19, 2020).

[39] Between 2015-2016 as President Kiir grew distrustful of his then Chief of General staff, Gen.Paul Malong. Malong would later defect and form his own rebel movement, South Sudan United Front/Army, leading the NSS to crackdown on supporters from his home area of Aweil and in Juba. South Sudan Human Rights Commission, A Situational Report on the National Security: Torture, Arbitrary Arrest, and State Fear, September 2018; UN Security Council, Final report of the Panel of Experts on South Sudan, resolution 2428 (2018), April 9, 2019, p 52, https://reliefweb.int/sites/reliefweb.int/files/resources/S_2019_301_E.pdf, (accessed 28, March, 2020).

[40] The NSS also helped found, train, and arm various ethnic Dinka militias such as the *Mathiang Anyoor,* an ethnic Dinka militia group that fought alongside the army and was responsible for serious abuses particularly in the Equatoria region. Human Rights Watch, "Soldiers assume we are rebels:" Escalating Violence in the Equatorias, August 2017, https://www.hrw.org/sites/default/files/report_pdf/southsudan0817_web.pdf, p 21-24; NSS also reportedly equipped a Padang Dinka militia, created in 2014 to protect the oil fields of Upper Nile and fight Shilluk rebels in 2015; Small Arms Survey, Human Security Baseline Assessment for Sudan and South Sudan, The Conflict in Upper Nile, The Conflict in Upper Nile State. http://www.smallarmssurveysudan.org/facts-figures/south-sudan/conflict-of-2013-14/the-conflict-in-upper-nile.html (accessed May 12, 2020). The UN panel of experts also found that the NSS was violating a UN arms embargo imposed in 2018 by purchasing weapons through Sudan: UN Security Council, Interim Report of the Panel of Experts on South Sudan, November 2017, https://www.undocs.org/S/2017/979, (accessed September 15, 2019); Report of the Commission on Human Rights on South Sudan, February 2018 p. 81; In 2019 and 2020, the UN Panel of Experts found the NSS to be one of the main units violating a UN arms embargo by receiving foreign security training and possibly importing weapons into the country: UN Security Council, Final Report of the Panel of Experts on South Sudan, April 2019, https://www.undocs.org/S/2019/301 (accessed December 12, 2019); UN Security Council, Final Report of the Panel of Experts on South Sudan, April 2020, https://www.undocs.org/S/2020/342, (accessed May, 2020); "South Sudan's Arms Embargo Flouted," Human Rights Watch news release, May 8, 2019, https://www.hrw.org/news/2019/05/08/south-sudans-arms-embargo-flouted; "UN Security Council Should Renew South Sudan Arms Embargo", Human Rights Watch news release, May 8, 2020, https://www.hrw.org/news/2020/05/08/un-security-council-should-renew-south-sudan-arms-embargo.

Experts on South Sudan as a violator of the UN arms embargo imposed in July 2018 to stop the flow of weapons into the country.

II. Abuses in NSS Detention Facilities

Since the outbreak of South Sudan's conflict in 2013, the NSS has harassed, arbitrarily arrested and detained scores of people based on their real or perceived political affiliations and views. These include civil society activists, journalists, human rights defenders, and members of political opposition groups. NSS agents also targeted foreigners and aid workers on accusations of fraud, immigration offences or petty offences. Others, including civilians and members of security forces, were detained at the behest of senior government or security officials with personal grudges.

Although nominally governed by the National Security Service Act, the NSS effectively operates outside of the law and conducts its business without proper legal authority. This means, for example, that NSS agents hold detainees in sites - both known and secret - which are not designated as detention facilities under the law. They do not conduct arrests based on warrants or court orders, but on their own initiative, and routinely hold detainees for long periods – even years –without charge and without access to lawyers or visitors. Detainees are rarely brought before a court to be charged. Detention periods lasted from hours to as long as four years, in violation of South Sudanese and international law, and specifically South Sudan's obligations under multiple human rights treaties.

This section documents the range of abuses and harsh conditions faced by individuals in NSS custody and the lasting impact these abuses have on detainees' lives.

NSS Detention Sites in Juba

Although the NSS Act gives the agency powers of detention, it does not specify locations where NSS detainees can be held. The ISB holds people at the NSS headquarters, commonly known as the Blue House, and at Riverside, a site near the Nile river in downtown Juba, also known as NSS operations division. It also detained individuals at a security forces' training facility at Luri, not far from Juba and the State security offices, Central Equatoria state near the Hai Jalaba site. They also have at least one detention site in each of the 10 states.[41]

[41]Human Rights Watch interview with South Sudanese policy analyst, Juba, November 12, 2018; Transitional Constitution of South Sudan, Article 162 (1) provides that "The territory of South Sudan is composed of ten states governed on the basis of decentralization." In October 2015, President Kiir issued Republican Order No 36/2015 creating 28 states which was criticized as inconsistent with the Constitution, misused presidential powers, created ethnic enclaves and violated the August 2015 Agreement on the Resolution of Conflict in South Sudan. Prior to this decree, Dr. Machar's party, the Sudan People's Liberation Movement in Opposition (SPLM-IO) had

None of these sites is authorized in law as a detention facility. In addition, NSS runs an unknown number of detention sites in unmarked, unofficial "safe houses". The ISB's reputation is worse than its counterpart, the GSB. The GSB holds people at an office in the Hai Jalaba neighborhood.

As public information about these sites is limited and South Sudanese did not respond to Human Rights Watch inquiries, Human Rights Watch has assembled information about the three main sites from interviews with former detainees held at the sites and former intelligence and security officials.

Hai Jalaba Site

Hai Jalaba site, near the Egyptian clinic in Atlabara close to Juba town, is under the authority of the GSB. Former detainees held there between 2015-2019 told Human Rights Watch that the site is an office compound with cells in offices but also in shipping containers and residential houses in another section. The site is mostly used to detain foreigners, on allegations such as spying, forgery, fraud and embezzlement or other offences deemed to violate South Sudan's national security.[42] The facility is also adjacent to the state security offices of Central Equatoria state which are run by the ISB.

Riverside

The Riverside site is located within the NSS operations division compound, behind police and immigration offices in downtown Juba. Former detainees with whom Human Rights Watch spoke described the site as "one big cell with four other cells or sections inside it with capacity to hold 20-35 people at a time."[43] They said it has a reception area or a verandah used to detain NSS officers held for disciplinary offences and where new detainees were sometimes interrogated and tortured;[44] a large cell used to hold multiple detainees, packed close together; five solitary confinement cells; and a dark

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suggested 21 states, an administrative structure based on the British colonial administration of 21 districts in what was then called southern Sudan. In February 2020, in the lead up to the formation of a new unity government, the president resolved to return the country to ten (10) States and their previous respective counties plus three (3) administrative areas.

[42] Human Rights Watch interview with South Sudanese policy analyst, November 12, 2018. Human Rights Watch phone interview with former NSS detainee, June 9, 2020.

[43] Human Rights Watch phone interviews with former detainees, May 13 and April 18, 2020 (names and other details withheld by Human Rights Watch). The facility was built shortly after Sudan's independence in the 1950s and was the Southern Sudan Police's headquarters for many years until Sudan's security service took it over as a combat operations station during Jaafar Nimeiri's government (1969-1985). During the 1980s and the independence struggle in the South, the facility was used by the NISS to detain activists and political dissidents and others who supported the SPLM/A and other southern movements. The facility was well known for numerous extrajudicial killings, enforced disappearances and systematic torture during this period: David Deng and Rens Willems, "Legacies of Enforced Disappearances in South Sudan" (briefing paper, University of Peace, 2015), http://www.upeace.nl/cp/uploads/downloadsprojecten/The%20Legacy%20of%20Enforced%20Disappearances%20in%20South%20Sudan%20-%20Briefing%20Paper.pdf, (accessed February 20, 2019). Between 2005 and 2011, the facility was used by the southern division of NISS in the Juba municipality as an operations and detention center where unlawful detentions and other abuses also took place. Upon independence, South Sudan's NSS combat operations division, continued to use the facility for detentions and torture of real or perceived political opponents of South Sudan's government and petty criminals. Human Rights Watch interview with member of the SPLM/A, Nairobi, March 12, 2019.

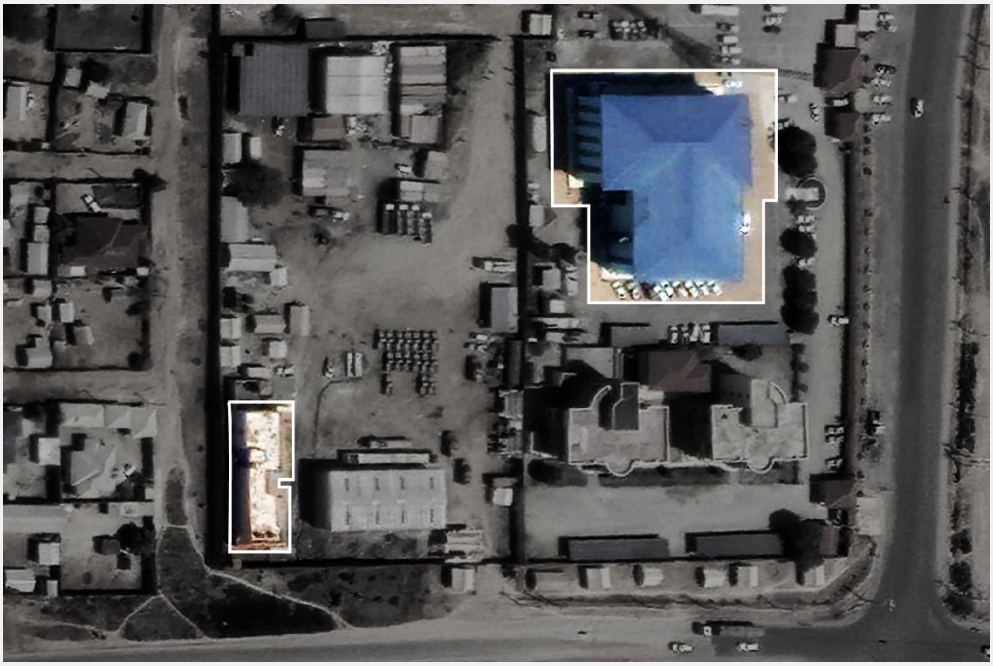
[44] Human Rights Watch interviews with two former detainees April 18 and May 13, 2020.

room where interrogations and torture would take place but they said was also sometimes used to store weapons.[45]

The Blue House

The Blue House is the headquarters of the NSS, is an imposing building on the Juba-Yei road in Juba's Jebel neighborhood. Its main detention site is a two-story building located behind the main office building, opened in November 2015. Prior to the completion of this facility, detainees were held in offices and the basement of the Blue House building itself or at the Riverside facility. Detainees interviewed for this report who were held at the Blue House between 2014 and 2020, told Human Rights Watch that the upper and lower sections of the site consist of 10 cells measuring 4x4 meters with capacity to hold at least 10 detainees at a time and six cells for solitary confinement commonly called "*zanzana*" (meaning cell for one person in Arabic) measuring 1x1 meter. The upper section of the site was used to hold high level detainees such as political activists and opposition members, referred to as "VIPs."

The site was designed to hold male detainees. However, sources told Human Rights Watch that a cell at the lower section of the site next to the warden's office is used to house female detainees (see below on conditions for female detainees). If there are no female detainees, male detainees use the cell.



Satellite imagery shows the Blue House (upper right), the headquarters of South Sudan's National Security Service. In the lower left of the image is the compound's detention site. © 2020 Maxar Technologies. Source: Google Earth

[45] Ibid.

Torture and other Ill-Treatment of Detainees

> They used to beat me with bamboo and a pipe made from a car wheel rubber that they called 'uncle black'. They used a rope to tie my legs and hands and would use needles to [pierce] my skin, telling me to confess. I had nothing to confess.
>
> –Former NSS detainee, in his 20s, October 13, 2019.[46]

Human Rights Watch, the South Sudan National Commission on Human Rights, the UN and other organizations have repeatedly documented how NSS uses torture and ill-treatment during arrests and in its facilities in the capital, Juba and in other states systematically.[47] NSS officials inflict serious abuse, or allow serious abuse to be inflicted, on suspects and detainees, rising to at least the level of cruel, inhuman, or degrading treatment or punishment.[48] The physical and psychological pain inflicted by these abuses is immeasurable and has left lasting scars.[49]

Most of the former detainees Human Rights Watch interviewed said officers slapped, beat and threatened or intimidated them when they arrested them.

A 24-year-old student at the University of Juba told Human Rights Watch how in September, 2018, a group of police, NSS and Military Intelligence (MI) arrested him and two others on their way home, inspected their belongings, then took them to a residential house in Mia Saba neighborhood in Juba, where they beat the young men while interrogating them and detained them for a night before transferring them to Blue House: "One of them slapped and kicked me and said "you will not go home until you say the truth."[50]

Once in detention and during interrogations, torture and other ill-treatment was widespread in all NSS detention facilities. Nineteen out of the 48 former detainees interviewed for this report have

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[46] Human Rights Watch interview with Former detainee, Juba, October 13, 2019.

[47] UN Security Council, Final Report of the Panel of Experts on South Sudan, April 2019, https://www.undocs.org/S/2019/301 (accessed December 12, 2019); "Report of the Commission on Human Rights in South Sudan," A/HRC/37/CRP.2, 23 February 2018, www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx (accessed June 13,2020); South Sudan: Arbitrary Detention, Torture-Military, National Security Service Routinely Beat Detainees, Human Rights Watch news release, 18 May 2015, www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture; Amnesty International, "South Sudan: Denied protection of the law: National Security Service Detention in Juba, South Sudan," April 15, 2016, www.amnesty.org/en/documents/afr65/3844/2016/en/; Amnesty International, "South Sudan- A trail of broken promises: Arbitrary detentions by South Sudan's Intelligence Service, September 4, 2018, https://www.amnesty.org/download/Documents/AFR6588232018ENGLISH.pdf.

[48] All ill-treatment of detainees violates South Sudan's obligations under the ICCPR and the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, which set out the absolute prohibition on ill-treatment.

[49] See section II of this report on impacts of abusive NSS detentions

[50] Human Rights Watch interview with former detainee, Juba, January 14, 2019.

been subjected to torture or other physical ill-treatment while in NSS custody. Thirteen detainees described being beaten with various tools including sticks, whips, pipes, and wires. Two reportedly were subjected to electric shocks, and two others were burned with melted plastic on their skin. Detainees also reported rape and other forms of sexual violence.

Torture and ill-treatment of detainees was prevalent in all three NSS facilities in Juba.

Riverside

Detainees held at Riverside told Human Rights Watch that NSS officers beat and subjected them to physical pain frequently either within the first hours and days of the detention; in some cases it lasted the entire detention period.[51] Methods of physical torture and ill-treatment varied and include beatings with sticks, whips, and cable wires, dripping melted plastic skin, cutting with knives and glass, being electrocuted, piercing testicles and skin with needles and other sharp objects.[52]

A detainee held at Riverside for four months between May 2017 and September 2017 recalled that officers were sadistic:

> "They would remove all your clothes and you remain only with underwear. [Four men] would hold your hands and legs down. They caned you until you start bleeding…For at least three days you could not sit on your buttocks. The beating was normal. It could happen anytime they wanted."[53]

A former NSS officer told Human Rights Watch that detainees at Riverside were tortured during their first days or weeks of arrival in the site to "break them" and force them to confess to crimes, false or otherwise. He said, "[They]were sometimes hung upside down from a rope on a tree or a pole and would be tortured in a small room in the facility."[54]

Detainees were also verbally threatened. A 19-year-old activist and student detained for 23 days at the Riverside site in 2018 told Human Rights Watch that he was threatened with a pistol, caned,

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[51] Human Rights Watch interviews with 21 detainees, Riverside, between 2014-2020.

[52] Human Rights Watch interview with former detainee, Juba, December 13, 2019; Human Rights Watch interviews with former detainees, Kampala, November 14, 2018.

[53] Human Rights Watch interview with former detainee, Kampala, November 14, 2018.

[54] Human Rights Watch phone interview with former NSS officer, April 20, 2020.

kicked, and slapped during the first three days of interrogations. "They would step on my head with their boots and say if I looked at them or smiled, they would kill me. They said if I did not confess to my crime, I would be thrown into the river in a sack," he recalled.[55]

In some cases, detainees were tortured in locations outside of Riverside such as the *Giyada* military barracks, residential houses, Luri training site and other secret places of detention.[56]

Blue House

Detainees held at the NSS detention site at Blue House told Human Rights Watch that torture was more frequent in the lower section of the site compared to the upper section where political detainees or VIPs were held. A detainee held in the lower section, released in August 2018, said that NSS officers beat him for close to a year of his three-year detention. He sustained injuries to his backbone and had his foot broken. He described the beatings:

> They took me to the courtyard at night and tied me up, then put me inside a sack…and beat me with sticks and rods. Every day they would torture and beat me…they would bring me out and lash me 50 times. I have scars on my chest and back from the beating. My body is all scarred up even on my belly...Even my right foot is broken.[57]

Hai Jalaba Site

Detainees held at Hai Jalaba site said they were beaten, stripped naked, and verbally threatened by NSS officers.[58]

A 39-year-old former detainee held there for three weeks in 2019 said officers beat detainees regularly:

> "They would us make us lie down in a row and give you lashes with a rubber pipe as prescribed by a senior officer. Sometimes it would be 50 or 30 lashes. They

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[55] Human Rights Watch interview with former detainee, Juba, December 4, 2018.

[56] Human Rights Watch phone interviews with former NSS detainees, November 20, 2018 and April 21, 2020; Human Rights Watch interview with former detainee, Kampala, September 9, 2018.

[57] Human Rights Watch interview with former detainee, Juba, December 4, 2019.

[58] Human Rights Watch interviews with former detainees, Kampala, November 6, 2019.

> would bring young officers who had energy to beat you. They beat me every two days. Until I got sick."[59]

He also said detainees were subjected to forced labor every morning including washing the cars of senior officers, cleaning toilets, and clearing the compound of rubbish, grass and bushes.[60]

Evidence of Sexual Violence

As described below, rape and other forms of sexual violence, including forced nudity against male detainees were reported in all the NSS detention sites. While there is less documented evidence of rape and sexual violence against female detainees, both male and female former detainees described conditions and contexts which indicate such violations of female detainees regularly occur.

A male detainee held in the lower section of Blue House site for two weeks and four days in 2018 said he was gang-raped over a two-day period by NSS officers:

> We were in separate isolation rooms. My room was small and had no window or sun or power. It was very hot. I was allowed out in the morning and evening for shower. I was beaten by the soldiers and national security. After a week, I was raped by three male officers who said if I accepted, they would help get me out. They did it one after the other also. It was painful but I had no choice. They kept me another week and then released me.[61]

Three detainees held at Riverside also reported rape and other forms of sexual violence.[62] A 26-year-old activist arrested in December 2016 and detained for four months at the Riverside site said NSS officers subjected him and seven other detainees to torture and gang rape on multiple occasions. He described how NSS officers on orders from a Lt. Col. raped him and other detainees on various occasions:

> My hands were tied. I was raped by four people and another time they were six. There were many officers involved. One of the [officers in charge] said, 'you take

[59] Human Rights Watch phone interview with former detainee, June 2, 2020.
[60] Ibid.
[61] Human Rights Watch interview with former detainee, Juba, December 4, 2018.
[62] Human Rights Watch interview with three unrelated detainees interviewed in separate locations Juba, December 4, 2018.

> these boys and go entertain yourselves.' On another day he said, 'go and take these boys and go wash them,' and I thought I was going to take a bath because I had not for many days. I was taken out to a tent and they raped me.[63]

Another activist in his 20s also said he was raped by two NSS officers at Riverside: "They raped me [in the toilet] one after the other. Then they told me to wash myself and get back to the cell," he recalled.[64]

The South Sudan National Human Rights Commission documented the unlawful detention and torture of 29 men from greater Aweil in Northern Bar el Ghazal state by the NSS at the Luri military training facility in Luri, on the Yei-Juba road, between June 29 and July 7, 2018.[65] The Commission found that prisoners were kept in rooms of 5m by 3m and were "routinely stripped of their clothing and placed naked in an isolation cell. In other instances, they were forced to cultivate the farms of senior officers when naked while guards observed them."[66]It also found that detainees showed wounds consistent with beatings from canes, sticks, whips and skin burns caused by drips from hot melted plastic.[67] As a result, some developed serious mental health illnesses and some became "profoundly psychotic." [68]

NSS officers at the Luri training center, also detained, beat and sexually harassed international ceasefire monitors working with Intergovernmental Authority on Development (IGAD). On December 18, 2018, armed men who identified themselves as NSS, blocked ceasefire monitors from accessing the facility to conduct an inspection based on allegations that there had been a breach of South Sudan's peace agreement.[69] NSS officers detained the monitors for four hours, blindfolded and handcuffed them and subjected them to forced nudity. They forced two monitors, a colonel with the Sudanese Armed Forces and a major with the Kenyan Armed Forces, to undress down to their underpants. One female colonel with the Ethiopian Army was forced to completely undress.[70]

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[63]Human Rights Watch interview with a former detainee, Juba, December 4, 2018.

[64]Human Rights Watch interview with detainee, Juba, December 4, 2018.

[65]South Sudan Human Rights Commission, "A situational Report on the National Security: Torture, Arbitrary Arrest and State of Fear," September 2018.

[66]Ibid, para 23, p 5.

[67]Ibid, para 4, p 3.

[68]Ibid, para 24, p 6.

[69]Reconstituted Joint Monitoring and Evaluation Commission (RJMEC) press release, "RJMEC condemns assault on CTSAMVM Team in Luri," December 23, 2018, https://jmecsouthsudan.org/index.php/press-release/item/402-rjmec-condemns-assault-on-ctsamvm-team-in-lori, (accessed May 26, 2019).

[70]Letter from the CTSAMM-Chairman to the Chairperson of IGAD Council of Ministers, December 19, 2018.

IGAD heads of state called upon the government "to immediately investigate the violation, bring the perpetrators and their pertinent superiors to justice, and apologize to the victims and the countries they represent for the criminal act committed and notify the Council on measures taken as a matter of urgency."[71]

In May 2019, a senior NSS officer attached to Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM) said that the monitoring body was exaggerating the incident and to date there has been no accountability for the abuses.[72]

Female Detainees

Female detainees are at risk of sexual violence by both officers and male detainees. Former male detainees at Blue House held near the female cell told Human Rights Watch they overheard conversations which indicated that male officers forced female detainees to have sex, offering to free them from detention if they submitted.[73] One former detainee, a male in his 40s held in Blue House for over three years, recalled:

> They will bring women and detain them in one room and at night they will just pick them [out]. Most of them are foreigners from Kenya, Ethiopia and Uganda. These are the ones we see coming from time to time and they do not stay for long. Provided you fulfill the obligation they will release you.[74]

Human Rights Watch interviewed four women held at Blue House and Riverside between 2015-2019. Although none of them described accounts of sexual violence, they said conditions of detention exposed them to the risk of sexual violence by officers and detainees.[75] A former female detainee held at Blue House for 2 months in 2018 recalled. "I could not sleep through the night.

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[71]IGAD, "Council of Ministers Statement on Violation of the Revitalized Agreement of Resolution of the Conflict on South Sudan R-ARCSS at Lure Training Center," https://igad.int/programs/115-south-sudan-office/2021-igad-council-of-ministers-statement-on-violation-of-the-revitalized-agreement-of-resolution-of-the-conflict-on-south-sudan-r-arcss-at-lure-training-center (accessed February 21, 2019).

[72]CTSAMVM, "Technical Committee Outcomes 7th CTC Report, https://www.ctsamvm.org/wp-content/uploads/2019/01/7th-CTC-Report.pdf, p.21 (accessed February 21, 2019); CTSAMVM, Technical Committee Outcome Report, 9 the CTC report, (accessed October 9, 2019)

[73]Human Rights Watch interview with former detainee, Kampala, November 10, 2018; Human Rights Watch interview with former NSS detainee, April 12, 2020.

[74]Human Rights Watch interview with former detainee, Kampala, September 9, 2018.

[75]Human Rights Watch interview with two former detainees, Juba, May 23, 2019; Human Rights Watch phone interview with former detainee June 10, 2019; Human Rights Watch interview with former detainee, November 22, 2019 (location withheld).

Sometimes I could hear the male inmates saying, 'I need a woman, and there is one there, let us get her.'"[76]

Solitary Confinement

The detention at the Blue House site has six solitary confinement rooms in its upper section and another six in its lower section. The rooms known as "*zanzana*" are described by detainees to measure around 1m x 1m or 2m x 2m. The Riverside facility had five solitary confinement cells measuring 1x1m. Prolonged solitary confinement may amount to torture.[77]

High-profile detainees, such as politicians or those accused of having committed a serious crime were often held in solitary confinement.[78]

Human Rights Watch spoke to four detainees who between 2017-2019 were held in solitary confinement.[79] James Gatdet Dak, the spokesperson of the Sudan People's Liberation Movement/Army-In Opposition (SPLM/A-IO) led by Dr. Riek Machar, described his solitary confinement in Blue House from November 2016 until February 2018:

> They did not allow me to talk to other prisoners [and I had] no access to radio, newspapers, or anything. I was locked up 24 hours a day and [officers] came only once to let me shower and use the toilet. At 3 p.m. they brought me a meal and that's when they would let me use toilet, but not more than five minutes.

Marko Lokidor, the former SPLM/A-IO governor for Eastern Equatoria who was abducted by national security operatives from Kakuma Refugee camp in Kenya on December 29, 2017, was held in solitary confinement in the upper section of the Blue House site for 90 days. "The experience

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[76] Human Rights Watch interview with former detainee, Juba, May 23, 2019.

[77] UN General Assembly, Resolution adopted by the General Assembly at its 68th session December 18, 2013, A/RES/68/156, https://undocs.org/en/A/RES/68/156 (accessed January 20, 2020) para 28: "Emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty,…calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment, and notes in this regard concerns about solitary confinement, which may amount to torture or other cruel, inhuman or degrading treatment or punishment;" Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Interim Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, August 5, 2011, U.N. Doc. A/66/268, para 58, https://daccess-ods.un.org/TMP/6322669.98291016.html (accessed March 18, 2020).

[78] Human Rights Watch Interview with former detainee, Juba, April 26, 2019.

[79] Human Rights Watch telephone Interview with Marko Lokidor, a former detainee, January 3, 2019; Human Rights Watch interview with former detainee, Kampala, September 9, 2018; Human Rights Watch interview with James Gatdet Dak, Juba, December 5, 2019; Interview with former NSS detainee, Juba, October 13, 2019.

that I actually encountered is psychological torture. When you don't have access to your family or relatives and friends or other detainees, it is unbearable torture," he recalled.[80]

Arbitrary Arrests and Detentions

> "Don't you know that we can kill you now if we want? Don't you know that nobody knows you are here? You don't even have a file here."[81]
>
> –30-year-old former NSS detainee, December 2018.

Almost all former detainees interviewed for this report said that they were not told why they were arrested and detained, and they were not charged or brought before a judge at any time.[82] In many of the cases, NSS officers simply accused detainees of opposing the government or supporting the rebels. Some individuals were also accused of theft, fraud, murder, detained as proxies for relatives or to settle personal scores.

Except for a group of high-profile detainees charged with crimes against the state, most of the detainees Human Rights Watch interviewed were not charged with a crime or presented before a court.

These detentions violate fundamental international law due process rights, also incorporated into South Sudanese law, that require anyone arrested be informed immediately of the reasons for their arrest, that they be brought promptly before a judicial authority to be charged or released, and that their detention have a legal basis such as reasonable suspicion that they have committed an offence.[83]

A former NSS detainee in his 40s said he was arrested in Wau on November 8, 2015 and detained in the upper section of the Blue House used to hold political detainees and other high-profile figures. He was released after a year and nine months, with 19 other detainees who had also been

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[80] Human Rights Watch phone Interview with Marko Lokidor a former detainee, January 3, 2019.

[81] Human Rights Watch interview with a former detainee, Juba, December 12, 2018.

[82] Only a number of numbers of high-profile detainees such as Peter Biar Ajak, Kerbino Wol, James Bol Akec, Dar Duer Dar, Benjamin Agany Akol, Simon Dau Makuei on the 7th October incident in Criminal case number 1/AG/2019 and James Gatdet Dak and William Endley in separate crimes against the state charges were presented in court for trial.

[83] Transitional Constitution of the Republic of South Sudan, art. 19 (1); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A Res. 2200A (XXI), 21 U.N GAORR Supp. (No.16) at 52, U.N Doc. A/6316 (1966), 999 U.N.T.S 171, entered into force March 23, 1976, art. 9; African Charter on Human and Peoples' Rights ("Banjul Charter"), adopted June 27, 1981, entered into force October 21, 1986, art. 6.

detained in the same site: "I was never interrogated. From my arrest to my release, they did not tell me any evidence of a crime. What crime was I paying for?"[84]

Human Rights Watch also found that officers from the legal department of the NSS, mandated to advise the service on issues of constitutionalism, rule of law and human rights, also participated in violations of due process rights. A 26-year-old former detainee who was a security guard, told researchers he was summoned by phone to the Blue House in October 2016 and detained there for 18 months without charge.[85] He said that during the first 10 days of his detention, he was interrogated once by investigators from the NSS legal department: "They said, 'You are a criminal!' and they kept accusing me of supporting rebels... I asked where the evidence is, who is the complainant, what did I do? They said if I don't confess, I will stay there forever. They did not call me again until my release."[86]

Lack of Proper Documentation of Detainees

Detainees told Human Rights Watch that they were held or transferred to and from various facilities in and around Juba, including Riverside, Blue House, Hai Jalaba, Luri and the NSS office at Juba International airport, Jubek/Central Equatoria state security offices, police stations and unofficial detention facilities, as well as the South Sudan People's Defence Force (SSPDF) military barracks at Bilpam, Giada, and Gorom in Juba. Detainees were also transferred from Wau, Kapoeta, Yambio, Aweil, Torit and Yei by road or air, demonstrating that these NSS abuses are widespread around the country. According to those interviewed, these transfers were often arbitrary with verbal instructions rather than files or documents indicating why they had been arrested or were being transferred.

A detainee arrested in Kapoeta, recalled how after 18 days in detention at the NSS office there, NSS officers transported him blindfolded and handcuffed to Juba. When they arrived at the Blue House, he learned that there was no paperwork about his arrest or transfer but NSS officials at the Blue House still took him into custody. "Even the officer in charged asked [his colleagues] 'who is this person and why is he here?'"[87]

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[84]Human Rights Watch interview with former detainee, Kampala, September 9, 2018.
[85]Human Rights Watch Interview, with former detainee in Juba, January 3, 2019.
[86]Human Rights Watch Interview, with former detainee in Juba, January 3, 2019.
[87] Human Rights Watch Interview with former detainee, Juba, January 12, 2019.

Former detainees, lawyers and family members consistently complain that it is almost impossible to trace detainees in NSS custody. This lack of records is not only a violation of due process itself, but it directly makes detainees more vulnerable to serious violations such as torture and enforced disappearances. A detainee in his mid-30s told Human Rights Watch he was threatened with death by NSS during interrogation in 2017: "Don't you know that we can kill you now if we want? Don't you know that nobody knows you are here? You don't even have a file here."[88]

Lack of Access to Legal Counsel

International norms and South Sudanese law require that defendants have the right to consult promptly with a lawyer.[89] However, in most of the cases documented by Human Rights Watch, NSS did not allow detainees access to lawyers at any stage.[90]

A detainee held at Blue House from late 2016 to April 2018 told Human Rights Watch he explicitly asked for a lawyer but was denied access to one; "They interrogated me for two days. I said I would not speak without a lawyer. They said, "You go think about it" and sent me back to my cell. The next time they called me was after 5 months."[91]

The NSS also intimidated and harassed lawyers. One lawyer who was acting on behalf of the family of a detainee held at Blue House was denied access to his client on two occasions and subjected to verbal abuse and told by a senior NSS officer, "If you are not careful, even you will need a lawyer soon."[92]

Denial of Visitors, Family

In the cases documented by Human Rights Watch, detainees held at the Riverside site seemed to have been granted the least family visits. Of the 14 cases documented between October 2015 and November 2019 at Riverside, only two individuals were allowed family visits. Detainees held at Blue House said that the NSS very rarely allowed families to visit. For those held for prolonged

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[88] Human Rights Watch interview with former detainee, Juba, December 12, 2018.

[89] Transitional Constitution of the Republic of South Sudan, art 19 (6) states: "*any accused person has the right to defend himself or herself in person or through a lawyer of his or her own choice or to have legal aid assigned to him or her by the government where he or she cannot afford a lawyer to defend him or her in any serious offence*"; ICCPR, arts 9 and14.

[90] Commission on Human Rights in South Sudan, A/HRC/40/69, March 12, 2019, para 27; South Sudan Human Rights Commission, State of Fear and Torture report; "South Sudan; Reform Abusive Service, Human Rights Watch news release, February 19, 2020, https://www.hrw.org/news/2020/02/19/south-sudan-reform-abusive-security-agency.

[91] Human Rights Watch Interview with former NSS detainee, Juba, December 4, 2018.

[92] Human Rights Watch phone interview with South Sudanese lawyer, October 21, 2020.

periods, they said guards and security officers sometimes allowed a family to drop off food, water, medicine, and other provisions for a detainee, but would not allow meetings with detainees.[93]

Human Rights Watch found that family members of NSS detainees are often not informed of the arrest and detention of their relatives, must work persistently through their own networks to obtain this information, and are then often not allowed visits to their loved ones.

One woman whose husband was detained by NSS on November 8, 2018 told Human Rights Watch how NSS officials denied her access to her husband when he was detained at the Blue House: "I would go every day. On the sixth day they allowed me to see him in the office reception at Blue House. I tried again after and failed to access him."[94] In February 2019, her husband was moved to Juba central prison where she had regular access to him. In January 2020, the high court ordered his release.[95]

Moreover, NSS does not allow regular visits by national or international rights monitoring bodies. Of those interviewed, only one detainee, James Gatdet, said he had been granted visits from the ICRC in November 2017, possibly due to the international nature of his case and his high political profile. [96]

Deaths in Custody

Former detainees told Human Rights Watch that at least 12 detainees died due to poor health and poor detention conditions at the Blue House between July 2017 and November 2019.[97] One detainee who witnessed his cellmate die after complaining about stomach ulcers in early 2018 recalled: "It was the first time in my life to see someone die. It was painful."[98]

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[93] Human Rights Watch interview with wife of former detainee (name withheld), Juba, March 7, 2019.

[94] Human Rights Watch interview with wife of detainee, Juba, January 13, 2019.

[95] Human Rights Watch exchange with lawyer involved in the case on secure messaging applications, January 27, 2020.

[96] Human Right Watch interview with former detainee, Juba, December 12, 2018.

[97] Human Rights Watch interviews with former detainee held in Blue House between October 2016-April 2018, Juba, January 16, 2019, former detainee held at Blue House between June-Nov 2019, April 15, 2020; Human Rights Watch phone interview with former detainee held at Blue House from late 2019-May 2020, August 28, 2020. Amnesty International reported in 2017 that between February 2014 and July 2017, at least 23 male detainees died while in NSS custody at Blue House due to torture, ill-treatment or to poor health, exacerbated by the poor conditions of detention and inadequate medical care; Amnesty International, "South Sudan: Open Letter from Secretary-General Salil Shetty to President Salva Kiir on Prolonged Detentions, Enforced Disappearances, and Reported Deaths While in Government Custody," 28 March 2017, https://www.amnesty.org/download/Documents/AFR6559702017ENGLISH.PDF, (accessed April 19, 2020).

[98] Human Rights Watch interview with former detainee held in Blue House between October 2016-April 2018, Juba, January 16, 2019.

Former detainees said officers executed detainees. Human Rights Watch documented one example of this. Officers extrajudicially executed a detainee named "Malesh" around June 2018 in the upper level of Blue House, according to a witness detained at the same time, who explained:

> "The security officers wanted to bring him out at night at around 1 or 2 a.m.; usually they go to torture people around this time. He was fighting them and resisting leaving his cell. They shot him and he died."[99]

On October 7, 2018, a group of prisoners at Blue House disarmed their NSS guards in protest against their detentions, torture, "nightly pick-ups of detainees" and extrajudicial killings in custody.[100]

It is unclear what happened to the bodies of those who died or were unlawfully killed while in custody. Detainees said that if the person apparently died from ill health, NSS officers could take the body to the Juba teaching hospital or Giyada military hospital mortuary, notify relatives of the deceased and in rare cases arranged for the transfer of the deceased to locations outside the capital city or provide money to the family for transport and funeral.[101] In one case, the NSS apparently flew the deceased body to his home area in Tombura, Western Equatoria in mid-July 2017 and gave the family some flour, beans and little money.[102] It is not clear if autopsies were ever performed to establish and formally record the causes of death. One former NSS officer said that if torture or extrajudicial killing was involved, family members were not notified of the death or burial of their loved one.[103] Multiple sources told Human Rights Watch that they heard that bodies of deceased detainees were sometimes thrown in the Nile river, burnt or buried in unmarked graves.[104] Human Rights Watch could not independently verify this.

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[99] Human Rights Watch interview with former detainee held at Blue House between October 2015- August 2018, Juba, December 4, 2018.

[100] Human Rights Watch phone interview with the late Kerbino Wol Agok who led the prison protest, October 7, 2018; Denis Dumo, "Prisoners Seize Control of Part of South Sudan Detention Center," *Reuters*, October 7, 2018, (accessed October 17, 2020), https://www.reuters.com/article/us-southsudan-prisoners-idUSKCN1MH083 .

[101] Human Rights Watch interviews, Nairobi and Juba, April 15 and December 13, 2019, and April 20, 2020.

[102] Human Rights Watch interview with former NSS detainee, Kampala, September 6, 2018.

[103] Human Rights Watch phone interview with former NSS officer, April 18, 2020.

[104] Human Rights Watch interview with former detainee, Kampala, September 7, 2018; Human Rights Watch interview with member of the UN Panel of Experts on South Sudan (name and location withheld), April 15, 2019; Human Rights Watch phone interview with former detainee, Nairobi, June 18, 2020.

Release from NSS detention

NSS have released detainees as suddenly and as arbitrarily as they had arrested them and overwhelmingly without being charged with any crime. On at least four separate occasions between 2015 and 2019, President Kiir ordered the release of political prisoners and detainees whom he deemed "prisoners of war," who were arrested and detained by the NSS in connection to the insurgency and rebellion against the state, in accordance with the terms of the 2015 and 2018 peace deals.[105] Some of those released and documented by Human Rights Watch included human rights defenders and journalists, petty criminals and others who do not fit any possible criteria of "prisoners of war."[106]

Accounts of why or how detainees regained their liberty reveal a variety of circumstances that underscore how arbitrary the NSS detention practices are. For example, some detainees were released following intervention by influential government officials or senior political and military figures or had a relative act as a guarantor.[107]

Some said they had to pay to be released. Human Rights Watch documented four cases in which detainees or their families paid NSS officers to secure their release with the highest amount being 1.5 million SSP (US$ 5000 at the time), sums which most detainees could not pay.[108]

In other cases, detainees were offered pre-conditions for their release. William Endley, a South African national and former adviser to the South Sudanese opposition leader, Riek Machar, was offered money twice and told he would be released if he denounced Riek Machar and joined his rival at the time, Taban Deng Gai.[109] He refused. A political activist who had been detained in Blue

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[105]Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), art 2.1.7: "Prisoners of War (PoWs) and detainees shall be released immediately under the supervision of the International Committee of the Red Cross (ICRC)."

[106]"South Sudan says release 30 political prisoners," *Reuters*, August 11, 2017, (accessed May 2, 2020), https://www.reuters.com/article/us-south-sudan-violence-idUSKBN1AR1PR; Joseph Oduha, "Kiir frees two political prisoners", *East African*, October 31, 2018, (accessed March 14,2020), https://www.theeastafrican.co.ke/news/ea/Kiir-frees-two-political-prisoners/4552908-4830932-12eev4c/index.html; "South Sudan announces release of prisoners of war and detainees," Human Rights Watch release, September 28, 2018, https://www.hrw.org/news/2018/09/28/south-sudan-announces-release-prisoners-war-and-detainees; "South Sudan frees five political detainees," *Reuters*, October 25, 2018, (accessed March 14, 2020), https://www.reuters.com/article/us-southsudan-unrest/south-sudan-frees-five-political-detainees-intelligence-agency-idUSKCN1MZ21P.

[107]Human Rights Watch interviews with former detainees, January 12, January 14, June 25 and December 13, 2019 and September 6, 2018.

[108] Human Rights Watch interview with former detainee, December 6, 2018; Human Rights Watch interview with family member of former detainee, Juba, January 7, 2019.

[109]William Endley was arrested by NSS officers in Juba on August 18, 2016 and detained at the Blue House. He was convicted and sentenced to death on 23 February for espionage, terrorism, spying and attempts to overthrow a constitutionally established government. He received presidential pardon on October 31, 2018 and was released on November 2, 2018 together with James Gatdet Dak. Human Rights Watch phone interview with William Endley, November 21, 2018.

House for his criticism of various government officials said the NSS offered to release him if he agreed to join the service. He refused but was released due to poor health in September 2019.[110]

In some cases, NSS detainees after a lengthy period of unlawful detention were taken before a judge and charged. Once trial commenced or ended, they were transferred to the regular civilian justice system and taken to an official detention center, such as a police station or Juba central prison. In the cases of Peter Biar, Kerbino Wol and James Gatdet, they were transferred from NSS detention to regular prisons only after they were sentenced by a court.[111]

Almost all detainees interviewed for this report said they were either warned or made to sign statements that they would not speak about their experience in detention to anyone especially human rights organizations. Some former detainees said they were subjected to physical surveillance post their release. Some left the country due to fear of re-arrest.

Those who wished to leave the country upon their release had to obtain clearance from the NSS or Ministry of Justice prior to their travel or arrange for new travel documents as NSS had blacklisted or confiscated their passports.[112]

Harsh Detention Conditions

Conditions in all NSS run facilities were poor and unsanitary. Detainees interviewed for this report said they were held in cramped, congested, and unsanitary conditions, conditions which violate international law. Although in some cases authorities provided mattresses, most detainees slept on the bare floor, or on blankets and sheets provided by their families or that they personally procured from outside through friendly NSS officers. Some detainees even though they were being held without charge were forced to wear jumpsuits given to them by the NSS. For example, detainees in the upper section of the Blue House site known as the political or "VIP" section were given orange jumpsuits, while detainees in the lower section wore blue jumpsuits. Some wore clothes they had been arrested in for the duration of their detention or a change of clothes brought by relatives or friends.

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[110]Human Rights Watch interview with former detainee (name withheld), Juba, December 13, 2019.

[111]Human Rights Watch interviews with James Gatdet Dak, Juba, December 12, 2018 and phone interview with William Endley, November 21, 2018.

[112]Human Rights Watch interviews with former detainee (name withheld), Kampala, November 14, 2018; James Gatdet Dak, Juba, December 7, 2018 and family member of former detainee (name withheld), January 16, 2020.

Most detainees were held in congested cells and others in solitary confinement without fresh air or daylight and were not allowed exercise or other recreational activities.[113] At the Blue House there was a space on the top floor where VIP detainees could hold prayers, whereas detainees on the lower floor used a hall.

Inadequate Food, Water and Medical Care

Detainees from all NSS sites described inadequate and substandard food. Typically, it was a monotonous diet of *posho* [mashed cassava or maize flour] and beans once a day, with rice served as a substitute occasionally. Almost all detainees interviewed said the water was insufficient, salty or dirty.

Detainees also described unsanitary conditions. A 23-year-old activist detained first at Riverside and then transferred to the Blue House site in January 2017 described overcrowding and unsanitary conditions in both facilities:

> At Riverside, we were 19 people in one small cell and there was no space even to stretch. The water for drinking was not clean. We were sleeping next to a toilet. Urine and fecal matter were flowing where we used to sleep; it was not sanitary at all.[114]

Detainees had limited access to medical care and attention and spoke of contracting malaria, hepatitis, stomach ulcers, typhoid, and skin infections among other illnesses. Detainees said a doctor would visit detainees from time to time and when there were serious illnesses, patients would be taken to nearby clinics, Juba Teaching hospital or Giyada military hospital for treatment.

Human Rights Watch was told of two detainees living with HIV/AIDs who were held in the Blue House site in congested cells with other detainees between 2017 and October 2019. One witness said they did not have access to their retroviral medication regularly, and this compromised their health and increased risk of co-infections.[115]

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[113] See section II: Solitary Confinement of this report]

[114] Human Rights Watch interview with former detainee, Juba, January 17, 2019.

[115] Human Rights Watch interview with former detainee (name withheld), Kampala, September 6, 2018; Human Rights Watch interview with former detainee (name withheld), August 26, 209, Juba, South Sudan.

Detention of People with Disabilities

NSS does not shy away from arbitrarily detaining and mistreating people with both physical and mental disabilities. As Human Rights Watch has documented previously, authorities in South Sudan have subjected persons with disabilities to conditions that are significantly worse than for other detainees.[116] One former detainee told Human Rights Watch that NSS detained a man in his early 20s with a psychosocial disability for four months at the Riverside site in 2018:

> "He was always talking to himself. He said that two people who wanted to chop off his head were chasing him, and he could hear a voice saying, 'if you are a man, enter this compound.' He ran into the house of an army officer in Hai Thoura neighborhood. So that officer arrested him and brought him to Riverside."[117]

Another former detainee in his mid-30s recalled that officers at Blue House denied medical attention to a detainee with one arm from Torit who fell in the bathroom and broke his leg in May 2019. He said "he would crawl on the floor and push himself with his buttocks. He would be supported by friends and limp. It was not easy for him."[118]

Due to the harsh conditions of detention some detainees developed psychosocial and physical disabilities while in detention and were vulnerable to abuse. Former detainees told researchers that they knew two detainees held at Blue House between 2018 and 2019 whose mental health seriously deteriorated during their detention and would be beaten by officers.[119] One of them, "Garang", held in the lower section of the Blue House between mid-2018 to April 2019, would experience mental health crisis and fight his cellmates and draw on the wall with his own excrement.[120]

A man in his 30s from the Acholi ethnic group, detained in 2017 on accusations of being a rebel, experienced mental health issues after he said he was sexually abused by officers.[121]

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[116] Human Rights Watch, *South Sudan- Prison is not for me: Arbitrary Detention*, June 21, 2012, https://www.hrw.org/report/2012/06/21/prison-not-me/arbitrary-detention-south-sudan#_ftn152; Amnesty International, "Our hearts have grown Dark: Mental Health Impact of South Sudan's conflict," 2016, https://www.amnesty.org/download/Documents/AFR6532032016ENGLISH.PDF, (accessed June 8, 2020).

[117] Human rights Watch interview with a former detainee who shared a cell with said detainee, Juba, December 4, 2018.

[118] Human Rights Watch phone interview with former detainee, August 28, 2020.

[119] Human Rights Watch interview with former detainee, Juba, October 16, 2019; Human Rights Watch exchange with former detainee over secure messaging application, August 30, 2020.

[120] Human Rights Watch interview with former detainee, Juba, October 16, 2019.

[121] Human Rights Watch phone interview with former detainee, August 30, 2020.

> "He would bang the door of his cell until morning. Officers would often kick and punch him as punishment sometimes in front of other detainees. At one point he managed to break the door off its hinge and his hands were bleeding. Officers beat him. The next evening, he continued the same."[122]

He was freed in August 2018 never having been charged.

Conditions for Female Detainees

Former detainees, including two women, held at the Blue House said there was no separate section for women and no female officers were on duty in the facility.[123] Instead, officers cleared a cell next to the guards or detention director's office in the lower section of the site for female detainees.[124] If there were no female detainees, men would be detained there. Women unlawfully detained by NSS include security officers, businesswomen, women accused of petty crimes and those with family connections to rebel fighters or opposition figures. [125] The UN Commission on Human Rights in South Sudan has also documented unlawful detentions of women by the NSS.[126]

In October 2019, at least two women were held in the lower section of the site, one of whom was a lactating mother together with her 8-month-old baby.[127]

There was often no water in the cell, and the women were not allowed to leave the room except at fixed times, to use the toilet. Female detainees as other detainees, did not have access to adequate health care — which should include specialized care for women — including feminine hygiene products.[128]

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[122]Ibid

[123]Human Rights Watch Interviews with detainees held in Blue House between 2014-2019.

[124]Human Rights Watch Interviews with former detainees, Kampala, September 6, and September 9, 2018.

[125]Human Rights Watch interviews with detainees held at Blue House between 2014-2019; Also see OCHCR, Report of the Commission on Human Rights in South Sudan, February 18, 2019, https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A_HRC_40_69.docx&action=default&DefaultItemOpen=1, (accessed, February 20, 2019).

[126] OCHCR, Report of the Commission on Human Rights in South Sudan, February 18, 2019, https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A_HRC_40_69.docx&action=default&DefaultItemOpen=1, (accessed, February 20, 2019).

[127]Human Rights Watch interview with former detainee, Juba, October 13, 2019.

[128]Human Rights Watch interviews with two former female detainees held at Blue House, (interviewed separately) Juba, January 16, 2019.

In one case from 2018, NSS agents held a pregnant woman for several months, without access to a doctor, releasing her shortly before she gave birth. One former inmate recalled, "She was getting sick; she was alone and there was no doctor. All of us, we felt sorry for her. "[129]

In the Hai Jalaba site, an office was converted into a cell to house a female detainee in June 2019.[130] Officers provided her a mattress, but no bedsheet or mosquito net and they would bring her bottled water and food once a day. Armed male guards escorted her to and from the bathroom twice a day.[131]

Detention of Children

The NSS has also detained children suspected of being involved with rebel groups or who otherwise are perceived to be a security threat. They were commingled with adult detainees in cells that were often overcrowded and had little access to food, clean water, or medical care.[132] Some were beaten as punishment. As with adults, they were not afforded basic due process protections, in violation of both South Sudanese and international law.[133] Detaining children with unrelated adults puts them at additional risk of physical and sexual violence and is prohibited by international law.[134]

In 2019, the NSS held a 13-year-old boy from the Toposa tribe at the lower section of the Blue House for six weeks on accusations of being a rebel fighter. Former detainees said that the NSS moved him out of the Blue House after six weeks to an unknown location.[135]

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[129]Human Rights Watch interview with former detainee, Juba, January 6, 2019.

[130]Human Rights Watch phone interview with former detainee, June 25, 2019.

[131]Ibid.

[132]Human Rights Watch interview with former Detainee, Juba, October 13, 2019; Human Rights Watch interview with former detainees, September 11, 2018, Kampala, Uganda; Human Rights Watch interview with former detainee, Juba, December 4, 2018.

[133]Under the Child Act, 2008, sec 19 and 21, children are guaranteed the right not to be deprived of their liberty without due process and to be free from torture and other cruel, inhuman and degrading treatment. Additionally, children who have committed illegal acts need to be treated in accordance with international juvenile justice standards, which emphasize alternatives to detention, and prioritize the rehabilitation and social reintegration of the child; Convention on the Rights of the Child (CRC), adopted 20, November 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) entered into force September 2, 1990, arts. 37, 40; Committee on the Rights of the Child, General Comment No. 24 on Children's Rights in the Justice System, U.N. Doc. CRC/C/GC/24 (September 18, 2019).

[134]The Convention on the Rights of the Child (CRC), which South Sudan ratified in May 2015, states in art 37(c) that "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so…"

[135]Human Rights Watch interview with former Detainee, Juba, October 13, 2019.

In August 2017, a detainee held in the Hai Jalaba site for two days said he witnessed a boy being caned by officers. The boy was detained on accusations of spying on the NSS:

> "They boy was crying seriously saying he will die. He said he collected an identification document (ID) outside and it belonged to an NSS personnel, he tried to bring back the ID to NSS and that's when he was arrested and detained. He was beaten badly, every morning."[136]

In addition to children who were held because they were accused of wrongdoing, former detainees held in the lower section of the Blue House site told Human Rights Watch they witnessed an eight-month-old infant held together with her mother for three months in 2018.[137] The breastfeeding mother, who had been detained on accusations of fraud only ate once a day like other detainees, and was not given any specialized care or food to ensure her or her child's health and safety.

Impacts of Abusive NSS Detentions

Former detainees told Human Rights Watch that the prolonged detention and the harsh conditions including beatings, solitary confinement and inadequate food and water had both a physical and mental toll on them. Detainees were sometimes visibly distressed and emotional as they recounted their experience to Human Rights Watch.

"I can still feel the needles on my skin," a 27-year-old male former detainee who was tortured at the Riverside with needles driven into his testicles recalled six months after his release in 2019.[138]

Another former detainee released in August 2017 said he has eyesight problems because of being kept in a dark cell for over a year.[139]

The impacts are not just physical. Dozens of detainees said they still could not shake off the memory of NSS detention many months and years after their release. A female detainee held in

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[136] Human Rights Watch interview with former detainee, Kampala, November 6, 2019.

[137] Human Rights Watch interview with former detainee, Juba, October 16, 2019. The Convention on the Rights of the Child calls on state parties to provide appropriate assistance to parents to support them in the performance of their child-rearing responsibilities, to protect children from neglect or negligent treatment, and to take all appropriate measures to ensure children's survival and development: Convention on the Rights of the Child, arts. 18(2), 19(1), 6(2).

[138] Human Rights Watch interview with former NSS detainee, October 13, 2019.

[139] Human Rights Watch interview with former detainee, Kampala, September 12, 2018.

the lower section of the Blue House site for almost two months in 2019 described the psychological impact that detainees experienced:

> There is a lot of trauma in there, many detainees have tried to kill themselves. One intentionally overdosed on medication brought by the doctor and died [...] They might not beat you but just being there is torture. Even the closing of the door today, scares me. I cannot sleep through the night.[140]

Most former detainees Human Rights Watch spoke to were unable to access mental health care due to a lack of awareness of the availability of services, a lack of financial resources or stigma around mental health in general in South Sudan. Others found relief for their mental distress from family, church and community networks.

Many faced difficulties restarting their lives. Many had lost their jobs and lack financial means, sometimes because NSS officials unlawfully seized their assets, and had trouble integrating back into society due to physical or mental ailments.[141]

The NSS often seized properties of detainees as part of the investigations but sometimes went beyond this and did not return property even after the individuals were released. The NSS has seized, vehicles, plots of land and title deeds, frozen bank accounts and financial assets, suspended and taken over business operations and mobile phones and computers.[142]

Former detainees were often afraid to follow up their seized property or frozen accounts.[143] One former detainee released in September 2015 said the detainee went to the police to open an investigation into the seizure and transfer of his land plots to various new owners. Due to frequent phone calls and death threats by people he believes are NSS, he withdrew the complaint and the investigation stopped.[144]

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[140] Human Rights Watch interview with former detainee, Juba, January 16, 2019.

[141] Human Rights Watch interview with former detainee (name withheld), June 25, 2019 and April 12 2020; Human Rights Watch interview with former detainee,(name withheld), 15 April 2020.

[142] Human Rights Watch interview with former detainee (name withheld), Juba, December 6, 2018; Human Rights Watch phone interview with former detainee, July 21, 2020; Human Rights Watch interview with former detainee, November 22, 2019 (location withheld).

[143] Human Rights Watch interviews with former detainees (names withheld), Juba, December 4, 2019; Human Rights Watch phone interview with former detainee, February 12, 2020.

[144] Human Rights Watch phone interview with former detainee (name withheld), February 12, 2020.

III. The Long Arm of the NSS

Due to the broad powers of the NSS and the prevailing culture of impunity for violations they commit, the NSS has engaged in illegal surveillance, extrajudicial executions, enforced disappearances and cross border abductions and forced returns of opponents or government critics.[145] This section documents cases in which NSS is credibly implicated in these abuses, not just in South Sudan but also across borders in neighboring countries.

Extrajudicial Killings by NSS

NSS has committed extrajudicial killings - the killing of a person by governmental authorities or individuals without the sanction of any judicial proceeding or legal process.[146]

Cases increased with the outbreak of war in December 2013 as government army, military intelligence and national security forces killed or forcibly disappeared perceived opponents in South Sudan and neighboring countries.[147]

The UN Panel of Experts on South Sudan has reported that the NSS has two killing squads known as "Inside Tiger" and "Outside Tiger" whose members have been responsible for extrajudicial executions and enforced disappearances.[148] Extrajudicial killings in South Sudan are often attributed to "unknown gunmen". Even when members of the police, military and NSS are involved, it is difficult to tell which branch or which officers were responsible and witnesses rarely

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[145]David Deng and Rens Willems, "Legacies of Enforced Disappearances in South Sudan." (briefing paper, University of Peace, 2015).

[146]ICCPR, article 6:"No one shall be arbitrarily deprived of his life."; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, art 1; An emblematic case of extrajudicial killing in South Sudan, for which there has been no justice to date, was the abduction and subsequent killing of critic and writer Isaiah Diing Abraham on December 5, 2012 by a combination of members of the Presidential guard unit and NSS in Juba. Although authorities announced they had arrested suspects in January 2013, no one has been held accountable for this killing; "South Sudan: Threats to Free Speech," Human Rights Watch news release, January 21, 2013; https://www.hrw.org/news/2013/01/31/south-sudan-threats-free-speech; Gurtong, "Press Release: Remembering Isaiah Abraham," December 4, 2019, http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/21980/Press-Release-Remembering-Isaiah-Abraham.aspx, (accessed June 23, 2020).

[147]"South Sudan: Army Abuses Spread West," Human Rights Watch news release, March6, 2016, https://www.hrw.org/news/2016/03/06/south-sudan-army-abuses-spread-west; Human Rights Watch, *South Sudan- Soldiers Assume we are rebels: Escalating Violence and Abuses in South Sudan's Equatorias*, August 2017, https://www.hrw.org/sites/default/files/report_pdf/southsudan0817_web.pdf; "South Sudan: Civilians Killed, Tortured in Western region," Human Rights Watch news release, May 24,2016, https://www.hrw.org/news/2016/05/24/south-sudan-civilians-killed-tortured-western-region.

[148] UN Panel of Experts on South Sudan, final report, April 2019, https://www.un.org/securitycouncil/sanctions/2206/panel-of-experts/reports

come forward.[149] Investigations rarely occurred and even when they did, did not lead to prosecutions contribution to a culture of impunity.[150]

Kerbino Wol Agok, a businessman and philanthropist from Tonj, was detained on April 27, 2018 at the Blue House on unknown charges. On October 7, 2018, Wol and other detainees staged a violent protest, disarming guards at the site, demanding an end to unlawful detentions, torture and rape, poor conditions and extrajudicial killings in custody.[151] In June 2019, he was convicted of treason based on the events of the prison protest but was released in February 2020 following a presidential pardon.[152] His physical and financial assets, seized by the NSS in April 2019, were not returned to him.

In early June 2020, Wol published a manifesto laying out a "model for revolutionary change"which launched what became known as the "7 Oct Movement."[153] On June 14, 2020 Wol and another former NSS detainee, Abraham Maliab, were captured and executed by a joint force of NSS, army and Gelweng youth in Rumbek, Lakes State. Witnesses and sources familiar with the case said that the two were unarmed when they were captured and executed with their hands tied behind their backs.[154]

Following Wol's killing, the government started a crackdown on his real or perceived associates, arresting many other former detainees.[155] Former detainee and economist, Peter Biar Ajak, fled Nairobi for Washington D.C. in the United States, saying that South Sudan's government had sent an NSS hit squad to kill or kidnap him in Kenya, an accusation denied by the government.[156] Biar

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[149] Human Rights Watch interview with member of South Sudan Civil Society Forum (name withheld), May 12, 2020.

[150] For instance, no one has been held to account for the killing of journalist Peter Julius Moi nor did police investigations reveal who was responsible. https://cpj.org/data/people/peter-julius-moi/ (accessed August 31, 2020).

[151]HRW phone interview with Kerbino Wol Agok, October 7, 2018 ; Denis Dumo, "Prisoners seize control of part of South Sudan detention center," *Reuters*, October 7, 2018, (accessed October 17, 2019), https://www.reuters.com/article/us-southsudan-prisoners/prisoners-seize-control-of-part-of-south-sudan-detention-center-idUSKCN1MH083; Ayen Bior, "Prison Standoff in South Sudan's Blue House," *VOA*, October 7, 2018, (accessed October 17, 2019), https://www.voanews.com/archive/prison-standoff-south-sudans-blue-house

[152]"Lawyers Appeal Detainees' Conviction," Human Rights Watch news release, June 26, 2019, https://www.hrw.org/news/2019/06/26/lawyers-appeal-detainees-convictions-south-sudan.

[153]Copy of manifesto on file with Human Rights Watch. Though the Manifesto was made public on June 8, 2020, it is dated April 12, 2020.

[154]Human Rights Watch phone interview with confidential UN source (name withheld), June 29, 2020; Human Rights Watch phone interview with relative to deceased June 25, 2020.

[155]Human Rights Watch phone interview with UN staff not authorized to speak on record, June 29, 2020; Human Rights Watch phone interview with former detainee (name withheld), August 28, 2020.

[156]Peter Biar Ajak, "My escaped to America shows the price of dissent in South Sudan," *WSJ Opinion*, July 23,2020, (accessed August 5, 2020), https://www.wsj.com/articles/my-escape-to-america-shows-the-price-of-dissent-in-south-sudan-11595545759; Arshad

had been in detention with Wol and they were tried together in relation to the October 7, 2018 prison protest.[157] Biar had been sentenced to 2 years in prison in June 2019 on charges of "disturbing the peace" but pardoned in January 2020.[158]

On July 11, 2020, Monydiar Maker, a youth leader in his early 30s, was killed by a joint taskforce of NSS, military intelligence, army and local armed youth known as the Gelweng in Amongpiny, Lakes state.[159] The joint force surrounded Monydiar's house at around 3.a.m. and opened fire on Monydiar and his family while they slept, killing him and two of his male cousins.[160] Monydiar's wife and infant daughter were also injured by a shrapnel from a grenade thrown into the compound.[161] Human Rights Watch could not determine the motivations of the killing but sources indicate it may have been linked to suspicion that he was being recruited to join the "7 Oct movement."[162]

Enforced Disappearances

When a person is deprived of their liberty by state actors followed by a refusal to acknowledge the act or the whereabouts or fate of the detained person is concealed this constitutes an enforced disappearance under international law, a crime which is absolutely prohibited at all times and which may in certain circumstances constitute a crime against humanity.[163]

Mohammed, Julio-Cesar Chavez, "Prominent South Sudan critic says government sent hit squad for him; Juba denies," *Reuters*,July 24,2020, (accessed September 4, 2020), https://www.reuters.com/article/us-southsudan-usa-rights/prominent-south-sudan-critic-says-government-sent-hit-squad-for-him-juba-denies-idUSKCN24P04J.

[157]John Adukata, "South Sudan jails prominent activist, *East African*, June 11, 2019, (accessed September 4, 2020), https://www.theeastafrican.co.ke/tea/news/east-africa/south-sudan-jails-prominent-activist-philanthropist-1419920.

[158]"Kiir pardoned 30 prisoners including Biar Ajak and Kerbino," Radio Tamazuj, January 2, 2020, (September 4, 2020), https://radiotamazuj.org/en/news/article/kiir-pardons-30-prisoners-including-biar-ajak-and-kerbino.

[159]Human Rights Watch interview with journalist June 25, 2020; Human Rights Watch interview with UN staff not authorized to speak on record (name withheld), June 29, 2020; Human Rights Watch phone interview with family member to one of the deceased, June 25, 2020. For more reading on the Gelweng, See, Saferworld, South Sudan's Gelweng: Filling a security gap or perpetuating conflict" https://www.saferworld.org.uk/en-stories-of-change/south-sudanas-galweng-filling-a-security-gap-or-perpetuating-conflict, (accessed September 4, 2020).

[160] Human Rights Watch interview with journalist (name withheld), June 25, 2020; Human Rights Watch interview with UN staff not authorized to speak on record (name withheld), June 29, 2020.

[161] Human Rights Watch interview with confidential UN source (name withheld) June 25, 2020.

[162] Ibid, Human Rights Watch phone interview with confidential UN source (name withheld) June 29, 2020; Human Rights Watch phone interview with relative to deceased June 25, 2020.

[163]International Covenant for the Protection of all Persons from Enforced Disappearances (ICPPED) adopted on 20 December 2006, G.A. Res. 61/177, entered into force December 23, 2010, art 2.

The ICRC reported in 2020 that over 5,000 people are missing since the war started whose fate or whereabouts remained unknown.[164] Some of the missing may be victims of enforced disappearances. There is no comprehensive figure of how many individuals have been victims of enforced disappearances since the war started.

Human Rights Watch documented five incidents in which men were victims of enforced disappearances by the NSS. Nelson James Adieng, an operations officer for an airline company, Eagle Air, was arrested on May 4, 2017 reportedly by the NSS protection unit at Juba International Airport.[165] Since his arrest, his family has been unable to find out information about his fate or whereabouts from the NSS or the police.[166]

Anthony Nyero, a staff of the UN Mission in South Sudan (UNMISS) Civil Affairs Division based in Torit was arrested by NSS officers on the evening of September 17, 2014, at a market in Torit, Eastern Equatoria.[167] He was immediately taken to Juba and detained at the Riverside detention site. In June 2015, NSS officers transferred Nyero to the Blue House.[168] In January 2016, he was transferred back to the NSS Riverside detention site, and after that his family has not been able to confirm any information on his whereabouts or fate. Nyero's family members said that given the lack of information on his fate or whereabouts from either the government or UNMISS, they presume he is dead and organized a funeral service for him in late 2018.[169]

James Lual also worked with UNMISS as a security guard based in Wau. NSS arrested him in Wau on August 23, 2014 and flew him to Juba the next day.[170] Like Anthony, he was initially detained at the Riverside site and then transferred to Blue House early 2015. In January 2016, he was removed

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[164]ICRC, "South Sudan: New policy approach brings hope for families of thousands registered as missing," August 28, 2020, https://www.icrc.org/en/document/south-sudan-new-policy-approach-brings-hope-families-thousands-south-sudanese-registered; In 2019, this figure was at 4,000 ICRC, "South Sudan: Thousands missing because of conflict and violence," August 30, 2019, https://www.icrc.org/en/document/south-sudan-thousands-missing-because-conflict-and-violence, (accessed, May 15, 2020).

[165]Human Rights Watch phone interview with family member of Nelson James Adieng, August 16, 2018. Witnesses to Nelson's arrest told a family member interviewed by Human Rights Watch that the head of the protection unit and his officers conducted the arrest. The protection unit department in the NSS is tasked with protecting government officials and other VIPs. Family members opened a police investigation, wrote appeal letters to the Director General of the ISB and met with the head of the detention facility at the time of Omac's disappearance. During a conversation on October 12,2020, the family member told Human Rights Watch there was still no information from authorities.

[166] Ibid

[167]Amnesty International, "Fate of two detained UNMISS staff unknown," December 14, 2016, https://www.amnesty.org/en/documents/afr65/5285/2016/en/, (accessed May 17, 2019); Human Rights Watch interview with former detainees, Kampala, November 7, 2018 and Kampala, November 10, 2018; Report of the Secretary general on the situation in South Sudan, para 60.

[168]Ibid

[169]Human Rights Watch phone interview with family member of Anthony Nyero, February 10, 2020.

[170]Ibid

from the Blue House detention facility and since then, no one has heard of his fate or whereabouts.[171]

The arrest and detention of the two UN staff without clear cause violates the Status of Forces Agreement between the UN and South Sudan which provides legal immunity for UNMISS staff, including local staff, for acts performed by them in their official capacity.[172]

In one prominent case- that of Dong Samuel and Aggrey Idri- the men were also victims of cross-border abduction and forced return from Kenya (see below).

Cross-border Harassment and Forced Returns

Human Rights defenders and political activists in exile or living as refugees in Kenya and Uganda said NSS had a network of spies in these countries and harassed them with support from Kenyan and Ugandan authorities. One political analyst described the agency as "as a strong octopus with its tentacles all over South Sudan and neighboring countries."[173]

Human Rights Watch documented six cases in which Kenyan and Uganda authorities participated in the forced return of South Sudanese citizens, and others in which South Sudanese authorities or government supporters, often with the aid of counterparts in Kenya and Uganda, harassed and repressed South Sudanese activists.

Some of the victims of forced return were registered refugees or had valid documentation allowing them to stay in the host country.[174] Others did not have refugee status but were not presented with

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[171]Human Rights Watch interview with former NSS detainee, Kampala, September 7, 2018; Human Rights Watch interview with former NSS detainee, Kampala, September 10, 2018.

[172]The SOFA enables the UN to have legal presence in South Sudan and regulates the work between the government of the Republic of South Sudan and its various institutions with the United Nations. For more details see: https://unmiss.unmissions.org/sites/default/files/unmiss_sofa_-_english_version_0.pdf, accessed August 6, 2020.

[173]Human Rights Watch interview with political analyst and lawyer, (name and details withheld by Human Rights Watch), Juba, January 6, 2019.

[174]As of 1 August 2014, the Government of Kenya granted all South Sudanese asylum seekers refugee status on a prima facie basis, hence, individual refugee status determination is not required for South Sudanese refugees. See: UNHCR, Kenya, comprehensive refugee plan, 2016, https://www.unhcr.org/ke/wp-content/uploads/sites/2/2016/08/KCRP-2015.pdf. In Uganda, the state pushes an economic self-reliance model rather than political asylum or access to citizenship. Uganda's 2006 Refugee Act and 2010 Refugee Regulations provide a legal framework whereby refugees are given relative freedom of movement, equal access to primary education, healthcare and other basic social services, and the right to work and own a business. Most refugees in Uganda are hosted in settlements which are designated pieces of land set aside by the government of Uganda where refugees live and access services.

any legal documents to authorize their arrest and return.[175] In all the cases documented, victims experienced abuses at the hands of NSS once returned.[176]

The forced return or expulsion of South Sudanese refugees or asylum seekers from host countries to South Sudan where they face a high risk of torture and other abuses, violates the principle of non-refoulement and obligations under UN and AU refugee conventions.[177]

Even when South Sudanese residents are not asylum seekers, the arrest and return to South Sudan - without appropriate legal authorization -- violates their rights.

In May 2017, a South Sudanese university student in his 20s was arrested and detained by seven armed Ugandan police officers in a hostel in Kiryandogo in Western Uganda. The officers accused him of being a rebel and carrying weapons, charges he denied. He recalled: "In the police station they told me that we are arresting you because the government of South Sudan has been looking for you. They did not show me any arrest warrant, extradition order or any other documentation."[178]

He was handed over to South Sudanese authorities eight days after his arrest, firstly to Nimule via plane and to Juba by road under armed escort of police and NSS.[179] He was detained first at the Riverside where he was repeatedly tortured with beatings and pierced with needles over a 10-day period and then transferred to Blue House where he was held without charge or trial for two and a half years.[180] In November 2019, he was charged with murder and moved to Juba Central prison where he awaits trial.[181]

In another example, Marko Lokidor Lochapo, an official with the SPLA/IO was visiting his family in Kakuma refugee camp, northern Kenya when he was abducted by people he thought were Kenyan police on December 29, 2017.[182] He was driven over land for three days to Kapoeta in eastern

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[175]Human Rights Watch interview with former NSS detainee, Juba, October 13, 2019.

[176]Cases described in this report on this include Dong Samuel Luak, James Gatdet Dak who were refugees and Aggrey Ezbon Idri, Marko Lokidor Lochapo, Dickson Gatchang, who had valid visas.

[177]1951 Refugee Convention and its 1978 Protocol; Art 2 (3) The 1969 Organization of African Unity (OAU) [Later AU Convention, 1974] Convention Governing the Specific Aspects of Refugee Problems in Africa; Convention Against Torture. Under international human rights law refugees are entitled to enjoy civic and political rights, including the rights to freedom of expression, peaceful assembly and association UNHCR, "Political Rights of Refugees," November 2003, https://www.refworld.org/pdfid/3fe820794.pdf, (accessed May 17, 2020).

[178]Human Rights Watch interview with former detainee, (name and location withheld) October 13, 2019.

[179]Ibid.

[180]Ibid.

[181]Human Rights Watch phone interview with South Sudanese activist who has been monitoring this case, August 22, 2020.

[182]Human Rights Watch phone interview with Marko Lokidor, Juba, January 3, 2019.

South Sudan. He was then flown to Juba in the company of NSS officers. He was thereafter detained without charge in the Blue House detention site until October 25, 2018 when he was released with four other political detainees.[183]

James Gatdet Dak, spokesperson of SPLA/IO leader Riek Machar and a registered refugee in Kenya, was deported to South Sudan by Kenyan authorities in early November 2016 and detained at the Blue House. His alleged offence was a Facebook post in which he lauded the sacking of a Kenyan General in the UN peacekeeping mission in South Sudan.[184] Upon his arrival in South Sudan he was detained at the Blue House in solitary confinement for almost two years and convicted by a South Sudanese High Court convicted him on charges of treason, publishing or communicating false information prejudicial to South Sudan and insulting or undermining the authority of the president, and sentenced him to death. He was released though a presidential pardon in November 2018.

As described in the Case of Dong Samuel and Aggrey Idri textbox in section III, South Sudanese and Kenyan authorities abducted prominent South Sudanese lawyer and human rights activist, Dong Samuel Luak and Aggrey Idri, a member of the political opposition, from the streets of Nairobi, Kenya in January 2017.

Human Rights Watch also received credible reports that NSS agents or government supporters have harassed South Sudanese activists in Kenya and Uganda, with help from local officials. Five South Sudanese activists living in Uganda in 2018 and 2019 told Human Rights Watch of a campaign of harassment and attempted kidnappings by persons believed to be NSS with support from Ugandan authorities.[185] Activists also said the NSS agents also harassed their family and friends, outing them at risk.[186]

In May 2019, a youth group, Red Card Movement (RCM) planned global protests of South Sudan's government, emulating the popular protests in Sudan that led to the overthrowal of Omer Al Bashir's government in April 2019. In Juba, NSS and army officers arrested dozens of youth

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[183]"Marko Lokidor's wife calls for justice," *Nyamilepidia*, June 2, 2018, (accessed July 21, 2020), https://www.nyamile.com/2018/06/02/marko-lokidors-wife-calls-for-justice/; "SPLM-IO happy over the appearance of kidnapped governor, urges gov't to release detainees," *Nyamilepidia*, October 8, 2018, (accessed July 21, 2020), https://www.nyamile.com/2018/10/08/splm-io-happy-over-the-appearance-of-kidnapped-governor-urges-govt-to-release-detainees/.

[184]Human Rights Watch interview, December 12, 2018, Juba, South Sudan.

[185]Human Rights Watch interviews with activists (names withheld), phone interview, May 10, 2018; September 10, 2018, Kampala, Uganda; September 14, Kampala, Uganda; phone interview September 2, 2019; Secure messaging application exchanges with activist May 18, 2019; Human Rights Watch interview with activist, September 11, 2018, Kampala, Uganda,

[186]Human Rights Watch interview with activist, September 10, 2018, Kampala, Uganda

suspected of being affiliated with the group and detained them, without access to legal counsel and due process.[187] In Nairobi, Kenya, Kenyan authorities arrested and prosecuted RCM activists on trumped up charges while South Sudanese government supporters harassed and threatened them.[188]

Kenyan authorities told Human Rights Watch that other than a police report made by the family of Marko Lokidor on his abduction, they had not received any reports of harassment and kidnapping of South Sudanese government critics in Kenya. (See Annex IV)

The Case of Dong Samuel and Aggrey Idri

Dong Samuel Luak, a renowned South Sudanese human rights lawyer and activist, and Aggrey Idri, a vocal government critic and member of the opposition, were abducted off the streets of Nairobi on January 23 and 24, 2017, respectively by persons believed to be affiliated with South Sudan's and Kenya's security agencies.[189] According to a 2019 report issued by the UN Panel of Experts on South Sudan, the men were transported to South Sudan on a commercial airline, with the support of the South Sudanese embassy in Kenya on January 27.[190]

The panel concluded it was "highly probable" the two men were killed there on January 30, 2017 on the orders of the commander of the NSS training and detention facilities in Luri; Brig. Gen Malual Dhal Murowel, the Commander of the National Security Service Central Division, Maj. Gen Aciec Kuot and, ultimately, Lt. Gen. Akol Koor Kuc, the director general of the internal security bureau.[191]

There is compelling evidence the men were taken to NSS facilities in South Sudan. The panel found that upon arrival from Kenya, they were driven to NSS headquarters in Juba and detained at the Blue House, then moved to the NSS training centre in Luri.[192] Human Rights Watch spoke to six former detainees who confirmed that they were indeed held in the Blue House between January 25 and 28,

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[187]Amnesty International, "We are at risk and on the run: Security agents track down peaceful protesters,".July 18, 2019, https://www.amnesty.org/en/documents/afr65/0692/2019/en/, (accessed April 9, 2020); UN Panel of Experts on South Sudan, Interim Report, para 43.

[188]Human Rights Watch phone interview with activist, 16 June 2019. For more on the crackdown on RCM: Amnesty International, "We are at Risk and on the Run: Security forces track down peaceful protestors.

[189]"South Sudan: A year on, Two Men's whereabouts unknown," Human Rights Watch news release, January 23, 2018; https://www.hrw.org/news/2018/01/23/south-sudan-year-two-mens-whereabouts-unknown.

[190]Final Report of the UN Panel of Experts on South Sudan, April 9, 2019, Para 43-46.

[191]Final Report of the UN Panel of Experts on South Sudan, Para 42-47; "South Sudan denies execution of prominent activists," *East African*, May 2, 2019, (accessed July 16, 2019), https://www.theeastafrican.co.ke/news/ea/South-Sudan-denies-execution-of-prominent-activists/4552908-5097446-uoxweo/index.html; At least two former detainees who claimed to have seen the two men at Blue House in January 2017 told Human Rights Watch that the two men were driven over land to South Sudan through Uganda.

[192]Final Report of the UN Panel of Experts on South Sudan, Para 43-46.

2017.[193] The witnesses said the men were in solitary confinement for most of the time, that Idri was on the top floor and Dong on the bottom floor. Several described how armed security forces took Dong from his cell on the night of January 27 and Aggrey in the afternoon of January 28.[194] "They switched off all the lights. Locked all the detainees in their cells. They came where we were and covered Dong's eyes, [handcuffed] his hands behind his back and put a bag or sack over his head," a former detainee in his early 30s recalled.[195] The Commission on Human Rights in Sudan documented at least eight witnesses who saw Dong and Aggrey at the Blue House facility.[196]

Efforts to hold both Kenya and South Sudan to account for the enforced disappearances of both men have been ineffective. Hours after the men went missing in Nairobi, their families filed a writ of *habeas corpus* case before a Kenyan High Court to require the government to produce them in court. The court denied that petition, saying it could not establish that Luak and Idri were in custody but that a "criminal abduction by unknown persons" had taken place and that the police should thoroughly investigate the matter.[197] In April 2017, the families filed an application for judicial review of the January decision, and asked the high court to compel Kenyan authorities to conduct a thorough, objective and adequate investigation into the abduction and possible enforced disappearance of the two men. The court dismissed the petition on January 17, 2019, stating that the police had acted "prudently and within the law" and that families should pursue alternative administrative remedies such as filing a complaint with Kenya's Internal Police Oversight Authority. The decision ended any official inquiry into Kenya's role in the crime.[198]

In late December 2019, the United States sanctioned five individuals for their role in the enforced disappearances and in January 2020 it imposed sanctions on South Sudanese Vice President Taban Deng Gai, citing among other factors, his role in the enforced disappearances and reported killing of the two men.[199]

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[193]Human Rights Watch Interviews with former detainees, Kampala, Juba, September 9 and 11, October 3 and December 4, 2018, February 23 and March 17, 2019; The UN Panel of Experts on South Sudan received and reviewed a number of independent reports from multiple, highly credible and well-placed sources including NSS officials.

[194]Human Rights Watch interview with former detainee, Kampala, September 7,2018; Human Rights Watch interview with another former detainee, Kampala, September 6, 2018.

[195]Human Rights Watch interview with former detainee, Juba, December 4, 2018.

[196]Report of the Commission on Human Rights in South Sudan, March 12, 2019, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_69.docx, (Accessed September 15,2020), Para 36.

[197]Republic v Inspector General of Police & another Exparte Edmund Polit James & another [2019] eKLR, http://kenyalaw.org/caselaw/cases/view/166411/, (accessed October 24, 2019).

[198] "Kenya, South Sudan: Investigate Critics' Disappearance," Human Rights Watch news release, February 12, 2019, https://www.hrw.org/news/2019/02/12/kenya-south-sudan-investigate-critics-disappearance.

[199] The sanctions were imposed under Executive Order 13818 – which implements and expands upon the Global Magnitsky Human Rights Accountability Act. The US Global Magnitsky Act allows the executive branch of the U.S government to impose visa bans and

The governments of both South Sudan and Kenya have repeatedly denied that the men were victims of enforced disappearances and deny any responsibility for their fate.[200]

Surveillance and Monitoring

The 2014 National Security Service Act gives expansive powers to the NSS to "[p]re-empt and control any situation that may harm and cause danger to the national interest," and grants them sweeping powers of surveillance, arrest and detention.[201] The NSS has powers to "gather internal and external information related to security of the Nation;" "monitor, investigate and conduct search of suspects and places;" "monitor frequencies, wireless systems, publications, broadcasting stations and postal services;" and "request any information, statement, document, or any relevant material from any suspect and potential witness."[202]

In South Sudan, procedural safeguards to prevent abusive surveillance are largely absent. South Sudanese law does not guarantee the right to privacy despite a few known examples of courts rejecting communications obtained by NSS as evidence for violating the right to privacy.[203] The NSS powers are effectively unchecked, and without safeguards to prevent the NSS, other government agencies or private companies and individuals from handling personal data and user information negatively or ensure needed due diligence and accountability by said actors.

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targeted sanctions on individuals anywhere in the world responsible for committing human rights violations or acts of significant corruption; "US Global Magnitsky Act," Human Rights Watch news release, September 13, 2017, https://www.hrw.org/news/2017/09/13/us-global-magnitsky-act; Aggrey Mutambo, "US sanctions 5 South Sudanese security chiefs over activists' disappearance," *The East African*, December 11, 2019, (accessed January 31, 2010), https://www.theeastafrican.co.ke/news/ea/US-sanctions-South-Sudanese-security-chiefs/4552908-5381438-1118rk1/index.html; U.S. Department of State, "Treasury Sanctions First Vice President of South Sudan Taban Deng Gai," January 8, 2020, https://www.state.gov/treasury-sanctions-first-vice-president-of-south-sudan-taban-deng-gai/, (accessed January 31, 2020).

[200] Hereward Holland, "South Sudan denies kidnapping, executing prominent critics," *Reuters*, May 1, 2019, (accessed June 3, 2019), https://www.reuters.com/article/us-southsudan-united-nations-rights/south-sudan-denies-kidnapping-executing-prominent-critics-idUSKCN1S742C; Kevin J. Kelley, "Kenya accused of colluding with Juba in disappearance of activists," *Daily Nation*, https://www.nation.co.ke/news/Kenya-accused-of-colluding-with-South-Sudan/1056-5096958-10djcou/index.html; Report of the Commission on Human Rights in South Sudan, para 35.

[201] National Security Service Act, sec. 6e, 13, 11, 15.

[202] National Security Service Act, sec 13 (2), (7), (12), (13), (14).

[203] In the case of John Agau and 16 others versus Republic of South Sudan (2016) the supreme court dismissed previously admitted evidence of unauthorized phone recordings. See: "South Sudan High Court unmasks renowned spymaster," *Sudan Tribune*, December 15, 2016, (accessed September 8, 2020), https://sudantribune.com/spip.php?article61115; In the case of Pagan Amum and others Versus Republic of South Sudan, 2014, the prosecution had by then presented the phone conversation between General Oyai Deng Ajak and Taban Deng Gai, as evidence to prove the alleged coup attempt during the December 2013 outbreak of conflict. However, the court dismissed those phone conversations as illegal and a violation of individual's privacy because of the manner in which phone recordings were obtained.

South Sudan should enact appropriate limitations and protections on the NSS surveillance powers. These should include legal safeguards to limit the nature, scope and duration of surveillance to ensure that it is necessary and proportionate to achieve a legitimate aim. The government should also require intelligence and law enforcement agencies to seek approval to conduct surveillance activities from an independent and impartial judicial authority. An independent civilian oversight agency, with the participation of civil society, should be set up to conduct regular and periodic reviews of these surveillance activities to ensure that comply with the government's obligations to respect and ensure the right to privacy.

Evidence of Intrusive Technology

The Sudanese government under Bashir (1985-2018) was known to engage in digital and physical surveillance of activists and those deemed to oppose the government.[204] During the CPA period 2005-2011, there was an agreement between the Southern government and the ruling National Congress Party government of Sudan that the telecommunication system would be a shared system where the South would share the frequency spectrum of Sudan.[205] As the network was controlled from Khartoum, Sudanese intelligence were able to intercept calls from and to specified phone numbers including of senior southern figures.[206]

In 2011, South Sudan's intelligence service imported surveillance systems from Israel, including devices that could be fixed on the tower and base stations of telecommunications companies.[207]

The description of the technology provided to Human Rights Watch is similar to International Mobile Subscriber Identity catchers, which are designed to imitate mobile phone towers to capture mobile communications as well as sensitive information about these communications, such as the identity of the sender and recipient and the location of their devices.[208]

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[204]Open Net Initiative, "ONI Country Profile: Sudan", 7 August 2009, https://opennet.net/research/profiles/sudan, (accessed August 12, 2020); Liemia Eljaili Abubkr, "Online surveillance and censorship in Sudan" April 11, 2014, https://www.apc.org/en/blog/online-surveillance-and-censorship-sudan, (accessed August 12, 2020).

[205]Human Rights Watch phone interviews with former NSS and Military Intelligence Senior Officer, February 18, 2019 and Human Rights Watch phone interview with former senior SPLM/A official, July 23, 2020.

[206]Human Rights Watch phone interview with former NSS and Military Intelligence senior official (name withheld), February 18, 2019; Human Rights Watch interview with South Sudanese policy analyst, Juba, December 6, 2019; Human Rights Watch interview with former military and intelligence, January 21, 2020, Nairobi; Human Rights Watch phone interview with former senior SPLM/A official, July 23, 2020

[207]Human Rights Watch phone interview with former senior government official, July 23, 2020.

[208]Privacy International, IMSI Catchers analysis, https://privacyinternational.org/report/3965/imsi-catchers-pis-legal-analysis,(accessed August 12, 2020).

In 2012, South Sudan obtained its own frequency network but apparently continued to use these surveillance devices.[209]

Between 2012-2016, the South Sudanese government acquired military weapons and multiple surveillance and communication interception equipment from Israel and other countries.[210] During this period NSS officers were also receiving combat and intelligence training from the Israeli Mossad.[211] A former intelligence official told Human Rights Watch that the surveillance equipment acquired has the ability to "intercept and monitor" networks that carry voice and data traffic, potentially allowing NSS to record communications including voice calls and voice messages in real time.[212]

A south Sudanese human rights monitor told Human Rights Watch that the surveillance equipment is operated and managed by private Israeli experts who reports to the head of the Internal Security Bureau of the NSS, Lt. Gen. Akol Koor Kuc.[213]

Human Rights Watch could not determine how extensively NSS uses the technology.

In May 2016, an Israeli parliamentarian petitioned the Israeli High court seeking to force the Defense Ministry to rescind export licenses for the sale of wiretapping equipment to the government of South Sudan and stop the sale of such equipment.[214]

Surveillance Drones and Cameras

In December 2017, South Sudan launched surveillance drones and cameras in at least 11 locations in Juba as part of a $ 1 million "Juba Smart City project" which the government said was to "help

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[209]Human Rights Watch phone interview with former senior government official, July 23, 2020.

[210] Human Rights Watch interview with former military and intelligence official, Nairobi, January 24, 2020; Final report of the UN Panel of Experts on South Sudan, p. 45-46; Human Rights Watch interview with former SPLM confidential source, September 12, 2019; Judah Ari Gross, "High court hears arguments against spy tech sale to South Sudan," *Times of Israel*, September 23, 2016, (accessed May 16, 2020), https://www.timesofisrael.com/high-court-hears-arguments-against-spy-tech-sales-to-south-sudan/.

[211] Human Rights Watch interview with former UN staff, July 30, 2020; Human Rights Watch interview with former NSS and military intelligence officer, February 18, 2019. The cooperation between Israel and South Sudan extends as far back as the 1970s when Israeli Mossad provided weapons and military support to the Anyanya movements under Joseph Lagu.

[212]Human Rights Watch interview with former senior government and intelligence official, Nairobi, January 28, 2020; AFP, "Broke South Sudan spends millions on Israeli surveillance drones," *Times of Israel*, December 4, 2017, accessed April 15, 2020). https://www.timesofisrael.com/broke-south-sudan-spends-millions-on-israeli-surveillance-drones/.

[213] Human Rights Watch interview with South Sudanese human rights monitor Commission, Juba, December 6, 2019.

[214] "An Israeli MP is suing to stop her country sending surveillance kit to South Sudan," *Quartz Africa*, May 21, 2016, (accessed 21 June 2019), https://qz.com/africa/689598/an-israeli-mp-is-suing-to-stop-her-country-sending-surveillance-kit-to-south-sudan/.

trace criminals who commit crimes."[215] The operation is run from the offices of the Central police division and is managed by a joint group of National Security Service, police officers and Israeli nationals affiliated with a private security company.[216] However, a UN researcher who visited the facility said the project appears to be a much broader national security project that extends beyond controlling common crime. He noted that some of the CCTV cameras were strategically placed on key checkpoints in and out of Juba, the airport, the UN base in the Thongpiny neighborhood and well-known meeting places used by civil society and international actors.[217]

Access to customer data

Mobile operators, if compelled by authorities, can enable interception of voice calls and facilitate access to SMS text messages they may retain.[218] For billing and other purposes, telecommunications companies (telcos) create and maintain "call detail records," which list phone numbers of incoming and outgoing calls, call time and date, duration of calls, and mobile tower (location) information.[219] Moreover, mobile operators can be compelled to activate Global Positioning System (GPS) chips placed in most smart phones, revealing the user's location and enabling prospective location tracking. Such data, when collected in bulk, can be used to create detailed dossiers of communications, associations, and movements over time, tied to specific individuals.

In South Sudan, people are required to show a government-issued ID and provide personal information including home address and place of birth, which often indicates a person's ethnicity, to telecommunication companies, to purchase a mobile SIM card. This makes it easier for NSS agents to identify individuals associated with a particular phone number.

The NSS has in the past compelled telcos to provide phone numbers, metadata and call logs belonging to their customers and used this information to tap phone numbers of suspects and

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[215] "South Sudan president buys surveillance drones," *Sudan Tribune*, December 4, 2017, (accessed March 3, 2020), https://www.sudantribune.com/spip.php?article64174=.

[216] Human Rights Watch received conflicting information as to the identity of the private security firm from sources.

[217] Human Rights Watch phone interview with former UN staff, July 30, 2020.

[218] For background on mobile surveillance and network architecture: Vassilis Prevelakis and Diomidis Spinellis, "The Athens Affair," IEEE Spectrum, Vol. 44, No. 7, https://dl.acm.org/doi/10.1109/MSPEC.2007.376605, (accessed March 4, 2020), doi: 10.1109/MSPEC.2007.376605.

[219] Aubra Anthony, "Call Detail Records: 'Does the NSA Know Where You Are?'" post to "Policy Beta" (blog), Center for Democracy & Technology, July 10, 2013, https://cdt.org/insights/call-detail-records-%E2%80%9Cdoes-the-nsa-know-where-you-are%E2%80%9D/, (accessed March 4, 2020).

other targets or to carry out arrests or pursue prosecutions.[220] NSS officers assigned to telcos have access to the company databases and can monitor specific phone numbers and even make voice audio recordings of conversations.[221]

Physical Surveillance

The agency also employs traditional physical surveillance methods such as monitoring the movements of persons of interest and embedding agents in civil society, NGOs, newspaper printing establishments, in UN and conferences and meetings discussing human rights issues.[222] The targets of surveillance have included human rights defenders, political activists, critics, and opposition and military figures.

The NSS physically surveils individuals by following them, monitoring their movements, and visiting their homes. Human Rights Watch found that among those monitored include released detainees and individuals they suspect of opposing the government, including human rights defenders and journalists. In some cases, individuals who were being surveilled feared arrest and fled the country. For example, a 33-year-old journalist with a local newspaper told Human Rights Watch researchers that he was warned by an NSS officer that he was being followed and that his phone communications were being monitored.[223] He said officials from the NSS and the Army's Tiger Division called him on three occasions and threatened him over the phone with arrest and death.[224] The warnings prompted him to flee the country.

Another journalist in his late 20s with the South Sudan Union of Journalists told researchers that in February 2020 a grey Land Cruiser without number plates trailed his car on two occasions, and men visited his home on three occasions looking for him.[225] He believes they were NSS officers and, fearing arrest, he fled the country. The journalist had spoken openly about the arrest and detention of a fellow journalist in early February.[226]

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[220] Human Rights Watch interviews with former government and senior intelligence official, January 28, 2020 and phone interview academic and NSS former detainee, April 20, 2020; Human Rights Watch phone interviews with former NSS and Military Intelligence Senior Officer February 18, 2019.

[221] Human Rights Watch phone interview with political activist, September 9, 2020.

[222] Office of the High Commissioner for Human Rights, "Report on The Right to Freedom of Opinion and Expression in South Sudan since The July 2016 Crisis," February, 2018, https://www.ohchr.org/Documents/Countries/SS/UNMISS-OHCHR_Freedom_of_Expression.pdf, (accessed May 12, 2019).

[223] Human Rights Watch interview with journalist in exile (name withheld), Nairobi, October 2, 2019.

[224] Human Rights Watch interview with journalist in exile (name withheld), Nairobi, October 2, 2019.

[225] Human Rights Watch phone interview with south Sudanese journalist (name withheld), March 11, 2020.

[226] Ibid.

Coerced Access to Passwords and Devices

In at least two cases documented in this report, NSS officials coerced detainees into giving up their email addresses and passwords while in detention, and then used the information obtained against the detainee.

In the case of Peter Biar Ajak, officers threatened to destroy the computer containing his unfinished PhD thesis if he did not comply.[227] The security agents sent the laptop to Rwanda and South Africa for further analysis and, according to Biar, to plant evidence of a crime.[228] Former NSS officials told Human Rights Watch that the agency has used foreign experts in the past to hack into computers and IT systems to copy, delete, or alter electronic information.[229] In August 2020, the government issued a public report refuting attempted kidnapping allegations by Biar (see section III: enforced disappearances), in which it acknowledged that they had confiscated his electronic devices and "extracted from his computer using a forensic technology…suspicion that he was engaged in intelligence gathering…as well as colluding with violent oppositions."[230] The NSS intended to use this information to charge Biar with the offence of treason.[231]

In August 2018, officers seized the laptop and phones of a detained activist in his mid-30s and coerced him to reveal his laptop and phone passwords during interrogation.[232]

In at least two other cases, NSS officers extracted information from confiscated phones and laptops of detainees because the detainees did not activate password protected access to laptops and phones.[233]

Failure to Exclude Illegally Obtained Phone Tapping Evidence

In December 2013, South Sudan arrested 11 senior SPLM officials (the "former detainees,") and detained them for several days on accusations that they had planned a coup with Riek Machar. On January 28, 2014, seven were released for lack of evidence but four of them including Pagan

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[227] "South Sudan: Release Peace Activist," Human Rights Watch news release, August 9, 2018, https://www.hrw.org/news/2018/08/09/south-sudan-release-peace-activist; Human Rights Watch interview with Peter Biar Ajak February 20, 2020.

[228] Information from relative of Biar's and from submission to the UN working group on enforced disappearances; also corroborated by Peter Biar Ajak in an interview with Human Rights Watch on April 20,2020.

[229] Human Rights Watch interview with former NSS and Military Intelligence senior officer, (name withheld), New York, February 18, 2019.

[230] South Sudan Office of the President, Response to the False allegations of Peter Biar, August 7, 2020. Page 6

[231] Ibid

[232] Human Rights Watch interview with former detainee, Juba, December 6, 2018.

[233] Human Rights Watch interview with former detainee, Kampala, September 11, 2018.

Amum, Majak D'Agoot, Oyai Deng Ajak and Ezekiel Lol Gatkuoth were put on trial in March 2014.[234] The Prosecutor presented an audio recording of a phone conversation between two of the accused as evidence of conspiracy to commit the alleged December 2013 coup to overthrow the government.[235] Defense lawyers objected that the evidence was illegally obtained but the court allowed it.[236] The case was dropped as the government did not have sufficient evidence to substantiate its alleged coup theory, due to public pressure and the ongoing IGAD mediated negotiations between warring parties at the time.[237]

Likewise, John Agau and 16 others accused and tried of fraud and embezzlement in the office of the president in 2015, were found guilty and sentenced on the basis of recorded phone conversations between Agau and two other co-accused.[238] Lawyers who represented clients in this case said they challenged the evidence but the trial court allowed it.[239] In June 2016, Agau and others were found guilty and sentenced to jail terms ranging from seven years to life imprisonment. But in 2017, the court of appeal reversed the judgement, acquitting six of the accused on grounds that "improperly obtained evidence from wiretapping telephone" was unconstitutional and violated the right to privacy

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[234]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.
[235]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.
[236]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.
[237]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.
[238]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.
[239]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.

IV. Obstacles to Justice for NSS abuses

> If no one is following up on your case from outside, you will not even see the light of day.
>
> —26-year-old former detainee, January 2019.[240]

Under international human rights law, states have obligations not only to prohibit and prevent torture but to investigate all reports of torture and other serious human rights violations. They should prosecute suspected perpetrators, provide reparations to victims of serious human rights violations including restitution, rehabilitation and compensation and take measures to prevent future violations. [241] However, in South Sudan victims of NSS' abuses rarely succeed in obtaining any form of redress.

The NSS operates without judicial or meaningful legislative oversight and its officers enjoy legal immunity from criminal and civil procedures for acts committed in connection with their work. Immunities can be waived by the Director of the NSS—or the Minister when the officer concerned is above the rank of 2nd Lt. —if it appears that their actions are not connected to their work.[242]

South Sudan has an obligation under its constitution and international law to protect its people from abuses by security forces.[243] This includes by conducting prompt, impartial and effective investigations into all credible allegations of abuses and ensuring all those found to have violated the law, regardless of position or rank, be prosecuted before competent courts in proceedings that meet international fair trial standards.

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[240]Human Rights Watch Interview with former detainee (name withheld), Juba, January 13, 2019.

[241]Basic Principles and Guidelines on a Right to a remedy, GA Res 60/147 paras 21-25.

[242]NSS Act, section 49.

[243]Transitional Constitution of the Republic of South Sudan, 2011, Bill of Rights; The United Nations (1948) Universal Declaration of Human Rights; International covenant on Civic and Political Rights (ICCPR), adopted December 16, 1966, ratified by South Sudan April 30, 2015; Convention against Torture and its Optional Protocol, ratified by South Sudan April 30, 2015; African Chapter on Human and People's Rights, ratified by South Sudan, October 23, 2013.

Failure to Investigate

Human Rights Watch found that despite widespread and well-documented allegations of serious abuses committed by NSS officials, authorities failed to launch prompt and effective investigations. The South Sudan Commission on Human Rights in their report on NSS abuses found that in August 2018 NSS officers circulated photos of torture victims from the Luri facility on social media and that senior officials were aware of this yet failed to act.[244] The report stated that NSS views that due process rights can be suspended when national security is concerned in order to justify abuses, a position that is unconstitutional and contrary to domestic and international human rights law.[245]

The OHCHR's Commission on Human Rights in South Sudan found that in April 2019, NSS officers dispatched to protect ethnic Luo civilians living in Kuajena, near Wau town, displaced by intercommunal clashes with Dinka cattle keepers, tortured and compelled the civilians to do forced labor.[246] The Commission also received allegations that female IDPs at the site were sexually assaulted. In February 2020, the Commission reported that the NSS refused to investigate the NSS officers involved in this incident despite evidence provided.[247]

A former detainee in his early 30s told Human Rights Watch that he had reported his abuse by an NSS officer including "lashing with a whip" to the director of the Blue House detention site and to ministry of justice officials in late 2018. They came to interrogate him in the office for the director of the detention site, but no action was taken against the officer. He recalled: "I saw him on duty again and again and his behavior did not change."[248]

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[244] South Sudan Human Rights Commission report, "The National Security: Arbitrary arrests, torture and State fear," para 37-41, September 2018.

[245] Ibid, para 41-42.

[246] The Luo also called Jur Chol and Luwo of Bahr el Ghazal are a Nilotic ethnic group that live in the western parts of South Sudan. They are part of a larger group of ethno-linguistically related Luo peoples of East and Central Africa. They speak the Jur language. Para 17, Report of the OHCHR Commission on Human Rights in South Sudan, February 20, 2020. Available, https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A_HRC_43_56.docx, accessed April 16, 2020.

[247] Ibid, para 17.

[248] Human Rights Watch interview with former detainee, Juba, December 12, 2018.

NSS has reportedly disciplined some NSS officers for criminal offences and abuses in the past.[249] But they have made little information available and it remains unclear how many members of the NSS have been investigated, suspended from duty, disciplined or prosecuted or otherwise held to account for torture, enforced disappearances, killings or other serious abuses that have persisted for years including those documented in this report.[250]

Lack of Domestic Redress

Victims of NSS abuses or their families rarely seek redress in courts because they fear retaliation by security forces and do not have trust in the judiciary.[251] One former detainee said she was afraid to sue the NSS for seizing her cars and freezing her accounts since June 2015 in relation to a corruption case: "I love my life, I would never take them to court. I am safe because I am silent, I am moving on with my life and that's what counts."[252]

Four lawyers representing various detainees in 2019 told Human Rights Watch that the NSS often harassed, intimidated and threatened them. One of these lawyers told Human Rights Watch:

> This is nothing new. Today you go to their office, they say the person is not in detention. Tomorrow they man-handle you. The next day they tell you 'my friend if you value your life be careful.' For the sake of the client and for justice we just persist.[253]

Lawyers said access to detainees was only granted on discretionary basis and sometimes depended on the lawyer's prominence or their relationship with the NSS.[254] The NSS did

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[249] Okot Emmanuel, Jale Richard, "NSS sentences its own to death," Eye Radio, March 3, 2020, (accessed May 15, 2020), https://eyeradio.org/nss-sentences-its-own-to-death/, "National security officer sentenced to death for murder," Radio Tamazuj, March 5, 2020, (accessed April 16, 2020), https://radiotamazuj.org/en/news/article/national-security-officer-sentenced-to-death-for-murder.

[250] At least 6 NSS officers were suspended from duty, arrested and detained by the NSS for their role in the torture and extrajudicial killings of Aweil Youth associated with Paul Malong based: South Sudan Human Rights Commission "The National Security: Arbitrary arrests, torture and State fear."

[251] Human Rights Watch phone interview with a lawyer, (name withheld), July 1, 2019; Human Rights Watch interview with family member of detainee, detained in Blue house for three months, Juba, August 22, 2019.

[252] Human Rights Watch Interview with former detainee, (name withheld), Nairobi, November 12, 2019.

[253] Human Rights Watch interview with lawyer, (name withheld), July 1, 2019.

[254] Ibid.

not keep clear records of cases and in some cases claimed to have lost investigation files, making it difficult for lawyers to follow up on cases or for cases to be handled in a timely manner.

In the few cases in which the NSS has brought legal charges against detainees, courts rarely considered the evidence of NSS abuse introduced by defense lawyers. For example, in the trial of SPLA/IO official, James Gatdet Dak, and in the treason trial of Peter Biar and Kerbino Wol and others, the courts refused to allow evidence of abuses of detainees by NSS and to rule on such evidence.[255]

In September 2019, following a request by the Director of the ISB, Akol Koor Kuc, President Kiir issued an order creating a tribunal to try certain crimes by NSS officers.[256] Composed of four senior NSS officials and a high court judge, it was set up to try a number of officers for crimes against the state including the attempted killings of civilians in Yambio, killings of civilians in Luri and murders of fellow officers.[257]

However, authorities have not made any information about the tribunal public. Its chairperson, Maj. Gen. Abud Stephen Thiongkol, was implicated in April 2019 by the UN Panel of Experts in the enforced disappearance and apparent killing of NSS detainees, Dong Samuel Luak and Aggrey Idri and was sanctioned by United States under the Global Magnitysk Human Rights Accountability Act in December 2019.[258]

UN and Regional Options for Accountability

Given the challenges in accessing justice for detainees inside South Sudan, NGOs, families, and victims have used regional and international mechanisms to seek justice.[259] However, these processes have proven extremely slow and are yet to deliver results.

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[255] Human Rights Watch interview with Lawyer Monyluak Alor Kuol, Juba, June 25, 2019 and August 22, 2019; Also see Judgement of the Special court for Crimes Against the State-Juba, Criminal Case number 1/A G / 2019, June 11, 2019.

[256] Presidential Decree, Republican Order No.21/2019 issued September 27, 2019.

[257] Section 77 read together with Schedule III, NSS Act, 2014; Official Correspondence between the Director General of ISB, Akol Koor Kuc and Minister for internal security Mamur Obote requesting presidential approval for the establishment of a Service Standing Tribunal for the Trial of non-summary offences, August 10, 2019. On file with Human Rights Watch.

[258] U.S Department of Treasury, "Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses," December 10, 2019, https://home.treasury.gov/news/press-releases/sm852, (accessed March 20, 2020).

[259] In April 2017, an NGOs filed a petition before the UN Working Group on Arbitrary arrests and detention with regard to the disappearance of Dong Samuel Luak and Aggrey Ezbon Idri. Through its Minister for Information and the Presidential

In February 2018, a South Sudanese lawyer filed a communication before the African Commission on Human and People's Rights (ACHPR) on the disappearance of Dong Samuel Luak and Aggrey Idri, seeking the Commission to instruct South Sudan to undertake effective investigations and reveal the fate and whereabouts of Dong and Aggrey.[260] At time of writing, the ACHPR had yet to issue a communication on the case. Two NGOs, the Pan African Lawyers Union and Hope for Humanity Africa, lodged a petition at the East African Court of Justice (EACJ) on July 2, 2019, requesting the court to order Kenya and South Sudan to conduct thorough investigations, identifying perpetrators and making findings public.[261] As of writing, the petition is pending.

In October 2018, the Pan African Lawyers Union filed a petition before the East African Court of Justice challenging the arbitrary arrest and detention of businessman Kerbino Wol.[262] By the time Wol was sentenced for treason and insurgency and later released from prison in January 2020 by a Presidential decree, the petition was still at its preliminary stages at the court.[263] As discussed in section III on extrajudicial killings by NSS, Wol was killed during a government operation by army and NSS forces in Rumbek area on June 14.[264] At time of writing the court had yet to issue interim reliefs on the detention of Wol or set a hearing date to hear the merits of the case.

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spokesperson, South Sudan has always denied the responsibility for the abduction and enforced disappearance of the two men.

[260]The ACHPR was established under the African Charter for Human and Peoples' Rights as a quasi-judicial mechanism to oversee state compliance with the Charter, including through adjudication of cases, and to promote and protect human rights on the continent. For more see: https://www.achpr.org/; "Lawyer petitions African court over two S. Sudan activists," *Sudan Tribune*, February 28, 2018, (accessed July 23, 2019), http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=64839.

[261]"South Sudan and Kenya sued over killing of two activists," *Radio Tamazuj*, August 2, 2019, (accessed 31 January 2019), https://radiotamazuj.org/en/news/article/south-sudan-and-kenya-sued-over-killing-of-two-activists.

[262]Pan African Lawyers Union, "PALU sues the Government of South Sudan at the East African Court of Justice regarding the arbitrary arrest of Mr. Kerbino Wol Agok," press release, October 12, 2018, https://lawyersofafrica.org/wp-content/uploads/2018/10/PALU-SouthSudan.pdf, (accessed February 21, 2020).

[263] Pan African Lawyers Union, "PALU sues the Government of South Sudan at the East African Court of Justice regarding the arbitrary arrest of Mr. Kerbino Wol Agok," press release, October 12, 2018, https://lawyersofafrica.org/wp-content/uploads/2018/10/PALU-SouthSudan.pdf (accessed February 21, 2019); "South Sudan: Lawyers Appeal Detainees' Convictions, Human Rights Watch news release, June 26, 2019, https://www.hrw.org/news/2019/06/26/lawyers-appeal-detainees-convictions-south-sudan.[263] Denis Dumo, "Prominent South Sudan economist, 30 others pardoned by President Kiir," *Reuters*, January 2, 2020, (accessed February 20, 2020), https://www.reuters.com/article/us-southsudan-politics/prominent-south-sudan-economist-30-others-pardoned-by-president-kiir-idUSKBN1Z11AH.

[264]"Kerbino Wol Killed in Action: SSPDF," *Eye Radio*. June 15, 2020, (accessed July 21, 2020), https://eyeradio.org/kerbino-wol-agok-killed-in-action-sspdf/.

An international lawyer representing Peter Biar Ajak, filed an urgent appeal before the UN special mechanisms in in January 2019 and in June 2019 requesting that they investigate his detention and call for his release on grounds that it violated international law.[265] Biar was released through a Presidential pardon along with 30 others in January 2020.[266]

The Future of the NSS

The Agreement on the Resolution of Conflict in South Sudan signed in 2015 and the "revitalized" agreement of 2018 (R-ARCSS) both provide that the National Constitutional Amendment Commission (NCAC) should conduct a review of security sector laws including the SPLA Act, the Police Act and the National Security Service Act.

In June 2019, the NCAC submitted amendments to these laws to the Ministry of Justice for deliberations and presentation before the National Assembly.[267] The amendment to the NSS Act restricts the NSS powers of arrest to "emergency circumstances" and requires agents to "hand [the suspect] over to the nearest police" and to obtain a court warrant to conduct any surveillance.[268] It also gives courts the power to review the arrest and detention of suspects within 24 hours and "to inspect suspected places of detention."[269] Human Rights Watch urges reforms to the NSS to include limiting its role to the collection of data and providing analysis and ensuring it is subordinate to the constitution, to civilian leadership and the rule of law. They should also strengthen judicial oversight by making

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[265]Jared Genser, Urgent Action Appeal to UN Special Rapporteurs, Press Statement by Perseus Strategies, January 29, 2019, https://www.perseus-strategies.com/wp-content/uploads/2019/06/Press-Release_Ajak-WGAD-Petition-6.12.19.pdf, (accessed February 21, 2020); UNWAGD Petition available: https://www.perseus-strategies.com/wp-content/uploads/2019/06/UNWGAD-Petition_-Peter-Biar-Ajak_6.12.19.pdf, (accessed February 20, 2020).

[266]Denis Dumo, "Prominent South Sudan economist, 30 others pardoned by President Kiir," *Reuters*, January 2, 2020, (accessed February 20, 2020), https://www.reuters.com/article/us-southsudan-politics/prominent-south-sudan-economist-30-others-pardoned-by-president-kiir-idUSKBN1Z11AH.

[267] Reconstituted Joint Monitoring and Evaluation Commission (RJMEC), "RJMEC Quarterly report to IGAD on the implementation of R-ARCSS from 1st April 2019 to 30th June" https://www.jmecsouthsudan.com/index.php/reports/rjmec-quarterly-reports/143-rjmec-quarterly-report-to-igad-on-the-status-of-implementation-of-the-r-arcss-from-1st-april-2019-to-30th-june-2019/file", para 27-30;

"Amended NSS bill to check abuse of power," *Radiotamazuj*, June 19, 2019, (accessed July 15, 2019), https://radiotamazuj.org/en/news/article/amended-nss-bill-to-check-abuse-of-power-ncac.In January 2019 the NCAC submitted drafts of the SPLA Act , the Police Act and Fire Brigade Act to the Minister for Justice. See NCAC submits Security Bills to Minister of Justice and Constitutional Affairs," Reconstituted Joint Monitoring and Evaluation Commission (RJMEC), January 25, 2018.

[268]NSS Act, 2014 (Amendment Bill 2019), section 10.

[269]NSS Act, 2014 (Amendment Bill 2019), section 34.

clear that warrants are required for all acts by the NSS that have an effect on protected rights.[270]

At time of writing, no progress has been made in passing the amendments into law and they are still pending before the national legislature.

Parliamentary oversight over NSS functions should be strengthened including by requiring the NSS to report to parliament more frequently than the current annual report. The NSS should also be subject to inspection by an independent body that can compel the production of evidence, access to all files, premises, personnel, archives and registers, as necessary for effective oversight.

Surveillance Reform

South Sudan should enact appropriate limitations and protections on the NSS surveillance powers. These should include legal safeguards to limit the nature, scope and duration of surveillance to ensure that it is necessary and proportionate to achieve a legitimate aim. The government should also require intelligence and law enforcement agencies to seek approval to conduct surveillance activities from an independent judicial authority. An independent civilian oversight agency, with the participation of civil society, should be set up to conduct regular and periodic reviews of these surveillance activities to ensure that they comply with the government's obligations to respect the right to privacy.

The Complaints Board

The NSS has not established the Complaints Board envisioned by the Act. Reforms should be made to the structure and composition of the Board including measures to exclude employees of the NSS from serving on the board and to specify that the board is obligated

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[270] While we recommend that police powers be excluded from the NSS mandate, we are particularly concerned that the NSS Act (2014) and proposed amendment do not provide for effective judicial oversight of these powers. They also don't for judicial authorization and review of intelligence gathering activities such as interception of communications and surveillance. While Section 55 of the Act describes the process for obtaining a judicial warrant, it does not clearly specify when a warrant is required. It includes a vague provision stating that a warrant should be sought by the NSS when there are "reasonable grounds to believe that a warrant is required to enable the Service to perform any of its functions under this Act…"

to exercise its functions in complete independence from the NSS.[271] A representative of the South Sudan Human Rights Commission should sit on the board. Section 21(4) provides that the Complaints Board may recommend "appropriate disciplinary action" against individuals found to have committed an infraction but does not provide for any additional remedies.

Disciplinary actions alone may not be sufficient to guarantee the right of a victim to a remedy. The Complaints Board should be empowered to refer cases to the public prosecutor to pursue criminal charges where the facts reveal a crime. It should also have the power to recommend reparation, such as compensation, for example in cases of wrongful arrest and detention. The law should also explicitly specify that bringing a complaint to the Complaints Board does not prejudice the rights of victims to seek redress through criminal and civil remedies in regular courts.

The law should also make provisions for victim and witness protection, specify a timeframe for dealing with complaints, and require publication of an annual report with a summary of complaints and policy recommendations arising from the work of the board.

Individual Criminal Responsibility for NSS abuses

The human rights violations described in this report – arbitrary arrests and detention, unlawful use of force, ill-treatment and torture, unlawful killings and enforced disappearances – at the hands of South Sudan's vast and draconian national security agency, are serious crimes under national and international law.

In war time the unlawful detentions of civilians, abuse of detainees, enforced disappearances and extrajudicial killings, would constitute war crimes; given the scale of NSS abuses and evidence that authorities consider them an accepted part of how NSS operates, they could also amount to crimes against humanity. Without accountability for widespread abuses committed by NSS, the cycle of violence and abuses will continue. The 2015 Agreement on the Resolution of Conflict in South Sudan (ARCISS) and 2018 Revitalized-ARCSS provides for three accountability mechanisms: the Commission for Truth Reconciliation and Healing (CTRH), a Hybrid court for South Sudan and a

[271] NSS Act, section 20

Compensation and Reparations Authority.[272] These envisioned mechanisms have potential to help stem the cycle of violence and bring needed truth and redress to victims of abuse and their families.

South Sudan's government has failed to move ahead with any of these mechanisms. Given the lack of genuine, independent, and impartial domestic investigations and prosecutions of crimes under international law and other serious violations of international humanitarian and human rights law, the hybrid court remains the most viable option for ensuring criminal accountability and achieving justice for atrocity crimes committed during the conflict. Human Rights Watch has called on the AU, South Sudan government and other stakeholders to set a strict timetable for the establishment of the hybrid court.[273] In the face of continued inaction by South Sudanese authorities on the court, the AU Commission should move ahead unilaterally with establishing the court in order to see victims have access to justice for atrocity crimes that have been committed.

The Minister of Interior, Mamur Obote oversees the administration of the National Security Service and supervises the Director Generals of the GSB and the ISB.[274] He has powers to make directives over the employment, suspension and discharge of officers as well as command, control and discipline of the NSS including employment, suspension and discharge of officers.[275]

The director generals of the Internal Security Bureau, Akol Koor Kuc and of the General or External Security Bureau, Thomas Duoth Guet share responsibility for the actions of the National Security Service.[276] Mamur Obote, Akol Koor Kuc and Thomas Duoth Guet, all oversee administration and operations of the NSS including their detention facilities.[277]

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[272] See Chapter V, ARCISS (2015) and Chapter V, R-ARCSS (2018)

[273] "South Sudan/AU: Set Meeting on War Crimes Court," Human Rights Watch news release, October 9, 2019, https://www.hrw.org/news/2019/10/09/south-sudan/au-set-meeting-war-crimes-court; Human Rights Watch letter to South Sudanese authorities, September 30, 2019; https://www.hrw.org/sites/default/files/supporting_resources/hrw_letter_to_ss_authorities.pdf.

[274] NSS Act, section 14 (6) and (7).

[275] NSS Act, section 14 (7), (8).

[276] Transitional Constitution of the Republic of South Sudan, art 159 (2).

[277] NSS Act, section 15.

While it is beyond the scope of this report to establish the extent to which any or all of the abuses by the NSS have been carried out on the direct orders of any of these men, it is clear that despite knowledge of the violations, they have failed to end systemic violations of human rights by the NSS or ensure investigations and criminal accountability for officers implicated in the violations. They should be investigated for their role in perpetuating serious violations and held to account.

The UN Panel of Experts on South Sudan and the Commission on Human Rights in South Sudan should also investigate the potential criminal responsibility of the three men, both with respect to their direct responsibility and on the basis of command responsibility.

V. Applicable Legal Standards

South Sudan is bound by customary international human rights and humanitarian laws which include norms that prohibit arbitrary arrests, detentions and unfair trials, ill-treatment of detainees, enforced disappearances and extrajudicial killings. Those norms also require that violations are effectively investigated, prosecuted as appropriate, and that victims have access to a remedy. South Sudan also has treaty obligations which reflect these norms. On October 31, 2013 the South Sudan government submitted a list of human rights pledges to the United Nations, including that it would ratify several core international human rights instruments including:

- International Covenant on Civil and Political Rights (ICCPR), 1966,
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966,
- African Charter on Human and Peoples' Rights (ACHPR), 1981,
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979,
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965,
- Convention on the Rights of the Child (CRC), 1989,
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), 1984

South Sudan ratified the ACHPR on October 23, 2013 but has yet to deposit its instrument of ratification with the African Union. It also ratified the CRC on January 23, 2015 and CAT and CEDAW on April 30, 2015. On June 7, 2019, the Transitional National Legislative Assembly (TNLA) approved ratification of the ICCPR and ICESCR, but the finalization at the international level has yet to take place.

Prohibition on Arbitrary Detention

Article 9 of the ICCPR specifies, "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law " and Article 6 of the ACHPR provides, "No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

According to the United Nations Working Group on Arbitrary Detention, "deprivation of liberty is arbitrary … [w]hen it is clearly impossible to invoke any legal basis justifying the deprivation of liberty." In order for an arrest not to be arbitrary it is not enough to follow the procedures of the law, such as issuing formal but unsubstantiated charges: as the UN Human Rights Committee explained, "arbitrariness" is not to be equated with "against the law," but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."[278] The UN Working Group has pointed out that the practice of arresting persons without a warrant when domestic law requires it, not informing them of the reasons for their arrest, and not filing charges against them within a reasonable period of time also renders their detention arbitrary, in contravention of articles 9 and 14 of the ICCPR.

UN bodies have repeatedly condemned secret and incommunicado detention as a serious rights violation that should be proscribed by law. Incommunicado detention is generally understood as a situation of detention in which an individual is denied access to family members, an attorney, or an independent physician.

Mistreatment of Persons in Custody

The mistreatment of detained persons is illegal under any circumstances according to both international humanitarian and human rights law. International humanitarian law prohibits murder, mutilation, cruel treatment, and torture; outrages upon personal dignity, including humiliating and degrading treatment. Torture, according to CAT which South Sudan has ratified, is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public

[278] Human Rights Committee General Comment on article 9, liberty and security of person, CCPR/C/GC/35 adopted December 16, 2014, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=11.

official or other person acting in an official capacity."[279] Torture and all other forms of cruel, inhuman or degrading treatment or punishment is prohibited in all circumstances.[280]

Under international law, states are obligated to ensure that any statement "made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." States must ensure that, even without an official complaint, allegations of torture are promptly, impartially, independently, and thoroughly investigated, that victims have access to an effective remedy and receive reparation, and that those responsible are brought to justice.

Sexual Violence

Rape and other forms of sexual violence violate international humanitarian and human rights law, which contain protections from rape and sexual assault as forms of torture and other ill-treatment, and as discrimination based on sex. International human rights bodies and tribunals have confirmed that rape in detention constitutes torture. The Committee on the Elimination of Discrimination against Women, which monitors state compliance with CEDAW, has enumerated a wide range of obligations for states related to ending sexual violence, including ensuring appropriate treatment for victims in the justice system, counseling and support services, and medical and psychological assistance to victims.

Rights in Detention

Under international law, persons who are deprived of their liberty must be informed at the time of arrest about the reason for the arrest and promptly of any charges against them. Under international human rights law, arrest and detention must be subject to prompt judicial review and a person deprived of liberty has the right to *habeas corpus*, meaning

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[279] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention Against Torture) adopted December 10, 1984, G.A. Res. 39/46, entered into force June 26, 1987. The Human Rights Committee in its General Comment no. 20 under the ICCPR (UN Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992) also underlines that, "the prohibition [of torture] in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim." The Committee also emphasized that protection from torture encompasses the obligation of states to provide reparation to victims of torture and other ill-treatment.

[280] Article 18 of South Sudan's Bill of Rights restates the absolute ban on torture and cruel, inhuman, and degrading treatment.

that they can request a court to order a review of the lawfulness of their detention and release, if the detention is not lawful.

Based on all relevant human rights norms, Human Rights Watch's position is that anyone detained by state authorities for whatever reason should, within 48 hours from the start of their detention, be physically brought before an independent judicial officer to be allowed to challenge the legality of their detention, barring extraordinary circumstances that make it impossible to do so.

A detained person who has been charged with an offence is entitled to a trial in reasonable time. A detainee has the right to defend themselves through legal representation of their choosing at all stages of legal proceedings, including prior and during any questioning.

Detainees should be held only in facilities officially acknowledged as places of detention. States are obliged to ensure that detainees have access to necessities and services that satisfy their basic needs, including appropriate provisions for living accommodation, personal hygiene, food, and medical service. Every detainee has the right to health, including healthcare and adequate conditions of detention.

All detainees are to be given all reasonable facilities to communicate with and receive visits from family and friends. The former UN Special Rapporteur on Torture has called for authorities to inform relatives of the arrest and place of detention within 18 hours. The Principles on Fair Trial in Africa state that any confession or admission made during incommunicado detention should be considered as having been obtained by coercion, and therefore must be excluded from evidence. The former UN Special Rapporteur on torture has also noted that "torture is most frequently practiced during incommunicado detention" and that "[i]ncommunicado detention should be made illegal."

Right to Privacy and Protection Against Illegal Surveillance

Article 17(1) of the ICCPR establishes the right against "arbitrary or unlawful interference" with privacy. A number of international bodies and experts – including the Human Rights Committee, the U.N. High Commissioner for Human Rights, and various U.N. Special Rapporteurs – have found that an interference with privacy is non-arbitrary only if it is

necessary to achieve a legitimate aim, proportionate to the aim sought.[281] At a minimum, this requires procedural safeguards such as independent and impartial judicial review and oversight of surveillance operations to ensure they do not arbitrarily interfere with privacy.[282]

Prohibition on Enforced Disappearances

South Sudan has yet to ratify the International Convention on the Protection on All Persons From Enforced Disappearances (ICCPED), but enforced disappearances are prohibited under international law and violate the rights to life, to liberty and security of the person as well as the right not to be subjected to torture or cruel, human and degrading treatment enshrined in the Transitional Constitution and guaranteed under treaties such as the ICCPR which South Sudan is party to.

ICCPED describes an enforced disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

Investigations and Accountability

Articles 2(1) and 2(3) of the ICCPR requires State Parties to "undertake to respect and ensure" and provide effective remedies for violations of the rights in the Covenant. The UN Human Rights has emphasized that the remedies must be "accessible and effective

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[281] U.N. Human Rights Comm., Communication No. 488/1992, Toonan v. Australia, ¶ 8.3, U.N. Doc. CCPR/C/50/D/488/1992 (Mar. 31, 1994); U.N. Human Rights Comm., Communications Nos. 1482/2006, ¶¶ 10.1, 10.2, U.N. Doc. CCPR/C/93/D/1482/2006 (Sept. 2, 2008), and 903/1999, para 7.3, U.N. Doc. CCPR/C/82/D/903/1999 (Nov. 1, 2004); U.N. High Comm'r for Human Rights, The Right to Privacy in the Digital Age, ¶¶ 21-23, U.N. Doc. A/HRC/27/37 (June 30, 2014); Human Rights Council, Report of the Special Rapporteur on the right to privacy, Joseph A. Cannataci, ¶ 2, U.N. Doc. A/HRC/31/64 (Mar. 8, 2016); Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Scheinin, ¶¶ 16-19, U.N. Doc. A/HRC/13/37 (Dec. 28, 2009).

[282] UN Human Rights Council (HRC), Report of the Special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, (Hereinafter, "Report of the special rapporteur on surveillance"), U.N. Doc A/HRC/23/40, April 17, 2013.

remedies" and take into account "the special vulnerability of certain categories of person." The committee has also told state parties that they have "to allow the victims of human rights violations to find out the truth in regard to acts committed, to know who the perpetrators of such acts are and to obtain appropriate compensation."

Further, the General Assembly of the United Nations adopted a set of principles relating to states' obligations to the victims of serious violations of international human rights law that makes clear that states are obligated to "[i]nvestigate violations" of international human rights law "thoroughly and impartially, and where appropriate, take action against those allegedly responsible in accordance with domestic and international law." States also have "the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for violations."

Crimes Against Humanity

Crimes against humanity can be committed during peace or armed conflict and consist of acts committed on a widespread or systematic basis as part of an attack on a civilian population, meaning there is some degree of planning or policy to commit the crime. Such acts include murder and "other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health." Liability is not limited to individuals who carried out the acts, but also those who order, assist, or are otherwise complicit in the crimes. Under the principle of command responsibility, military and civilian officials up the chain of command can be held criminally responsible for crimes committed by their subordinates when they knew or should have known that such crimes were being committed and failed to take reasonable measures to stop them.

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Annex I: HRW Letter to South Sudan Minister for National Security

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July 1, 2020

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Hon.Gen. Obuto Mamur Mete
Minister for National Security,
Office of the President
Republic of South Sudan

Transmitted via email to: Hon. Jalpan Obac, Director of Legal Administration, Internal Security Bureau
[redacted]

Re: Role of the National Security Service in South Sudan

Dear Honorable Minister,

I am writing on behalf of Human Rights Watch to request for your comments regarding research Human Rights Watch has carried out on the role of the National Security Service, NSS, in South Sudan.

As you may know, Human Rights Watch is an independent organization that monitors human rights and reports in more than 90 countries around the world. We produce reports on our findings to raise awareness about human rights issues and to promote policy recommendations for change. We have documented human rights developments throughout Sudan including Southern Sudan for more than 20 years and have reported on human rights concerns in South Sudan since its independence.

Since September 2018, Human Rights Watch has been investigating the role of the National Security Service and documenting the human rights abuses by NSS officials. Our findings are based on 46 interviews with former detainees held at various facilities ran by the NSS at the Blue House, the Operations Division at Riverside, the External Security Bureau facility at Hai Jalaba and various other detention centres in Juba and other towns. We also interviewed human rights activists in South Sudan and in exile, journalists, analysts, opposition party members, civil servants and

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former military and security/intelligence personnel, family members of NSS detainees and representatives of international groups.

In December 2018, March, August and December 2019 as well as January 2020, Human Rights Watch made written meeting requests to the Director General of the ISB and both oral and written requests to the Director of Legal Administration of the ISB but to date these meeting requests have gone unanswered.

As we finalize our report on our findings and recommendations to your government, we are requesting another opportunity to engage with your ministry and the NSS. We are, by this letter, sharing a summary of our findings and would appreciate your response to several questions attached in the annex. Our findings include the following allegations:

Violations of Due Process Rights:

- That NSS officers have committed numerous abuses, including arbitrary arrests, detentions, and ill-treatment of detainees, enforced disappearances, killings, and violations of freedoms of expression and assembly and privacy rights.
- That arrests are often carried out without warrants or legal grounds and detainees were held incommunicado for long periods of time, years even, without charge or being brought to trial. Detainees were often held on accusations of supporting rebels, petty offences, fraud, or at the behest of individuals seeking revenge or personal vendetta.
- Detainees were frequently released without ever being interrogated, charged or brought before a court. Some were released as "prisoners of war and political detainees" even though they were activists or petty criminals and did not fit this criterion; others paid money to be released, others were released due to the influence of senior government and military officials.

Poor detention conditions and Torture and Ill-treatment of detainees:

- Detainees interviewed were subjected to, and witnessed, various types of torture and ill-treatment. They told of beatings, being pierced with needles, having hot plastic dripped on them, being hung upside down from a rope, shocked with electricity, and raped.
- Detainees have died in custody because of poor conditions, medical negligence, torture and extrajudicial killings by officers.
- Detainees interviewed were often held in congested cells with inadequate access to food, water, exercise, and medical care. While most of the detainees we spoke to were adult males, we found evidence of arrest and detention of women and children as well as of people with mental disabilities.

Unlawful Surveillance:

- NSS conducts unlawful physical and technological surveillance and used information gained to support arrests, detention, and prosecutions.
- NSS has reached across borders. It has harassed, intimidated, and abducted people in Kenya and Uganda on accusations of various crimes or whom they deemed to oppose the government, sometimes with the support of authorities from these countries. These operations were carried out without warrants or extradition orders.

Lack of Accountability:

- We found that even where abuses are reported or are made public, the NSS rarely took disciplinary action, launched investigation or criminal prosecutions on officers accused or suspected of abuses.

Human Rights Watch is committed to producing material that is well informed and objective. We have therefore attached several questions about the above findings, and we would appreciate your response or comments by Friday, July 17, 2020, to enable us include information you provide in our forthcoming report.

Thank you for your consideration and we look forward to your responses to our inquiries. We would also welcome the opportunity to discuss these issues with you further over the phone or other medium. Should you have any questions, please do not hesitate to contact our East Africa director, Ms. Jehanne Henry on phone+[redacted] or email [redacted].

Sincerely,

Mausi Segun
Executive Director, Africa Division

CC: Lt. Gen. Akol Kur Kooc, Director General, Internal Security Bureau, [redacted]

CC: Lt. Gen. Thomas Duoth Guet, Director General, General Security Bureau, [redacted]

Annex II: HRW Letter to Kenyan Authorities

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HUMAN RIGHTS WATCH

HRW.org

August 31, 2020

To:

Ministry of Interior & Coordination of National Government
Harambee House, Harambee Avenue
P.O Box 30510,00100
Nairobi

Office of the Inspector General
Taifa Road, Jogoo House "A" 4th Floor
P.O Box 44249-00100
Nairobi, Kenya

Transmitted via Email: [redacted];

Your Excellencies,

Re: Role of Kenyan authorities in harassment and disappearance of South Sudanese government critics

I am writing on behalf of Human Rights Watch to share our findings from research on the role of the National Security Service in South Sudan and in neighboring countries including Kenya.

As you may know, Human Rights Watch is an independent organization that monitors human rights in more than 90 countries around the world. We produce reports on our findings to raise awareness about human rights issues and to promote policy recommendations for change. We have documented human rights developments throughout the Sudans for more than 20 years and have reported on human rights concerns in South Sudan since its independence.

Our findings are based on interviews with former detainees and families of victims of abuses by National Security Service conducted between September 2018 - May 2020.

We have documented four cases which indicate that Kenyan authorities have harassed, intimidated and forcefully returned South Sudanese from Kenya to South Sudan. Some of these operations were carried out unlawfully, without warrants or extradition orders.

The forced return or expulsion of South Sudanese refugees or asylum seekers from host countries to South Sudan where they face a high risk of torture and other abuses, violates international obligations under UN and AU refugee conventions.

These cases include:

- James Gatdet Dak, spokesperson of Riek Machar and the chairperson of Sudan People's Liberation Movement in Opposition (SPLM/A-IO), a recognized refugee in Kenya by UNHCR, as deported from Kenya to South Sudan on November 3, 2016 to South Sudan. Upon his arrival in South Sudan he was detained by the National Security Service at the Blue House detention facility in solitary confinement for almost two years. In February 2018, a South Sudanese High Court convicted him of treason, publishing false information prejudicial to South Sudan and insulting or undermining the authority of the president and sentenced him to death by hanging. He was pardoned by President Kiir in February 2019.

- Marko Lokidor Lochapo, an official with the SPLA/IO was abducted from the Kakuma refugee camp by Kenyan police at the behest of South Sudanese authorities on December 29, 2017. His family members and SPLA/IO officials reported his abduction to Kenyan police in Kakuma immediately following his disappearance. He was driven over land for three days to Kapoeta in South Sudan through Lokichogio and Nadapal. He was then flown to Juba by plane chartered by South Sudan's NSS. He was detained without charge in the Blue House detention facility in Juba until October 25, 2018.

- Dong Samuel Luak, a renowned South Sudanese human rights lawyer and activist, and Aggrey Ezbon Idri, a vocal government critic and member of the SPLA/M-IO, were abducted off the streets of Nairobi on January 23 and 24, 2017, respectively by persons believed to be affiliated with South Sudan's and Kenya's security agencies. Human Rights Watch, Amnesty International, domestic groups and other actors have over the years called on Kenya and South Sudan to conduct effective investigations into the disappearance of the two men and hold those responsible to account. On January 27, 2017, a Kenyan high court ordered Kenyan Police to thoroughly investigate the "Criminal abduction" of the two men. On January 17, 2019, a Kenyan High Court ended its 24-month oversight of the Kenyan police investigation initiated immediately after the disappearance of both men in Nairobi. According to a 2019 report issued by the UN Panel of Experts on South Sudan, the men were transported to South Sudan on a commercial airline, hired with the support of the South Sudanese embassy in Kenya on January 27, 2017. The report also stated that the two men were highly possibly killed on January 30, 2017 by NSS officials in Juba.

The patterns in these cases indicate that Kenyan authorities knew and participated in or should have known that the forceful rendition of these individuals took place.

Human Rights Watch is committed to producing material that is well informed and objective. We have therefore listed questions below about the above findings to enable us include your responses in our forthcoming report.

1. Please respond to the allegations that your government has collaborated with South Sudan's government to take action against South Sudanese citizens in Kenya, who have expressed dissent or criticism of South Sudan's government.

2. Please clarify the circumstances and grounds under which James Gatdet Dak, Marko Lokidor Lochapo, Dong Samuel Luak and Aggrey Ezbon Idri, were removed from Kenya including what laws, if any were broken in these removals?

3. Please provide any details of any investigations undertaken or underway into the above cases including how many Kenyan officials have been investigated, suspended from duty, disciplined, or prosecuted for abuses, and what are their ranks and titles? If possible, we would appreciate the details of who conducted any investigations and the outcome of the inquiry.

4. What arrangements or understanding does the Kenyan government have with South Sudan regarding requests to forcibly return South Sudanese citizens to South Sudan, including any arrangements the Kenyan government has permitting South Sudan's National Security Service to operate in Kenya?

Thank you for your consideration and we look forward to your responses by September 14, 2020 so that we can include them in our report. We would also welcome the opportunity to discuss these issues with you further over the phone or other medium.

Should you have any questions, please do not hesitate to contact our South Sudan researcher Nyagoah Pur on email ([redacted]) or phone ([redacted]).

Yours sincerely,

Johanne Henry

Jehanne Henry
Director, East Africa
Human Rights Watch

CC: Ministry of Foreign Affairs and International Trade, [redacted]

Annex III: HRW Letter to Ugandan Authorities

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Bruce Rabb, *Secretary*

HUMAN RIGHTS WATCH

HRW.org

August 31, 2020

To:

Ministry of Internal Affairs
Plot 75, Jinja rd
P. O. Box 7191
Kampala

Office of the Prime minister, Department of Refugee Affairs
Plot 9-11, Apollo Kaggwa Road
P.O. Box 341
Kampala, Uganda

Your Excellencies,

Transmitted via Email: [redacted];

Re: Role of Ugandan authorities in harassment and disappearance of South Sudanese government critics

I am writing on behalf of Human Rights Watch to share our findings from research on the role of the National Security Service in South Sudan and in neighboring countries including in Uganda.

As you may know, Human Rights Watch is an independent organization that monitors human rights and reports in more than 90 countries around the world. We produce reports on our findings to raise awareness about human rights issues and to promote policy recommendations for change. We have documented human rights developments throughout the Sudans for more than 20 years and have reported on human rights concerns in South Sudan since its independence.

Our findings are based on interviews with former detainees and families of victims of abuses by South Sudan's National Security Service conducted between September 2018-May 2020. They indicate that Ugandan authorities sometimes at the behest of South Sudanese authorities have harassed, intimidated, and renditioned or abducted South Sudanese from Uganda to South Sudan on

accusations that they have committed various crimes or because they are deemed to oppose the government. These operations were carried out without warrants or extradition orders.

One of these cases include:

- In May 15, 2017, [redacted], a 27-year-old South Sudanese university student and refugee living in Kiryandogo was arrested and detained by seven armed Ugandan police officers from the Directorate of Criminal Investigation and Crime Intelligence at around 9pm. He was taken to a police station in Kiryandongo where officers told him that he was "wanted by the government of South Sudan" because he committed murder there, and that he was accused of being a rebel and carrying a pistol, charges he denied. Officers told him that South Sudan had requested his extradition but he was not shown a warrant for his arrest or an extradition order. Eight days after his arrest, he was transported from Kiryandongo to Entebbe by road and to Nimule, South Sudan via a plane chartered by the National Security Service of South Sudan. He was then detained by the NSS without charge or trial until his release in November 2018.

Human Rights Watch is committed to producing material that is well informed and objective. We would like to request your response to our findings by September 4, so as to enable us include information you provide in our forthcoming report.

1. Please respond to the allegation that your government unlawfully removed the [redacted] from Ugandan territory and clarify the circumstances and grounds under which the above-mentioned individual was removed from Uganda including whether there was a valid warrant of arrest or extradition order? If possible, we would appreciate a copy of such documentation.

2. What arrangements or understanding the Ugandan authorities have with South Sudan regarding requests to forcibly return South Sudanese citizens to South Sudan, including any arrangements the Ugandan authorities have permitting South Sudan's National Security Service to operate on Ugandan territory?

3. Is it legal under Uganda law for a person living in Uganda to be forcibly expelled from Uganda to South Sudan without going through an appropriate procedure before an independent court to determine the legality of such an expulsion including whether the expulsion would violate any human rights norms? If so under what circumstances would it be legal?

4. Have you received complaints about and/or investigated reports of harassment of South Sudanese activists, refugees and asylum seekers by Ugandan authorities? Please provide details of any investigations undertaken or underway into the above case including how many Uganda officials have been investigated, suspended from duty, disciplined, or prosecuted, and what are their ranks and titles? If possible, we would appreciate the details of the who conducted the investigation and the outcome of the inquiry.

Thank you for your consideration and we look forward to your responses to our inquiries by September 14, 2020 so that we can include them in our report. We would also welcome the opportunity to discuss these issues with you further over the phone or other medium.

Should you have any questions, please do not hesitate to contact our South Sudan researcher Nyagoah Pur on email ([redacted]).

Yours sincerely,

Jehanne Henry

Jehanne Henry
East Africa Director
Human Rights Watch

CC: Ministry of Foreign Affairs, [redacted]
CC: Gerald Menhya, Acting commissioner for refugees, [redacted]
CC: Ndahiriwe Innocent, legal advisor, OPM, [redacted]

Annex IV: Letter from Kenyan Authorities

OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI – KENYA

Telegraphic Address: "IG, NPS"
Telephone: [redacted]
When replying please quote

Jogoo House 'A'
P O Box 44249 – 00100
NAIROBI

NPS/IG/SEC/2/11/4/VOL.V/41

19th October, 2020

Jehanne Henry
Director, East Africa
Human Rights Watch

ROLE OF KENYAN AUTHORITIES IN HARASSMENT AND DISAPPEARANCE OF SOUTH SUDANESE GOVERNMENT CRITICS

Your email to us dated 31st August, 2020 on the above subject refers.

We wish to inform you that records held in various police stations in the country do not contain any reports of harassment and/or disappearance of South Sudan Government's critics in Kenya.

However, a report was made at Kakuma Police Station on 29th December, 2017 that one Marko Lochipia had been abducted at around 17:00 hours by unknown people. The incident report was made by his wife Lucia Namboya. Investigations into the incident are ongoing and the case is still pending.

Titi Ayiera
For: INSPECTOR GENERAL
NATIONAL POLICE SERVICE

Annex V: HRW Letter to South Sudan National Security Service, March 2019

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HUMAN RIGHTS WATCH

HRW.org

Akol Kur Kooc,
Director of Internal Security Bureau,
National Security Service Headquarters,
Jebel neighborhood,
Republic of South Sudan

13 March 2019

CC: Jalpan Obaj, Director of Legal Affairs, ISB

Dear Honorable Director,

RE: REQUEST FOR APPOINTMENT

We write to request an appointment with you or your representative.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses in over 90 countries worldwide. Human Rights Watch has a long history of documenting human rights violations throughout the East and Horn of Africa region.

We have carried out research in the Sudans for more than 20 years and continue to research and report on important human rights concerns in both countries. Since 2011, we have documented several cases of detention of individuals by South Sudan's National Security Service and would like to discuss them with you or the legal adviser to the Service.

We respectfully request a meeting on 22 March at a time convenient for you. We are available on [redacted] and [redacted]. We look forward to your response.

Sincerely,

Jehanne Henry

Jehanne Henry

Associate Director, Africa Division

Human Rights Watch

Annex VI: HRW Letter to South Sudan National Security Service, December 2019

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HUMAN RIGHTS WATCH

HRW.org

Akol Kur Kooc,
Director of Internal Security Bureau,
National Security Service Headquarters,
Jebel neighborhood,
Republic of South Sudan

2 December 2019

CC: Jalpan Obaj, Director of Legal Affairs, ISB

Dear Honorable Director,

RE: REQUEST FOR APPOINTMENT

We write to request an appointment with you or your representative.

Human Rights Watch is an international human rights organization that conducts research and advocacy on human rights abuses in over 90 countries worldwide. Human Rights Watch has a long history of documenting human rights violations throughout the East and Horn of Africa region.

We have carried out research in the Sudans for more than 20 years and continue to research and report on important human rights concerns in both countries. Since 2011, we have documented several cases of detention of individuals by South Sudan's National Security Service and would like to discuss them with you or the legal adviser to the Service.

We respectfully request a meeting on 4-5th or 11-14th December with you. We are available on [redacted]. We look forward to your response.

Sincerely,

Jehanne Henry

Jehanne Henry

Associate Director, Africa Division

Human Rights Watch

“What Crime Was I Paying For?”

Abuses by South Sudan’s National Security Service

South Sudan’s National Security Service (NSS) should have a mandate limited to intelligence gathering. However, in part because of the conflict which erupted in the country in 2013, it acquired law enforcement and combat functions and has become one of the government’s preferred tools of repression against its critics and those perceived to have rebel links. Abuses at the hands of the NSS have become the norm, as the agency has sown fear and terror among South Sudanese not least through a widespread practice of arbitrary detentions in unauthorized, and sometimes secret, detention sites.

In *“What Crime Was I Paying For?”* Human Rights Watch documents serious human rights violations committed by the NSS, how it abuses its extensive and vague powers and the impunity it operates with. Men, women, children, people with disabilities from all walks of lives as well as activists, political dissidents, students, members of the security forces and aid workers have all been victims of arbitrary detention, torture, and other abuses. The NSS has been implicated in unlawful surveillance, enforced disappearances, extra-judicial killings and abducting victims from neighboring countries. Victims often suffer from long-term physical and mental health conditions.

The 2018 peace deal and the formation, in February 2020, of South Sudan’s transitional government of national unity provides an opportunity to ensure rule of law, respect for human rights and justice for abuses. The government should start by enacting legal and policy reforms to limit NSS powers to information-gathering, analysis and advice, closing all unauthorized places of detention and releasing detainees. It should investigate all NSS violations, ensure perpetrators are brought to justice, whatever their rank or status, and provide redress and reparations to victims and their families.

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