



“THESE WALLS HAVE EARS”

THE CHILLING EFFECT OF SURVEILLANCE IN SOUTH SUDAN

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2021

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2021

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: AFR 65/3577/2021

Original language: English

amnesty.org



Cover illustration: A South Sudanese journalist trying to tweet a news item as he is under surveillance and threatened by the South Sudan National Security Service and other security services.

© Private

**AMNESTY
INTERNATIONAL**



CONTENTS

1. EXECUTIVE SUMMARY	6
2. METHODOLOGY	8
3. BACKGROUND	9
3.1 THE 2013 CONFLICT IN SOUTH SUDAN	9
3.2 THE OPPRESSED BECOME THE OPPRESSORS	10
3.3 INDEPENDENCE DID NOT DELIVER FREEDOMS	11
4. SPEAKING OUT IS RISKY	14
4.1 PERVASIVE ATMOSPHERE OF STATE SURVEILLANCE	14
4.2 ACTIVISTS AVOID TALKING OVER THE PHONE	15
4.3 NSS APPROVAL FOR EVENTS AND BILLBOARDS	16
4.4 WOMEN HUMAN RIGHTS DEFENDERS	16
4.5 IMPACT ON MENTAL HEALTH AND LIVELIHOODS	17
4.6 REPORTS OF ISRAELI SURVEILLANCE EQUIPMENT	19
4.7 MONITORING CENTRE	21
5. SURVEILLANCE WITHOUT SAFEGUARDS	23
5.1 LEGAL FRAMEWORK FOR SURVEILLANCE AND ITS APPLICATION IN PRACTICE	23
5.1.1 SOUTH SUDAN'S LEGAL FRAMEWORK	23
5.1.2 AFRICA'S LEGAL FRAMEWORK	25
5.1.3 INTERNATIONAL LEGAL FRAMEWORK	26
5.2 PHONE TAPPING IN PRACTICE IN SOUTH SUDAN	28
5.2.1 PHONE TAPPING, ARBITRARY ARREST AND PROLONGED DETENTION	29
5.3 HUMAN RIGHTS RESPONSIBILITIES OF TELECOMMUNICATION COMPANIES	30
5.4 CONFISCATION AND SEARCH OF DEVICES UPON ARREST AND QUESTIONING	31
5.5 THE NSS MONITORS (SOCIAL) MEDIA	32
5.6 A NETWORK OF SPIES AND INFILTRATION	34

5.7 THE NETWORK CROSSES BORDERS	36
6. CONCLUSION AND RECOMMENDATIONS	39
6.1 TO SOUTH SUDANESE AUTHORITIES	39
6.1.1 TO THE GOVERNMENT AND THE PRESIDENT OF SOUTH SUDAN:	39
6.1.2 TO THE MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS, THE NCAC AND THE PARLIAMENT:	41
6.1.3 TO THE MINISTER OF NATIONAL SECURITY, DIRECTOR GENERAL OF THE ISB-NSS, AND THE NSS:	42
6.2 TO INTERNATIONAL PARTNERS, INCLUDING THE AFRICAN UNION, IGAD, RJMEC, THE UNITED NATIONS, AND INTERNATIONAL NGOS	42
6.2.1 TO THE AU SPECIAL RAPporteur ON HUMAN RIGHTS DEFENDERS AND THE UN SPECIAL RAPporteur ON THE SITUATION OF HUMAN RIGHTS DEFENDERS:	43
6.2.2 TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR):	43
6.2.3 TO THE INTER-GOVERNMENTAL AUTHORITY ON DEVELOPMENT, THE RECONSTITUTED JOINT MONITORING AND EVALUATION COMMITTEE AND GUARANTORS OF THE R-ARCSS:	43
6.2.4 TO THE UNITED NATIONS, INTERNATIONAL DONORS AND INTERNATIONAL NGOS:	43
6.3 TO TELECOMMUNICATION COMPANIES	44
6.4 TO SURVEILLANCE COMPANIES	44
ANNEX 1: RESPONSE FROM MTN GROUP TO AMNESTY INTERNATIONAL	46
ANNEX 2: RESPONSE FROM THE DEFENSE EXPORT CONTROL AGENCY IN THE ISRAELI MINISTRY OF DEFENSE TO AMNESTY INTERNATIONAL	51

ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
AP	Associated Press
AU	African Union
BIS	Bureau of Industry and Security
CoHRSS	Commission on Human Rights in South Sudan
DECA	Defense Export Control Agency
HCSS	Hybrid Court for South Sudan
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
IGAD	Intergovernmental Authority on Development
ISB	Internal Security Bureau
MID	Military Intelligence Directorate
NAS	National Salvation Front
NCA	National Communication Authority
NCAC	National Constitutional Amendment Committee
NGO	Non-governmental Organization
NSS	National Security Service
PTSD	Post-Traumatic Stress Disorder
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan
RCM	Red Card Movement
RJMEC	Reconstituted Joint Monitoring and Evaluation Commission
RTGoNU	Revitalized Transitional Government of National Unity
SPLM	Sudan People's Liberation Movement
SPLM/A-IO	Sudan People's Liberation Movement/Army in Opposition
SSPDF	South Sudan People's Defense Forces
SSRRC	South Sudan Relief and Rehabilitation Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNMISS	United Nations Mission in South Sudan
UNSC	United Nations Security Council
USA	United States of America
WHRDs	Women Human Rights Defenders

1. EXECUTIVE SUMMARY

After a decades-long struggle characterized by systematic oppression and gross human rights violations, South Sudan gained independence from Sudan in July 2011. However, independence is yet to result in freedoms of expression and assembly and freedom from torture. Since the start of the country's conflict in December 2013, which emerged from disputes within the ruling Sudan People's Liberation Movement (SPLM) party, the Government of South Sudan has become increasingly authoritarian. South Sudan's National Security Service (NSS) has sought to silence critics by harassing, intimidating, threatening, arbitrarily detaining and, in some cases, forcibly disappearing and extra-judicially killing them.

This report provides new insights into the surveillance capacity of the Government of South Sudan and the impact of how this is abusively deployed without safeguards. Cumulatively, electronic and physical surveillance – both in practice and perception – have created a pervasive climate of fear and self-censorship. While many human rights defenders continue to courageously work within the limits of this repressive environment, free speech is fraught with danger. Women human rights defenders face the dual challenge of threats and intimidation in public and private spheres and are perceived by most South Sudanese men to have transgressed gendered social norms.

The report is based on 63 interviews conducted in South Sudan, Uganda, Kenya and remotely between January 2019 to November 2020. Interviewees included South Sudanese civil society members including human rights defenders, journalists and faith-based leaders, as well as lawyers and judges, academics and former detainees. Amnesty International also interviewed former employees of private security and telecommunications companies operating in South Sudan with expert knowledge and first-hand experience of surveillance infrastructure, as well as international non-governmental organizations (NGO) and United Nations (UN) staff, journalists and diplomats. The organization reviewed documentary evidence of surveillance equipment.

The Government of South Sudan conducts communications surveillance with at least one type of equipment bought in Israel. Amnesty International found that, at least from March 2015 to February 2017, Israeli Verint Systems Ltd, a subsidiary of American Verint Systems Inc., through Vivacell Network of the World (henceforth Vivacell), provided the South Sudanese authorities, including the NSS, with communications interception equipment and annual support services. This is concerning because both South Sudan's legal framework governing surveillance and the Israeli export licencing regime are not in line with international human rights standards. The NSS can likely only intercept communications with collaboration from telecommunication service providers. Tapped telephone conversations have been presented as evidence in court, recounted to a detainee in interrogations, and appear to have provided leads for arbitrary arrests. The NSS also monitors media and social media and has used this information to arbitrarily arrest and illegally detain journalists and human rights defenders.

In fulfilment of its intelligence gathering mandate, the NSS deploys agents throughout South Sudan and neighbouring countries, penetrating all levels of society and daily life. NSS approval is required to hold civil society meetings disabling genuine dialogue. Credible and consistent accounts from multiple sources demonstrate that intelligence agents have infiltrated NGOs, the media, private sector security companies and hotels. The depth and breadth of the NSS's spy network creates an environment that infringes on freedom of opinion, expression and privacy.

The psychological impact of living in constant fear of being under surveillance, whether perceived or real, and the violations that could result from that surveillance have a negative effect on mental health without recourse to adequate support. The enforced disappearance and reported extra-judicial execution of Dong Samuel, a South Sudanese human rights lawyer, and Aggrey Idri, Chair of the Sudan People's Liberation

Movement/Army-In Opposition (SPLM/A-IO's) Humanitarian Affairs Committee, in Nairobi in January 2017, has had a significant psychological impact on South Sudanese human rights defenders and critics. They are fearful that if they must flee, there is no safe haven in the region. Illegally detained activists have also lost their jobs negatively impacting their livelihoods.

South Sudan's legal framework governing surveillance does not meet the principles of non-arbitrariness, legality, necessity, legitimacy and proportionality for surveillance to be a legitimate law enforcement tool and not to interfere with the right to privacy. The 2014 National Security Service Act (henceforth 2014 NSS Act) gives the NSS sweeping, unchecked powers to conduct surveillance without sufficiently protecting the right to privacy guaranteed under Article 2011 of the country's Transitional Constitution, as well as regional and international human rights law. Despite repeated calls by organizations including Amnesty International and the authorities' obligations under the peace agreement, the government has failed to amend the Act.

The Government of South Sudan should end the NSS's practice of operating outside the law including the unlawful surveillance of journalists and human rights defenders and requiring event organizers to seek permission. They should issue a moratorium on the use of surveillance until a proper human rights regulatory framework is in place. This human rights framework should include safeguards against unlawful surveillance including requirements in domestic law for transparency, judicial oversight, and adequate remedy. Independent investigations into cases of unlawful surveillance and other human rights violations must be conducted and individuals suspected of human rights violations investigated and prosecuted. Effective remedies, including compensation, for physical and mental harm, as well as the loss of livelihoods must be provided to victims. The Government of South Sudan should also refrain from requiring telecommunication companies and other businesses to take steps that interfere with the right to privacy in an arbitrary or unlawful way.

The Government of Israel should create an effective and transparent export licensing regime that prevents exports of dual use surveillance equipment to countries where there is a likelihood that the exported surveillance equipment will be used to violate human rights. Telecommunication companies and surveillance companies should actively implement the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) and take proactive steps to ensure respect for human rights. They should investigate the allegations in this report relating to unlawful and illegal interception of phone conversations.

Given the inter-dependencies between the rights to privacy, freedom of expression and opinion, media freedoms, and right to assembly in South Sudan and the opportunities for accountability and effective implementation of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), the Inter-Governmental Authority on Development (IGAD) and the Reconstituted Joint Monitoring and Evaluation Committee (RJMEC) should issue a communiqué calling on all R-ARCSS signatories to publicly commit to the rights to privacy, freedom of expression and opinion, media freedoms and the right to assembly and refrain from infringing these rights.

Pressure from the African Union (AU), the UN and South Sudan's development partners is also critical to encourage the government to reform the 2014 NSS Act in line with the 2011 Transitional Constitution and international human rights law and to stop abusive practices of surveillance.

2. METHODOLOGY

This report is based on Amnesty International research in Juba, South Sudan in February 2019, March – April 2019 and November – December 2019, in Kampala, Uganda in November 2019, in Nairobi, Kenya in November 2020, and remote research from January 2019 – November 2020.

Amnesty International interviewed 63 people. These included South Sudanese civil society members including human rights defenders, journalists and faith-based leaders, lawyers and judges, academics and former detainees. The organization also interviewed international NGO staff and journalists working in and reporting on South Sudan, diplomats, former employees of private security and telecommunication companies operating in South Sudan, and UN staff. 15 of these were women. All interviews were in English and took place individually, except for one close door round table. Remote interviewees over a secure connection took place with interviewees in the East Africa region during the COVID-19 pandemic, as well as those based outside the East African region, including in Israel, the United States of America (USA), the Central African Republic and the Democratic Republic of Congo. Due to travel restrictions imposed to curb the spread of COVID-19, it was not possible to conduct a research mission outside of the capital, Juba. Four human rights defenders from different geographical areas of South Sudan were interviewed in Juba.

Amnesty International also reviewed over 57 reports and studies by UN bodies, intergovernmental, non-governmental organizations, as well as investigative media reports published between 2012 and 2020, communiqués, resolutions, laws and conventions.

Amnesty International sent letters seeking information and requesting a response to the report's findings to the Government of South Sudan's Minister of National Security, the Director General of the Internal Security Bureau (ISB) of the NSS, the Minister of Presidential Affairs, the Director General of the National Communication Authority, the Minister of Information, Communication Technology and Postal Services, the Minister of Foreign Affairs, the Minister of Justice and Constitutional Affairs, and the Minister of Finance and Planning but did not receive a response. Amnesty International also sent letters requesting information and requesting a response to the report's findings to MTN Group, Zain, Vivacell, and Verint. Only MTN Group responded. Letters were also sent to Israel's Ministry of Defence, and the United States State Department, with a copy to the US Department of Commerce's Bureau of Industry and Security (BIS). The Israeli Ministry of Defence responded to one of two letters sent by Amnesty International. The Government of the United States did not respond. The responses we received from MTN Group and the Israeli government are reflected in the report where relevant and are included in full in the appendices.

Amnesty International thanks everyone who participated in the research. Given security concerns of interviewees, their names and other identifying details have been omitted to protect their identities.

3. BACKGROUND

3.1 THE 2013 CONFLICT IN SOUTH SUDAN

On 15 December 2013, following months of political disputes within the ruling SPLM party, an armed confrontation between soldiers loyal to President Salva Kiir Mayardit and then Vice President Riek Machar Teny Dhurgon at the military barracks in the capital city, Juba, ignited a full-blown non-international armed conflict that rapidly spread to other areas of the country including Jonglei, Upper Nile and Unity states. The years of conflict that ensued were characterized by brutal violations of international human rights and humanitarian law, committed by government, armed opposition forces and their allied militias with near total impunity,¹ causing mass internal displacement,² the largest refugee crisis in Africa and the third largest in the world,³ and a devastating humanitarian crisis,⁴ including a man-made famine.⁵

After months of peace talks led by IGAD, the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) was signed in August 2015, only to collapse in July 2016 when government and opposition forces fought each other for four days in Juba. The violence then spread to the previously peaceful Equatoria regions in the south, leaving a trail of human rights violations and abuses and a rising number of armed groups. The United Nations warned about the possibility of genocide⁶ and in July 2018, after a long campaign by civil society, the UN Security Council (UNSC) imposed an arms embargo on South Sudan⁷ that is still in effect at the time of writing.

In June 2017, regional leaders endorsed a new peace process to 'revitalize' the ARCSS which resulted in the signing of the R-ARCSS in September 2018. After months of delay and two postponements, the parties to the R-ARCSS started the formation of the Revitalized Transitional Government of National Unity (RTGoNU) on 22 February 2020.⁸

While large-scale fighting has decreased since the R-ARCSS was signed, non-state armed groups including the National Salvation Army (NAS), a non-signatory to the R-ARCSS, the SPLM/A-IO, the army and the NSS continue to clash sporadically, particularly in the country's south.⁹ Fighting between ethnic groups and communities in Jonglei State, Lakes State, and Warrap State has surged, resulting in hundreds of civilians

¹ Amnesty International, "Do you think we will prosecute ourselves?" No prospects for accountability in South Sudan (Index: AFR 65/1105/2019).

² At the time of writing, 1.62 million people were internally displaced. OCHA, *South Sudan Humanitarian Snapshot, December 2020*, reliefweb.int/report/south-sudan/south-sudan-humanitarian-snapshot-december-2020

³ UNHCR, Emergencies, www.unrefugees.org/emergencies/south-sudan/

⁴ At the time of writing, 7.5 million people needed assistance. OCHA, *South Sudan Humanitarian Snapshot, December 2020*, reliefweb.int/report/south-sudan/south-sudan-humanitarian-snapshot-december-2020

⁵ FAO, *Famine hits parts of South Sudan, 20 February 2017*, www.fao.org/news/story/en/item/471251/icode/

⁶ United Nations, *Media briefing by Adama Dieng, United Nations Special Advisor on the Prevention of Genocide on his visit to South Sudan, 11 November 2016*, [www.un.org/en/genocideprevention/documents/2016-11-11%20Mr.%20Dieng's%20statement%20at%20press%20conference%20\(Juba\).rev%20FINAL.pdf](https://www.un.org/en/genocideprevention/documents/2016-11-11%20Mr.%20Dieng's%20statement%20at%20press%20conference%20(Juba).rev%20FINAL.pdf)

⁷ UN Security Council, Resolution adopted by the Security Council at its 8310th meeting, on 13 July 2018, UN Doc. S/RES/2428 (2018), para. 4.

⁸ Amnesty International, *South Sudan: Forthcoming unity government must reform security service and set up hybrid court* ([Press release](https://www.amnesty.org/en/latest/press-releases/2020/02/south-sudan-unity-government-must-reform-security-service-and-set-up-hybrid-court/), 22 February 2020).

⁹ Amnesty International, *South Sudan: UN arms embargo must be maintained after surge in violence against civilians in 2020* ([Press release](https://www.amnesty.org/en/latest/press-releases/2020/11/south-sudan-un-arms-embargo-must-be-maintained-after-surge-in-violence-against-civilians-in-2020/), 30 November 2020); United Nations, *Cessation of Hostilities Agreement Violations Persist in South Sudan, Under-Secretary-General Tells Security Council, 24 January 2018*, www.un.org/press/en/2018/sc13176.doc.htm; United Nations Panel of Experts on South Sudan, *Final Report, S/2020/342, 28 April 2020*, www.undocs.org/S/2020/342; Human Rights Watch, *South Sudan: Government Forces Abusing Civilians. Rein in Troops, Ensure Justice for Abuse by All Sides*, 4 June 2019, www.hrw.org/news/2019/06/04/south-sudan-government-forces-abusing-civilians

killed, scores displaced, abductions and rape and other forms of gender-based and sexual violence.¹⁰ In June 2020, the UN Mission in South Sudan (UNMISS) told media that fighters in uniform had been observed among those engaged in inter-communal violence, indicating participation of more organized forces.¹¹ In October 2020, the UN Commission on Human Rights in South Sudan (CoHRSS) reported that national actors are arming ethnic militias and paramilitary groups with weapons, driving political violence at the inter-communal level.¹²

Alongside army soldiers, armed opposition groups and their allied militias, the NSS and the Military Intelligence Directorate (MID) have also been implicated in violations. The NSS and MID arbitrarily detained hundreds, if not thousands, of people, mostly men, mainly in unofficial detention facilities across the country. They subjected them to torture and other forms of ill-treatment, as well as extra-judicial executions.¹³

3.2 THE OPPRESSED BECOME THE OPPRESSORS

South Sudan gained independence from Sudan on 9 July 2011 after a decades-long struggle characterized by systematic oppression and gross human rights violations, including slavery, arbitrary arrests and detention, enforced disappearances and extra-judicial executions. The signing of the Comprehensive Peace Agreement in 2005 ended the conflict but failed to address the legacy of human rights violations and abuses, leaving widescale impunity and a blueprint for repetition of such violations. Many individuals from the SPLM/A that fought the Sudanese government now occupy high-level governmental positions, including in the South Sudan People's Defence Forces (SSPDF) and NSS, and have been implicated in similar violations once committed by the Sudanese security forces. Since the start of the conflict in 2013, the Government of South Sudan, mostly through the NSS, has become increasingly authoritarian and has sought to silence critics by harassing, intimidating, threatening, arbitrarily detaining and, in some cases, forcibly disappearing and extra-judicially killing them. The NSS has arrested and detained people who are alleged to have communicated with, or supported, the opposition, as well as human rights defenders, civil society activists¹⁴ and academics¹⁵ critical of the government.¹⁶

THE WHITE HOUSE AND THE BLUE HOUSE

The Sudanese military intelligence and National Intelligence and Security Service held their prisoners in several locations around Juba, including a building near the military headquarters that became known as the 'White House' and notorious as a torture centre.¹⁷

The South Sudanese NSS now uses a building commonly referred to as the 'Blue House' to illegally detain real or perceived opponents of the government. The Blue House is on the compound of the

¹⁰ International Committee of the Red Cross (ICRC), *South Sudan: Jonglei State clashes leave hundreds dead and injured as COVID-19 reduces ICRC surgical capacity by 30%*, 21 May 2020, www.icrc.org/en/document/south-sudan-jonglei-state-clashes-leave-hundreds-dead-and-injured; UN Commission on Human Rights in South Sudan (CoHRSS), *Transitional Justice and accountability: a roadmap for sustainable peace in South Sudan, A/HRC/45CRP.4*, 5 October 2020.

¹¹ United Nations Mission in South Sudan (UNMISS), *Escalating Intercommunal Conflict Could Unravel the Peace Agreement*, 9 June 2020, unmiss.unmissions.org/escalating-intercommunal-conflict-could-unravel-peace-agreement

¹² UN Commission on Human Rights in South Sudan (CoHRSS), *Transitional Justice and accountability: a roadmap for sustainable peace in South Sudan, A/HRC/45CRP.4*, 5 October 2020.

¹³ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (Index: AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index: AFR 65/8823/2018); Amnesty International, *South Sudan: Investigate Apparent 2017 Killing of Activists* ([Press release](http://www.amnesty.org/en/press-releases/2019/04/30), 30 April 2019); United Nations Panel of Experts on South Sudan, *Final Report, S/2019/301*, 9 April 2019, www.undocs.org/S/2019/301; Amnesty International, *Systematic harassment of civil society, journalists, private sector and critics by South Sudan's intelligence agency*, (Index: AFR/65/2727/2020); Human Rights Watch, *"What Crime Was I Paying For?" Abuses by South Sudan's National Security Service, 14 December 2020*, www.hrw.org/sites/default/files/media_2020/12/southsudan1220_web.pdf

¹⁴ Amnesty International, "Urgent Action: South Sudanese Activist Arbitrarily Detained" 27 August 2018.

¹⁵ Amnesty International, "Urgent Action: University Professor Arbitrarily Detained" 29 March 2016.

¹⁶ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (Index: AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index: AFR 65/8823/2018); Human Rights Watch, *"What Crime Was I Paying For?" Abuses by South Sudan's National Security Service, 14 December 2020*, www.hrw.org/sites/default/files/media_2020/12/southsudan1220_web.pdf

¹⁷ Amnesty International, *Sudan: Deaths and detentions: the destruction of Juba*, (Index: AFR 54/26/92).

NSS headquarters in Juba's Jebel neighbourhood. Former detainees have described harrowing practices of torture and dire conditions.¹⁸

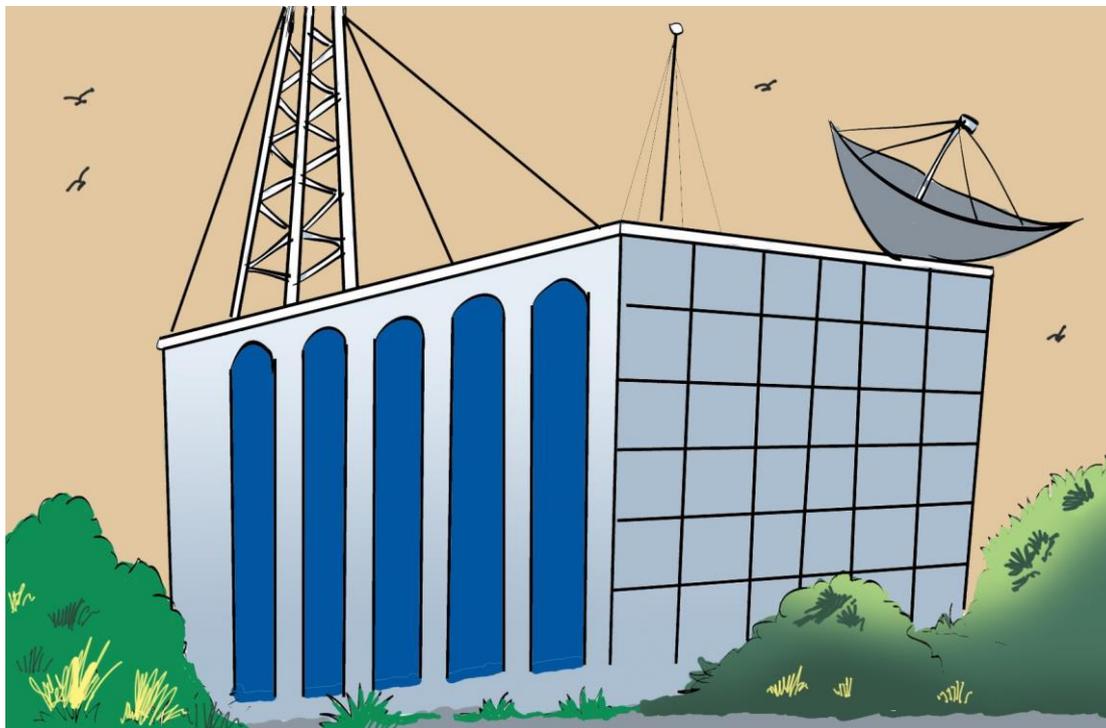


Image (above): Blue House in Juba, South Sudan. © Private

Since the NSS Act in 2014, the NSS has accumulated unchecked power becoming one of the main perpetrators of human rights violations and the most powerful security actor. Exceeding the NSS's constitutional mandate, which limit its powers to "information gathering, analysis and advice to the relevant authorities,"¹⁹ the 2014 NSS Act gives the security agency police-like powers to arrest, detain, conduct searches and seize property without adequate safeguards. Chapter II of the R-ARCSS obliges the signatories to reform the security sector, including national security, but the NSS, outfitted with the most sophisticated weapons, has been left out of the process which has only focused on the army, the police, the wildlife services and the SPLA-IO and other armed opposition groups.²⁰

3.3 INDEPENDENCE DID NOT DELIVER FREEDOMS

Since South Sudan's independence in July 2011, freedom of expression, including media freedom, and freedom of opinion and the right to information, have been extremely restricted. National actors reporting on human rights violations or engaging with international human rights actors are perceived as traitors or leaking state secrets. Information that should be public, including laws and court judgements,²¹ is shrouded in secrecy and considered as classified by many government officials, restricting the right to information. In 2018, the CoHRSS described South Sudan as "one of the most dangerous places in the world for journalists,

¹⁸ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (Index: AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index: AFR 65/8823/2018); Amnesty International, *Systematic harassment of civil society, journalists, private sector and critics by South Sudan's intelligence agency* (Index: AFR 65/2727/2020); Human Rights Watch, "What Crime Was I Paying For?" *Abuses by South Sudan's National Security Service*, 14 December 2020, www.hrw.org/sites/default/files/media_2020/12/southsudan1220_web.pdf

¹⁹ Section 159 of the 2011 Transitional Constitution of the Republic of South Sudan.

²⁰ Amnesty International, *OPED South Sudan: Time for justice and reform; no celebrations just yet* (OPED, 6 March 2020).

²¹ Amnesty International, "Do you think we will prosecute ourselves?" *No prospects for accountability in South Sudan* (Index: AFR 65/1105/2019)

with many having been killed, physically assaulted and accused of propagating “Western agendas”²², concluding that this has had a chilling effect on the press.

In addition to intimidation, harassment, arbitrary arrests, prolonged detention, torture and other ill-treatment, enforced disappearances and extra-judicial killings to silence government critics, human rights activists and journalists primarily by the NSS, international organizations including Amnesty International have also reported on censorship, suspension and closure of news outlets, seizure of newspapers, blocking access to prominent news sites,²³ revocation or denial of accreditation of foreign correspondents,²⁴ summons, arbitrary arrests and prolonged detention for critical posts on social media,²⁵ a regional crackdown on government critics, and violations of the right to freedom of peaceful assembly and association.²⁶ The South Sudan National Communication Authority (NCA), NSS agents and the Media Authority, an oversight body, restrict media freedoms and freedom of expression critical of the government.

Security forces have also violated the right to peaceful assembly and association.²⁷ In mid-2019, South Sudanese authorities waged a regional crackdown on members of the Red Card Movement (RCM), a diaspora-led self-proclaimed civil rights movement. Inspired by protests in Sudan and Algeria that led to the fall of former presidents Omar al-Bashir and Abdelaziz Bouteflika, RCM protests took place in Australia, the US, Ethiopia, Kenya and Sudan. Protesters in Kenya and Ethiopia said they were targeted by NSS agents and threatened with abduction. In May 2019, the government deployed the military in the streets, did house-to-house searches and threatened protesters, preventing protesters in Juba from participating in a peaceful demonstration.²⁸

On 3 June 2020, security forces shot at unarmed protesters in Juba’s Shirkat neighbourhood, injuring at least two protesters.²⁹ The protests were sparked by the unlawful killing of four people, including a pregnant woman and an older man by soldiers following a physical confrontation about a land dispute involving a relative of the President who succumbed to his injuries later that night.³⁰ At least 14 demonstrators were arrested, illegally detained in Juba Central Prison for five months until they were released but charged with offences against public order and public nuisance in November 2020.³¹

²² UN Commission on Human Rights in South Sudan, *Report, A/HRC/37/CRP.223, February 2018*, para 63, www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx

²³ On 17 July 2017, the South Sudan National Communication Authority blocked the websites of news outlets Sudan Tribune and Radio Tamazuj and blog sites *Nyamilepedia* and *Paanluel Wel*. According to the media, Michael Makuei Lueth, the Minister of Information, Broadcasting, Telecommunications, and Postal Services, said that the websites had published information that was “hostile” to the government and “subversive”. The Minister told the Committee for Journalists that sites would remain blocked until “those institutions behave well”. See, Amnesty International, *Amnesty International Report 2017/18: The State of the World’s Human Rights* (Index: POL 10/6700/2018); Committee to Protect Journalists, *South Sudan authorities block access to at least four media websites, 20 July 2017*, cpj.org/2017/07/south-sudan-authorities-block-access-to-at-least-4/. At the time of writing, these online media sites continue to be blocked.

²⁴ See United Nations Panel of Experts on South Sudan, *Interim Report, S/2017/979, 20 November 2017*, para 31, www.undocs.org/pdf?symbol=en/S/2017/979; Amnesty International, *South Sudan: Journalists at risk ahead of unity government* (Press Release, 1 November 2019); Amnesty International interview with foreign correspondent Bastien Renouill, remote, 29 July 2020; Reporters Without Borders, *South Sudan expels another journalist, second in two weeks, 7 November 2019*, www.kahawatungu.com/south-sudan-rebuked-expelling-foreign-journalists/

²⁵ See, for instance, Amnesty International, “Urgent Action: Detained Youth Activist Denied Family Visits”, 10 July 2019.

²⁶ Amnesty International, *Amnesty International Report 2012: The State of the World’s Human Rights* (Index: POL 10/001/2012); Amnesty International, *Amnesty International Report 2013: The State of the World’s Human Rights* (Index: POL 10/001/2013); Amnesty International, *Amnesty International Report 2014/15: The State of the World’s Human Rights* (Index: POL 10/001/2015); Amnesty International, *Amnesty International Report 2015/16: The State of the World’s Human Rights* (Index: POL 10/2552/2016); Amnesty International, *Amnesty International Report 2016/17: The State of the World’s Human Rights* (Index: POL 10/4800/2017); Amnesty International, *Amnesty International Report 2017/18: The State of the World’s Human Rights* (Index: POL 10/6700/2018); Amnesty International Urges South Sudan to Rein in the National Security Service and Respect the Rights to Freedom of Expression and Peaceful Assembly, *Statement delivered at the Human Rights Council on 16 September 2019* (Index: AFR 65/1050/2019); Amnesty International, *Human Rights in Africa: Review of 2019* (Index: AFR 01/1352/2020).

²⁷ For instance, on 4 October 2011, security forces responded with gunfire and tear gas when secondary school students from Wau in Western Bahr el-Ghazal State peacefully protested against rising food prices and low salaries for teachers, killing two people who died from their gunshot wounds. At least seven people, including students, were arrested and detained in Wau prison. In the same city in December 2012, security forces killed eight peaceful protesters and arrested dozens of others who demonstrated against the decision by the governor of Western Bahr el-Ghazal State to move a county’s headquarters. See, Human Rights Watch, *World Report 2014: South Sudan, Events of 2013*, www.hrw.org/world-report/2014/country-chapters/south-sudan#b11a52

²⁸ Amnesty International, *South Sudan: “We are at risk and on the run” - Security agents track down peaceful protesters* (Index: AFR 65/0692/2019).

²⁹ Amnesty International interview with demonstrator, remote, 4 June 2020; Amnesty International interview with demonstrator, remote, 5 June 2020; Amnesty International interview with witness, remote, 5 June 2020; Amnesty International interview with family member of a victim, remote, 11 June 2020; Amnesty International interview with demonstrator, remote, 2 July 2020; Amnesty International interview with demonstrator, remote, 4 July 2020; Amnesty International interview with demonstrator, remote, 9 July 2020; Amnesty International interview with demonstrator, remote, 11 August 2020.

³⁰ Government of South Sudan, Committee Report of Committee to investigate the Shirkat incident, October 2020, on file with Amnesty International. Amnesty International remote interviews, 3-5 June 2020.

³¹ Amnesty International correspondence with lawyer, 23 November 2020.

Despite the repressive environment, human rights defenders have demonstrated, on occasion, without authorities violating their rights to peaceful assembly and the freedom of expression. On 15 May 2020, women human rights defenders, supported by male colleagues,³² marched to protest high levels of sexual violence in South Sudan, to stand in solidarity with victims, and demand justice and an end to impunity for sexual violence.³³ The women's march was triggered by media reports of an incident in which three men were reported to have gang-raped an eight-year-old girl after taking her from her home, holding her mother under gunpoint, and then dumping her unconscious body outside her home in Juba.³⁴ The girl received medical treatment and the police arrested a suspect who later escaped.

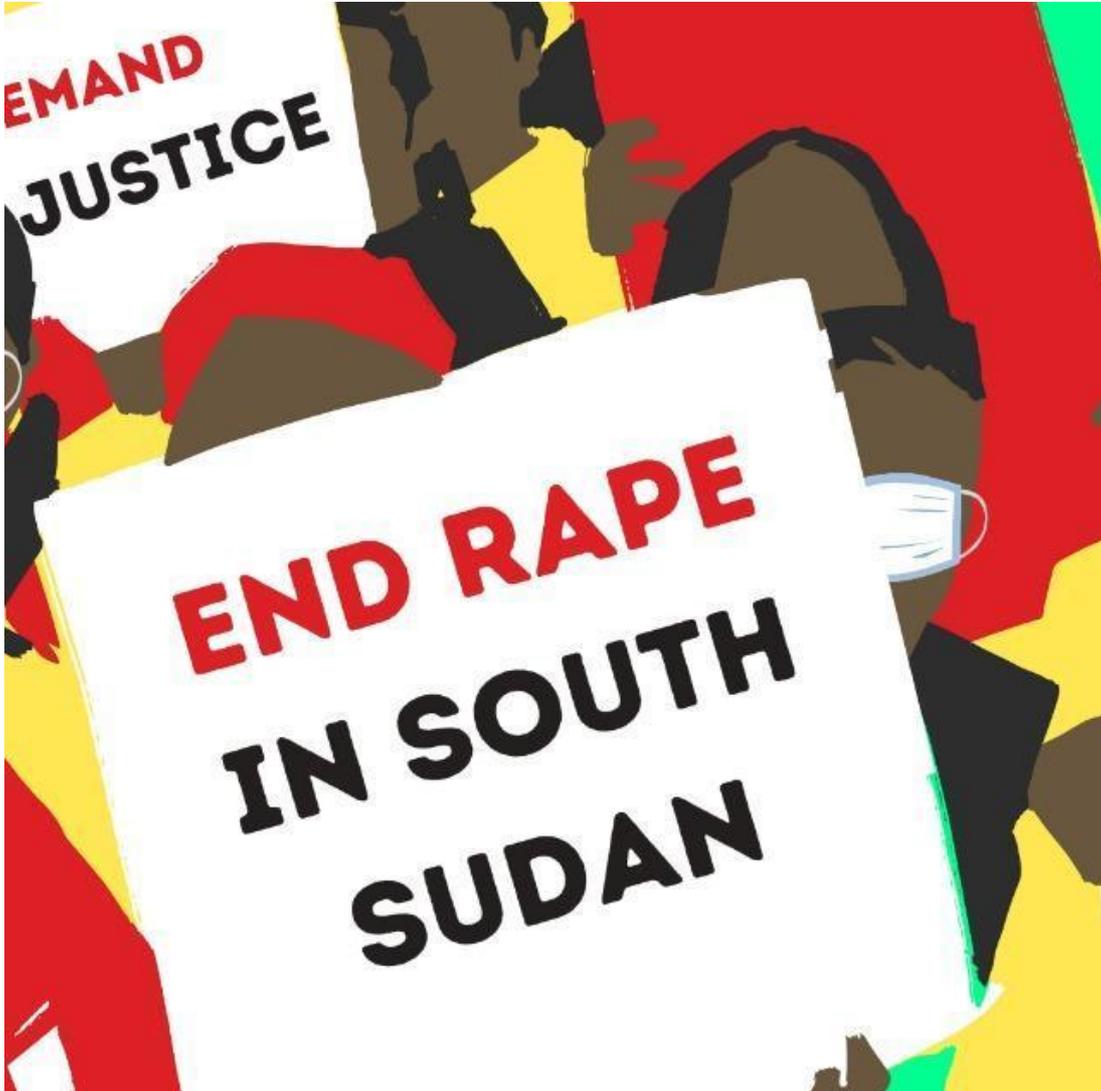


Figure (above): Graphic used by women to promote their march against violence against women that took place on 15 May 2020.

³² Eyeradio, *Activist slams security officers for allegedly “freeing” rape suspects*, 3 July 2020, eyeradio.org/activist-slams-security-officers-for-allegedly-freeing-rape-suspects/

³³ United Women and Girls of South Sudan, *Demanding Justice for an 8-Year-Old Who Was Gang-raped As Reported by Eyeradio*, 15 March 2020, women's march manifesto on file with Amnesty International.

³⁴ Eyeradio, *Child gang-raped found unconscious in Juba*, 10 May 2020, eyeradio.org/child-gang-raped-found-unconscious-in-juba/

4. SPEAKING OUT IS RISKY

4.1 PERVASIVE ATMOSPHERE OF STATE SURVEILLANCE

Reports, rumours, and perceptions of the surveillance capacity of South Sudanese authorities, coupled with the systematic harassment of civil society, journalists, and government critics by the NSS,³⁵ has instilled fear among activists resulting in self-censorship and a chilling effect on South Sudanese civil society.

One activist said “it makes you disassociate and more security aware, you scope out people. People we engage with more selective[ly]. Spaces where we go are limited. You have to know every aspect of someone and somewhere.”³⁶ At a public forum on International Human Rights Defenders Day 2019, a human rights defender said “You cannot speak without thinking twice.”³⁷ Another activist said “You have to be careful with your words. Some of us who are already on their [NSS] list, we have to be careful.”³⁸

Most activists said that the surveillance, harassment and looming risk of arbitrary arrest, detention and possible death does not stop them from speaking out, but that they carefully measure and regulate what they say, where they say it and to whom. Another activist said: “I did not give up on advocacy and activism, but the only way for me is social media, Facebook.”³⁹

Eight individuals that Amnesty International interviewed expressed concern that either the NSS had infiltrated civil society or that their civil society colleagues doubled as NSS informants to monitor them.⁴⁰ A human rights defender who was forced to flee to Uganda after her colleagues were detained by the NSS while she was at an international conference said: “They always have spies in the NGOs. They will have an informant.”⁴¹ One activist told Amnesty International “Even other[s] are spies for the government, you are not sure who you are speaking to. Yes, people pretend to be in civil society but initially they are spying for

³⁵ Amnesty International, *Systematic harassment of civil society, journalists, private sector and critics by South Sudan's intelligence agency*, (Index: AFR/65/2727/2020)

³⁶ Amnesty International interview with exiled civil human rights defender, Kampala, Uganda, 20 November 2019.

³⁷ Women human rights defender speaking at a public forum, Juba, South Sudan, 9 December 2019

³⁸ Amnesty International interview, remote, 5 August 2020.

³⁹ Amnesty International interview, Kampala, 21 November 2019.

⁴⁰ Amnesty International remote interview with former employee of private security company in South Sudan, 8 March 2019 and 4 September 2020; Amnesty International interview in Kampala, Uganda with exiled human rights defender, 20 November 2019; Amnesty International interview in Kampala, Uganda with exiled civil society member, 21 November 2019; Amnesty International interview in Juba, South Sudan with journalist, 27 November 2019; Amnesty International interview in Juba, South Sudan with civil society member, 27 November 2019; Amnesty International interview in Juba, South Sudan with religious leader, 3 December 2019; Amnesty International interview in Juba, South Sudan with civil society member, 8 December 2019; Amnesty International remote interview with academic, 6 August 2020.

⁴¹ Amnesty International interview with human rights defender in Kampala, Uganda, 20 November 2019.

government.”⁴² In 2017, the CoHRSS reported that human rights defenders and civil society members told the Commission that the NSS had infiltrated civil society creating an environment of distrust.⁴³

The fear and presence of surveillance extends to in-person meetings. The presence of real, or perceived, NSS officers or informants in events results in activists calculating how freely they can express themselves. Explaining how to navigate the civic space, a faith-based leader said “It’s [South Sudan] not a free territory, it’s a mine territory.”⁴⁴ [...] It impacts on how one speaks.”⁴⁵ He continued to say, “If the meeting is in favour of the government, you won’t be disturbed.”⁴⁶

During two meetings in different public locations, Amnesty International researchers observed waiters hover around eavesdropping. The challenges to find safe locations to conduct interviews in Juba demonstrates the chilling effect and restrictions on freedom of expression in South Sudan.

4.2 ACTIVISTS AVOID TALKING OVER THE PHONE

“I’ve gotten to the extent, I fear holding my phone, could it be tapped?”

South Sudanese human rights defender, remote, 29 July 2019.

Almost all interviewees were suspicious of surveillance, avoided talking about sensitive topics over the phone, and expressed preference to meet in private spaces in Juba. This chilling effect – a reflection of the widespread fear of the NSS’s surveillance capacity and practices – causes people who have yet to have any action taken against them to refrain from expressing legal views for fear of harassment, arrest or prolonged detention. Living with this constant fear of surveillance impedes human rights defenders’ work contributing to shrinking space for civil society to operate.

Most people Amnesty International spoke to said they prefer to discuss sensitive topics in person or to use encrypted means of communication because they assumed regular phone lines were unsafe. One activist told Amnesty International “I don’t know who is tracking my phone, when and where. In South Sudan, they know if you are a human rights person, they might not follow you today, not arrest you now, but they can be following your phone conversation, can be checking on your phone every now and then and one day they will turn against you.”⁴⁷ Another activist told Amnesty International “I’ve gotten to the extent, I fear holding my phone, could it be tapped?”⁴⁸

Sensitive topics include corruption and transparency, human rights violations, especially sexual and domestic violence and rights of lesbian, gay, bisexual and transgender and intersex people, accountability and the establishment of the Hybrid Court for South Sudan (HCSS), criticism of the government and government officials, tribal dynamics and regional political representation. “You try talk about these things, you become a target”⁴⁹ a faith-based leader told Amnesty International. An activist whose work had forced her to flee to Uganda said: “If you work on justice or human rights, basically you have a problem with the government.”⁵⁰ Another activist told Amnesty International “There are issues people let go in order to protect their lives.”⁵¹ He continued to say “There is rampant corruption, but you can’t talk about it. You’ll be arrested and detained.”⁵²

⁴² Amnesty International interview with human rights activist, remote, 3 August 2020.

⁴³ UN Human Rights Council, *Report of the Commission of Human Rights in South Sudan, A/HRC/34/63, 6 March 2017*, para.49, www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx

⁴⁴ The faith-based leader compared the civic space in South Sudan to a mine field, indicating the need to be cautious about what you say in South Sudan.

⁴⁵ Amnesty International interview with faith-based leader, Juba, South Sudan, 3 December 2019.

⁴⁶ Amnesty International interview with faith-based leader, Juba, South Sudan, 3 December 2019.

⁴⁷ Amnesty International interview with human rights activist, remote, 3 August 2020.

⁴⁸ Amnesty International interview with human rights activist, remote, 29 July 2020.

⁴⁹ Amnesty International interview with faith-based leader, Juba, South Sudan, 3 December 2019.

⁵⁰ Amnesty International interview with exiled human rights defender, Kampala, Uganda, 20 November 2019.

⁵¹ Amnesty International interview with human rights activist, Juba, South Sudan, 11 December 2019.

⁵² Amnesty International interview with human rights activist, Juba, South Sudan, 11 December 2019.

4.3 NSS APPROVAL FOR EVENTS AND BILLBOARDS

According to article 15 of the 2016 NGO Act, NGOs registered with the South Sudan Relief and Rehabilitation Commission (SSRRC) need written approval from the Registrar before conducting activities not in their “programmes plan.”⁵³ However, in practice, the NSS requires event organizers to seek permission before holding any public meeting, training, workshop or event though this is not required by law, and is contrary to international human rights law and standards. This has enhanced the government’s access to information and tightened civic space.

Organizations, including NGOs and the UN, are required to submit the topic, time, date and venue of events, the number and, at times, names of participants or the invited organizations.⁵⁴ This requirement is widely adhered to by civil society members. One human rights defender told Amnesty International that their organization had also been requested to submit the organization’s registration certificate.⁵⁵ In some cases, NSS officers will accept ‘facilitation fees’ to smooth the approval process. Interviewees mentioned amounts ranging from 1000 to 20,000 South Sudanese Pounds,⁵⁶ at the time the equivalent of around 3 US Dollars to 65 US Dollars on the black market. Once authorized, the NSS sends one or two officers to listen to the event,⁵⁷ stifling free speech and disabling genuine dialogue. As one human rights defender told the participants in her workshop: “Ladies, these walls have ears.”⁵⁸ Another interviewee said: “If the function does not favour what the government wants, they will cause problems. They will start threatening some of the participants. This is how they have been operating, particularly the NSS.”⁵⁹

On 16 June 2020, the NSS arbitrarily arrested and detained Moses Monday, Executive Director of the Organization for Non-Violence and Development, a civil society organization in a coalition publicly demanding financial accountability and transparency in South Sudan. He was arrested for a billboard that the coalition had put up in Juba as part of their “Gurush wen?” (Where is the Money?) campaign. After nine days in an NSS-run detention centre along the Nile river, known as “Riverside”, without access to a lawyer, Moses Monday was released without charge on 25 June 2020.⁶⁰ The NSS also at times requires billboard owners to seek NSS approval before erecting messages on billboards.⁶¹

4.4 WOMEN HUMAN RIGHTS DEFENDERS

“Women are easier to intimidate” [...] A sense of ‘I can do whatever I want with you’. It’s even worse for women human rights defenders.”⁶²

Women human rights defenders (WHRDs) told Amnesty International of the dual challenge of threats and intimidation in the public and private sphere and identified cultural barriers that affected their work. Vocal female activists were perceived by most South Sudanese men to have transgressed gendered social norms including being outspoken in their human rights work. As WHRDs, their activism is used against them, and their private lives open to attack. One WHRD told Amnesty International: “One of the causes is that South Sudan is a patriarchal society. They still believe that women should be women and not speak on some of

⁵³ Article 15 of the 2016 NGO Act.

⁵⁴ Amnesty International interview with civil society member, Juba, South Sudan, 4 December 2019; Amnesty International interview with lawyer, Juba, South Sudan, 5 December 2019; Amnesty International interview with civil society member, Juba, South Sudan, 5 December 2019; Amnesty International interview with human rights defender, Juba, South Sudan, 8 December 2019; Amnesty International interview with human rights defender, remote, 13 August 2020. UNMISS and OHCHR, *Report on the right to freedom of opinion and expression in South Sudan since the July 2016 crisis, February 2018*, www.ohchr.org/Documents/Countries/SS/UNMISS-OHCHR_Freedom_of_Expression.pdf

⁵⁵ Amnesty International interview with human rights defender, Juba, South Sudan, 27 November 2019.

⁵⁶ Amnesty International interview with lawyer, Juba, South Sudan, 5 December 2019; Amnesty International interview with human rights defender, Juba, South Sudan, 8 December 2019; Amnesty International interview with human rights defender, Juba, South Sudan, 27 November 2019.

⁵⁷ Amnesty International interview with civil society member, Juba, South Sudan, 4 December 2019; Amnesty International interview with civil society member, Juba, South Sudan, 5 December 2019; Amnesty International interview with human rights defender, Juba, South Sudan, 8 December 2019; Amnesty International interview with human rights defender, remote, 13 August 2020.

⁵⁸ Amnesty International interview with human rights defender, Juba, South Sudan, 8 December 2019.

⁵⁹ Amnesty International interview with academic, remote, 6 August 2020.

⁶⁰ Amnesty International, *Systematic harassment of civil society, journalists, private sector and critics by South Sudan’s intelligence agency* (Index: AFR/65/2727/2020); Amnesty International, *Amnesty International oral statement to 66th ordinary session of the ACHPR, 23 July 2020* (Index: AFR 01/2757/2020).

⁶¹ Amnesty International interview with human rights defender, Nairobi, Kenya, 6 November 2020; Amnesty International correspondence with international civil society member, 19 January 2021.

⁶² WHRD speaking at a public forum, Juba, South Sudan, 9 December 2019.

these issues that happen in the communities. They think it's a responsibility of the men to speak."⁶³ "A few SGBV (Sexual and Gender Based Violence) cases I am following up and most of the time, they will want to know, who is your husband, are you married or not, where do you stay? You feel threatened, why should they know where I live and my status as a woman when I come to do a certain job?"⁶⁴

This was echoed by another WHRD who said: "There's a negative connotation that women are just women, women are nothing, they are just there to be in the kitchen, there to bear babies. We're trying to fight through this as women activists. For instance, if you are trying to counter forced marriage, they will ask, are you married yourself? If you say no, they say you are just jealous. If you are not married, you are not considered responsible enough to do the work. If you work around women rights, they'll say it's our culture."⁶⁵

Recalling an encounter she had with an NSS official, as she was responding to a traffic accident involving a young girl, one WHRD told Amnesty International that the NSS official told her "you are just a woman, shut up, who are you to talk to us, we're NSS, we're protecting the country, you are talking about rape, who raped you, there is no rape in this country."⁶⁶ Multiple organizations including Amnesty International⁶⁷ and the CoHRSS⁶⁸ have documented and reported on high levels of sexual violence, including rape, which has been used as a weapon of war in South Sudan and is often ethnically motivated.

Women that do speak out reported that they were perceived to have acted immorally or inappropriately, affecting their personal lives. Some reported receiving death threats for working on women and girls' rights. "When you are a women human rights defender, you're looked at as, most of the time, these are prostitutes. These ones are women who can't make families, they don't even know the cultures for women."⁶⁹ She told Amnesty International that her family thinks her work is dangerous and that she sometimes withholds information about it.⁷⁰ Another WHRD working on the case of a gangrape of a teenager, said that the victim's brothers, all soldiers, threatened to kill her if she reported the incident to the police. The WHRD has now hidden the victim which she felt posed a risk to her life.⁷¹ She went on to describe that threats also come indirectly to women: "If you are a woman, they come through your family to shut you up. They will even ask: "Who will marry you, you speak too much, you travel too much. Who will marry you?"⁷²

None of the activists interviewed were aware of any cases of arbitrary arrest and detention of WHRDs. According to one WHRD, female activists are silenced through summons, interrogation, verbal intimidation and threats of sexual violence. Recalling one encounter with an NSS agent, she said: "They can tell you, [...] you rant here, let's see how you will get back to the country, we'll meet you in the country, we'll meet you at the airport, we know which car you drive, your number plate, which routes you use, where you stay. You're talking about rape, wait 'til you experience one."⁷³

4.5 IMPACT ON MENTAL HEALTH AND LIVELIHOODS

The psychological impact of living in constant fear or the perception of being under surveillance, and the violations that could result from that, coupled with the stress of working in a high-risk environment where human rights defenders (HRDs) are frequently targeted, has a negative effect on mental health.

"Surveillance is everywhere. Sometimes it messes with your head,"⁷⁴ a South Sudanese journalist told Amnesty International. "If you say anything against the government, be ready for death"⁷⁵ an exiled South Sudanese activist said. One South Sudanese activist told Amnesty International that "every morning when I go out, I give my colleague, I give her the documents to the organization, I move out of the house knowing I

⁶³ Amnesty International interview with WHRD, remote, 3 August 2020.

⁶⁴ Amnesty International interview with WHRD, remote, 3 August 2020.

⁶⁵ Amnesty International interview with WHRD, remote, 29 July 2020.

⁶⁶ Amnesty International interview with WHRD, remote, 29 July 2020.

⁶⁷ Amnesty International, "Do not remain silent": Survivors of sexual violence in South Sudan call for justice and reparations (Index: AFR 65/6469/2017).

⁶⁸ Yasmin Sooka, *Statement to the UN Human Rights Council, 23 September 2020*, www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26281&LangID=E. See also, CoHRSS, *Report of the Commission on Human Rights, A/HRC/43/56, 31 January 2020*, www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx

⁶⁹ Amnesty International interview with WHRD, remote, 3 August 2020.

⁷⁰ Amnesty International interview with WHRD, remote, 3 August 2020.

⁷¹ Amnesty International interview with WHRD, remote, 29 July 2020.

⁷² Amnesty International interview with WHRD, remote, 29 July 2020.

⁷³ Amnesty International interview with WHRD, remote, 5 August 2020.

⁷⁴ Amnesty International interview with journalist, Juba, South Sudan 27 November 2019.

⁷⁵ Amnesty International interview with exiled human rights activist, Kampala, Uganda, 20 November 2019.

could get shot on the road, or get killed in an “accident” so I prepare for my death. She starts crying, but at least she knows where to start from.”⁷⁶ Describing the impact of her activism, a female human rights defender explained: “It has not been an easy task and I think physically it is really draining to continuously be worried about what will happen to you, or to your family and that disturbs you mentally.”⁷⁷

HRDs in South Sudan operate in an extremely difficult environment characterized by, amongst others, constant concerns for their safety and that of their loved ones, high levels of distrust, worries about financial security and the daily struggles of doing dangerous work. In addition, due to the history and widespread extent of human rights violations and abuses in South Sudan, many HRDs are victims or witnesses of human rights violations and/or abuses, which can cause primary trauma, in addition to the secondary trauma they may experience listening to other victims’ testimonies of violations.⁷⁸

Despite significant and widespread need,⁷⁹ the availability and accessibility of mental health and psychosocial support services in South Sudan is extremely limited. South Sudan only has three national psychiatrists⁸⁰ who work on a roving basis and provide training and supervision to health staff.⁸¹ They see patients in Juba Teaching Hospital which is the only public medical facility providing in-patient psychiatric care and which has insufficient beds in its psychiatric ward. The availability of psychotropic drugs is inconsistent and limited.⁸² Lacking appropriate services and facilities, people with mental health conditions are routinely housed in prisons, even if they have committed no crime.⁸³

In 2016, Amnesty International documented the impact of the conflict on mental health and offered the Government of South Sudan recommendations to improve the situation. The right to health is realized progressively. However, over the past four years, the situation has only improved slightly and the government has still not integrated mental health services into the primary health care system, and there is no dedicated mental health policy, strategy, or legislation.⁸⁴ The Ministry of Health was supposed to develop a National Mental Health Strategy in 2020, but this initiative was delayed due to the COVID-19 pandemic.⁸⁵ The government chronically underinvests in health care and fails to make the financial commitments necessary to improve the availability and accessibility of mental health services. South Sudan has failed to respect, protect and fulfil the right to health and a range of relevant obligations under international law that it has committed to. At a minimum, the Government of South Sudan should seek support to pass laws, policies, strategies and plans to improve mental health services which are accompanied by human rights compliant benchmarks, targets and indicators with transparent and effective monitoring and accountability mechanisms.⁸⁶

Activists’ livelihoods are also negatively impacted. At least four former detainees interviewed by Amnesty International lost their jobs because of their detention. An activist described the impact of nine of her colleagues being arbitrarily arrested in 2017, when she was at an international conference, and detained for periods ranging between December 2017 and February 2018: “Everything is affected; your life, your work. They [NSS] just move on to the next case.”⁸⁷ A human rights lawyer said “Being a human rights lawyer, clients are discouraged from you. You are described as a rebel.”⁸⁸ He continued “Human rights work is not an easy one. I almost lost everything in my life.”⁸⁹ An activist working in the southern part of the country explains the impact as “If I leave for one week, then they want to know where have I been. Radio Miraya, I have cut that one.”⁹⁰ I don’t want my voice to be heard. They will challenge me. Even texting I fear, I can be

⁷⁶ Amnesty International interview with human rights defender, remote, 29 July 2020.

⁷⁷ Amnesty International interview with human rights defender, remote, 5 August 2020.

⁷⁸ Amnesty International correspondence with Ilja van Roon, therapist who has worked with South Sudanese HRDs, 14 January 2021.

⁷⁹ A 2015 study by the South Sudan Law Society (SSLS) and the United Nations Development Programme (UNDP) found that 41% of 1,525 respondents across six states and Abyei exhibited symptoms consistent with a diagnosis of Post-Traumatic Stress Disorder (PTSD). SSLS and UNDP, *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan, June 2015*, www.researchgate.net/publication/283343710_Search_for_a_New_Beginning_Perceptions_of_Truth_Justice_Reconciliation_and_Healing_in_South_Sudan; A 2015 survey by SSLS in Malakal PoC site found that 53% of respondents exhibited symptoms consistent with a diagnosis of PTSD. SSLS and Humanity United, *Perceptions of Truth, Justice, Reconciliation and Healing in Malakal PoC, December 2015*, www.comboni.org/app-data/files/allegati/1311.pdf

⁸⁰ Amnesty International correspondence with international aid worker, 12 January 2021.

⁸¹ Amnesty International correspondence with international aid worker, 12 January 2021.

⁸² Amnesty International, “*Our hearts have gone dark*”: *The mental health impact of South Sudan’s conflict* (Index: AFR/3203/2016); Amnesty International correspondence with international aid worker, 12 January 2021.

⁸³ Amnesty International, “*Our hearts have gone dark*”: *The mental health impact of South Sudan’s conflict* (Index: AFR/3203/2016).

⁸⁴ Amnesty International, “*Our hearts have gone dark*”: *The mental health impact of South Sudan’s conflict* (Index: AFR/3203/2016); Amnesty International correspondence with international aid worker, 12 January 2021.

⁸⁵ Amnesty International correspondence with international aid worker, 12 January 2021.

⁸⁶ Amnesty International, “*Our hearts have gone dark*”: *The mental health impact of South Sudan’s conflict* (Index: AFR/3203/2016).

⁸⁷ Amnesty International interview with exiled human rights activist, Kampala, Uganda, 20 November 2019.

⁸⁸ Amnesty International interview with lawyer, Juba, South Sudan, 3 December 2019.

⁸⁹ Amnesty International interview with lawyer, Juba, South Sudan, 3 December 2019.

⁹⁰ With this statement the activist meant that they do not want to speak on Radio Miraya anymore.

tracked. [...] The moment I leave [their area of residence],⁹¹ I leave my family in trouble.”⁹² The Executive Director of one civil society organization told Amnesty International that her staff had resigned after receiving threats from NSS agents and that international partners had withdrawn funding after government actors stopped her organization from organizing an event, leaving them struggling financially.⁹³

4.6 REPORTS OF ISRAELI SURVEILLANCE EQUIPMENT

In January 2016, the UN Panel of Experts found that the NSS’s “ability to identify and illegally apprehend individuals has been significantly enhanced since the beginning of the conflict because it has acquired additional communications interception equipment from Israel.”⁹⁴ The panel does not name who is supplying this equipment to the Government of South Sudan.

In early 2016, Israeli human rights lawyer Eitay Mack and Tamar Zandberg, a parliamentarian for the Maretz Party, filed a petition before the Israeli Supreme Court seeking to freeze transfers of spy technology from Israel to South Sudan, claiming it was used to “track down, lock up, and torture political dissidents and journalists.”⁹⁵ The court placed a gag order⁹⁶ on the case.⁹⁷ In May 2017, Eitay Mack together with 54 other Israeli activists “filed another petition with the Israeli High Court seeking a criminal investigation into Israel’s exporting of arms to South Sudan.”⁹⁸ The court also placed a gag order on this case.

In August 2016, Associated Press (AP) named American-Israeli company Verint Systems as a possible supplier of surveillance technology to South Sudan, referencing an AP journalist who observed two Verint employees working on a presentation on a flight from Ethiopia to South Sudan. AP also reported that two former NSS detainees, an activist and Joseph Bakosoro, a former governor, and now Minister of Public Service, recall their interrogators playing recordings from intercepted phone conversations, voicemails and emails.⁹⁹

A media article about the 2017 corruption court case, detailed in the section above, wrote that equipment used to wiretap the phones was bought by the South Sudanese government in Israel, featured in the January 2016 report of the UN Panel of Experts and is the subject of a court case in Israel.¹⁰⁰

In October 2018, Israeli newspaper *Haaretz* reported that “three sources confirmed that Verint supplied espionage means to the country [South Sudan], and two of them were able to say that the equipment was used in a monitoring center”.¹⁰¹ AP writes that one of their sources used to train security personnel on how to use surveillance systems.¹⁰²

Amnesty International obtained authentic documents that prove that, at least between March 2015 and February 2017, the NCA, in collaboration with the NSS and with knowledge of the then Undersecretary of the Ministry of Telecommunication and Postal Services, required Vivacell to pay at least 762,236 US Dollars to Verint Ltd in Israel for “LI technical services rendered”.¹⁰³ Based on this documentary evidence, testimony from a former Vivacell employee, and the media reports, Amnesty International believes that Verint Systems Ltd. transferred Lawful Interception equipment to South Sudan, at least between 2015 to 2017. It is unclear whether Verint is also the supplier of the surveillance equipment mentioned in the 2016 UN Panel of

⁹¹ Their area of residence is omitted for security reasons.

⁹² Activist speaking in closed door round table, Juba, South Sudan, 10 December 2019.

⁹³ Amnesty International interview with WHRD, remote, 5 August 2020.

⁹⁴ United Nations Panel of Experts on South Sudan, *Final Report, S/2016/70, 22 January 2016, para 134, www.undocs.org/S/2016/70*

⁹⁵ Quartz Africa, *An Israeli MP is suing to stop her country sending surveillance kit to South Sudan, 21 May 2016, qz.com/africa/689598/an-israeli-mp-is-suing-to-stop-her-country-sending-surveillance-kit-to-south-sudan/*

⁹⁶ A gag order is typically a legal order by a court or government preventing information or remarks being made public.

⁹⁷ Judah Ari Gross, *High Court hears arguments against spy tech sales to South Sudan, 23 September 2016, www.timesofisrael.com/high-court-hears-arguments-against-spy-tech-sales-to-south-sudan/*

⁹⁸ Suraya Dadoo, *How Israel is sowing the seeds of a deadly war in South Sudan, 30 August 2019,*

english.alaraby.co.uk/english/comment/2019/8/30/in-south-sudan-israel-is-sowing-seeds-of-war

⁹⁹ Frank Bajak and Jack Gillum, *Israeli Spy-tech Firm at Heart of Global Debate on State Surveillance, 2 August 2016,*

www.haaretz.com/world-news/israeli-spy-tech-firm-at-heart-of-debate-on-state-surveillance-1.5419565

¹⁰⁰ Sudan Tribune, *South Sudan Appeal Court says phone wiretapping “unconstitutional”, 29 May 2017,*

next.sudantribune.com/2017/05/29/south-sudan-appeal-court-says-phone-wiretapping-unconstitutional/62576/

¹⁰¹ Hagar Shezaf and Jonathan Jacobson, *Revealed: Israel’s Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays, 20 October 2018, www.haaretz.com/israel-news/premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027*

¹⁰² Hagar Shezaf and Jonathan Jacobson, *Revealed: Israel’s Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays, 20 October 2018, www.haaretz.com/israel-news/premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027*

¹⁰³ Letters from the NCA to Vivacell and proforma invoices from Verint Ltd, on file with Amnesty International.

Experts report and whether it is the subject of the petition filed by Eitay Mack and Tamar Zandberg. It is therefore possible that the Government of South Sudan bought more than one surveillance equipment from Israel.

Lawful Interception equipment is a dual use item on export control lists under the Wassenaar Arrangement¹⁰⁴ and can only be exported with a license. Amnesty International's finding that Verint Systems Ltd. transferred surveillance equipment to South Sudan is concerning because of South Sudan's record of human rights violations and abuses. The NSS violates the rights to life and liberty, opinion and expression, peaceful assembly and association, and freedoms from torture and other forms of ill-treatment.¹⁰⁵ South Sudan's legal framework governing surveillance does not meet the principles of non-arbitrariness, legality, necessity, legitimacy and proportionality for surveillance to be a legitimate law enforcement tool and to not interfere with the right to privacy.

Amnesty International believes that this goes against Israel's obligation to protect human rights. Exporting jurisdictions have an obligation to ensure that all relevant technologies are scrutinized before transfer and export authorization is denied where there is a substantial risk that an export could be used to violate human rights – either through unlawful surveillance or where the destination country has inadequate legal, procedural and technical safeguards to prevent abuse. Israel's current export licensing regime does not provide adequate export limitations when there is a high probability that they will be used to violate human rights.

For example, in August 2019, the Independent International Fact-Finding Mission on Myanmar, mandated to “establish the facts and circumstances of the alleged recent human rights violations by military and security forces, and abuses, in Myanmar...”,¹⁰⁶ found reasonable grounds to conclude that Israel had, in addition to other countries, “failed to refrain from transferring weapons although they expected or ought to have expected, based on the facts or their knowledge of past patterns of the Tatmadaw [Myanmar military], that the weapons would be used in acts that violate international human rights law and international humanitarian law.”¹⁰⁷ The report further concluded that “Israel in particular allowed the transfer of arms covered by the [Arms Trade Treaty] at a time when it had knowledge, or ought to have had knowledge, that they would be used in the commission of serious crimes under international law.”¹⁰⁸

Another worrying example is surveillance technology sold by Israeli surveillance company NSO Group Technologies Ltd. Amnesty International has found that NSO Group's Pegasus spyware has been used to target human rights defenders in Morocco and an Amnesty International staffer.¹⁰⁹ Citizen Lab found that Pegasus was used to target human rights defenders in Saudi Arabia, Mexico, and the United Arab Emirates.¹¹⁰ In 2019, Amnesty International supported a case that was brought to the Tel Aviv District Court asking the Israeli Ministry of Defence to revoke NSO Group's export license because of the targeting of an Amnesty International staff member. Instead of holding the Ministry accountable for their practices, the case was rejected in July 2020 in a disgraceful ruling.¹¹¹ This showed once again that export of surveillance technology from Israeli companies is used to commit human rights violations abroad with impunity.¹¹² In December 2020, Citizen Lab found that 36 phones belonging to *Al Jazeera* journalists, anchors, producers and executives were hacked with Pegasus in July and August that same year.¹¹³

¹⁰⁴ The Wassenaar Arrangement is an arrangement by states who seek to promote transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. Participating states apply export controls on items contained in set lists in order to prevent unauthorized transfers or re-transfers of those items. For more, see www.wassenaar.org/about-us/

¹⁰⁵ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (Index: AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index: AFR 65/8823/2018);

¹⁰⁶ United Nations Human Rights Council, Resolution on the situation of human rights in Myanmar, A/HRC/RES/34/22, 3 April 2017, para 11, documents-dds-ny.un.org/doc/UNDOC/GEN/G17/081/98/PDF/G1708198.pdf?OpenElement

¹⁰⁷ Independent International Fact-Finding Mission on Myanmar, *The economic interests of the Myanmar military*, 16 September 2019, A/HRC/42/CRP.3, para 168, www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

¹⁰⁸ Independent International Fact-Finding Mission on Myanmar, *The economic interests of the Myanmar military*, 16 September 2019, A/HRC/42/CRP.3, para 170, www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/EconomicInterestsMyanmarMilitary/A_HRC_42_CRP_3.pdf

¹⁰⁹ Amnesty International, *Amnesty International Among Targets of NSO-powered Campaign* ([Press release](#), 1 August 2018); Amnesty International, *Moroccan Journalist Targeted With Network Injection Attacks Using NSO Group's Tools* ([Press release](#), 22 June 2020).

¹¹⁰ The Citizen Lab, *Hide and Seek. Tracking NSO Group's Pegasus Spyware to Operations in 45 Countries*, 18 September 2018, tspacelibrary.utoronto.ca/bitstream/1807/95391/1/Report%23113--hide%20and%20seek.pdf

¹¹¹ Amnesty International, *Israel: Court rejects bid to revoke notorious spyware firm NGO Group's export license* ([Press release](#), 12 July 2020)

¹¹² Amnesty International, *Israel: Court rejects bid to revoke notorious spyware firm NGO Group's export license* ([Press release](#), 12 July 2020)

¹¹³ Citizen Lab, *Journalist Hacked with Suspected NSO Group iMessage 'Zero-Click' Exploit*, 20 December 2020, citizenlab.ca/2020/12/the-great-ipwn-journalists-hacked-with-suspected-nso-group-ismessage-zero-click-exploit/

Privacy International reported in 2014 that Israeli companies Verint and Nice Systems had supplied monitoring centres with mass surveillance capabilities to Kazakhstan and Uzbekistan that were used to commit human rights violations.¹¹⁴ *Haaretz* also reported that surveillance technologies purchased in 2012 from Israel company Circles Technology, ahead of the 2015 Nigerian elections, were used by Nigerian Governor of Bayelsa to monitor his chief rival and his wife and aides, and in one case to locate and arrest a well-known government critic.¹¹⁵

AP reported in 2016 that spyware from Israeli companies was used to violate human rights in Peru, Mexico, Colombia and Uzbekistan. According to the article, dissidents in Uzbekistan said that "the [surveillance] equipment is used to locate and arrest people who discuss sensitive information on the phone." *Haaretz* also reported in 2018 that a Mexican human rights activist investigating enforced disappearances was targeted with phone spyware Pegasus.¹¹⁶

Amnesty International's finding that annual support services for communication interception equipment were sold by Israeli Verint Systems Ltd to Vivacell for use by the Government of South Sudan is the latest evidence of the Government of Israel's failure to establish a transparent export licensing regime preventing export to countries where there is a likelihood that surveillance equipment will be used to violate human rights. Amnesty International is concerned that Verint's sale of surveillance equipment for use by the Government of South Sudan may have contributed to human rights violations by the NSS in a country without laws to safeguard civilians against unchecked surveillance.

Amnesty International wrote to Verint's headquarters in USA on 30 September 2020, to Verint's office in Israel on 28 October 2020 to seek information about Verint's work in South Sudan and again on 19 and 12 November respectively to ask them to respond to the information detailed above. They did not respond. Amnesty International also wrote to the Israeli Ministry of Defence on 26 October and the US Department of State with a copy to the US Commerce's Bureau of Industry and Security (BIS) on 28 October to ask whether they authorised export of surveillance technology to South Sudan between July 2011 to October 2020. Only the Israeli Ministry of Defence responded on 5 November explaining the responsibilities of the Defense Export Control Agency (DECA), claiming that defence exports from Israel are "subject to constant scrutiny and periodic assessments, and defense export licenses are granted after individual examination in accordance with the law and international obligations."¹¹⁷ Regarding the questions related to South Sudan, DECA wrote that Israel's Ministry of Defense "does not comment on the export control policy, specific licenses or end users, due to security, policy and strategic considerations." Amnesty International wrote to the Ministry of Defence in Israel again on 18 November 2020, asking them to respond for the allegations and information detailed above. They did not respond.

On 26 October, Amnesty International wrote to South Sudan's Ministry of Finance and Planning, the Ministry of National Security, with copy to the Director General of the ISB of the NSS, and to the Ministry of Presidential Affairs seeking information about the procurement of surveillance equipment. On 11 January 2021, Amnesty International wrote to the Director General of the ISB of the NSS, with a copy to the NSS's Directorate of Legal Affairs, to the Ministry of National Security, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Information, Communication Technology and Postal Services, the NCA, the Ministry of Presidential Affairs, and on 13 January to the Ministry of Justice and Constitutional Affairs sharing a summary of the key findings and offering the right to reply to the allegations contained in this report. All 10 letters sent to the Government of South Sudan went unanswered.

4.7 MONITORING CENTRE

In October 2018, *Haaretz* reported that two of their sources stated that surveillance equipment sold to South Sudan was used in a monitoring center. *Haaretz* writes that one of their sources used to train security

¹¹⁴ Privacy International, *Privacy International uncovers widespread surveillance throughout Central Asia, exposes role of Israeli companies, 20 November 2014*, www.privacyinternational.org/press-release/1186/privacy-international-uncovers-widespread-surveillance-throughout-central-asia

¹¹⁵ Hagar Shezaf and Jonathan Jacobson, *Revealed: Israel's Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays, October 19 2018*, www.haaretz.com/israel-news/.premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027

¹¹⁶ Hagar Shezaf and Jonathan Jacobson, *Revealed: Israel's Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays, 19 October 2018*, www.haaretz.com/israel-news/.premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027 *haaretz*

¹¹⁷ Director of DECA in the Israeli Ministry of Defence Response to Amnesty International letter, 5 November 2020, on file with Amnesty International.

personnel on how to use surveillance systems.¹¹⁸ Lawful interception monitoring centres enable law enforcement agencies and intelligence services to track and monitor communications of specific targets.

Two former members of the UN Panel of Experts on South Sudan who spoke with Amnesty International described a monitoring centre that one of them visited in Juba's Buluk Police Station which is part of the "Smart City" project that President Kiir launched in December 2017. They explained that it is implemented by an Israeli company¹¹⁹ owned by former Israeli army major general.¹²⁰ Smart City was launched as a crime fighting project using CCTV cameras and drones in 11 locations in Juba to keep people safe.¹²¹ However, an independent investigator told Amnesty International that the project was run in collaboration with the NSS and that, rather than fighting crime, the cameras were used to monitor strategic military locations in the city as well as UN and diplomatic compounds.¹²² This was confirmed by former members of the UN Panel of Experts on South Sudan. They also told Amnesty International that a second monitoring centre is located inside the Blue House which explains the numerous radio receiver antennas which the experts believe intercept and capture communications.¹²³ A former detainee who had been held in Blue House also told Amnesty International that the NSS operates a monitoring centre from inside the Blue House.¹²⁴

¹¹⁸ Hagar Shezaf and Jonathan Jacobson, *Revealed: Israel's Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays*, 20 October 2018, www.haaretz.com/israel-news/.premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027

¹¹⁹ Amnesty International remote interview with former member of the UN Panel of Experts on South Sudan, 22 November 2019. See also Radio Tamazuj, *Kiir launches surveillance drones, CCTV cameras in Juba, 4 December 2017*, radiotamazuj.org/en/news/article/kiir-launches-surveillance-drones-cctv-cameras-in-juba; Sudan Tribune, *S. Sudan president launches surveillance drones, CCTV cameras, 4 December 2017*, sudantribune.com/spip.php?article64174

¹²⁰ Amnesty International remote interview with former member of the UN Panel of Experts on South Sudan, 22 November 2019.

¹²¹ Radio Tamazuj, *Kiir launches surveillance drones, CCTV cameras in Juba, 4 December 2017*, radiotamazuj.org/en/news/article/kiir-launches-surveillance-drones-cctv-cameras-in-juba; Sudan Tribune, *S. Sudan president launches surveillance drones, CCTV cameras, 4 December 2017*, sudantribune.com/spip.php?article64174

¹²² Amnesty International interview with independent investigator, Nairobi, Kenya, December 2018.

¹²³ Amnesty International interview with former member of the UN Panel of Experts on South Sudan, remote, 22 November 2019.

¹²⁴ Amnesty International interview with former detainee, Juba, South Sudan, 29 November 2019.

5. SURVEILLANCE WITHOUT SAFEGUARDS

Surveillance in South Sudan is routinely used to target human rights defenders and conducted without safeguards and transparency. Human rights defenders live in a state of constant uncertainty as to whether their private communications or interactions are being monitored, and consequently fear freely expressing themselves.

5.1 LEGAL FRAMEWORK FOR SURVEILLANCE AND ITS APPLICATION IN PRACTICE

5.1.1 SOUTH SUDAN'S LEGAL FRAMEWORK

Article 159 of South Sudan's 2011 Transitional Constitution mandates the NSS to conduct classic intelligence activities and "focus on information gathering, analysis and advice to the relevant authorities".¹²⁵ The 2014 NSS Act Chapter III, article 13 allows the NSS to, amongst other things, "monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interests so as to prevent misuse by users".¹²⁶

The 2014 NSS Act does not provide for judicial authorization and review of intelligence gathering activities such as interception of communications and surveillance. While article 55 of the 2014 NSS 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 the NSS should seek a warrant 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...".¹²⁷

While article 19 of the 2014 NSS Act provides for parliamentary oversight of the NSS, this provision is weak. It requires the Minister of National Security to submit an annual report to parliament on "matters related to the performance of the Service"¹²⁸ but stops short of endowing parliament with sufficient powers and access to security and intelligence information to enable it to exercise adequate oversight. Amnesty International wrote to the Minister of National Security asking whether the Minister submitted annual reports to parliament. At the time of writing, the letter remains unanswered.

¹²⁵ Transitional Constitution of South Sudan 2011 Section 159(3) limits the mandate of the NSS to "focus on information gathering, analysis and advice to the relevant authorities."

¹²⁶ Article 13 of the 2014 NSS Act.

¹²⁷ Article 55(1) of the 2014 NSS Act.

¹²⁸ Article 19 of the 2014 NSS Act.

Article 9(e) of the 2012 National Communication Act (henceforth 2012 NC Act) mandates the NCA to “set rules and regulations for planning, managing, allocating, licensing and monitoring frequencies, wireless systems, broadcasting stations and postal services with due consideration to their respective security aspects”.¹²⁹ Article 9(f) mandates the NCA to “protect obligations and requirements of the country in fields of security, defense and emergencies, having due regard to regional and international standards and practices and in collaboration with concerned bodies and entities providing communication services”.¹³⁰ Article 9(v) obliges the NCA to “assure privacy, security and confidentiality within communication services”.¹³¹

5.1.1.1 NO COMPLAINT MECHANISM

Article 20 of the 2014 NSS Act¹³² provides for a Complaints Board but, at the time of writing,¹³³ the Complaints Board had not been established.¹³⁴ Amnesty International is concerned that, if and when it will be established, the provisions establishing and governing the board do not adequately provide for its independence. Article 20(1) stipulates that members of the Complaints Board shall be appointed by the President, upon recommendation by the Judicial Service Commission. The head of the NSS’s legal department is included as a member of the Complaints Board. As an NSS employee responsible for providing legal advice about the service, this person would be unable to exercise their role on the Complaints Board independently of the NSS’s legal department. Amnesty International is also concerned that given the high levels of patronage and nepotism in South Sudan,¹³⁵ appointment by the President would jeopardize the Complaints Board’s independence.

Article 21(2) specifies that the Complaints Board shall “have regard to the requirements of national security” and shall “consult the Director General and the Council in determining information or circumstances under which certain information may not be disclosed in the course of or in relation to any inquiry in the interest of national security”. By requiring the Complaints Board to consult the Director General, against whom complaints may be made, on what information can be disclosed, the 2014 NSS Act compromises the Complaints Board’s independence and transparency. The 2014 NSS Act does not specify a timeframe for dealing with complaints and does not require the Complaints Board to publish complaints in full or summary.

Article 21(4) provides that the Complaints Board may recommend “an appropriate disciplinary action” against individuals subject to complaints but does not provide for additional remedies. Disciplinary actions alone are insufficient to guarantee an aggrieved person’s right to a remedy. The Complaints Board should be empowered to recommend criminal prosecutions against individuals. As part of South Sudan’s overall obligation to fulfil the right to remedy, the Complaints Board should also have the power to recommend reparation, such as compensation, for example, in cases of wrongful arrest and detention and violations of the right to privacy, including unlawful surveillance. The 2014 NSS Act should also explicitly specify that the establishment of the Complaints Board does not prejudice the rights of individuals to seek redress through criminal and civil remedies in regular courts.

While article 21(9) provides that a person aggrieved by a decision of the Complaints Board may appeal, Amnesty International is concerned that article 21(7) which states that members of the Complaints Board shall not be called to give evidence in any court or judicial proceeding about the board’s functions may obstruct appeals. There should be no blanket exclusion of evidence by the courts.

The Act also does not make provisions for victim and witness protection which is a serious concern in South Sudan where victims and witnesses, as well as legal professionals, have been harassed, threatened and attacked.¹³⁶

¹²⁹ Article 9(e) of the 2012 NC Act.

¹³⁰ Article 9(f) of the 2012 NC Act.

¹³¹ Article 9(v) of the 2012 NC Act.

¹³² Article 20 of the 2014 NSS Act.

¹³³ This section was written in October 2020.

¹³⁴ Amnesty International communication with two South Sudanese lawyers and an independent investigator on 16 October 2020.

¹³⁵ The Sentry, *Making a Killing. South Sudanese Military Leaders’ Wealth, Explained, May 2020*, cdn.thesentry.org/wp-content/uploads/2020/07/MakingAKilling_TheSentry_May2020.pdf

¹³⁶ Amnesty International, “Do you think we will prosecute ourselves?” No prospects for accountability in South Sudan (Index: AFR 65/1105/2019); Human Rights Watch, *Ending the Era of Injustice: Advancing Prosecutions for Serious Crimes Committed in South Sudan’s New War, 10 December 2014*, www.hrw.org/report/2014/12/10/ending-era-injustice/advancing-prosecutions-serious-crimes-committed-south-sudans

Regional and international human rights law stipulate that victims of human rights violations have the right to seek and obtain effective remedies¹³⁷ and the South Sudanese government has a duty to create a framework that fulfils this, provides for independent investigations and accountability through disciplinary and criminal sanctions. Effective remedies can include compensation for physical or mental harm, rehabilitation including medical and psychological care, and legal and social services. Victims should also be provided with satisfaction through measures such as effective investigations and prosecution of the perpetrators or public acknowledgement of the facts and acceptance of responsibility and guarantees of non-repetition, through actions or reforms to prevent future abuses.

Article 1.18.1.2 of the R-ARCSS obliges South Sudanese authorities to amend legislation including the 2014 NSS Act and tasks the National Constitutional Amendment Committee (NCAC) with drafting an amendment bill which was submitted to the Ministry of Justice and Constitutional Affairs in mid-2019.¹³⁸ The bill has yet to be discussed in parliament¹³⁹ and enacted into law which should have been done before the start of the formation of the Revitalized Transitional Government of National Unity (RTGoNU). After two postponements, the R-ARCSS signatories started forming the RTGoNU on 22 February 2020 but, at the time of writing,¹⁴⁰ have failed to reconstitute the parliament.

Urgent calls for South Sudanese authorities to reign in the NSS and bring the 2014 NSS Act in line with the country's 2011 Transitional Constitution and its obligations under regional and international human rights law have not been heeded.¹⁴¹

5.1.2 AFRICA'S LEGAL FRAMEWORK

The African Charter on Human and Peoples' Rights (the Charter), to which South Sudan is a party, does not provide for the right to privacy although, as a cross-cutting and enabling right, privacy is a necessary pre-condition for realising many rights guaranteed in the Charter. In November 2016 at its 59th Ordinary Session, the African Commission on Human and Peoples' Rights (ACHPR) passed resolution 362 on the right to freedom of information and expression on the internet in Africa recognizing that "privacy online is important for the realization of the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association."¹⁴²

The Declaration of Principles on Freedom of Expression and Access to Information in Africa adopted by the ACHPR during its 65th session in November 2019 details principles governing the right to privacy and communications surveillance. For instance, it calls on ACHPR member states, including South Sudan, to refrain from "indiscriminate and untargeted collection, storage, analysis or sharing of a person's communications",¹⁴³ and only engage in targeted communications surveillance when authorized by law, in compliance with international human rights law and standards and for legitimate aims. The declaration also requires states to ensure that surveillance laws provide adequate safeguards and oversight mechanisms to protect the right to privacy,¹⁴⁴ to adopt laws in line with international human rights law and standards to protect individual's personal information¹⁴⁵ and to provide legal recourse to effective remedies. They should also ensure individuals' rights relating to processing of personal information.¹⁴⁶ "Any person whose personal

¹³⁷ See for instance, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, March 2006, UN Doc. A/RES/60/147.

¹³⁸ Article 1.18.1.2 of the R-ARCSS.

¹³⁹ The 2018 revitalized peace agreement obliges signatories to reconstitute and expand the Transitional National Legislative Assembly (TNLA), but at the time of writing, the parties have failed to do so.

¹⁴⁰ This section was written in January 2021.

¹⁴¹ Amnesty International, *Amnesty International Urges South Sudan to Address National Security Service Violations and Crimes, statement delivered at the Human Rights Council on 12 March 2019* (Index: AFR 65/0011/2019).

¹⁴² African Commission on Human and Peoples' Rights, Resolution on the Right to Freedom of Information and Expression on the Internet in Africa, ACHPR/Res.362(LIX)2016.

¹⁴³ Everyone has the right to privacy, including the confidentiality of their communications and the protection of their personal information.

¹⁴⁴ Principle 41.3 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa sets out the following legal safeguards: "the prior authorisation of an independent and impartial judicial authority; b. due process safeguards; c. specific limitation on the time, manner, place and scope of the surveillance; d. notification of the decision authorising surveillance within a reasonable time of the conclusion of such surveillance; e. proactive transparency on the nature and scope of its use; and f. effective monitoring and regular review by an independent oversight mechanism."

¹⁴⁵ Principle 42.4 states that "The processing of personal information shall by law be: (a) with the consent of the individual concerned; b. conducted in a lawful and fair manner; c. in accordance with the purpose for which it was collected, and adequate, relevant and not excessive; d. accurate and updated, and where incomplete, erased or rectified; e. transparent and disclose the personal information held; and f. confidential and kept secure at all times."

¹⁴⁶ Principle 42.4 provides that states shall ensure individuals have the "rights to: a. be informed in detail about the processing; b. access personal information that has been or is being processed; c. object to the processing; and d. rectify, complete or erase personal information that is inaccurate, incomplete or prohibited from collection, use, disclosure or storage."

information has been accessed by an unauthorised person has the right to be notified of this fact within a reasonable period”.

5.1.3 INTERNATIONAL LEGAL FRAMEWORK

The right to privacy is enshrined in article 12 of the Universal Declaration of Human Rights (UDHR), applicable in South Sudan, and article 17 of the International Covenant on Civil and Political Rights (ICCPR) which provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence,” and that “everyone has the right to the protection of the law against such interference or attacks.”¹⁴⁷ Surveillance should only be used when necessary and proportionate to protect legitimate interests¹⁴⁸ and when subject to judicial oversight for a defined purpose and period.¹⁴⁹ States are also required to ensure that individuals whose rights have been violated by unlawful surveillance have access to remedy. The right to an effective remedy has been recognized under various international and regional human rights treaties and instruments,¹⁵⁰ of which the UDHR, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the African Charter on Human and Peoples’ Rights are applicable in South Sudan, and also as a rule of customary international law.¹⁵¹ In June 2019, South Sudan’s parliament authorized the ratification of the ICCPR.¹⁵² However, at the time of writing, South Sudan is yet to ratify the ICCPR and deposit the instrument of accession.

Limitations placed on the right to privacy must have a demonstrable chance of achieving a legitimate goal, such as protecting national security or the right to life of others. “The onus is on authorities seeking to limit the right to show that the limitation is connected to a legitimate aim. Furthermore, any limitation on the right to privacy must not render the essence of the right meaningless and must be consistent with other human rights, including prohibition of discrimination. Where the limitation does not meet these criteria, the limitation is unlawful and/or the interference with the right to privacy arbitrary.”¹⁵³

The UN High Commissioner for Human Rights emphasizes that “Even the mere possibility of communications information being captured creates an interference with privacy, with a potential chilling effect on rights, including those to free expression and association. The very existence of a mass surveillance programme thus creates an interference with privacy.”¹⁵⁴ Where surveillance practices are inadequately overseen or regulated, where frequent abuses of surveillance powers take place, and victims are denied remedies, such as in South Sudan, this interference violates human rights, and undermines the ability of civil society to carry out its work.

As such, surveillance¹⁵⁵ can amount to an “arbitrary or unlawful” attack on privacy or violate other rights when the domestic legal framework is insufficiently detailed or publicly inaccessible or does not provide for

¹⁴⁷ Article 17 of the ICCPR.

¹⁴⁸ Article 19 (3) of the ICCPR.

¹⁴⁹ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Report on surveillance and human rights*, A/HRC/41/35, 28 May 2019, para. 50(c), www.undocs.org/A/HRC/41/35

¹⁵⁰ Article 8 of the UDHR; Article 2 (3) of the ICCPR,; Article 2 of the International Covenant on Economic, Social and Cultural Rights; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women; Article 14 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 25 of the American Convention on Human Rights, Article 7(1)(a) of the ACHPR; Article 47 of the Charter of Fundamental Rights of the European Union; Articles 12 and 23 of the Arab Charter on Human Rights, and UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006, amongst others.

¹⁵¹ *Prosecutor v. André Rwamakuba*, Case No. ICTR-98- 44C, Decision on Appropriate Remedy, para 40 (31 January 2007); *Prosecutor v. André Rwamakuba*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, paras 23-5 (13 September 2007); and *Cantoral-Benavides v. Perú*, 2001 Inter-Am. Ct. H.R. (ser.C) No. 88, at para 40.

¹⁵² UN Office of the High Commissioner for Human Rights, *Press briefing note*, 7 June 2019,

www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E

¹⁵³ UN High Commissioner for Human Rights, *The Right to Privacy in the Digital Age*, A/HRC/27/37, 30 June 2014, para 23,, digitallibrary.un.org/record/777869?ln=en

¹⁵⁴ Amnesty International, *Injustice Incorporated: Corporate abuses and the human right to remedy* (Index: POL 30/001/2014).

¹⁵⁵ In addition to interception of the content of private communication, human rights may also be violated if metadata - information about, for example, the time, location and manner of communication – is intercepted. According to the UN High Commissioner for Human Rights, this can amount to a violation because “‘metadata’ may give an insight into an individual’s behaviour, social relationships, private preferences and identity that go beyond even that conveyed by accessing the content of a private communication.” See, UN High Commissioner for Human Rights, *The Right to Privacy in the Digital Age*, A/HRC/27/37, 30 June 2014, para 19, digitallibrary.un.org/record/777869?ln=en; UN General Assembly Third Committee, Resolution on the right to privacy in the digital age, 16 November 2016, UN Doc. A/C.3/71/L.39/Rev.1

adequate safeguards against abuse, or where surveillance is carried out for purposes or in a way that is contrary to a state's obligations under international human rights law.¹⁵⁶

Article 1 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, referred to as the Human Rights Defenders Declaration, sets out rights and obligations that are provided for under international human rights law. It states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.”¹⁵⁷ However, in South Sudan, surveillance is used to monitor individuals critical of the government who the NSS perceives as “spies”¹⁵⁸ or “Western agents”¹⁵⁹ who “leak information to enemies”¹⁶⁰ and are seen as traitors and a national security threat.¹⁶¹ Chapter V of the 2008 Penal Code Act (hereafter 2008 Penal Code) defines “offenses against Southern Sudan” to include treason, overthrowing or attempting to overthrow the government by unconstitutional means, insurgency, banditry, sabotage or terrorism, publishing or communicating false statements prejudicial to Southern Sudan with a risk of inciting or promoting public disorder or violence, and undermining the authority of or insulting the President, realising that the statement is, or could be, false.¹⁶² Treason is punishable by death.¹⁶³ Expressing opinions critical of the government or government officials does not amount to a threat to national security and is not an aim that can justify limiting the right to privacy. In addition, South Sudan's legal framework is insufficiently detailed, does not provide for adequate safeguards against abuse and laws are not publicly accessible.¹⁶⁴

Specifically, the targeting of human rights defenders, activists, journalists, and civil society members, because of their work, using surveillance technology would qualify as unlawful targeted surveillance under international human rights law. It is often impossible for human rights defenders to prove the existence of surveillance, either because of technical hurdles or because its use is covert.¹⁶⁵ Even where targeting or the presence of an active infection through technical indicators cannot be proven, the fact of living under the constant threat of possible surveillance may constitute a human rights violation itself.¹⁶⁶

On 21 November 2016, the UN General Assembly's (UNGA) Third Committee adopted a resolution on the right to privacy in the digital age. Though non-binding on states, UNGA resolutions over time can become customary international law. The resolution underscores that any legitimate state security concerns should be addressed in compliance with international human rights law. The resolution also calls on states, in line with their obligations under the UN Guiding Principles,¹⁶⁷ to put in place measures to prevent the private sector from violating and abusing the right to privacy, specifically calling on states “to refrain from requiring business enterprises to take steps that interfere with the right to privacy in an arbitrary or unlawful way.”¹⁶⁸ The resolution also calls on businesses to respect human rights and to inform users about company policies that may affect their right to privacy. The UNGA Third Committee also expressed deep concern about the negative human rights impact of surveillance, including extraterritorial and mass surveillance, which can also violate the right to privacy. Amnesty International believes that indiscriminate mass surveillance is never a proportionate interference with the rights to privacy and freedom of expression.

The interrelatedness and indivisibility of the right to privacy makes it important for the realization of other rights, such as freedom of opinion and expression and freedom of peaceful assembly and association. These are important for an individual to participate in political, economic, social and cultural life and for

¹⁵⁶ Amnesty International, “*It's enough for people to feel it exists*” *Civil society, secrecy and surveillance in Belarus* (Index: EUR 49/4306/2016).

¹⁵⁷ UN General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 December 1998, UN Doc. A/RES/53/144.

¹⁵⁸ Amnesty International interview with civil society member, Juba, South Sudan, 10 December 2019.

¹⁵⁹ Amnesty International interview with faith-based leader, Juba, South Sudan, 3 December 2019; Amnesty International interview with civil society member, remote, 24 April 2020.

¹⁶⁰ Amnesty International interview with faith-based leader, remote, 3 December 2019; Amnesty International interview with civil society member, remote, 24 April 2020; Amnesty International interview with former detainee, remote, 3 November 2020.

¹⁶¹ Amnesty International interview with civil society member, remote, 24 April 2020; Amnesty International remote interview with former detainee, 3 November 2020.

¹⁶² Chapter V of the 2008 Penal Code.

¹⁶³ Art. 64 of the 2008 Penal Code. The 2008 Penal Code Act describes treason to mean “an act of sedition disloyalty, betrayal or subversion.”

¹⁶⁴ Amnesty International, “*Do you think we will prosecute ourselves?*” *No prospects for accountability in South Sudan* (Index: AFR 65/1105/2019).

¹⁶⁵ Amnesty International, *Human Rights Defenders Under Threat - A Shrinking Space for Civil Society* (Index: ACT 30/6011/2017).

¹⁶⁶ Amnesty International, *A Dangerous Alliance: Governments Collaborate with Surveillance Companies to Shrink the Space for Human Rights Work* (Blog, 16 August 2019).

¹⁶⁷ The UN Guiding Principles on Business and Human Rights require states to protect against abuses by businesses operating within their territory and jurisdictions.

¹⁶⁸ UN General Assembly Third Committee, Resolution on the right to privacy in the digital age, 16 November 2016, UN Doc. A/C.3/71/L.39/Rev.1

foundations of a democratic state and society. Surveillance, including interception of digital communications and collection of personal data may also affect these other rights.¹⁶⁹

This is particularly important in South Sudan as the country struggles to implement the R-ARCSS, including national public consultations for a permanent constitution-making process, consultations for enabling legislation for transitional justice mechanisms, and as the country prepares for elections which should take place 60 days prior to the end of the 36-month transitional period.¹⁷⁰ Independent and critical voices are needed in South Sudan to contribute to national discussions about lasting solutions to the political crisis and internal armed conflict, and to improve the human rights situation.

5.2 PHONE TAPPING IN PRACTICE IN SOUTH SUDAN

In July 2013, a former NSS officer told Amnesty International that the South Sudanese government was able to conduct communications surveillance. This capacity was confirmed during the 2014 trial of senior government officials Pagan Amum Okiech,¹⁷¹ Majak D'Agoot,¹⁷² Oyay Deng Ajak¹⁷³ and Ezekiel Lol Gatkuoth,¹⁷⁴ who faced charges for treason and other offences for allegedly plotting a coup against the government on 15 December 2013, the day the conflict erupted. Government prosecutors played a recorded telephone conversation between Oyay Deng Ajak and Taban Deng Gai,¹⁷⁵ governor of Unity State until July 2013 and South Sudan's current Second Vice President, in court.

In May 2017, the Court of Appeal ruled that a High Court judge had erred in fact and law when he convicted individuals accused of corruption in the Office of the President on the basis of illegally obtained evidence from wiretapping telephones which violated the right to privacy enshrined in article 22 of South Sudan's 2011 Transitional Constitution.¹⁷⁶

This kind of government surveillance would likely necessitate support from telecommunication service providers, either through a direct connection to their systems or by handing over user data to government authorities. An article about the High Court judgment quotes a telecommunications expert explaining how the system works: "The system work[s] this way, a telephone number is programmed into the monitoring unit. Once that phone number calls or receive calls, it will alert the operator with a red flash on its screen and then the operator will than just press the recording button. [...] This system does not have a jurisdiction control. As long as you know the number of someone, you are able to monitor his or her phone calls at any time."¹⁷⁷

This corresponds to what a former employee of Vivacell, a telecommunication company that operated in South Sudan until March 2018,¹⁷⁸ told Amnesty International. They said that the NSS has a direct connection to all telecommunication service providers in the country via surveillance technology that, they

¹⁶⁹ UN High Commissioner for Human Rights, *The Right to Privacy in the Digital Age*, A/HRC/27/37, 30 June 2014, para 14, digitallibrary.un.org/record/777869?ln=en; UN General Assembly Third Committee, Resolution on the right to privacy in the digital age, 16 November 2016, UN Doc. A/C.3/71/L.39/Rev.1

¹⁷⁰ Section 1.20 of the R-ARCSS. The transitional period started on 22 February 2020 with the start of the formation of the RTGoNU meaning the elections are expected to be held on 23 or 24 December 2022.

¹⁷¹ Pagan Amum Okiech was the Secretary General of the ruling SPLM party and a close ally of President Kiir from 2007 until July 2013. Between 2014 – August 2019, he was the leader of the SPLM Former Detainees, a group of politicians who were arrested in mid-December 2013 by government security forces for their alleged involvement in the alleged coup in Juba in December 2013. At the time of writing he is the leader of the Real-SPLM, a party he formed in August 2019. The Real SPLM is part of the South Sudan Opposition Movements Alliance (SSOMA); an alliance between the Real SPLM, former SPLA Chief of Staff Paul Malong's South Sudan United Front (SSUF) and former SPLA Deputy Chief of Staff of Logistics Thomas Cirillo's National Salvation Army (NAS).

¹⁷² Majak D'Agoot was the Deputy Defense Minister until July 2013 and a member of the SPLM Former Detainees.

¹⁷³ Oyay Deng Ajak was the Minister of National Security. Prior to independence, he was head of SPLA Chief of General Staff from 2005 – 2009 and head of the National Intelligence and Security Services (NISS) in Southern Sudan.

¹⁷⁴ Ezekiel Lol Gatkuoth, former ambassador to the USA, joined Riek Machar's SPLA-IO until July 2016 when he defected to Taban Deng Gai's faction after the SPLA-IO split. He was the Minister of Petroleum from April 2016 till June 2019 when he was dismissed by President Kiir under unclear circumstances.

¹⁷⁵ Amnesty International and Human Rights Watch, *"The Price of Silence" Freedom of expression under attack in South Sudan*, (Index: AFR 65/007/2014).

¹⁷⁶ Sudan Tribune, *South Sudan Appeal Court says phone wiretapping "unconstitutional"*, 28 May 2017, sudantribune.com/spip.php?article62576; Amnesty International, interview with defense counsel of the accused, remote, 29 October 2020.

¹⁷⁷ Sudan Tribune, *South Sudan national security agents spied on Kenyan citizens*, 19 December 2016, sudantribune.com/spip.php?article61165

¹⁷⁸ The government shut Vivacell down in March 2018, allegedly for failure to comply with government regulations. For more see Radio Tamazuj, *Government shuts down mobile operator Vivacell*, 27 March 2018, radiotamazuj.org/en/news/article/government-shuts-down-mobile-operator-vivacell; Sudan Tribune, *Vivacell in talks with S. Sudan authorities after closure*, 29 March 2018, sudantribune.com/spip.php?article65060. At the time of writing, an arbitration case between Vivacell and the Government of South Sudan is ongoing.

believed, could be classified as dual use. They further stated that the equipment, known by the name of “Legal Interception” could facilitate lawful interception, and that it was procured in Israel.¹⁷⁹ Dual use technologies are technologies that are normally used for civilian purposes, but which may have military applications. These technologies may serve a legitimate purpose like ensuring that telecommunication networks are accessible, provide quality services to clients and billing monitoring, but they can also be used for unlawful government surveillance.¹⁸⁰ The former Vivacell employee further said that the government required all telecommunication companies operational in South Sudan to pay Verint Systems Ltd, the Israeli subsidiary of Verint Systems Inc. for this equipment and annual service provision.¹⁸¹ In official correspondence, MTN confirmed to Amnesty International that MTN was required to pay for Lawful Interception equipment and services to vendors, and that this was done in accordance with the law and coordinated through the NCA, with all mobile networks operating within the country. MTN did not mention the specific legal provisions or which particular vendor they paid.¹⁸²

As detailed in section 4.6, Amnesty International obtained authentic documents that prove that, at least between March 2015 and February 2017, the NCA, in collaboration with the NSS and with knowledge of the then Undersecretary of the Ministry of Telecommunication and Postal Services, required Vivacell to pay at least 762,236 US Dollars to Verint Ltd in Israel for “LI technical services rendered”.¹⁸³ Based on the documentary evidence and the testimony from Vivacell’s former employee, Amnesty International believes that Verint Systems Ltd. transferred Lawful Interception equipment to South Sudan, at least between 2015 to 2017.

A former MTN South Sudan employee told Amnesty International that, in 2013, the NSS, through an Israeli company, installed a ‘box’ at their company acquired from Israel. According to him, this was illegal at the time because South Sudan’s laws did not have legal provisions then to permit government interception of private telecommunications. He told Amnesty International that such ‘boxes’ were installed in all telecommunication companies operating in South Sudan at the time.¹⁸⁴ ‘Box’ installation could be how the government, including the NSS, gains direct access to data from service providers. “They [telecom companies] will automatically be bulldozed and there is no way to protect [data from customers]. The environment here...it’s not because the laws are not there, but it’s not implemented. The law is not respected. There is impunity,”¹⁸⁵ the former employee of the telecom company said. Amnesty International wrote to MTN Group, Zain and Vivacell to ask whether they had installed boxes to enable communications surveillance under orders from the Government of South Sudan.

Only MTN responded, stating that they were unable to comment on Amnesty International’s interview with the former MTN employee and that “[p]er the terms of governing laws and regulations including our operating licence, we have obligations to have interconnection with other mobile network operators and the International Gateway. This would entail having equipment installed in our switch centres under the guidance of the National Communications Authority (NCA).”¹⁸⁶ From this response, it is unclear whether MTN allowed the installation of a box acquired from Israel that would enable the government to gain direct access to MTN’s data. MTN claims it is “not involved in any monitoring or surveillance of customers”¹⁸⁷ and “only shares customer data in strict compliance with its legal and regulatory obligations”¹⁸⁸ such as “supporting in the conduct of any legal proceedings and lawful purposes pursuant to our licence obligations.”¹⁸⁹

5.2.1 PHONE TAPPING, ARBITRARY ARREST AND PROLONGED DETENTION

Abdalah (pseudonym), a South Sudanese human rights defender, told Amnesty International that, after he had spoken out about human rights violations his organization documented, he started receiving phone calls from someone in Juba in mid-2018 who identified himself as an NSS-ISB officer. In August 2018, he was arbitrarily arrested and detained in the south-west of the country. He told Amnesty International that, during his detention, an NSS officer showed him a box near the office buildings on the NSS compound where the detention facility was also located, and an antenna. Abdalah said that the NSS officer told him that this box

¹⁷⁹ Amnesty International interview with former Vivacell employee, 29 January 2020 and 27 October 2020.

¹⁸⁰ Amnesty International interview with former MTN South Sudan employee, Juba, South Sudan, 26 November 2019.

¹⁸¹ Amnesty International interview with former Vivacell employee, 29 January 2020 and 27 October 2020.

¹⁸² MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

¹⁸³ Letters from the NCA to Vivacell and proforma invoices from Verint Ltd, on file with Amnesty International.

¹⁸⁴ Amnesty International interview with former MTN South Sudan employee, Juba, South Sudan, 26 November 2019.

¹⁸⁵ Amnesty International interview with former MTN South Sudan employee, Juba, South Sudan, 26 November 2019.

¹⁸⁶ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

¹⁸⁷ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

¹⁸⁸ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

¹⁸⁹ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

was used to capture information from telecommunication networks. Abdalah was later transferred to Blue House where he reports that a fellow detainee who had worked for South Sudan's immigration office told him that the NSS had equipment to intercept telecommunication, including voice recognition.¹⁹⁰

Abdalah also told Amnesty International that in August 2018 before his arbitrary arrest, when he spoke with a staff member of an international human rights organization over a regular phone line about threats he was facing, a person who identified himself as an NSS-ISB officer, called him and recounted what he had said to the staff member of the international organization. Abdalah believes that there is no alternative way the NSS-ISB officer could have known the contents of the phone conversation and believes that his phone was tapped.¹⁹¹

Abraham Majak Maliap, a former SPLA-IO division commander and member of parliament, told Amnesty that NSS agents arrested him without a warrant in Cueibet on 17 November 2017 and brought him to an NSS detention center in Wau where he stayed for two days. He reported that he was then flown to Juba on 20 November 2017 where the NSS detained him in the Blue House.¹⁹² Abraham Majak Maliap was released almost a year later on 25 October 2018 following a presidential pardon.¹⁹³ Abraham Majak Maliap suspected his phone calls were intercepted because he did not make his travel plans public and very few people knew of them. He said that he was arrested after he had called one of the armed opposition members¹⁹⁴ in Australia and told him where he was heading.¹⁹⁵ Unless the person on the other end of the line in Australia informed the NSS of his travel plans, it is plausible that Abraham Majak Maliap's call was intercepted or that the system revealed his location, resulting in his arbitrary arrest and prolonged detention. Government forces killed Abraham Majak Maliap in June 2020, shortly after he joined a rebellion called the 7th October movement.¹⁹⁶

5.3 HUMAN RIGHTS RESPONSIBILITIES OF TELECOMMUNICATION COMPANIES

Without adequate transparency, it is not possible to know the full technical details of how unlawful surveillance is accomplished in South Sudan. However, in many countries, it is common for such surveillance to be effectuated with support from telecommunication companies.

Telecommunications companies have a responsibility to respect human rights, including the right to privacy, by ensuring that they are not causing, contributing to or are directly linked to human rights abuses. Under the UN Guiding Principles, an internationally recognized standard, businesses have a responsibility to respect human rights wherever they operate, including throughout their operations and supply chains. Businesses should avoid infringing on the human rights of others, address adverse human rights impacts with which they are involved, and seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. As an important measure to ensure their respect for human rights, businesses are required to identify, prevent, mitigate and account for any negative human rights impacts resulting from their operations or as a result of their business relationships with other actors.¹⁹⁷ The UN Guiding Principles also clarify that in armed conflict situations, which South Sudan has been since December 2013, enterprises should respect international humanitarian law.¹⁹⁸

¹⁹⁰ Amnesty International interview with human rights defender, remote, 13 October 2020.

¹⁹¹ Amnesty International interview with human rights defender, remote, 18 September 2020; Amnesty International interview with human rights defender, remote, 13 October 2020.

¹⁹² Amnesty International interview with Abraham Majak Maliap, Juba, South Sudan, 20 February 2019.

¹⁹³ Reuters, *South Sudan frees five political detainees: intelligence agency, 25 October 2018*, www.reuters.com/article/us-southsudan-unrest-idUSKCN1M21P

¹⁹⁴ Abraham Majak Maliap resigned as a parliamentarian representing SPLA-IO Taban Deng Gai's faction in June 2017 and started his own opposition movement called the Popular Front for Democratic Reform. Its military wing was called the Pan-African National Guard. Sudan Tribune, *Former S. Sudanese lawmaker forms new rebel movement, 25 June 2017*, sudantribune.com/spip.php?iframe&page=imprimable&id_article=62824; Amnesty International interview with Abraham Majak Maliap, Juba, South Sudan, 20 February 2019.

¹⁹⁵ Amnesty International interview with Abraham Majak Maliap, Juba, South Sudan, 20 February 2019.

¹⁹⁶ Radio Tamazuj, *Family demands body of a man killed by SSPDF in Lakes, 21 June 2020*, radiotamazuj.org/en/news/article/family-demands-body-of-man-killed-by-sspdp-in-lakes

¹⁹⁷ UN Guiding Principles on Business and Human Rights, Principles 13-15.

¹⁹⁸ UN Guiding Principles on Business and Human Rights, Commentary to Principle 12.

Amnesty International is concerned that telecommunication companies in South Sudan may have failed to respect human rights as outlined by the UN Guiding Principles by sharing customer telephone records with the Government of South Sudan and the NSS, without legal justification or judicial oversight, particularly if these entities used such records to commit human rights violations, including of the rights to life, liberty, freedom from torture and other forms of ill-treatment.

Amnesty International asked Zain, Vivacell, and MTN Group to provide information about their human rights due diligence practices, among other questions. Only MTN Group responded saying that the revision of MTN Group's Digital and Human Rights Policy was concluded in the latter part of 2020 and that as of December 2020 training is underway to ensure the implementation of the policy framework and assessments.¹⁹⁹ In its letter, MTN also stated that MTN does not disclose risks by individual market.

In official correspondence, MTN confirmed that the law in South Sudan requires all [mobile] operators in the country to cater for legal interception and MTN stated that the operation of the legal interception is not [within] the scope of the responsibilities of mobile operators.²⁰⁰ Under the UN Guiding Principles, MTN and other telecommunication companies have a responsibility to respect human rights, for example, by ensuring that their systems do not result in adverse human rights impacts. In addition, MTN Group also has the responsibility to ensure that access to their client's data is not direct, meaning without adequate checks and oversight which does not appear to be the case in South Sudan.

5.4 CONFISCATION AND SEARCH OF DEVICES UPON ARREST AND QUESTIONING

Under the 2014 NSS Act, the NSS has sweeping powers to conduct searches without sufficiently protecting the right to privacy guaranteed under Article 2011 of the country's Transitional Constitution, as well as regional and international human rights law.²⁰¹ Chapter III, article 13 of the Act allows the NSS to, amongst others, "monitor, investigate and conduct search of suspect and places"; "gather internal and external information related to security of the Nation" and "undertake necessary search and investigation for disclosure of any situation, fact, activity or factors which may endanger the national security and safety of the nation". There is no clarity about the circumstances when these powers can be exercised contravening the principle of legality, and it does not specify that they should only be exercised when strictly necessary to achieve the legitimate goal of protecting national security in a proportionate way.

Amnesty International documented two cases where the NSS confiscated telephones and laptops of activists that they summoned, arbitrarily arrested and detained. For instance, Martin (pseudonym), a youth activist detained without charge for 2.5 months in the Blue House after writing Facebook posts critical of senior government officials, including the president, told Amnesty International that NSS agents took his two phones and beat him to force him to give his passwords to his Facebook accounts, email accounts, and his smartphones. Two days after he was released, he realized that his Facebook password had been changed. He obtained the new password from a member of the committee that had been investigating his case and he changed it.²⁰² Searching his phone without a warrant, accessing his digital data, and changing his password without his consent violates his privacy.

In October 2019, Sam Mednick, an AP international journalist was investigating the impact of pollution from chemicals used by South Sudan's oil industry on communities in the oil-rich Paloch area in north-eastern South Sudan.²⁰³ Before boarding her flight back to Juba, an individual she suspected to be an NSS agent called her into his office, confiscated her laptop, phone, i-Pad, camera and notebook. Over the next 11 days, she reported to two security offices, one of them at the Blue House, multiple times. NSS officials confiscated her passport and questioned her for hours, forced her to show her files, went through her handwritten notes and accused her of prolonging the conflict. This violated her privacy and media freedoms. The NSS returned her passport, warning her if she ever wrote about oil pollution in South Sudan there would be consequences,

¹⁹⁹ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

²⁰⁰ MTN Group Response to Amnesty International letter, 14 December 2020, on file with Amnesty International.

²⁰¹ Article 22 of the 2011 Transitional Constitution reads: "The privacy of all persons shall be inviolable; no person shall be subjected to interference with his or her private life, family, home or correspondence, save in accordance with the law."

²⁰² Amnesty International interview with youth activist, Juba, South Sudan, April 2019.

²⁰³ Sam Mednick, *South Sudan ignores reports on oil pollution, birth defects*, 13 February 2020, apnews.com/article/f2f06cfa70126ad179445720d7c60b8a; Sam Mednick, *South Sudan buries reports on oil pollution, birth defects*, 13 February 2020, apnews.com/article/fade1c85f9c691448d04b7d1f2df14f8

including not allowing her to be in the country.²⁰⁴ On 30 October 2019, the South Sudanese authorities confiscated Sam Mednick's accreditation and work permit. The South Sudan Media Authority said they revoked her accreditation on 23 October because of an article she wrote about tensions in Juba ahead of the formation of the unity government.²⁰⁵ The authorities allowed Sam Mednick to return to South Sudan as a foreign reporter in November 2020.

5.5 THE NSS MONITORS (SOCIAL) MEDIA

“We cannot express ourselves, even Facebook is dangerous.”

South Sudanese lawyer, Juba, 5 December 2019.

While the NSS's mandate allows them to monitor individuals, including online, the scope of their powers and the lack of adequate legal safeguards means that in practice they exceed what international law and standards allow. Additionally, the way they use that information - to arbitrarily arrest and detain individuals critical of the government - makes this surveillance harmful. Chapter III, article 13 of the 2014 NSS Act allows the NSS to, amongst others, “monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interests so as to prevent misuse by users”. The NSS abuses this power to silence dissenting voices.

Amnesty International documented four individuals who were arbitrarily arrested and detained after posting critical messages about the government and government officials on social media platforms. This indicates that the NSS monitors public social media posts to identify, intimidate and arrest and detain people perceived as government critics.

In late April 2020, South Sudanese authorities arbitrarily arrested and detained Atem Mawut Marac for several hours after he criticized senior government officials on Facebook for not following the country's social distancing rules.²⁰⁶

In late 2019, Kanybil Noon, a civil society representative on the Strategic Defense and Security Review Board, a body of the 2018 R-ARCSS, was charged with defamation. The case was initiated by Akol Koor Kuc, Director of the NSS's Internal Security Bureau, in relation to Kanybil Noon's Facebook posts and letter to President Salva Kiir Mayardit in which he alleged that Akol Koor Kuc abuses his power. On 29 May 2020, Kanybil Noon, was arbitrarily arrested and detained in Blue House. Kanybil was not informed of any charges against him. He accessed a lawyer in June who, on 30 June, filed an application before the High Court of South Sudan in Juba seeking his unconditional release or appearance in court.²⁰⁷ After 117 days in detention in poor health, without access to medical services and without charges, Kanybil Noon was released on 22 September.²⁰⁸

On October 2019, Emmanuel Monychol Akop, managing editor of the *Dawn* newspaper was summoned to Blue House and subsequently detained allegedly for ridiculing the dress of Awut Deng Achuil, the then Minister of Foreign Affairs, on Facebook. Awut Deng Achuil had filed a defamation case against the *Dawn* in 2017. Emmanuel Monychol Akop was briefly released on bail after four days in detention to attend a burial

²⁰⁴ Sam Mednick, *Getting the story of South Sudan's devastating oil pollution*, 13 February 2020, [apnews.com/article/646258f8514136215b7cd9bcc48b47ed](https://www.apnews.com/article/646258f8514136215b7cd9bcc48b47ed); Amnesty International interview with Sam Mednick, remote, 14 October 2020.

²⁰⁵ Amnesty International, *South Sudan: Journalists at risk ahead of unity government* (Press release, 1 November 2019).

²⁰⁶ Anataban, *Alleged arrest of a South Sudanese Citizen named Atem Mawut Marac in Twic state*, 26 April 2020. Press Statement, on file with Amnesty International.

²⁰⁷ Defense Counsel, *Release him unconditionally or produce him before the court: A statement on Kanybil Noon Deng's detention by the National Security Service (sic)*, 2 July 2020, on file with Amnesty International. See also Amnesty International, *Systematic harassment of civil society, journalists, private sector and critics by South Sudan's intelligence agency* (Index: AFR/65/2727/2020).

²⁰⁸ Amnesty International, *Accountability critical to ending grave human rights violations in South Sudan* (Index: AFR 65/3105/2020).

only to be summoned again on 4 November 2019 and detained until he was released on bail on 29 October 2019.²⁰⁹

“They monitor radio, if you talk [negatively] about the NSS or government they will look for you. [...] We cannot express ourselves, even Facebook is dangerous”,²¹⁰ a lawyer told Amnesty International. “In [the] state [geographical administrative area], we have a WhatsApp group to share info about gender-based violence. All this is monitored by security. If you write something not favouring them, you’ll be arrested. On Facebook, on WhatsApp, you can’t express your opinion in the way you want.”²¹¹

The NSS also monitors traditional media and uses the information to identify, target, arbitrarily arrest and, in some cases, detain government critics.

Maker (pseudonym), a political activist, told Amnesty International that he was abducted by NSS agents on 17 July 2019, two days after he published an article about extra-judicial killings of 35 people. After the publication, he reported receiving threatening calls and warnings from individuals who identified themselves as agents of the NSS’s Central Division: “They call me, why are your writing report, these are classified informations (sic). I told them it’s not in line with constitution, and I want to bring it to attention of the government. They were threatening me, especially the security personnel, saying one day you will see consequences of what you have done.”²¹² In the evening of 17 July 2019, Maker says that as he was on his way home, NSS agents pulled him into a black Toyota V8, tied his hands and feet, covered his face with a small cloth and drove off. He said they questioned him about the article and started beating him, telling him that they were going to teach him a lesson. He heard them talk about their work in the Blue House in the Dinka language. Shortly after they transferred him to another car which drove for hours and left him on the outskirts of Juba.²¹³

In January 2019, Michael Rial Christopher, editor of the *Al-Watan* newspaper, published an opinion article in support of anti-government protests in Sudan. After publication, the Media Authority and the NSS warned *Al-Watan* not to report on the protests. Michael temporarily fled South Sudan in January 2019 due to death threats from persons he believes were NSS agents and returned to the country in February. In March 2019, the authorities suspended *Al-Watan* for operating without a license, an allegation that Michael denies. On 15 July 2019, he was taken off a flight to Kenya by NSS agents and summoned to Blue House and illegally detained on 17 July only to be released on 22 August 2019. He did not have regular access to his family and a lawyer during his detention.²¹⁴

Kevin (pseudonym), a civil society member, was arrested by NSS officers on 14 February 2017 and taken to their Central Equatoria State headquarters, next to the Egyptian clinic in Juba, which doubles as an underground unofficial detention centre, on allegations that he was planning to overthrow President Kiir. He told Amnesty International that the NSS interrogators told him that other allegations against him included having meetings in hotels with “kawajaat” (an Arabic term used to refer to caucasian people) where he spoke negatively about President Kiir and the government, expressing himself negatively about the government in tea places, and critiquing the government on the news and social media. They showed him a copy of the press release he had written. After his release later that day, he remembers the NSS officers telling him to be very careful, that they knew what he was doing, that the work he was engaged in was not good for the government and that, if he was not careful, not silent, they would “see what to do with him”. Upon his release, they warned him not to talk to media and threatened him that “they will get him” if he did.²¹⁵

A civil society leader told Amnesty International about an incident during a meeting with the NSS in mid-2020: “Of course we introduced ourselves. He said “even without your introduction, we already know you, we know what is in your mind, we know what you say, we know your movements, we know who you talk to. We follow on radio, in newspapers, and on social media. We have your records with us. It’s just a matter of time.’ Nothing has happened that will make us go there now. It’s just a matter of time.” We were quiet, we didn’t say anything.”²¹⁶

²⁰⁹ Human Rights Watch, *South Sudan: Free Arbitrarily Detained Journalist. Uphold Free Expression; Reform National Security Laws*, 28 November 2019, [www.hrw.org/news/2019/11/28/south-sudan-free-arbitrarily-detained-journalist#:~:text=The%20National%20Security%20Service%20\(NSS.in%20Jebel%20neighborhood%20of%20Juba.](http://www.hrw.org/news/2019/11/28/south-sudan-free-arbitrarily-detained-journalist#:~:text=The%20National%20Security%20Service%20(NSS.in%20Jebel%20neighborhood%20of%20Juba.)

²¹⁰ Amnesty International interview with lawyer in Juba, South Sudan, 5 December 2019.

²¹¹ Amnesty International interview with human rights defender in Juba, South Sudan, 5 December 2019.

²¹² Amnesty International interview with political activist, remote, 6 September 2020.

²¹³ Amnesty International interview with political activist, remote, 6 September 2020.

²¹⁴ Amnesty International, “Urgent Action: Newspaper Editor detained without charge”, 25 July 2019; Amnesty International, *Amnesty International Urges South Sudan to Rein in the National Security Service and Respect the Rights to Freedom of Expression and Peaceful Assembly* (Index: AFR/65/1050/2019)

²¹⁵ Amnesty International interview with civil society member in Kampala, Uganda, 21 November 2019.

²¹⁶ Amnesty International interview with civil society leader, remote, 24 June 2020.

5.6 A NETWORK OF SPIES AND INFILTRATION

“They have occupied most of the spaces”

South Sudanese human rights defender, Juba, 27 November 2019.

The 2014 NSS Act allows the NSS to “co-operate with any similar or friendly organ in exchange for information”,²¹⁷ and to “gather and retain information related to any person, persons or institutions as is necessary for carrying out its duties and functions under this Act.”²¹⁸ Article/section 40(1) of the NSS Act allows the Director General of a concerned Operational Organ to second any NSS member to any institution, in consultation with the Minister of National Security.²¹⁹ In fulfilment of its mandate, the NSS has deployed agents and informants throughout South Sudan as well as in neighbouring countries.

Amnesty International obtained credible accounts that the NSS has infiltrated institutions including NGOs, government agencies, media houses, universities, private sector companies, and that hotels have resident NSS officials. Amnesty International also received reports that the NSS has infiltrated the United Nations mission and agencies and international NGOs.²²⁰

One activist who used to work with the Ministry of National Security between 2011 and 2013 told Amnesty International that, during those years, the NSS would attach agents to all government agencies as a method of operation and that he believed that this was still the case.²²¹

In 2019, the UN Panel of Experts on South Sudan reported that, through Deng Tong Kenjok, a Lieutenant Colonel attached to the SSRRC which oversees NGOs in South Sudan and regulates their registration, certification and operating licenses,²²² “the Service embeds personnel within key offices and civil society organizations and approves all meetings, workshops and conferences.”²²³ Deng Tong Kenjok was the Chief Registrar of NGOs with broad powers that violate international human rights law to issue and revoke NGO registrations under the 2016 NGO Act. He was replaced by Dominic Michael Genge in January 2021.²²⁴

²¹⁷ Article 13(10) of the 2014 NSS Act.

²¹⁸ Article/Section 32 of the 2014 NSS Act. Article 13 of the 2014 NSS sets out the power and functions of the NSS to be: “(1) Protect the national interest of the Republic of South Sudan; (2) Monitor, investigate and conduct search of suspects and places related to crimes or offences against the State in accordance with the provisions of this Act; (3) Maintain security, protection of the Constitution, national social fabric and safety of South Sudanese from any internal or external danger; (4) Gather internal and external information related to security of the Nation, analyze, evaluate and recommend to the Council necessary protection measures based on such information; (5) undertake necessary search and investigation for disclosure of any situation, fact, activity or factors which may endanger the national security and safety of the nation in accordance with the provisions of this Act; (6) Provide opinion, advice, consultation and services in respect of security and intelligence to various national organs for realization of stability and safety of the nation; (7) Detect and prevent any danger resulting from espionage terrorism, conspiracy, piracy, cyber and environmental crimes or destructive actions; (8) Detect and combat any destructive activities by any organization, group or individuals, foreign country or South Sudanese group inside or outside South Sudan; (9) Protect Very Important Persons and public utilities in coordination with other regular forces; (10) Co-operate with any similar or friendly organ in exchange for information, combat terrorism and any activity threatening mutual security or national interests and in order to achieve the above: (11) Monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interests so as to prevent misuse by users; (12) Request any information, statement, document, or any relevant material from any suspect and potential witness for perusal or examination, keep or take necessary or appropriate measures in respect of such information, statement, document or relevant material; (13) Summon, investigate and take particulars and depositions from any suspect and potential witness; (14) Seize weapon, machine, tool, automobile or any gadget suspected to be connected with an offence or crime against the state; (15) Arrest and detain suspects in accordance with the provisions of this Act in crimes related to National Security as provided for under section 7 of this Act; (16) Carry out any other function assigned to it by the President or the Council in accordance with the Constitution.”

²¹⁹ Article/Section 40(1) of the 2014 NSS Act.

²²⁰ Amnesty International interview with former employee of private security company in South Sudan, remote, 8 March 2019 and 4 September 2020; Amnesty International interview with former justice in Juba, South Sudan, 1 April 2019; Amnesty International interview with exiled human rights defender in Kampala, Uganda, 20 November 2019; Amnesty International interview with exiled civil society member in Kampala, Uganda, 21 November 2019; Amnesty International interview with journalist in Juba, South Sudan, 27 November 2019; Amnesty International interview with civil society member in Juba, South Sudan, 27 November 2019; Amnesty International interview with international researcher in Juba, South Sudan, 28 November 2019; Amnesty International interview with former detainee in Juba, South Sudan, 29 November 2019; Amnesty International interview with faith-based leader in Juba, South Sudan, 3 December 2019; Amnesty International interview with human rights defender in Juba, South Sudan, 4 December 2019; Amnesty International interview with civil society member in Juba, South Sudan, 5 December 2019; Amnesty International interview with journalist in Juba, South Sudan, 6 December 2019; Amnesty International interview with teaching assistant in Juba, South Sudan, 6 December 2019; Amnesty International interview with civil society member in Juba, South Sudan, 8 December 2019; Amnesty International interview with journalist in Juba, South Sudan, 9 December 2019; Amnesty International interview with academic, remote, 6 August 2020..

²²¹ Amnesty International interview with youth activist, remote, 3 September 2020.

²²² Articles 9, 10 and 12 of the 2016 NGO Act.

²²³ UN Panel of Experts on South Sudan, *Final Report, S/2019/301, 9 April 2019*, para 57, www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2019_301.pdf

²²⁴ See tweet by South Sudan NGO Forum on 22 January 2021, twitter.com/SSNGOF/status/1352569684617555971

Two interviewees recall a youth conference in Kigali, Rwanda that brought together different South Sudanese youth organizations, including the youth wings of political parties, in June 2018 where a civil society member had expressed himself critically about the government. The discussions resulted in a communiqué signed by the participants. The civil society member recalls: “We discovered later, there were security personnel amongst them [SPLM youth] to monitor. They approached me in the middle of the night. “Malual (pseudonym), we got your name. Why did you sign? You know this document is against the government.”” Malual told Amnesty International that the NSS agents threatened him with abduction at the airport were he to travel back to Juba. He then flew to Uganda and travelled back to South Sudan by road and, after more warnings, fled to Uganda, where he felt he was still being monitored by a South Sudanese man whose identity was unknown to him who followed him on the streets of Kampala and would stop when he stopped and continue walking when Malual did too.²²⁵

Three journalists told Amnesty International that the NSS also has an agent attached to the Media Authority. “One [of the] worst thing[s] that we have, within Media Authority, there is an NSS. When it comes to arrest and detention of journalist by NSS, the person in Media Authority who is supposed to do that is NSS! He was just appointed to be there to do the thing in the interest of NSS,” said one of the journalists describing the challenges facing journalists and press freedoms in the country.²²⁶ In 2018, UNMISS concluded that the NSS’s “practice of being embedded inside newspapers printing establishments or monitoring conferences discussing the state of the country or human rights issues, contributed to deterring participation and resulted in growing self-censorship.”²²⁷

A former private security company employee connected to NSS officials through his work, told Amnesty International that the NSS has personnel in most hotels, guest houses, consulting businesses, NGOs, government agencies and security companies. He told Amnesty International that, at the company he worked for, the NSS had their own office on the company’s compound and that NSS officers obtained the daily logbooks of individuals who visit the premises where employees of the security company worked as security guards and report back to their seniors.²²⁸ These logbooks typically include identification details of the visitor, the license plate number if the individual enters by car, the date and time of the visit and who the visitor is to meet.

This collaboration with a private security company is problematic because the private security company is employed by a wide variety of organizations including media organizations, international NGOs, the UN, and diplomatic missions. The former private security employee also told Amnesty International that the NSS pressures security companies to provide NSS personnel and their families with jobs, enabling a patronage network that can provide the NSS with logistical support, such as vehicle maintenance and fuel supplies, when necessary.²²⁹

Other interviewees also said that NSS has resident officers in all hotels to monitor activities in the hotels and ensure that any activities have been approved.²³⁰ A former Court of Appeal justice who had moved to a hotel after he was attacked at home, told Amnesty International that he had encountered NSS officers in the hotel who said that they were monitoring him. “It’s normal”, he said.²³¹ A civil society member recalled getting into an argument with an NSS officer at the hotel where he was staying after the officer said that he was there to monitor hotel guests.²³² A journalist told Amnesty International: “In hotels all over, they have people. There is no safe hotel in South Sudan. They are checking who is doing what.”²³³ A human rights defender told Amnesty International she overheard NSS officers asking a hotel for the list of “who is there. Every day they come to get the list of who is staying at the hotel and what is going on. [...] It’s common that people know

²²⁵ Amnesty International interview with civil society member in Kampala, Uganda, 21 November 2019. This account was verified by another participant of the conference. Amnesty International interview with conference participant, remote, 6 August 2020.

²²⁶ Amnesty International interview with journalist in Juba, South Sudan, 6 December 2019.

²²⁷ UNMISS and the UN Office of the High Commissioner of Human Rights, *Report on the right to freedom of opinion and expression in South Sudan Since the July 2016 Crisis, February 2018*, reliefweb.int/report/south-sudan/report-right-freedom-opinion-and-expression-south-sudan-july-2016-crisis

²²⁸ Amnesty International interview, remote, 8 March 2019.

²²⁹ Amnesty International interview, remote, 8 March 2019

²³⁰ Amnesty International interview with civil society leader, Juba, South Sudan, April 2019; Amnesty International interview with former justice in Juba, South Sudan, 1 April 2019; Amnesty International interview with journalist in Juba, South Sudan, 27 November 2019; Amnesty International interview with civil society member in Juba, South Sudan, 27 November 2019; Amnesty International interview with civil society member in Juba, South Sudan, 4 December 2019.

²³¹ Amnesty International interview with former Court of Appeal justice in Juba, South Sudan, 1 April 2019.

²³² Amnesty International interview with civil society member in Juba, South Sudan, 4 December 2019.

²³³ Amnesty International interview with a journalist, Juba, South Sudan, 27 November 2019.

about it.”²³⁴ Two hotel managers told Amnesty International that they had NSS officers staying in their hotel and that this was a common practice.²³⁵

Individuals that Amnesty International spoke to believed NSS agents are deployed in many other locations including churches, tea places, and that the network extends to using motorcycles (commonly referred to as “boda bodas”).²³⁶

The network extends to the University of Juba too. A journalist told Amnesty International when he was interviewing an academic at the University of Juba about the peace process going on in Khartoum before the signing of the agreement in September 2018, four to five individuals interrupted the interview and shoved them both to the side. One of the individuals, who identified himself as an NSS agent, confiscated the journalist’s phone that he was using to record the interview, demanded to listen the recording, and warned the journalist that if he were to broadcast anything negative, they knew where to find him.²³⁷ Other interviewees also spoke of the presence of NSS agents at the university.²³⁸

While international law does not prohibit the practice of undercover investigation per se, the breadth and depth of the network of NSS informants, and its unlawful use to monitor HRDs and deter people from exercising their human rights, unquestionably violates human rights law and standards, including freedom of opinion and expression as well as the right to privacy. In addition, the NSS uses the information gathered through human surveillance to arbitrarily arrest and detain individuals critical of the government. In 2019, the CoHRSS noted that “the subsequent arrest of those identified occurred reportedly because of surveillance undertaken across different sectors, including in hospitals, government agencies, airports, banks, media houses, oilfields and civil society organizations.”²³⁹

5.7 THE NETWORK CROSSES BORDERS

The NSS spy network extends throughout East Africa to reach those who find refuge in neighbouring countries.

DONG SAMUEL LUAK AND AGGREY EZBON IDRI

On 23 January 2017, Dong Samuel Luak, a South Sudanese human rights lawyer and registered refugee, was forcibly disappeared in Nairobi, Kenya. The next day, on 24 January 2017, Aggrey Ezbon Idri, chair of the SPLM/A-IO’s Humanitarian Affairs Committee, was also forcibly disappeared. Amnesty International believes that South Sudanese and Kenyan security agencies were involved their enforced disappearances.²⁴⁰

In 2019, the UN Panel of Experts on South Sudan found that Dong and Aggrey were flown to South Sudan on a commercial plane chartered with the help of South Sudan’s embassy in Kenya on 27 January 2017. Both the UN Panel of Experts and Amnesty International verified that once in South Sudan, they were detained in the Blue House in Juba. They were then removed from this facility on 27 January 2017. According to the UN Panel of Experts, they were moved to the NSS training facility on President Salva Kiir’s farm in Luri, near Juba. The Panel of Experts concluded that it is “highly probable” that the two were executed there on January 30, 2017.²⁴¹

Despite persistent calls by the families, the UN Working Group on Enforced or Involuntary Disappearances, Amnesty International and other organizations, on the governments of Kenya and

²³⁴ Amnesty International interview with a human rights defender, Juba, South Sudan 27 November 2019.

²³⁵ Amnesty International interview with a former hotel manager, Juba, South Sudan, April 2019; Amnesty International interview with a former hotel manager, Juba, South Sudan, April 2019.

²³⁶ Amnesty International interview with a journalist in Juba, South Sudan, 27 November 2019; Amnesty International interview with an academic, remote, 6 August 2020.

²³⁷ Amnesty International interview with a journalist in Juba, South Sudan, 9 December 2019.

²³⁸ Amnesty International interview with former university professor, remote, 15 September 2020; Amnesty International interview in Juba, South Sudan, 6 December 2019. See also, Human Rights Watch, *South Sudan Academic Suspended Over Opinion Piece. Ensure Free Speech and Academic Freedom*, 12 February 2020, www.hrw.org/news/2020/02/12/south-sudan-academic-suspended-over-opinion-piece

²³⁹ CoHRSS, *Report of the CoHRSS, A/HRC/40_69, 21 February 2019*, para 26, www.securitycouncilreport.org/atf/ctf%7B65BFC9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/A_HRC_40_69.pdf

²⁴⁰ Amnesty International, “Urgent Action: Two South Sudanese at Risk of Deportation” 26 January 2017; Amnesty International, “Urgent Action: Fate and Whereabouts of Two Men Unknown” 24 May 2017.

²⁴¹ United Nations Panel of Experts on South Sudan, *Final Report, S/2019/301, 9 April 2019*, www.undocs.org/S/2019/301

South Sudan to reveal the fate and whereabouts of the two men, and later to independently investigate the apparent extrajudicial execution, both governments continue to deny any involvement.²⁴²

On 2 July 2019, a South Sudanese NGO, Hope 4 Humanity Africa and the Pan African Lawyers Union sued the Kenyan and South Sudanese governments before the East African Court of Justice for “the abduction, enforced disappearance, illegal and/or extraordinary rendition, arbitrary detention, torture and possible subsequent brutal murders of Mr. Dong Samuel Luak and Mr. Aggrey Ezbon Idri”.²⁴³

On 10 December 2019, the United States Department of the Treasury’s Office of Foreign Assets Control sanctioned Abud Stephen Thiongkol, Malual Dhal Muorwel, Michael Kuajien, John Top Lam and Angelo Kuot Garang for their alleged roles in “the abduction and likely murder” of Dong and Aggrey.²⁴⁴

The forceful disappearance and reported extra-judicial killing of Dong Samuel and Aggrey Idri and the NSS’s cross-border operations has had a powerful chilling effect on activists in South Sudan and neighbouring countries. It was referenced by all RCM members Amnesty International interviewed in Kenya and some in Uganda and Ethiopia²⁴⁵ as well as four civil society members that Amnesty International interviewed for this research.²⁴⁶ One activist in Uganda working closely with South Sudanese activists told Amnesty International: “They’ll even go as far as coming here and picking people here.”²⁴⁷ She continued to say: “Kenya hands over activists. If I speak out about something, I could very well end up like them [Dong and Aggrey]. Which country can we go to where we will be safe?”²⁴⁸ A South Sudanese human rights lawyer forced into exile after working on a politically sensitive case echoed these sentiments: “With the disappearance of Dong Samuel, we’re not even safe here. I’d be happy to speak but can’t say what is going on in South Sudan, not from Kenya and Uganda.”²⁴⁹

Dong and Aggrey are not the only South Sudanese who have been abducted in Kenya and illegally transferred back to South Sudan. In November 2016, Kenyan authorities unlawfully deported SPLM/A-IO spokesman James Gadet, a registered refugee, to South Sudan where he was subsequently sentenced to death.²⁵⁰ President Kiir pardoned James Gadet on 31 October 2018.²⁵¹ In December 2017, SPLM/A-IO governor Marko Lokidor Lochapio was abducted from Kakuma refugee camp in Kenya,²⁵² transferred to Juba and detained in Blue House until his release on 25 October 2018.²⁵³ On 23 July 2020, Peter Biar Ajak,²⁵⁴ a South Sudanese academic and chair of the South Sudan Young Leaders Forum, arrived in the USA with his family after having been forced into hiding for five weeks in Nairobi, Kenya after receiving calls from senior government officials, who according to Peter Biar Ajak, warned him that NSS agents had been sent to

²⁴² Amnesty International, “Urgent Action: Fate and Whereabouts of Two Men Unknown” 24 May 2017; Amnesty International, South Sudan: Investigate Apparent 2017 Killing of Activists ([Press Release](#), 30 April 2019).

²⁴³ Statement of Reference, East African Court of Justice 1st Instance Division at Arusha, Reference No. 15 of 2019, 2 July 2019.

²⁴⁴ US Department of the Treasury, *Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses*, 10 December 2019, home.treasury.gov/news/press-releases/sm852

²⁴⁵ Amnesty International, *South Sudan: “We are at risk and on the run” - Security agents track down peaceful protesters* (Index: AFR 65/0692/2019).

²⁴⁶ Amnesty International interview with WHRD, remote, 29 July 2020; Amnesty International interview with lawyer, Entebbe, Uganda, 21 November 2019; Amnesty International interview with South Sudanese and Ugandan activists, Kampala, Uganda, 20 November 2019; Amnesty International interview with Peter Biar Ajak, remote, 3 September 2020.

²⁴⁷ Amnesty International interview with human rights activist, Kampala, Uganda, 20 November 2019.

²⁴⁸ Amnesty International interview with human rights, Kampala, Uganda, 20 November 2019.

²⁴⁹ Amnesty International interview with lawyer, Entebbe, Uganda, 21 November 2019.

²⁵⁰ Amnesty International, *South Sudan: One of just two executing states in sub-Saharan Africa in 2017* ([Press Release](#), 16 April 2018).

²⁵¹ Amnesty International, *South Sudan: Relief as president pardons two prominent death row inmates* ([Press release](#), 2 November 2018).

²⁵² Sudan Tribune, *South Sudan rebel appointed governor abducted in Kenya, 1 January 2018*, www.sudantribune.com/spip.php?article64385; The East African, *Africa: Are Kenya, Uganda Obstacles to South Sudan Peace?*, 6 January 2018, allafrica.com/stories/201801150280.html

²⁵³ Reuters, *South Sudan frees five political detainees: intelligence agency, 25 October 2018*, www.reuters.com/article/ussouthsudan-unrest/south-sudan-frees-five-political-detainees-intelligence-agency-idUSKCN1MZ21P

²⁵⁴ Peter Biar Ajak was arrested by NSS agents at Juba International Airport on 28 July as he was travelling to Aweil in north-western South Sudan to attend a youth forum he had organized. Peter Biar Ajak had been a vocal critic of the government. Peter Biar Ajak was held in Blue House until June 2019 when he was convicted in an unfair trial for promoting public violence and disturbing the peace during an uprising in the Blue House on 7 October 2019 and sentenced to two years in prison. President Kiir pardoned Peter Biar Ajak and others in January 2020 after which he was released from Juba Central Prison. Amnesty International “Urgent Action: Detained Activist Denied Access to a Lawyer” 31 July 2018; Amnesty International, *Amnesty International slams sham trial that resulted in prison sentences for six men including activist Peter Biar Ajak* (, Index: AFR/65/0510/2019) Ayen Bior, *South Sudan Pardons High-Profile Prisoners, 2 January 2020*, www.voanews.com/africa/south-sudan-focus/south-sudan-pardons-high-profile-prisoners

abduct or kill him in Nairobi.²⁵⁵ Peter Biar Ajak said in early July, two cars, one with a South Sudanese license plate and another with a Kenyan license plate started driving around his house and following his movements, and those of friends visiting him.²⁵⁶ He said the fate of Dong and Aggrey had amplified his fears.²⁵⁷ The Office of the President denied Peter Biar Ajak's claims.²⁵⁸

NSS agents also operate in Uganda. According to the UN Panel of Experts on South Sudan, on 18 August 2017, a NSS officer attached to the South Sudanese embassy in Kampala, in unofficial collaboration with five agents of the Ugandan security service, attempted to forcibly detain Gabriel Lam, SPLA-IO deputy military spokesperson.²⁵⁹ Amnesty International also received credible reports from South Sudanese activists in Kampala, Uganda, Nairobi, Kenya as well as Addis Ababa, Ethiopia, that the arm of the NSS extends beyond South Sudanese borders, making neighbouring countries unsafe for critics of the South Sudanese government.²⁶⁰ This puts many South Sudanese dissidents between a rock and a hard place without an accessible safe haven because it can take years to receive asylum in countries outside the region.

²⁵⁵ Amnesty International interview with Peter Biar Ajak, remote, 18 June 2020; Peter Biar Ajak, *My Escape to America Shows the Price of Dissent in South Sudan*, 23 July 2020, www.wsi.com/articles/my-escape-to-america-shows-the-price-of-dissent-in-south-sudan-11595545759

²⁵⁶ Amnesty International interview with Peter Biar Ajak, remote, 3 September 2020.

²⁵⁷ Amnesty International interview with Peter Biar Ajak, remote, 18 June 2020; The Citizen, *South Sudan dissident flees to US over threats to his life*, 25 July 2020, www.thecitizen.co.tz/news/1840340-5598872-b138ki/index.html

²⁵⁸ Garang Abraham Malaak, *Kiir's office 'rubbishes' Biar's death squad claims*, 24 July 2020, eyeradio.org/kiirs-office-rubbishes-biars-death-squad-claims/

²⁵⁹ United Nations Panel of Experts on South Sudan, *Interim Report, S/2017/979*, 30 November 2017, para. 30, www.undocs.org/pdf?symbol=en/S/2017/979

²⁶⁰ South Sudan: "We are at risk and on the run" - Security agents track down peaceful protesters (Index: AFR 65/0692/2019).

6. CONCLUSION AND RECOMMENDATIONS

This report demonstrates the chilling effect of violations of the right to privacy and unlawful surveillance to arbitrarily arrest and illegally detain government critics by South Sudan's NSS. This climate of fear undermines the right to freedom of expression and opinion, the right to peaceful assembly, media freedoms and numerous other human rights.

South Sudan's legal framework governing surveillance does not meet the principles of non-arbitrariness, legality, necessity, legitimacy and proportionality for surveillance to be a legitimate law enforcement tool and to respect the right to privacy. The 2014 NSS Act gives the NSS sweeping, yet unchecked, powers to conduct surveillance without sufficiently protecting the right to privacy guaranteed under Article 2011 of the country's Transitional Constitution, as well as regional and international human rights law.

In the absence of publicly available information about the surveillance capacity of the Government of South Sudan, rumours, anecdotes and incidents which may or may not be related to surveillance, are at times perceived by activists as indicators of surveillance, increasing the fear. These fears are compounded by the arbitrary arrest and prolonged detention of activists for publicly expressing themselves, Dong Samuel's and Aggrey Idri's forced disappearance and reported extrajudicial killing, and illegal transfers of individuals from Kenya and Uganda.

This chilling effect - a reflection of perceptions of the NSS's surveillance capacity and practices - causes people who have yet to have any action taken against them to refrain from expressing legal views for fear of harassment, arrest or prolonged detention. While not all are deterred, this fear limits individuals from freely doing human rights related work. Ultimately this self-censorship is caused by the state's surveillance system functioning without safeguards and the abusive nature of the state's security apparatus.

6.1 TO SOUTH SUDANESE AUTHORITIES

6.1.1 TO THE GOVERNMENT AND THE PRESIDENT OF SOUTH SUDAN:

- End the culture and practice of allowing the NSS to operate outside the 2011 Transitional Constitution and with impunity, starting by issuing a public order warning the NSS to operate within its constitutional mandate and immediately end the practice of requiring event organizers to seek permission before holding any public events.
- Implement a human rights regulatory framework that governs surveillance. Until such a framework is implemented, a moratorium on the purchase, sale, transfer, and use of surveillance equipment should be enforced. This human rights friendly regulatory framework must include provisions to:
 - Disclose information about all previous, current, or future contracts with private surveillance companies;

- Halt the unlawful surveillance of journalists and human rights defenders in violation of their rights;
 - Ensure the effective implementing and enforcement of article 22 of the 2011 South Sudanese Transitional Constitution, ensure that any communication surveillance is authorised by competent, independent, judicial authorities in advance, and end mass surveillance including by reducing the breadth and depth of the network of informants and bringing covert surveillance in line with international norms;
 - Provide for independent investigations into cases of unlawful communications surveillance and other human rights violations and ensure accountability for such violations;
 - Provide for effective remedies, including compensation, for physical and mental harm, as well as loss of livelihood.
- Initiate prompt, effective and impartial investigations into NSS surveillance, including individuals authorizing it, and detention practices, including enforced disappearances, deaths in custody, torture and other ill-treatment, and bring those suspected of criminal responsibility to justice in open, accessible civilian courts and without recourse to the death penalty;
 - Release, or charge with internationally recognizable criminal offences, all remaining detainees being held at the NSS and Military Intelligence detention facilities in Juba and the rest of the country in line with obligations under domestic and international law;
 - Publicly condemn physical attacks, killings, threats, harassment, obstruction, intimidation, arbitrary arrests and illegal detention of critics of the government and government officials, including journalists and human rights defenders;
 - Issue clear instructions to all government officials and security forces, in particular the NSS, to stop harassing, threatening, arbitrarily arresting and illegally detaining critics of the government and government officials and ensure that all government institutions respect, promote and protect the right to privacy, the right to freedom of expression and opinion, media freedoms and the right to assembly;
 - Provide prompt and adequate reparation to individuals released without charge, subjected to torture and ill-treatment and individuals convicted after unfair trials, including medical and psycho-social rehabilitation and legal and social services;
 - Victims should also be provided with satisfaction through measures such as effective investigations and prosecution of the perpetrators or public acknowledgement of the facts and acceptance of responsibility and guarantees of non-repetition, through actions or reforms to prevent future abuses;
 - Initiate prompt, effective and impartial investigations into NSS surveillance and detention practices, including enforced disappearances, deaths in custody, torture and other ill-treatment, and bring those suspected of criminal responsibility to justice in open, accessible civilian courts and without recourse to the death penalty;
 - Once the 2014 NSS Act is amended to be in line with international human rights norms, appoint members to the Complaints Board and ensure it can operate independently;
 - Refrain from requiring telecommunication companies and other businesses to take steps that interfere with the right to privacy in an arbitrary or unlawful way;
 - Develop legislation, preventive measures and remedies addressing harm from the sale or multiple resale or other corporate sharing of personal data without the individual's free, explicit and informed consent;
 - Cooperate with the African Union to quickly establish the Hybrid Court for South Sudan as provided for in the August 2015 ARCSS to further ensure that those bearing criminal responsibility for abuses can be brought to justice;
 - Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and make the declaration under Article 34(6) of the Protocol that would allow direct access for individuals and NGOs to the Court.

- Complete ratification of the ICCPR and its Optional Protocols and deposit the instrument of accession;
- Gazette all NSS detention centres in the country and disseminate this widely, including through community outreach programmes;
- Take steps to improve the availability, accessibility and quality of mental health services available in the country and develop a mental health policy in consultation with stakeholders, including persons with mental and psychosocial disabilities, carers and family members. Specifically, the government should:
 - Work to integrate mental health treatment into primary health care services by providing training to primary health care staff to treat, manage and appropriately refer patients suffering from mental health conditions;
 - Develop community-based mental health services to provide locally-based treatment and care that is easily accessible to patients and their families;
 - Remove from state prisons people suffering from mental health conditions and provide them appropriate mental health services in general hospitals or community settings;
 - Improve the availability of psychotropic medicines;
 - Increase public awareness about the nature of mental health conditions, their treatability, the recovery process, and care choices.

6.1.2 TO THE MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS, THE NCAC AND THE PARLIAMENT:

As a matter of urgency, amend the 2014 National Security Service Act and the 2019 Amendment Bill to, amongst others:

- Remove NSS powers to arrest, detain, conduct searches, seize property and use force to comply with international, regional and national human rights norms and standards;
- Ensure that NSS employees do not serve on the Complaints Board, and to specify that the Board will exercise its functions with impartiality independent of the NSS;
- Ensure that members of the Complaints Board are not prevented from testifying on the substance of an appeal, and that limitations on the ability to give evidence are subject to the determination of the courts of a specified public interest in maintaining the secrecy of evidence balanced against the importance of ensuring the right to appeal;
- 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 Complaints Board;
- Make judicial authorization and ongoing oversight of intelligence gathering activities, such as communications interception and physical surveillance, mandatory including by making clear that warrants are required for all NSS acts that have an effect on protected rights, such as making arrests (with limited exceptions, if any), conducting searches, seizing property, and carrying out communications surveillance;
- Endow the parliament with sufficient powers and access to security and intelligence information to enable it to exercise adequate oversight of the NSS. Consider:
 - A requirement that the NSS report to the parliament on a more regular basis than annually;
 - Providing the parliament with the power to conduct unrestricted and unannounced visits to places of detention;

- Providing the parliament with the power to compel the production of evidence and have access to all files, premises, personnel, archives and registers, as necessary for the exercise of its oversight functions.
- Providing it has sufficient access to information about NSS activities, establish an inquiry into the actions of the NSS and allow for informed analysis of amendments required to bring the 2014 NSS Act in line with the 2011 Transitional Constitution and international human rights norms and standards.

6.1.3 TO THE MINISTER OF NATIONAL SECURITY, DIRECTOR GENERAL OF THE ISB-NSS, AND THE NSS:

- Ensure that the NSS operates within its constitutional intelligence gathering mandate;
- Direct all NSS officials to end intimidation, harassment, arbitrary arrest and illegal detention of critics of the government and senior government officials;
- Make public all annual reports on NSS performance;
- Issue a circular to end the practice of requiring NSS approval for events;
- End the practice of embedding NSS officials in newspaper and printing companies and in key positions such as the SSRRC and Media Authority where these positions enable the infringements of human rights;
- Take immediate steps to train the NSS on human rights including on the right to privacy, right to freedom of expression, media freedoms and right to assembly.

6.2 TO INTERNATIONAL PARTNERS, INCLUDING THE AFRICAN UNION, IGAD, RJMEC, THE UNITED NATIONS, AND INTERNATIONAL NGOS

- Publicly condemn the use of surveillance to threaten, harass, arbitrarily arrest and illegally detain government critics and speak out about the importance of human rights including the right to privacy, the right to freedom of expression and opinion, media freedoms and the right to assembly and increase pressure on the Government of South Sudan to:
 - Direct government officials, in particular the NSS, not to use surveillance to harass, threaten, arbitrarily arrest and illegally detain critics of the government and government officials;
 - Amend the 2014 NSS Act in line with the 2011 Transitional Constitution and international human rights norms;
 - End the NSS practice of requiring organisations to seek permission before holding events;
 - Respect, promote, protect and fulfil the rights of journalists, human rights defenders, academics, political opposition and other civic actors to privacy, to freedom of expression and opinion, media freedoms and to assembly.

6.2.1 TO THE AU SPECIAL RAPPOREUR ON HUMAN RIGHTS DEFENDERS AND THE UN SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS:

- Conduct a joint visit to South Sudan to assess the situation of human rights defenders in South Sudan and South Sudanese human rights defenders in the East African region, in particular Kenya and Uganda, and offer the government recommendations to improve the situation, and issue a public report on the visit.

6.2.2 TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR):

- Issue a resolution on the situation of human rights defenders in South Sudan and South Sudanese human rights defenders in the East African region, in particular Kenya and Uganda, and the rights to privacy, to freedom of expression and opinion, media freedoms and to assembly.

6.2.3 TO THE INTER-GOVERNMENTAL AUTHORITY ON DEVELOPMENT, THE RECONSTITUTED JOINT MONITORING AND EVALUATION COMMITTEE AND GUARANTORS OF THE R-ARCSS:

- Given the inter-dependencies between the rights to privacy, freedom of expression and opinion, media freedoms, and right to assembly in South Sudan and the opportunities for accountability and effective and swift implementation of the R-ARCSS, including Chapter V on transitional justice, issue a communiqué calling on all signatories of the R-ARCSS to publicly commit to the rights to privacy, freedom of expression and opinion, media freedoms and the right to assembly and refrain from infringing these rights.

6.2.4 TO THE UNITED NATIONS, INTERNATIONAL DONORS AND INTERNATIONAL NGOS:

- Unlawful targeted surveillance threatens the right to privacy, freedom of expression, freedom of association and many other rights essential for HRDs to carry out their work. We call upon states to implement an immediate moratorium on the purchase, sale, and transfer of surveillance equipment until human rights safeguards framework is in place. States, companies and investors in the surveillance industry must adhere to their human rights and due diligence obligations and support human rights defenders in upholding rights and freedoms across the world;
- Support South Sudanese civil society groups to carry out human rights work throughout the country, including through enabling self-help trainings and psychological support, and speak out when implementing partners are threatened, harassed and intimidated;
- Make asylum procedures for South Sudanese swifter and more accessible;
- To the Government of Israel:
 - Establish and implement an effective export licensing regime that is transparent and prevents exports of dual use surveillance equipment to countries where there is a likelihood that the exported surveillance equipment will be used to violate human rights.
- To the Government of Uganda and Kenya:
 - Provide effective protection to all individuals, including South Sudanese, residing and operating in their countries;
 - Independently, thoroughly and effectively investigate all allegations of harassment, threats, intimidation, arbitrary arrests, enforced disappearance and

illegal transfers and deportations to South Sudan of South Sudanese political opposition, human rights defenders and journalists and bring to justice anyone suspected to be responsible;

- Take adequate security and protection measures to ensure that South Sudanese human rights defenders and others can freely exercise their rights to freedom of expression, peaceful assembly and association without any fear of reprisals;
- Take necessary diplomatic and administrative measures to ensure that the activities of South Sudanese embassies do not infringe upon the rights of people to freedom of expression, peaceful assembly and association.

6.3 TO TELECOMMUNICATION COMPANIES

- Thoroughly and effectively investigate the allegations in this report relating to unlawful and illegal interception of phone conversations by the Government of South Sudan, in particular the NSS, using telecommunication companies in South Sudan;
- Actively implement the UN Guiding Principles on Business and Human Rights and take pro-active steps to ensure respect for human rights;
- Publish regular public transparency reports detailing requests for data sharing by government authorities;
- Inform users about the collection, use, sharing and retention of their data that may affect their right to privacy and establish transparency policies, as appropriate;
- Carry out human rights due diligence to identify, prevent, mitigate and account for addressing human rights impacts arising out of their business operations.
- Set up operational level grievance redressal mechanisms and others forms of remedy for users whose rights may have been violated.
- Ensure that customer data is shared with government actors only when in response to a legally-valid warrant that complies with international human rights standards and challenge requests for user data which do not, or which pose risks to users' human rights and notify users when a warrant requesting their data has been issued.

6.4 TO SURVEILLANCE COMPANIES

- Publicly commit to respecting human rights, and the work and security of human rights defenders;
- Implement adequate human rights due diligence processes, as set out in international business and human rights instruments, such as the UN Guiding Principles on Business to ensure your activities, or those of your subsidiaries, sub-contractors and suppliers respect the rights of human rights defenders and do not hinder their legitimate work and conduct consultations with rights holders before signing contracts in countries;
- As part of your responsibility to conduct human rights due diligence, carry out robust human rights risk assessments for all proposed transfers, which should be scrutinized by export authorities, and made public;
- Ensure transparency about sales and contracts;
- Implement contractual protections against human rights abuses;
- Have an adequate notification process for reporting misuse of technology and grievance mechanisms;
- Implement robust mechanisms for compensation of targets of unlawful surveillance or other forms of redress;

- Allow for developing mechanisms in the surveillance technology that prevent further re-sale of the technology to intermediaries, including, where possible, by developing tracking mechanisms of where the technology ends up, or by implementing a re-certification renewal process for the technology to continue operations.

ANNEX 1: RESPONSE FROM MTN GROUP TO AMNESTY INTERNATIONAL

MTN Group



14 December 2020

Response to Amnesty International

1. According to MTN's human rights due diligence framework, it conducts proactive risk assessments quarterly and conducts impact assessments on an annual to bi-annual basis. Have you implemented this in South Sudan? If yes, what risks have you identified and how have you sought to mitigate these? Could you share copies of these assessments?

Response: The revision of MTN Group's Digital Human Rights Policy was concluded in the latter part of 2020 and applies to all MTN markets including MTN South Sudan as a subsidiary of MTN Group. The policy and due diligence framework do include risk assessments and impact assessments. Training is currently underway to ensure the implementation of the policy, framework and assessments.

MTN discloses the main risks affecting the organization – including risks related to Human Rights – in the MTN Group's annual Integrated Report and Sustainability Report. We do not disclose risks by individual market. MTN is approaching its next impact assessment cycle and will, per standard practice, disclose information through these annual reports.

2. During the proactive risk-assessment phase, MTN's human rights due diligence framework mentions stakeholder engagement to determine human rights risks. What, if any, is the nature of the stakeholder engagement carried out in South Sudan? Did MTN Group consult international human rights organizations, local human rights organizations, and at-risk activists in South Sudan during this process? Please provide details thereof.

Response: MTN South Sudan's operations are licensed and regulated by the National Communication Authority (NCA), which is aligned to the Ministry of ICT & Postal Services. Under the current dispensation, the National Communication Act 2012 and the operating licence agreements provide guidance on how to operate in South Sudan.

everywhere you go

MTN engages with various stakeholders on an on-going basis. This includes civil society organisations. Typically, any issues or concerns raised about MTN are channelled through the Regulator and Sector Ministry.

- 3. MTN's position on Digital Human Rights regarding online freedom of expression, privacy and security states that where operating conditions render it impossible to meet the commitments fully, MTN will seek opportunities to limit the scope, extent or duration of any negative impacts. How does this apply to South Sudan and what has MTN done to limit the scope, extent, or duration of any negative impacts.**

Response: MTN Group's Digital Human Rights Policy and due diligence process, applicable to all markets including South Sudan, is designed to limit the scope, extent or duration of any negative human rights impact. MTN engages with relevant stakeholders to seek guidance prior to responding to requests to clarify the request, seek amendment to the request, or seek that the request be set aside where possible.

MTN assesses whether engaging with authorities to reject the request (or partially comply with it) will increase the risk to the safety of employees or compromise MTN's ability to continue operations. Following the due diligence and evaluation process in terms of good governance, legal and risk management processes, we would respond in any of the following ways: reject the request where possible, partially comply with the request or fully comply with the request.

- 4. Have you raised specific concerns relating to surveillance with the GoSS?**

Response: Our engagement with the Government of South Sudan is limited to issues primarily around conducting business within the regulatory framework (mainly through the NCA (the Regulator)) and ensuring technological inclusion of the citizens through the services that we provide. We have not been alerted of any specific surveillance programme by the GoSS.



5. Amnesty has interviewed a former MTN employee who stated that the NSS installed a 'box' at an MTN office in Juba in 2013. Please provide details of the nature of this 'box' and the company providing it.

Response: We unfortunately cannot comment on discussions between yourselves and third parties including former MTN employees. Without further context, our understanding of the "box" is that it means equipment. Per the terms of governing laws and regulations including our operating licence, we have obligations to have interconnection with other mobile network operators and the International Gateway. This would entail having equipment installed in our switch centres under the guidance of the National Communications Authority (NCA).

6. Does the GoSS have direct access to MTN's network to carry out communication interception?

Response: The law in South Sudan requires all operators in the country to cater for legal interception. The operation of the legal interception is not in the scope of the responsibilities of the mobile operators.

7. Is the GoSS able to monitor, locate and track individuals using MTN systems or expertise? Is the GoSS able to intercept and record the communications of MTN's users? How does MTN collaborate with the GoSS to carry out lawful interception. Please provide details thereof.

Response: Apart from fulfilment of the obligation to cater for legal interception in our network, there has been no collaboration between GoSS and MTN in the operation and execution of any lawful interception activities by the GoSS. Any engagement with the GoSS and other authorities is through the Regulator (NCA) and is guided by the legal mandate of the parties with a view to growing the telecommunications industry while complying with the law.



8. Does MTN have a data sharing agreement with the GoSS? If yes, please provide a copy of this.

Response: MTN does not have a data sharing agreement with the GoSS except for specific requirements in the National Communication Act 2012 and operating licence requiring data sharing with the NCA as the Regulator.

9. What are the legal grounds and procedure followed by MTN to share user information with the South Sudanese government? What does MTN do in cases, like in South Sudan, where local laws on surveillance do not meet international human rights standards?

Response: Legal grounds would stem from the application of the law by any public body, complying with a regulatory requirement, or supporting in the conduct of any legal proceedings and lawful purposes pursuant to our licence obligations. We validate any request to confirm that the request is official, from a legally authorized body and assess this to confirm its compliance to laws or licence terms.

10. Has MTN in South Sudan shared customer data with the GoSS without having any legal grounds to do so?

Response: No, MTN only shares customer data in strict compliance with its legal and regulatory obligations.

11. In managing data requests from the GoSS, MTN's human rights due diligence policy details that the company may "reject the request" where possible. Has MTN rejected official requests from the GoSS?

Response: Yes, from time to time, MTN has pushed back on information requests where either there is no legal and/or regulatory obligation to do so, or in instances where an arbitrary request has come through from an authority to which MTN is not obliged to respond.

12. Does MTN notify customers who may be or are, in fact, monitored?

Response: As already indicated, MTN is not involved in any monitoring or surveillance of customers. MTN does not get to know who is monitored apart from the requests related to legal proceedings as outlined in the response to question 9, under which circumstances notification would happen through the court system.



everywhere you go

13. Article/section 40(1) of the NSS Act allows the Director General of a concerned Operational Organ to second any member of the NSS to any institution, in consultation with the Minister of National Security. Has the NSS attached an agent to MTN?

Response: We do not have any personnel seconded to MTN South Sudan by the NSS.

14. Was MTN required to pay for Lawful Interception equipment and services to surveillance vendors? If yes, please provide details thereof.

Response: Yes, this was done in accordance with the law and was communicated/coordinated through the Regulator (NCA) to / with all mobile networks operating within the country.

ENDS



ANNEX 2: RESPONSE FROM THE DEFENSE EXPORT CONTROL AGENCY IN THE ISRAELI MINISTRY OF DEFENSE TO AMNESTY INTERNATIONAL



STATE OF ISRAEL MINISTRY OF DEFENSE

For Official Use Only

DIRECTOR OF DECA

DATE: November 5th, 2020

TEL: 972-3-697-6005/6/4

FAX: 972-3-697-6030

REF: 017174-051120-אפי-1

Ms. Sarah Jackson
Deputy Regional Director (East & Southern Africa)
Amnesty International

Dear Madam,

Following your letter dated October 26th 2020,

The Defense Export Control Agency (DECA) in the Israeli Ministry of Defense (IMoD) is responsible for supervising defense export in accordance with the Defense Export Control Law, 5767.

The law regulates state control of the export of defense equipment and the lists of supervised security equipment are based on international regulatory regimes.

The policy of supervising defense exports from the State of Israel to any other country is subject to constant scrutiny and periodic assessments, and defense export licenses are granted after individual examination in accordance with the law and international obligations.

With regards to your questions related to South Sudan, IMoD does not comment on the export control policy, specific licenses or end users, due to security, policy and strategic considerations.

Sincerely,

Racheli Chen
Director DECA



הקריה, תל אביב 6473424, טלפון: 03-7776707, פקס: 03-6976034, E-mail: api_outreach@mod.gov.il
Hakiryia, tel-aviv 6473424, tel: 03-7776707, fax: 03-6976034 • www.exportctrl.mod.gov.il • E-mail: api_outreach@mod.gov.il

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@Amnesty](https://twitter.com/Amnesty)

“THESE WALLS HAVE EARS”

THE CHILLING EFFECT OF SURVEILLANCE IN SOUTH SUDAN

The Government of South Sudan, primarily through the National Security Service (NSS), conducts communications surveillance with equipment bought in Israel, and likely with support from the telecommunication companies.

The NSS also conducts physical surveillance through a widespread, cross-border network of informants and agents, penetrating all levels of society and daily life, by monitoring media and social media, and requiring event organizers to seek permission before holding any form of gathering. The NSS has used these forms of surveillance illegally, in breach of the right to privacy, to arbitrarily arrest and illegally detain individuals and infringe on press freedoms and the freedom of opinion and expression and the freedom of assembly.

South Sudan’s legal framework governing surveillance does not meet the principles of non-arbitrariness, legality, necessity, legitimacy and proportionality for surveillance to be a legitimate law enforcement tool and to not interfere with the right to privacy.

This report demonstrates the chilling effect resulting from the abusive nature of South Sudan’s security apparatus that functions without any safeguards. Cumulatively, electronic and physical surveillance – both in practice and perception – have created a pervasive climate of fear and self-censorship. While many human rights defenders continue to courageously work within the limits of this repressive environment, free speech is fraught with danger.