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“There is No Protection”

Insecurity and Human Rights in Southern Sudan

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Insecurity and Human Rights in Southern Sudan

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I. Acronyms

CPA	Comprehensive Peace Agreement
DDR	Disarmament, Demobilization and Reintegration
GNU	Government of National Unity
GoSS	Government of Southern Sudan
GoS	Government of Sudan
JIU	Joint Integrated Units
LRA	Lord's Resistance Army
NCP	National Congress Party
OHCHR	Office of the High Commissioner for Human Rights
SAF	Sudanese Armed Forces
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SSPS	Southern Sudan Police Service
UNMIS	United Nations Mission in Sudan

II. Summary

... there is no protection.

—Interview with a man from the village of Tore, Central Equatoria, Lumuke, who fled his village after it was attacked by a group of bandits and renegade soldiers, April 2008.

Nearly four years after the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA) that brought an end to 21 years of civil war, the Government of Southern Sudan (GoSS) has made limited progress in addressing impunity and establishing the rule of law. Soldiers and other security forces that commit human rights violations and other crimes against civilians are rarely brought to account. The nascent justice system suffers from systemic weaknesses leading to arbitrary detentions, prolonged pre-trial detentions, and very poor prison conditions.

The GoSS, created under the terms of the CPA in 2005, is responsible for administering a severely under-developed area nearly twice the size of France that has been shattered by civil war. Given the sheer scale of its state-building and reconstruction challenges, the GoSS has made significant progress, including by absorbing dozens of formerly hostile militia into the Sudan People's Liberation Army (SPLA). But the fledgling government, dominated by the Sudan People's Liberation Movement (SPLM) has not managed to protect civilians from crimes committed by its security forces, and public disquiet over these abuses is growing.

Southern Sudan's security landscape remains extremely fragile. In addition to threats emanating from national political tensions or attacks by the Ugandan rebel group Lord's Resistance Army (LRA), many southerners' security and livelihoods are affected by localized communal fighting, often linked to competition over land, livestock, or other resources. Large numbers of weapons remain in civilian hands, turning many disputes violent and deadly. Soldiers and renegade soldiers from the SPLA also contribute to insecurity with infighting or by crimes against civilians for personal gain.

The Southern Sudan Police Service (SSPS) lacks resources and training to effectively provide security. In their absence, GoSS officials, who are almost all former military themselves, turn to SPLA soldiers to manage security threats. The soldiers are untrained in civilian law enforcement and often undisciplined. For example, a policing operation carried out by SPLA

soldiers in Eastern Equatoria in June 2008 spiraled out of control, leading to the deaths of at least 12 civilians, arbitrary arrests, torture and the displacement of 4,000 people. Nine soldiers also lost their lives.

Very weak rule of law institutions and insufficient attention by GOSS authorities to rule of law issues have given rise to an environment of impunity, particularly for soldiers who view themselves as “liberators” of the South and above the law. In this environment, soldiers and other security forces commit serious crimes, often opportunistically, against civilians. The crimes include beatings, robbery, intimidation, land-grabbing, and sexual violence. In a series of cases in 2007-8, security forces carried out illegal arrests, beatings, robbery, and sexual violence targeting foreign traders in major towns.

In the broader context, the two parties to the CPA (Government of Sudan and SPLA/M) remain seriously behind schedule in implementing key aspects of the CPA. The CPA, which sets out a series of national reforms aimed at democratic transformation in Sudan, provides an interim six-year period that ends when southerners vote on self-determination in 2011. To date, the parties have not agreed to a demarcation of the North-South border, completed security arrangements, or made significant progress in preparing for national elections scheduled for mid-2009—a key milestone in the agreement.

As the window of opportunity for implementation gets smaller, it is becoming more urgent than ever that parties to the CPA adopt and advance the agreement’s human rights agenda—both nationally and in Southern Sudan—as a means to achieving the envisioned democratic transformation that would allow for free and fair elections and enable a meaningful referendum. This agenda includes a comprehensive law reform process at the national level, and action in Southern Sudan to improve human rights and rule of law, and to address impunity.

Within Southern Sudan, GoSS should hold soldiers and other security forces transparently accountable for crimes against civilians. GoSS security sector reforms should include appropriate human rights training of soldiers in their peacetime role. The SPLA should issue clear instructions to soldiers that they are not above the law and will be tried for their crimes, including illegal arrests and detentions. The police should also establish transparent accountability mechanisms, accessible to civilians. GoSS should expand training and support for police, legal advisors, and judicial authorities and encourage a proactive approach to ending illegal detentions.

These security sector reforms are especially urgent in view of potential political tensions and violence in the lead-up to national elections, currently scheduled July 2009, and the 2011 referendum. Flashpoints could include the announcement of the April 2008 national census results, the physical demarcation of the North-South border, the decision of the Permanent Court of Arbitration on Abyei's boundaries, and demarcation of electoral constituency boundaries.

The GoSS's response to violent crimes and inter-communal violence, which often erupts in predictable geographic and seasonal patterns, should prioritize human rights and civilian protection and be better coordinated, with involvement from relevant GoSS, State, and local civilian authorities. GoSS should develop a coherent strategy for managing conflict in a manner that protects human rights rather than violates them.

GoSS should also strengthen nascent rule of law institutions and ensure that the Human Rights Commission, Land Commission, and Anti-Corruption Commission are empowered and operational. Action in these areas could improve human rights in Southern Sudan and contribute tangibly to "peace dividends" that have so far eluded Southern Sudanese citizens.

The United Nations Mission in Sudan (UNMIS) should re-assess its role in civilian protection, improve its monitoring of insecure and volatile areas by its military and civilian components, and help local authorities respond effectively and appropriately to civilian insecurity. UNMIS, together with United Nations Development Program (UNDP) and other international agencies, should also accelerate assistance for appropriate training and reform of security forces, and ensure support for the Joint Integrated Units (JIUs) and Joint Integrated Police Units (JIPUs). They should simultaneously strengthen civilian rule of law institutions—police, prisons, and judiciary—and government commissions that help promote human rights and rule of law. Another key measure that could improve human rights protection is deployment of additional human rights officers more widely throughout Southern Sudan by the Office of the High Commissioner for Human Rights and UNMIS.

III. Recommendations

To the Government of National Unity

- Transparently develop and enact legal reforms as required under the Comprehensive Peace Agreement (CPA) including revisions to the National Security Act and the Press and Publications Act, and the establishment of a National Human Rights Commission.
- Provide support in accordance with obligations under the CPA to train and equip Joint Integrated Units (JIUs) and Joint Integrated Police Units (JIPUs) (deployed in Abyei) and ensure they protect and implement human rights and are held accountable for human rights violations.

To the Government of Southern Sudan

- Hold soldiers accountable for all crimes against civilians including human rights violations committed in the course of duty. The Sudan People's Liberation Army (SPLA) should issue clear instructions to commanders that soldiers will be prosecuted for any crimes they commit against civilians, including illegally (or arbitrarily) arresting and detaining civilians. It should promulgate an enforceable code of conduct and ensure the code is disseminated to all soldiers.
- Hold police accountable for human rights violations. The Southern Sudan Police Service should establish transparent accountability mechanisms, accessible to civilians, and ensure police are prosecuted for crimes they commit including illegal (or arbitrary) arrests and detentions. The GoSS should enact the Police Act and promulgate an enforceable code of conduct.
- The Ministry of Legal Affairs and Constitutional Development should proactively supervise criminal investigations and ensure all detentions are legal. The Judiciary of Southern Sudan should, on its own accord, review all detentions at regular intervals to determine the legality and necessity of detention, and order release of detainees if none exists.
- The judiciary, the Ministry of Legal Affairs and Constitutional Development, or any other legally mandated body such the Southern Sudan Human Rights Commission should regularly inspect all places of detention including police stations, military installations, and jails operated by traditional authorities.

- Strengthen the police force with equipment and training in their appropriate roles and responsibilities, particularly within the criminal justice system. To the extent possible, increase their deployment numbers throughout Southern Sudan.
- Ensure soldiers who are deployed to perform policing functions are trained in human rights and basic elements of policing.
- Ensure that government committees investigating human rights violations produce reports that are transparently shared within legislative organs and published for communities.
- Ensure the Southern Sudan Human Rights Commission, Anti-Corruption Commission, and Land Commissions are enabled with appropriate legislation and made effective and operational in all States.

To the United Nations and International Donors

- Urge both parties to the CPA, the Sudan People's Liberation Movement and the Government of Sudan, to provide support to the Joint Integrated Units and Joint Integrated Police Units (deployed in Abyei) and ensure they uphold human rights and are held accountable for human rights violations.
- Assess the need for increased support to the rule of law sector in Southern Sudan including more support for training police and soldiers in their roles and responsibilities, and projects that improve prison conditions, particularly for vulnerable groups.
- The UNMIS should strengthen its civilian protection role and revise internal military directives accordingly. It should increase its monitoring of volatile areas in Southern Sudan especially in the three transitional areas governed by separate protocols to the CPA (Abyei, Southern Kordofan, and Blue Nile).
- The Office of the High Commissioner for Human Rights and United Nations Mission in Sudan (UNMIS) should deploy more human rights officers across Southern Sudan, especially in disputed border areas and areas prone to frequent communal conflict, and provide regular public reporting on human rights violations.
- Urge the Government of National Unity (GNU) to engage in a transparent legal reform process prioritizing reforms to the National Security Act and Press and Publications Act and establishing a National Human Rights Commission.
- Provide technical support to the National Human Rights Commission when it is formed and to the Southern Sudan Human Rights, Anti-Corruption, and Land Commissions and assist them to become effective and operational in all ten states

IV. Methodology

This report describes some of the most urgent human rights concerns facing Southern Sudan and offers a set of recommendations to address them. It does not attempt to fully assess the justice sector or describe all the human rights implications of all issues.

The report is based on research missions to Southern Sudan in March, June, and December 2008, during which Human Rights Watch researchers conducted more than 120 interviews with a wide range of sources including government officials, international and Sudanese organizations, local authorities including police, lawyers and judges, civilians, and victims of human rights abuses by security forces, criminals, and rebels.

Interviews were conducted in Central, Eastern, and Western Equatoria, and in Unity and Lakes States. Researchers also conducted telephone interviews and e-mail correspondence, and reviewed relevant materials published by the UN, international and Sudanese organizations, and commissions and other bodies within the Government of Southern Sudan

V. Background

The Comprehensive Peace Agreement

In 2005, the Sudanese government and the Sudan People's Liberation Movement/Army (SPLM/A) signed the Comprehensive Peace Agreement (CPA) bringing an end to more than two decades of civil war in which more than two million people died. In so doing, they agreed not only to a ceasefire, but also to a series of reforms designed to bring democratic transformation to Sudan.

The CPA sets out a six-year interim period in which the two sides agree to withdraw troops to their respective sides of the North-South border, conduct a population census, and hold national elections. At the end of the interim period, southerners will vote by referendum whether Southern Sudan should remain part of Sudan or secede.¹

In addition to these time-sensitive provisions, the CPA provides for new government structures and reforms. It established the Government of National Unity (GNU) in Khartoum, created a semi-autonomous Government of Southern Sudan (GoSS) in Juba, and set out power and wealth sharing provisions and various reforms to achieve democratic transformation and "make unity attractive" to southerners before the 2011 referendum.²

The signing of the CPA was itself an achievement, and in the following months the parties formed both the national and southern governments and enacted interim constitutions at both levels.³ However, slow progress in implementing some of the CPA's key provisions has strained the relationship between the two parties such that in October 2007, the SPLM temporarily suspended participation in the GNU.⁴ The party accused the National Congress Party (NCP), the Islamic party that dominates the Sudanese government, of failing to share

¹ The Comprehensive Peace Agreement did not resolve other issues, such as land ownership or accountability for human rights violations during the 21 year civil war, although it established land commissions (nationally and regionally).

² The Comprehensive Peace Agreement Between The Government of The Republic of The Sudan and The Sudan People's Liberation Movement/Sudan People's Liberation Army (CPA), signed January 9, 2005 Chapter I, Part A, Art. 1.5.5. <http://www.unmis.org/English/documents/cpa-en.pdf> (accessed October 19, 2008).

³ The GNU passed the Interim National Constitution and the GoSS passed the Interim Constitution of Southern Sudan. The GNU's National Assembly has enacted several CPA laws such as the Joint Integrated Units Act, the Organization of Voluntary and Humanitarian Work Act (NGO Act), the National Civil Service Commission Act, and others.

⁴ The parties agreed to the CPA in large part because of the personal relationship between NCP's Ali Osman Taha, currently Vice President, and SPLM leader John Garang. Garang's death in July 2005 changed the dynamics of the peace agreement. See International Crisis Group "A Strategy for Comprehensive Peace in Sudan," Africa Report No. 130, July 26, 2007, pg. 3, <http://www.crisisgroup.org/home/index.cfm?id=4961> (accessed February 2, 2009).

oil revenues, failing to withdraw its troops from the south, failing to take steps to demarcate the historic 1956 North-South boundary, and, crucially, failing to implement the Abyei Protocol, an accord that aims to resolve the status of the contentious border town and surrounding area of Abyei.⁵

Although the SPLM rejoined the government in late 2007 and the parties addressed some of the sticking points, the Abyei dispute went unresolved.⁶ Abyei is an oil rich territory straddling the North-South boundary, historically home to both Dinka Ngok and Arab Misseriya ethnic groups. Political control over Abyei—long a contentious issue—has taken on added significance with the discovery of oil reserves. Failure of the parties to agree on arrangements for administering the territory culminated in a conflict between the SPLA on one side and the Sudanese army and allied militia on the other in May 2008, killing scores of civilians and causing some 60,000 to flee from their homes.⁷

Demarcation of the 1956 North-South borderline—a lynchpin in the agreement—also remains contentious. The border determines which government may claim important oil and other assets. It also affects the composition of constituencies in the upcoming national elections. The demarcation process has been extremely slow, complicated by the lack of documentation from 1956 showing the location of the historic border.⁸ With a significant portion of the borderline believed to be contested, the border commission's initial report—to be submitted to the Presidency before the commission begins the process of physical demarcation—is likely to be controversial.

The parties have not fully implemented the agreed security arrangements. They were to redeploy troops to either side of the North-South border by June 2007.⁹ They both claimed to have finished troop withdrawal by January 9, 2008—six months later than agreed—but in

⁵ CPA, Ch. IV.

⁶ The parties have made progress on the wealth sharing provisions, but the Assessment and Evaluation Commission, an independent body established by the CPA to monitor its implementation, recommends more transparency in the oil sector. Republic of the Sudan, Assessment and Evaluation Commission (AEC), Mid Term Evaluation Report, July, 9, 2008, p. 18, http://www.aec-sudan.org/mte/mte_english.pdf (accessed October 7, 2008).

⁷ Human Rights Watch, *Sudan - Abandoning Abyei: Destruction and Displacement, May 2008*, July 2008, <http://www.hrw.org/en/reports/2008/07/21/abandoning-abyei-o>. The parties have since made progress deploying new joint security forces and appointing an Administration pursuant to a June 8 agreement. However, the underlying boundary dispute, deferred to international arbitration, remains, and there have been reports of continued troop build ups in the area.

⁸ James Gatdet Dak, "Sudan's 1956 North-South border map is non-existent," *Sudan Tribune*, June 29, 2008, http://www.sudantribune.com/spip.php?page=imprimable&id_article=27683 (accessed October 6, 2008).

⁹ CPA, Ch. VI, Art. 3. The term "boundary," used interchangeably herein with "border," refers to the boundary drawn by the British colonial administration dividing North and South Sudan as of the date of Sudan's independence on January 1, 1956.

fact neither side has yet fully complied.¹⁰ In addition, they both continue to flout the agreement by amassing weapons.¹¹

Security arrangements also call for Joint Integrated Units (JIUs), composed of equal numbers of SAF and SPLA troops, to be deployed throughout the South, in transitional areas, and in Khartoum in order to bring stability, symbolize unity between North and South, and become the kernel of a new army if southerners vote for unity in 2011.¹² The units have been deployed to most (but not all) of the envisioned locations, but remain under-equipped and fragile due to ethnic tensions, poor and un-integrated command structure, lack of training, and the use of former militia in JIUs that were not first integrated into SAF or SPLA.¹³ They tend to fall apart in times of crisis, notably in Malakal in November 2006,¹⁴ and were quick to join in fighting with their respective armies at Abyei and other locations.¹⁵ The GNU's failure to contribute promised resources to them, especially in Abyei, where the JIUs and joint police units are supposed to provide security under the Abyei Roadmap agreement, has been a bone of contention.

The Road Ahead

The CPA time-table commits the parties to holding both a national census and elections before the interim period ends in 2011, when residents of Southern Sudan and Abyei vote on self-determination (Under protocols to the CPA governing Southern Kordofan and Blue Nile, residents there will not participate in the referendum¹⁶). The parties held the census in April and May 2008, but the process was deeply flawed in Darfur, where IDP populations refused to take part, and in parts of Southern Sudan, where insecurity interrupted the counting.¹⁷ In

¹⁰ CPA Monitor, November 2008, p.24, http://www.unmis.org/common/documents/cpa-monitor/cpaMonitor_novo8.pdf (accessed February 4, 2009); See also, United Nations Security Council, "Report of the Secretary-General on the Sudan," S/2008/485, para.s14-15, July 23, 2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/485> (accessed October 7, 2008).

¹¹ See, e.g., "Sudanese army deploys troops in South Kordofan, SPLM says," *Sudan Tribune*, December 6, 2008, <http://www.sudantribune.com/spip.php?article29498> (accessed February 2, 2009).

¹² CPA, Chapter VI; see also Small Arms Survey "Neither 'joint' nor 'integrated': The Joint Integrated Units and the future of the CPA", Sudan Issues Brief No. 10, March 2008, http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SIB%2010%20JIUs.pdf (accessed February 3, 2009)

¹³ "Neither Joint Nor Integrated," p.4.

¹⁴ AEC, Mid Term Evaluation Report, p. 37-8.

¹⁵ AEC, Mid Term Evaluation Report, p. 38.

¹⁶ CPA, Ch. V

¹⁷ The national census, conducted in April 2008 after several delays, was marred in part by a spate of attacks on civilians by Sudanese Armed Forces-supported militia in the preceding weeks. "Militia Attacks Threaten Crucial Census," Human Rights

Lakes State, communal violence killed an estimated 95 people and interfered with census activities.¹⁸

Both parties to the CPA have reserved the right to reject the census results. The President of Southern Sudan (who is also the First Vice President of Sudan) entreated the national and southern census commissions to seek agreement on the results before submitting the final report, reflecting concern that a controversy could fuel renewed violence, particularly in the lead-up to national elections scheduled in 2009.¹⁹ The CPA's power-sharing agreement gave the SPLM one-third of the national representation based on assumptions about the population of Southern Sudan. A less than one-third count could weaken the SPLM's political power nationally.

Although the parties have announced their willingness to hold elections on the CPA timetable, which calls for elections by July 2009,²⁰ preparations are seriously behind schedule and many observers expect the date to be postponed. The list of tasks includes agreeing on census results, demarcating the North-South boundary, drawing boundaries for voter constituencies (based on population counts), nominating candidates, and registering voters. The National Elections Commission, appointed in November 2008, has yet to set a date for elections or appoint High Committees for Southern Sudan and the States to administer voter registration and elections, as required by the National Elections Act.²¹ The elections law sets out an extremely complicated process, particularly for Southern Sudan, where residents will fill out twelve separate ballots for regional, state, and national officials. Public information and voter education campaigns—critical in the South where illiteracy rates are very high and where the population has little or no experience of participating in democratic elections—are just beginning.²²

The national unity government is behind implementing legal and institutional reforms called for in the CPA that would create a free and fair elections environment. While it has passed

Watch news release, April 10, 2008, <http://www.hrw.org/en/news/2008/04/08/sudan-militia-attacks-threaten-crucial-census>.

¹⁸ United Nations Security Council, "Report of the Secretary-General on the Sudan," S/2008/485, para. 5, July 23, 2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/485> (accessed October 7, 2009).

¹⁹ "Speech of South Sudan President Salva Kir on Fourth Anniversary of CPA in Malakal," *New Sudan Vision*, January 11, 2009 <http://www.newsudanvision.com/news/speech-south-sudan-president-salva-kiir-fourth-anniversary-cpa-malakal-1467> (accessed February 2, 2009).

²⁰ CPA, Ch. II, 1.8.3 calls for elections by the end of the third year of the interim period, while implementation modalities (Annexure II) of the CPA call for elections no later than end of fourth year of interim period.

²¹ The National Elections Act 2008, <http://www.unmis.org/english/2008Docs/Election-LAW2008.pdf> (accessed February 2, 2009).

several laws implementing aspects of the CPA—such as the Joint Integrated Units Act, the National Civil Service Commission Act, and others—it has not made reforms with far-reaching human rights implications. For example, the CPA calls for a new security service that functions as information gathering and analysis organ.²³

The GNU has yet to reform the NISS, limit the arrest and detention powers of security officials, or reform the criminal code and media laws to protect freedom of expression in line with the interim constitution and international obligations. The CPA also calls on the national government to establish a National Human Rights Commission and Land Commission, neither of which it has done.²⁴ These reforms have been the subject of political negotiations between the CPA parties; the parties should not in their haste to reach a deal rush through legislation without proper consultation when the assembly reconvenes in 2009.²⁵

Southern Sudan

The CPA is largely silent on governance in the ten States that make up Southern Sudan beyond establishing the GoSS and various mechanisms such as the Southern Sudan Land Commission. In an area almost the size of France that was never developed and has rarely been at peace over the last fifty years, the GoSS faces enormous state-building challenges.

It has made substantial progress establishing new government structures and institutions at the regional and state levels. It has largely succeeded in incorporating dozens of militias into the SPLA, as required by the CPA. On the development front it boasts improved roads, infrastructure, and new investment.²⁶ But the southern economy remains heavily dependent on the GoSS share of national oil revenues. The majority of the sizeable budget goes to the

²³ CPA, Ch.1, Art. 2.7.2

²⁴ CPA, Ch.1 Art. 2.10.2

²⁵ “Sudan: Pushed legislative reforms are counterproductive,” REDRESS, January 12, 2009, <http://www.redress.org/news/09-01-12%20REDRESS%20KCHRED%20Press%20Release%20Sudan%20Legislation%20Reforms%20-%20English.pdf> (accessed February 2, 2009).

²⁶ See “Speech of South Sudan President Salva Kir on Fourth Anniversary of CPA in Malakal,” *New Sudan Vision*, January 11, 2009, <http://www.newsudanvision.com/news/speech-south-sudan-president-salva-kiir-fourth-anniversary-cpa-malakal-1467> (accessed February 2, 2009).

security sector, and to salaries rather than development projects.²⁷ Many commentators have noted the lack of transparency about how efficiently the budget is spent.²⁸

Southerners criticize GoSS for keeping power and resources in the capital and for failing to deliver basic services. The process of decentralization, a stated priority for 2009, should in theory bring more services to people in rural areas.²⁹ States will need assistance setting up systems to pay public servant salaries, including for regular armed forces (police, wildlife service, fire brigade and prison guards) that are to be decentralized. Failure to pay salaries can lead to insecurity and human rights abuses. When teachers demonstrated over the lack of payment of salaries in Bentiu in October, authorities in Unity State responded by arbitrarily arresting and detaining several teachers.³⁰ In Juba, a student demonstration over the non-payment of their teachers' salaries in November also turned violent and led to human rights abuses when police used excessive force and shot into the crowd, leading to injuries and one death.³¹

Southerners also criticize the GoSS for engaging in "tribalism," and specifically for allowing the Dinka ethnicity to dominate government.³² Many have indicated that anti-Dinka sentiment is rising in Juba. In addition, many have noted increasing signs of corruption and the head of the Southern Sudan Anti-Corruption Commission, which has yet to be empowered legally, has said "there is outright stealing throughout the nation because we have a fragile institutional set-up,"³³ In private conversations with Human Rights Watch, officials bemoaned the lack of transparency and accountability within their own

²⁷ The 2008 GOSS budget for SPLA Affairs alone was 1 billion Sudanese Pounds, representing nearly a third of the total 3.428 billion Sudanese Pounds. Close to half the budget went to salaries. <http://mpagoss.org/budget.html> (accessed October 7, 2008). In January 2009, GoSS passed a 3.6 billion Sudanese Pounds budget despite overspending in several sectors including security, and falling oil revenues.

²⁸ See John G. Nyout Yoh, "Countdown: Two Years to the Referendum," Gurtong, January 20, 2009, http://www.gurtong.org/ResourceCenter/editorscorner/edart_details.asp?editorsitem_id=1020 (accessed February 2, 2009).

²⁹ See "Speech of South Sudan President Salva Kir on Fourth Anniversary of CPA in Malakal," *New Sudan Vision*, January 11, 2009 <http://www.newsudanvision.com/news/speech-south-sudan-president-salva-kiir-fourth-anniversary-cpa-malakal-1467> (accessed February 2, 2009).

³⁰ UNMIS Human Rights Bulletin, December 23, 2008, on file with Human Rights Watch.

³¹ Human Rights Watch interviews with UN police and human rights staff (names withheld), Juba, December 2008.

³² Traci D. Cook, "A place to call their own: Southern Sudanese comment on the hard work & struggles of self-governance," Findings from Focus Groups with Men and Women in Southern Sudan, National Democratic Institute for International Affairs, September 18, 2007, <http://www.ndi.org/node/13793> (accessed January 28, 2009).

³³ "Lack of law hampers South Sudan's anti-corruption body," *Sudan Tribune*, July 30, 2008, <http://www.google.com/search?hl=en&q=Lack+of+law+hampers+South+Sudan%E2%80%99s+anti-corruption+body+reuters> (accessed February 2, 2009).

administrations. The types of corruption officials mention include misuse of public funds, favouritism in hiring practices, and inflated payrolls.³⁴

And while the architecture of government is largely in place, GoSS has been less successful breathing life into it. With very little legal expertise and high levels of absenteeism in the legislative assembly, the GoSS has been overwhelmed with the task of drafting legislation and slow to establish a needed legal framework.³⁵ Laws on police, other regular forces, and land use are still in draft form, leaving a legal and policy vacuum in critical areas. The law to enable the Southern Sudan Human Rights passed in February 2009, while the laws enabling Land and Anti-Corruption Commissions are still pending.

³⁴ Traci D. Cook, "Intergovernmental Relations in Southern Sudan," Findings From Interviews with Government Officials and Legislators and the GoSS and State Levels," The National Democratic Institute for International Affairs, September 30, 2008, p. 75, <http://www.ndi.org/node/14950> (accessed February 2, 2009).

³⁵ Human Rights Watch interviews with members of Parliament (names withheld), Juba, March 17-18 and June 28, 2008.

VI. Context: Southern Sudan's Fragile Security Environment

One of the GoSS's greatest challenges is to demonstrate to its citizens the "peace dividend" in an extremely fragile security environment in which its own forces are often not able to protect civilians from violence that leads to human rights violations, and are often themselves responsible for human rights violations. In a potent reminder of this fragile environment, the CPA's fourth anniversary celebration at Malakal was marred by a conflict between Shilluk and Dinka ethnic groups over ancestral land rights. An argument between members of the two groups prompted police to fire guns, injuring six civilians. The incident sparked further clashes between the two groups in areas outside Malakal, in which eleven people were reported killed, houses were burned, and thousands of civilians were displaced.³⁶

External Threats

Southern Sudan's fragility has roots in both external and internal threats. North-South tensions fuel conflict, particularly in the disputed areas of the 1956 border, such as oil-rich Abyei. Tensions between the parties to the CPA increased after the northern National Congress Party rejected the finding of a boundaries commission, formed in accordance with the Abyei Protocol of the CPA.³⁷ The commission found that the ethnically southern Dinka Ngok communities had a legitimate claim to the area of Abyei and adjacent oil fields.³⁸ Following SAF and SPLA troop build-ups and months of skirmishes in the area, clashes between the two forces erupted in May 2008, killing scores of civilians and causing at least 60,000 to flee from their homes.³⁹

Although both sides claim to have withdrawn their troops to their own side of the North-South border in accordance with the CPA, they have repeatedly deployed forces in disputed

³⁶ "Hundreds flee clashes in Malakal," *Sudan Tribune*, January 13, 2009, <http://www.sudantribune.com/spip.php?article29847> (accessed January 28, 2009); United Nations Department of Safety and Security (UNDSS), Sudan Weekly Security Situation Report #2 2009, on file with Human Rights Watch.

³⁷ CPA, Ch. IV.

³⁸ Abyei Boundaries Commission Report, July 14 2005, <http://www.sudanarchive.net/cgi-bin/sudan?e=-and-TX-abyei-1025-10-1-o-abyei&a=d&cl=search&d=D1d18> (accessed February 2, 2009). See also, International Crisis Group, "Sudan's Comprehensive Peace Agreement: Beyond the Crisis," Africa Briefing No. 50, March 13, 2008, <http://www.crisisgroup.org/home/index.cfm?id=5329&l=1> (accessed February 2, 2009)

³⁹ Human Rights Watch, *Sudan - Abandoning Abyei: Destruction and Displacement, May 2008*, July 2008, <http://hrw.org/reports/2008/sudano708/>. The parties have since made progress deploying joint security forces to Abyei and appointing a civil administration there. However, the GNU has yet to release funding for the administration and joint forces. As of January 2009 the majority of residents have not returned.

areas. This was one reason for the SPLA withdrawal from the GNU, and a direct cause of conflicts in both Abyei and in Kharasana, another important contested town near the border where violent clashes erupted in the spring of 2008.⁴⁰ In the aftermath of the Abyei clashes, both sides withdrew their forces pursuant to the Abyei Roadmap and allowed joint forces to secure the area.

In the game of military shadow-boxing that characterizes border dynamics in the post CPA-era, the parties have continued to build up forces on either side of their respective borders. In December 2008, the Sudanese government reportedly deployed six battalions of SAF soldiers to Southern Kordofan.⁴¹ The SPLA has also been slow to pull back from the border.⁴² Other disputed parts of the 1956 border are flashpoints for further violence.⁴³ The UN and others have warned they could be potentially larger than the conflict that occurred at Abyei.⁴⁴

The CPA prohibits all militia—known as Other Armed Groups (OAGs)—requiring their dissolution or integration into the SPLA or the SAF. This has been largely accomplished.⁴⁵ However, officials say some elements of other armed groups still exist, such as remnants of the so-called “white army” in Jonglei or remnants of former SAF-supported groups in Upper Nile and could be “reactivated” at any time. There is evidence both sides have continued to back militia as proxy forces, fuelling tension and violence.⁴⁶

⁴⁰ Clashes erupted between Sudanese government-backed militia and SPLA near Kharasana in April 2008, then spread to Kharasana town, killing 18 civilians and causing thousands to flee. The clashes were preceded by disagreements over the location of SPLA troops. Similar disagreements caused violence at Abyei and contributed to tensions near White Lake/Jaw. United Nations Security Council, “Report of the Secretary-General on the Sudan,” S/2008/267, para. 11, April 22, 2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/267> (accessed October 6, 2008).

⁴¹ “Sudan confirms troop build-up in oil region,” Reuters, <http://www.alertnet.org/thenews/newsdesk/L7457858.htm> (accessed January 28, 2009).

⁴² United Nations Security Council, “Report of the Secretary-General on Sudan,” S/2008/662, para. 17 Oct 20 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/555/43/PDF/No855543.pdf?OpenElement> (accessed February 2, 2009).

⁴³ GoSS officials have predicted violence could erupt in Unity, Western Bahr el Ghazal, Upper Nile, and Blue Nile. John Young, “Emerging North-South Tensions and Prospects for a Return to War,” Small Arms Survey, Working Paper No. 7, pp. 32-36, July 2007, http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SWP%207%20North-South%20tensions.pdf (accessed October 6, 2008).

⁴⁴ United Nations Security Council, “Report of the Secretary-General on the Sudan,” S/2008/485, para. 91, July 23, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/430/60/PDF/No843060.pdf?OpenElement> (accessed February 2, 2009). International Crisis Group “Sudan’s Southern Kordofan Problem: the Next Darfur?” Africa Report No. 145, October 21, 2008, <http://www.crisisgroup.org/home/index.cfm?id=5738> (accessed February 2, 2009).

⁴⁵ Following the January 2006 “Juba Declaration on Unity and Integration of SPLA and the SSDF,” many other armed groups integrated into the SPLA. The Southern Sudan Defense Forces is an umbrella organization of formerly SAF-aligned armed groups.

⁴⁶ Small Arms Survey, “Allies and Defectors: an update on armed group integration and proxy force activity,” Sudan Issue Brief No. 11, May 2008, http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SIB%2011%20allies%20defectors.pdf (accessed October 6, 2008).

Uganda's Lord's Resistance Army is another external threat that has especially affected the Equatorial States. In September 2008, LRA attacked villages in the Democratic Republic of Congo and an SPLA camp in Sakure, Western Equatoria State, killing two civilians and abducted 14, including 12 children. Their attacks intensified in the weeks before their leader, Joseph Kony, was scheduled to sign a peace agreement but did not appear (the third such failed attempt). In December 2008, the Ugandan army, supported by the Central African Republic, Congolese and Southern Sudanese armies launched a coordinated offensive, Operation Lighting Thunder, against the rebels.⁴⁷ However, the attacks continued and by mid-January 2009, rebel attacks killed over six hundred Congolese civilians and an estimated 50 Southern Sudanese, abducted hundreds more, and caused thousands to flee their homes in Sudan.

Internal Threats

Armed criminal groups and renegade soldiers with unknown affiliations also present security threats in many parts of Southern Sudan, committing various abuses against civilians. For example, according to a report issued by the Southern Sudan Legislative Assembly's Human Rights and Humanitarian Affairs Committee, groups of renegade soldiers known as "forgotten warriors" attacked civilians in Upper Nile, looting homes and raping females.⁴⁸ In Eastern Equatoria, a group of former SPLA calling itself "No Unit" perpetrated a string of attacks on villages in April 2008, collecting supplies along the way.⁴⁹ In late June 2008, a group of disgruntled soldiers, Ugandan rebels and bandits, attacked a village in Central Equatoria, looting goods and abducting scores of men, women, and children, causing hundreds to flee.⁵⁰

Large numbers of underpaid soldiers who lack training in their peacetime police-oriented role also represent a threat to security by committing human rights abuses and other crimes (described in more detail below). Meanwhile communal conflict persists in the form of cattle rustling and inter-communal conflict over land use and ill-defined *payam* and county boundaries. With small arms still in large supply despite various attempts to disarm civilians,

⁴⁷ "DR Congo: LRA Slaughters 620 in 'Christmas Massacres', Human Rights Watch news release, January 17, 2009, <http://www.hrw.org/en/news/2009/01/17/dr-congo-lra-slaughters-620-christmas-massacres>.

⁴⁸ Southern Sudan Legislative Assembly Human Rights and Humanitarian Affairs Committee, Report on situation in Upper Nile, Sept 11-23, 2008, on file with Human Rights Watch.

⁴⁹ Mareike Schomerus, "Violent Legacies: Insecurity in Sudan's Central and Eastern Equatoria," Small Arms Survey, Working Paper No. 13, June 2008, http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SWP%2013%20C%20&%20E%20Equatoria.pdf (accessed October 6, 2008), pp. 31, 70.

⁵⁰ Human Rights Watch interview with Commissioner of Lainya County, Juba, July 5, 2008.

these conflicts often turn violent and exact high death tolls on civilians. In one clash, in May 2007, armed Toposa massacred 54 Didinga women and children in Buda county, Eastern Equatoria, while in April 2008 a communal conflict in Lakes State led to approximately 95 deaths.⁵¹

Many of these conflicts have deep historical roots and erupt in predictable cycles and locations. In December 2008 alone, clan fighting and cattle raiding among ethnic groups and sub-groups was reported in Warrap, Unity, Eastern Equatoria, Jonglei, and in Juba town, leading to numerous civilian deaths and injuries.⁵² In late December and January 2009 clashes between Dinka sections killed more than 20 people and caused hundreds to flee their homes in Wulu, Lakes State.⁵³ According to the UN Office of Coordination of Humanitarian Affairs, communal clashes caused more displacement than any other factor in 2008.⁵⁴

Boundaries are often a cause of inter-communal fighting. In December 2008 a staff member of the Southern Sudan Human Rights Commission was shot when he tried to mediate a dispute between Mundari and Bari communities over a county boundary north of Juba.⁵⁵ A dispute over boundaries was at the root of the clash between Shilluk and Dinka communities near Malakal that killed at least 11 civilians in January 2009. In Warrap State, a long-standing dispute between two Dinka sections over grazing lands led to renewed violence in spring 2008, causing at least 7 deaths, in part fuelled by disagreements over the creation of a county boundary line.⁵⁶

An underlying cause of insecurity that leads to human rights violations is that former soldiers have not yet benefited from Disarmament, Demobilization and Reintegration (DDR) programs envisioned in the CPA.⁵⁷ Plans include demobilization of 180,000 soldiers and 2,900 children, but the process is highly sensitive and requires more donor support for reintegration and livelihood. The inclusion of southern former SAF soldiers has been an

⁵¹ See United Nations Security Council, "Report of the Secretary-General on the Sudan," S/2008/485, para. 5, July 23, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/430/60/PDF/No843060.pdf?OpenElement> (accessed February 2, 2009).

⁵² UNMIS Protection of Civilians report, December 14, 2008, on file with Human Rights Watch.

⁵³ UN Police report, January 29, 2009, on file with Human Rights Watch.

⁵⁴ UN OCHA statistics, November 25, 2008, on file with Human Rights Watch.

⁵⁵ Human Rights Watch interview with victim (name withheld), Juba, December 13, 2008.

⁵⁶ Human Rights Watch telephone interview with resident of Warrap State (name withheld), October 1, 2008. Confidential report from UNMIS Civil Affairs, October 7, 2008.

⁵⁷ The CPA envisions a national Disarmament, Demobilization and Reintegration (DDR process), described in Chapter VI. However, the parties did not agree on a framework for DDR until September 2008.

especially contentious matter, with thousands remaining in Juba, Wau, and Malakal and still armed. Following the New Years day violence in Juba, GoSS passed resolutions that included calling for DDR and resolving the status of the former SAF soldiers.⁵⁸

Observers expect little progress on reforming or downsizing the SPLA anytime before the 2011 referendum in view of the political uncertainty facing the South and security threats—real or perceived—that have roots in the civil war with the North. As one long-term development agency worker told Human Rights Watch, “they are still in a war mentality and they do not want DDR, they do not want civilian oversight.”⁵⁹

Human Rights Concerns in the Lead Up to 2009 National Elections

In the period leading up to the elections, a number of politically sensitive decisions and events could become flashpoints. These include announcement of the results of the April 2008 census, demarcation of the North-South border, and the drawing of electoral constituencies (determined by population count). In Southern Sudan, disputes over local boundaries and the socio-economic pressure of more formerly displaced people and refugees returning to towns and villages could exacerbate an already tense elections environment.

Communities living near disputed areas of the North-South boundary may also become more vulnerable to national political tensions, particularly in Abyei where a shooting incident between a soldier and police in December caused hundreds of recently returned civilians to again flee the town. The forthcoming decision by the Permanent Court of Arbitration regarding the boundaries of Abyei, expected in the first half of 2009, is an obvious potential flashpoint.

The GoSS, UN agencies, and donors should urgently develop coherent strategies to prevent human rights violations arising from political tensions or communal disputes. These strategies should ensure coordination between relevant government bodies and mechanisms already established by GoSS. GoSS and international agencies should also ensure public information and voter education aim to reduce potential conflict and resulting human rights violations.

⁵⁸ James Gatdet Dak, “South Sudan cabinet passes a number of measures on insecurity,” *Sudan Tribune*, January 8, 2009, <http://www.sudantribune.com/spip.php?article29810> (accessed February 3, 2009).

⁵⁹ Human Rights Watch interview with UNDP staff member (name withheld), Juba, July 6, 2008.

VII. Southern Sudan's Human Rights Challenges

The most pressing human rights challenges in Southern Sudan today arise out of the GoSS's inadequate responses to various security threats and its failure to rein in human rights abuses by security forces, primarily the SPLA. In addition, systemic weaknesses in the rule of law institutions give rise to abuses in the administration of justice and contribute to a culture of impunity for crimes and human rights violations. The following provides an overview of key human rights issues in Southern Sudan. It is not, however, an exhaustive catalogue of all human rights challenges facing the South.

Lack of Civilian Protection

There are many examples of authorities deploying soldiers to locations where civilians face security threats. In Western Equatoria, GoSS security forces have conducted patrols since December 2008 to protect civilians from attacks by the Lord's Resistance Army. But there are just as many examples where authorities have not deployed security forces to protect civilians from violent criminal acts or conflict situations.

In Central Equatoria, for example, a man who fled his village after it was attacked by a group of bandits and renegade soldiers who perpetrated a string of attacks in early spring 2008 told Human Rights Watch, "No soldiers are being deployed and there is no protection. Unless the situation is cooled down, I cannot go back. I ran from a bullet. Even if soldiers are taken in there for protection, I want to see the reality first."⁶⁰

Even in Western Equatoria, where GoSS security forces have patrolled main roads against attacks by LRA, civilians have told UN staff they have lost confidence in the government's ability to protect them and some villages have turned to self-protection by youth groups armed with guns and bows and arrows.⁶¹

In the North-South border areas, southern authorities have not deployed forces to protect civilians in some instances—possibly because of the political implications of deploying military in that area given the terms of the CPA. Victims of attacks in Unity State prior to the population census in March and April 2008 reported that they did not feel protected. "There was no South Sudan army, it was only petroleum security at that place. There was no

⁶⁰ Human Rights Watch interview with man (name withheld) from village of Tore, Central Equatoria, Lumuke, April 1, 2008.

⁶¹ UNMIS activity report, January 20, 2009, on file with Human Rights Watch.

intervention,” said one man who was shot by a group of armed men, whom he described as Arab militia and Sudanese Armed Forces.⁶²

Weak Police Response

The Southern Sudan Police Service (SSPS), established under a separate command from the Khartoum-based police service, is still in very early stages of development. Most police are former SPLA soldiers, poorly trained and lacking basic education. Challenges training them include lack of infrastructure, lack of command and control, and low levels of literacy.⁶³ In many areas they are not sufficiently deployed to cover the terrain (for example, there are only 700 police for all of Lakes State, an area roughly the size of Switzerland with an estimated population of 350,000) and lack the transportation and communications resources they need to respond effectively to security problems.

The police are vulnerable to attacks themselves. In November 2008 in Unity state, for example, a feud between Nuer clans led to one death. Police arrested the assailant, but the victim’s family then attacked the police station, setting fire to the cell, and killed the assailant.⁶⁴ In Eastern Equatoria in December 2008, county authorities tried to quell a cattle-raiding dispute by sending an official delegation to villages in Lopit county, but armed men ambushed the team, killing ten people including a police officer.⁶⁵ In January 2009, an attack on one village in Western Equatoria by Lord’s Resistance Army rebels killed three people including police.⁶⁶

In some cases, the inappropriate use of force by police contributes to the escalation of violence leading to human rights abuses. For example, in January 2009 in Malakal at the CPA anniversary celebrations, SSPS fired into a crowd where Shilluk and Dinka traditional dancers were arguing over which group should take the lead in the celebrations, resulting in six injuries. The incident sparked clashes between the two ethnic groups in a nearby village, resulting in a reported additional eleven deaths, burned houses, and displacement of

⁶² Human Rights Watch interview with man (name withheld), Bentiu, March 21, 2008.

⁶³ See United Nations Security Council, “Report of the Secretary-General on the Sudan,” S/2008/485, para. 47, July 23, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/430/60/PDF/No843060.pdf?OpenElement> (accessed February 2, 2009).

⁶⁴ UNMIS Protection of Civilians report, December 14, 2008, on file with Human Rights Watch

⁶⁵ UNMIS Security report, January 1, 2009, on file with Human Rights Watch.

⁶⁶ UNMIS Security report, January 20, 2009, on file with Human Rights Watch.

villagers.⁶⁷ Police excess use of force also led to injuries and at least one death at student demonstrations in November 2008 protesting non-payment of teacher salaries in Juba.⁶⁸

Human Rights Consequences of Using SPLA to Keep Public Order

As a result of weak law enforcement capability in the police force, GoSS regional and state authorities—almost all of whom are former soldiers themselves—turn to the SPLA to patrol against crime, protect civilians from attacks from armed criminal groups, and quell disputes.

Technically, the SPLA does not have the legal authority to fulfil these functions unless directed by civilian government officials.⁶⁹ However, GoSS has not demonstrated the political will to ensure civilian oversight of law enforcement operations conducted by military at this stage. Even in instances in which civilian authorities call upon SPLA for law enforcement support they do not actually oversee operations.

Under international law, military personnel carrying out policing duties—such as searches, arrest, and detention—are bound by the same human rights standards applicable to all law enforcement officials.⁷⁰ Just as the police and other regular forces lack training as to their roles, current soldiers lack the training required to fulfil civilian law enforcement functions.

In March 2008 the GoSS issued a White Paper on Defence, describing the process of “transforming the SPLA into a regular, professional, non-partisan modern army.”⁷¹ Training needs are enormous and programs are just beginning, largely benefiting the higher ranks. With illiteracy in the armed forces estimated at 80 percent, the majority of soldiers lack basic education in addition to specialized training in, and practical skills for, their peace-time role or in human rights and humanitarian law.

In practice, the soldiers often employ military tactics in civilian law enforcement functions, such as by surrounding villages and using heavy weaponry and otherwise intimidating civilians. The strategy often backfires, leading to violent clashes with armed civilians and

⁶⁷ UNDSS, Sudan Weekly Security Situation report #2, 2009; “Hundreds flee clashes in Malakal,” *Sudan Tribune*, January 13, 2009, <http://www.sudantribune.com/spip.php?article29847> (accessed February 3, 2009).

⁶⁸ Human Rights Watch interviews with UN police and human rights staff (names withheld), Juba, December 2008.

⁶⁹ The Interim Constitution of Southern Sudan Art. 154 (c) states that armed forces do not have a mandate for internal law and order, “except as may be requested by the civil authority with necessity so requires.”

⁷⁰ See the United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), art. 1 cmmt.

⁷¹ “SPLA White Paper on Defense: Towards a Secured Southern Sudan/Sudan for All,” Government of Southern Sudan, March 2008, on file with Human Rights Watch.

soldiers committing serious human rights violations in the process, often with ethnic dimensions.

Case Study from Eastern Equatoria, June 2008

In one example from Eastern Equatoria in June 2008, an SPLA operation to prevent a conflict between two villages, Logurun and Iloli, turned into a deadly clash between SPLA soldiers and civilians. At least 10 civilians and nine soldiers were killed and an estimated 4,000 villagers were forced to flee to neighbouring Hiyala village. The Governor of Eastern Equatoria ordered the operation after he heard that the villages were preparing to fight. Representatives from the communities told Human Rights Watch that the SPLA took a heavy-handed approach that spiralled out of control.⁷²

According to eyewitnesses and local government officials Human Rights Watch interviewed, at around 3 a.m. on June 4, on the Governor's instructions, several hundred SPLA soldiers arrived on the outskirts of Logurun village with orders to secure it and the neighbouring village of Iloli to curtail a cattle-raiding conflict between the residents, to seize their cattle for return to their rightful owners, and to disarm civilians.⁷³ Men from Logurun saw soldiers in the bush and, believing they were "enemies" from Iloli preparing to attack, opened fire, killing nine of the soldiers.⁷⁴ SPLA soldiers fired back, entered the village, moved house to house with guns, and ordered people to leave before setting fire to the huts and stealing livestock.⁷⁵

Meanwhile, another contingent of soldiers who were surrounding neighbouring Iloli village, some 10 kilometres away, attacked when they learned about fighting at Logurun. The soldiers fired on the village, which sits on a hilltop, from positions at the bottom of the hill, then went house-to-house threatening people and ordering them to leave.⁷⁶ Several

⁷² Human Rights Watch interviews with Members of Parliament (names withheld), June 27, 2008. See also Otuho Community Association, "Complaint against SPLA military operations in the villages of Iloli and Ogurony on 4th June 2008," on file with Human Rights Watch.

⁷³ Memorandum addressed to the President of GoSS from the Eastern Equatoria State Governor's Office, June 10, 2008, on file with Human Rights Watch. The villages had remained armed despite a disarmament program in 2007 that collected some 100 weapons from the area.

⁷⁴ Both villages have a protection force, known as "monyomiji," that also serves as the village government. Youth from Lotuku villages are inducted into the village government and protection force once every two decades.

⁷⁵ Human Rights Watch interview with witnesses at Hiyala village, July 2, 2008

⁷⁶ Human Rights Watch interviews with witnesses at Iloli village, July 2, 2008

witnesses said soldiers killed three men at close range, execution style, during the incident.⁷⁷

Soldiers ordered the villagers to Hilaya village, where they stayed with host families and in temporary shelters. They also arrested some males from both villages and assaulted them. “I was beaten by the SPLA when they brought me to Hiyala...the soldier hit me with metal on my head, and I was bleeding,” recalled one man who had been detained.⁷⁸

Three days after the clashes, in broad daylight, the soldiers killed an additional two Lotuku civilians, an old woman and a 17-year-old boy, whom they encountered in a garden near Hiyala, where both victims were residents. According to local people, the victims were targeted because they belonged to the Lotuku ethnicity. “The soldiers said ‘you are all Lotuku’ and did not care which village we come from,” the chief told Human Rights Watch.⁷⁹

In the clashes, at least 10 villagers and nine soldiers died, hundreds of homes were destroyed, livestock was stolen, and some 4,000 villagers were displaced to nearby Hiyala village. According to an official complaint submitted to the GoSS Vice President by members of the Lotuku community, SPLA soldiers unlawfully killed a total of six additional persons after the clashes, and arbitrarily arrested civilians from the villages and detained and tortured them in their barracks.⁸⁰

International law requires that the use of force by law enforcement officials, including members of the armed forces, be proportionate and necessary to achieve law enforcement ends.⁸¹ The evidence suggests the SPLA soldiers violated international law when they committed extrajudicial executions, beat and tortured civilians, destroyed civilian property, and stole livestock. The SPLA launched an investigation into the incident, but the results have not been made public and to date there is no indication soldiers have been prosecuted.⁸²

⁷⁷ Human Rights Watch interview with witnesses at Iloli village, July 2, 2008

⁷⁸ Human Rights Watch interview with civilian from Logurun, Hiyala, July 2, 2008.

⁷⁹ Human Rights Watch interview with Paramount Chief, Hiyala, July 2, 2008

⁸⁰ Otuho Community Association, “Complaint against SPLA military operations in the villages of Iloli and Ogurony on 4th June 2008,” on file with Human Rights Watch.

⁸¹ See UN High Commissioner for Human Rights/Centre for Human Rights, *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police* (Geneva: United Nations, 1997), para. 525.

⁸² United Nations Security Council, “Report of the Secretary-General on Sudan,” January 30, 2009, S/2009/61 para. 56, <http://www.unhcr.org/refworld/docid/498ab68e9d.html> (accessed February 3, 2009)

This incident shows the need to train soldiers in the applicable laws and in civilian policing techniques, the need for accountability mechanisms, and for more inclusive strategies for dealing with localized conflict. One man from Logurun said, “The problem was that there was no communication with us [villagers]. There was no warning and this was not organized.”⁸³

The Civilian Disarmament Challenge

Similar violence and human rights violations have occurred in the context of civilian disarmament operations, particularly when they are led by military rather than civilian authorities.

One of the GoSS’ primary strategies for managing conflict has been to disarm civilians to reduce armed inter-communal violence. This strategy, which has been used piece-meal by state-level authorities for several years, became more prominent in May 2008 when Southern Sudan’s President Salva Kiir issued an order to all states to conduct civilian disarmament over a six month period.⁸⁴ Although the time-frame expired in December, Kiir has repeatedly urged the States to continue to improve security by disarming civilians.⁸⁵ Authorities in several states have proceeded with disarmament campaigns, forced and voluntary, with varying degrees of consultation with the communities and planning. The newly established GoSS Bureau of Community Security and Small Arms Control aims to develop policies on disarmament and weapons storage, but to date GoSS has not put into place a clear policy to guide civilian disarmament efforts across Southern Sudan.

The task of civilian disarmament in Southern Sudan is complicated by historical and political realities. Communities that traditionally raised their own defence forces are often the same ones that have not allied with SPLA. Many perceive disarmament efforts as thinly veiled attempts by authorities to weaken communities that do not support SPLM. Although the operation at Logurun and Iloli was not strictly a disarmament campaign, villagers told Human Rights Watch they believed the soldiers wanted to disarm their community because it has had a troubled relationship with the SPLA.⁸⁶

⁸³ Human Rights Watch interview with brother of shooting victim, Hiyala, July 2, 2008.

⁸⁴ GoSS, Operation Order No.1/2008: Disarmament of Civil Population in Southern Sudan, on file with Human Rights Watch.

⁸⁵ At a governor’s forum in October 2008, Kiir again encouraged governors to improve security in their states by disarming civilians. “H.E. Gen. Salva Kiir Mayardit Key Note Address at the 6th Governor’s Forum,” September 29, 2008, on file with Human Rights Watch.

⁸⁶ Human Rights Watch interviews at Iloli and Hiyala, July 2, 2009.

Moreover, unless authorities disarm neighbouring communities simultaneously, they make the disarmed communities more vulnerable to threats from armed neighbours with whom they have long-running feuds. These political dimensions have fuelled violence including serious violations of human rights in the past. In 2005-6 a civilian disarmament operation targeting primarily Lou Nuer communities in Jonglei state turned extraordinarily violent. The Lou Nuer, some of whom perceived the disarmament to be a politically-motivated crack-down, objected that they needed weapons to protect their cattle from seasonal raids by the Murle, a different ethnic group who have carried out raids against the Lou and other neighbours for decades.⁸⁷

When the SPLA refused to disarm the Murle at the same time as the Lou Nuer, battles erupted between the SPLA and the Lou Nuer “white army” supported by elements of former Southern Sudanese Defence Forces (SSDF) and the northern Sudanese Armed Forces (SAF). The battles left an estimated 1,600 soldiers and militia members dead and an unknown number of civilian casualties.⁸⁸

The disarmaments in 2008—carried out according to the May Presidential Decree—have been less violent than in 2006, but not all peaceful. In July 2008, soldiers in Pibor, Jonglei, used force that UN monitors reported was excessive during house-to-house searches.⁸⁹ In Lakes State, authorities carried out a disarmament campaign in September that spiraled out of control and led to violence and human rights violations.

Case Study from Rumbek, September 2008

The disarmament campaign in Rumbek, Lakes State, spiraled out of control when SPLA soldiers, deployed from other parts of Southern Sudan to carry out the disarmament campaign, ran amok in the market, looting money and goods, wounding eight civilians and beating a member of parliament.⁹⁰

⁸⁷ John Young, “Emerging North-South Tensions and Prospects for a Return to War,” *The Small Arms Survey*, pp. 24-29, http://www.smallarmssurvey.org/files/portal/spotlight/sudan/Sudan_pdf/SWP%207%20North-South%20tensions.pdf (accessed February 3, 2009). The SSDF, which had been receiving support from Khartoum, were effectively integrated into the SPLA with the 2006 Juba Declaration but some elements participated in the Jonglei battles fighting against SPLA because of ethnic loyalties.

⁸⁸ Ibid.

⁸⁹ United Nations Security Council, “The Report of the Secretary-General on the Sudan,” S/2008/485, para. 6, July 23, 2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/485> (accessed October 6, 2008).

⁹⁰ Manyang Mayom, “SPLA soldiers wound several civilians, beat Lakes deputy speaker,” *Sudan Tribune*, September 10, 2008, <http://www.sudantribune.com/spip.php?article28561> (accessed February 3, 2009). This report was confirmed by UN staff working in Rumbek.

According to state authorities and residents interviewed by Human Rights Watch, the disarmament operation began early on September 8 without fair warning to civilians except for radio announcements the night before instructing residents to remain at home the following day. The soldiers were ethnically Dinka and Nuer and not from the area—a factor that may have contributed to tensions with the local civilians. They surrounded Rumbek town and began house-to-house searches in the early morning. Witnesses told Human Rights Watch that many soldiers were drunk and beat civilians, shot at them, and stole personal items including cash, mobile phones, and military uniforms from civilian homes.

“The soldiers did not care who you were, they beat people and looted shops,” said one journalist who witnessed the events.⁹¹ By mid-afternoon, the SPLA commander in charge agreed to suspend the operation, but more violence erupted later that evening in the market.⁹²

Abraham, a 26-year-old former security officer himself, was one of the first market shooting victims and bore a fresh bullet wound scar on his back and stomach when Human Rights Watch spoke to him. He told Human Rights Watch he went to the market to charge his mobile phone, then noticed a group of soldiers trying to commandeer a motorcycle from a young man he knew. They opened fire on the young man, but Abraham, who was running away in the same direction, got shot instead.

“There were about six of them chasing us. One of the soldiers started shooting at my back,” he recalled. “I fell down. After I fell they took my wallet. I heard a voice saying in Arabic ‘just leave him.’ They took my money and left.” He claims to have lost more than \$2,000, all of his savings that he put in his wallet that morning so that soldiers could not take it from his home during the disarmament campaign.

The incident sparked an outbreak of more shooting violence in the market in which at least seven civilians were shot.⁹³ At least one civilian died.⁹⁴ State and SPLA authorities suspended the disarmament operation and ordered SPLA out of Rumbek following the day’s events. SPLA reported they had arrested at least 10 soldiers.⁹⁵ State authorities publicly apologized for the botched campaign and announced some soldiers suspected of shooting

⁹¹ Human Rights Watch interview with journalist (name withheld), December 18, 2009.

⁹² Human Rights Watch interview with Lakes State deputy governor, Hon. Awan Riak, Rumbek, December 18 2008.

⁹³ Human Rights Watch interview with Abraham Mayot Chol, Rumbek, December 18, 2008.

⁹⁴ UNMIS Human Rights Bulletin, October 23, 2008, on file with Human Rights Watch.

⁹⁵ Ibid.

civilians had been arrested and would be tried in military court.⁹⁶ They also told UN human rights monitors that they registered cases and compiled lists of lost or stolen items, and that the Governor paid several hundred US dollars in compensation to some victims at the hospital.⁹⁷

However, these efforts at accountability have not been made public. “We do not know how they work or the results of their investigation,” the deputy Governor told Human Rights Watch.⁹⁸ Moreover, some victims (including Abraham) say they have not received promised compensation for loss and medical treatment. State authorities told Human Rights Watch that the onus is on SPLA to pay compensation.⁹⁹

State authorities acknowledge there was a break-down in communication with the soldiers, and that the operation was not coordinated with civilian police and other civilian authorities. The episode underscores the need for careful planning and oversight, and also points to the lack of coherent GoSS-wide policies on civilian disarmament and limitations in providing accountability.

⁹⁶ Sudan Tribune, “Conciliatory officials admonish soldiers, plan for trial after Lakes atrocities,” September 13, 2008, <http://www.sudantribune.com/spip.php?article28600> (accessed February 4, 2009)

⁹⁷ Ibid.

⁹⁸ Human Rights Watch interview with Lakes State deputy Governor, Hon. Awan Riak, Rumbek, December 18, 2008.

⁹⁹ Ibid.

VIII. Abuses by Security Forces

Southern Sudan's large security forces comprise soldiers, police, wildlife service, fire brigade, and prison officials. The vast majority are ill-trained in their roles and responsibilities. In all locations visited, Human Rights Watch received reports of various types of abuses by security actors, ranging from harassment, assault, and beatings in the course of official duty to other crimes committed for personal gain. According to many observers, public disquiet over abuses by state actors is growing.¹⁰⁰

The scale and gravity of offences vary depending on location, local dynamics, and personalities. In Warrab State, the UNMIS reported that soldiers were involved in at least eight killings, rapes, assaults, and stealing crops between July and October 2008.¹⁰¹ In Juba, on New Years' Day, 2009, armed men believed to be security personnel shot and killed four civilians, prompting the GoSS Council of Ministers to convene and pass resolutions to improve security.

In one high-profile case of abuse of power, soldiers acting on orders beat Rumbek journalist Manyang Mayom while he was investigating allegations that cattle keepers purchased weapons that had been collected in a previous disarmament campaign. "Two of the soldiers forced me out of my car and beat me on my neck with their gun, then on my chest and kidneys. My injuries were so bad I could not speak," he told Human Rights Watch.¹⁰² The beating was so severe that he had to be transferred to Khartoum for medical treatment.

Reports of harassment and assault by police in the course of arrest are common. In Juba, police harassment increased in October 2008, when, acting on an order by the Juba County Commissioner criminalizing "all bad behaviours, activities and imported illicit cultures of what is now known as 'Niggers'," police arrested and detained at least 27 women including 11 girls for wearing trousers or short skirts. Many of the females reported they were beaten. GoSS officials condemned the arrest and the commissioner lost his job over the incident.

¹⁰⁰ See "State Agents Top Human Rights Violation List," *The Southern Eye*, December 14, 2008, <http://www.thesoutherneyeltd.net/newsdetails.php?newsid=2064&categoryid=13&PHPSESSID=3762f0f46e556b156fa1c73dbb66cfa9> (accessed February 3, 2009)

¹⁰¹ Report of the Secretary-General, October 20, para. 58

¹⁰² Human Rights Watch interview with Manyang Mayom, Rumbek, December 18, 2008.

Similar harassment occurred previously in Juba and in Malakal and Yei, where police forced some girls to strip.¹⁰³ In Juba residents complained in November and December 2008 of military police operating illegal checkpoints demanding money in some cases and harassing passengers at night in what many believe to be a continuation of the harsh public order policy.

Trend of Criminality by Soldiers and Police

Since 2007, human rights monitors from UNMIS observed a trend of soldiers and police targeting foreign traders, most from Uganda, in robberies, assaults, and killings.¹⁰⁴ The crimes appear opportunistic, targeting East African traders who run lucrative business, also reflecting a resentment of the traders' economic advantage. In a high profile murder from September 2007, for example, a group of 15 policemen attacked the head of the Ugandan Trader's Association for trying to prevent them from beating another trader. One policeman stabbed and killed the trader. To date, the suspects have not been prosecuted.¹⁰⁵

The trend continued into 2008 in main towns such as Juba, Torit and Yei. In March 2008, SPLA soldiers beat and detained a Ugandan taxi driver in Juba for allegedly helping a female passenger steal money from a soldier. The victim told Human Rights Watch that eight soldiers took him to their barracks, stripped him, beat him, and threatened to kill him before finally releasing him after three days. "They were torturing me, kicking me in the chest, they beat me with a stick and they pointed their guns at me," he stated.¹⁰⁶

Security forces have also targeted female traders in the markets of various towns, particularly Juba and Torit, for sexual assault and rape.¹⁰⁷ Police and soldiers have assaulted Ugandan women who spend nights in the market to guard their goods or who work in

¹⁰³ Correspondence with international humanitarian organization staff (names withheld) in Yei, July 27, 2008, on file with Human Rights Watch; see also "Trouser-wearing women worsening harassment and Kenya Sudan border," *Gurtong news*, August 22, 2008, http://www.gurtong.org/ResourceCenter/weeklyupdates/wu_contents.asp?wkupdt_id=2326 (accessed October 2, 2008); "Sudan: Fashion Police Make Arrests," *Reuters*, October 7, 2008, http://www.nytimes.com/2008/10/08/world/africa/08briefs-FASHIONPOLIC_BRF.html?ref=world (accessed October 8, 2008).

¹⁰⁴ UN Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in Sudan, Sima Samar," March 3, 2008, para. 67, <http://www.unhcr.org/refworld/docid/47df89002.html> (accessed February 3, 2009).

¹⁰⁵ UNMIS Human Rights bulletin, July 24, 2008, on file with Human Rights Watch.

¹⁰⁶ Human Rights Watch interview with Ugandan taxi driver (name withheld), March 27, 2008.

¹⁰⁷ Human Rights Watch interview with Ugandan Traders Association official (name withheld), Juba, March 27, 2008.

restaurants and bars at night.¹⁰⁸ In June 2008 a group of police raped four Ugandan women in Bor, Jonglei State.¹⁰⁹

The same month, police in Malakal, Upper Nile state, arrested a group of 11 Ugandan women, beat them, and accused them of prostitution and tried to force them to have sex with them.¹¹⁰ Soldiers in Malakal also used sexual violence against Sudanese women and girls in June and August 2008.¹¹¹ As elsewhere in Sudan, victims of sexual violence often do not report crimes committed against them, especially by soldiers and other security forces.

Land Disputes Involving Abusive Soldiers

Southern Sudan had yet to establish a legal and regulatory framework for land use and ownership. The vacuum has opened the door to forcible land grabs, illegal occupations, coerced sales, and multiple sales of the same property, fuelling various types of land disputes during and after the war that have had an especially negative impact on returning IDPs and refugees.¹¹²

Many disputes in urban areas involve soldiers who occupy land that returning refugees and IDPs now claim. Several Juba residents, including recent returnees, reported to Human Rights Watch that soldiers intimidated and threatened to kill them for contesting the soldiers' occupation of their land.¹¹³ One chief reported that soldiers put him in jail because he complained to SPLA that they had built their barracks on his land.¹¹⁴

A resident of Yei, Central Equatoria, told Human Rights Watch that soldiers threatened to kill him whenever he attempted to regain his land, and soldiers occupying his neighbour's land beat the neighbour so severely that he had to be treated in a hospital.¹¹⁵ In another case from

¹⁰⁸ UNMIS Human Rights bulletin, July 24, 2008, on file with Human Rights Watch; "Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar," Human Rights Council, A/HRC/7/22, March 3, 2008, para. 68. <http://www.unhcr.org/refworld/docid/47df89002.html> (accessed February 3, 2009).

¹⁰⁹ UNMIS Human Rights Bulletin, August 21, 2008, on file with Human Rights Watch.

¹¹⁰ Ibid.

¹¹¹ UNMIS Human Rights Bulletin, September 15, 2008, on file with Human Rights Watch.

¹¹² Sara Pantuliano, "The land question: Sudan's peace nemesis," HPG Working Paper, Humanitarian Policy Group, December 2007, <http://www.odi.org.uk/hpg/papers/wplandsudan.pdf> (accessed February 3, 2009). The legal vacuum has also had a negative impact on rural communities that rely on traditional land tenure systems, and on women whose land and property rights are not protected in the absence of a legal framework.

¹¹³ Human Rights Watch group interview with Juba men and women, Juba, March 29, 2008.

¹¹⁴ Human Rights Watch group interview with Juba men and women, Juba, March 29, 2008.

¹¹⁵ Human Rights Watch interview with man from Pojulu/Central Equatoria State (name withheld), Yei, March 31, 2008.

Yei, soldiers told a returning resident who claimed the land that he would have to “use the gun to claim it back.”¹¹⁶

In cases reported to Human Rights Watch, soldiers often expressed a sense of entitlement from having fought in the war.¹¹⁷ In one case a soldier who encroached on the land of a sub-chief and cut down some trees refused to pay compensation saying he “was part of the liberation of Yei.”¹¹⁸ By the same token, when a soldier tried to occupy land owned by the Southern Sudan Human Rights Commissioner, she challenged him to show his legal title to the land but he replied “we don’t need law because we liberated this land.”¹¹⁹

This sense of entitlement is reinforced by the de facto impunity soldiers and other security personnel enjoy. “The soldiers are operating without being accountable to anyone,” said one lawyer who handles land cases.¹²⁰

According to judges and lawyers working on land cases in Yei and Juba, soldiers frequently flout court orders to vacate land or pay compensation.¹²¹ In some cases, soldiers do not respond to court summonses. In other cases, they appear in court but simply ignore court orders. When judicial authorities request police to enforce the judgments, police often feel powerless to take action against soldiers. According to the lawyers, soldiers only comply when SPLA commanders order them to. In some areas, including in Juba, SPLA has agreed to move barracks in response to the community’s request.

¹¹⁶ Human Rights Watch e-mail correspondence with Norwegian Refugee Council staff, September 18, 2008.

¹¹⁷ Human Rights Watch interview with Central Equatoria State Assembly member working on land and natural resources (name withheld), Juba, March 17, 2008.

¹¹⁸ Human Rights Watch e-mail correspondence with Norwegian Refugee Council staff, September 18, 2008.

¹¹⁹ Human Rights Watch interview with head of Southern Sudan Human Rights Commission Joy Kwaje, Juba, March 18, 2008.

¹²⁰ Human Rights Watch interview with Dong Samuel Luak Kok, Juba, July 4, 2008.

¹²¹ Human Rights Watch interview with judge (name withheld), December 1, 2008; e-mail correspondence with Norwegian Refugee Council staff, September 2008.

IX. Abusive Practices in the Administration of Justice

Weaknesses in Southern Sudan's justice sector have given rise to various human rights violations in the administration of justice. Key areas of concern include, but are not limited to, interference of military authorities in the civilian justice system, arbitrary arrests and detentions by police, and poor conditions of detention.¹²²

Military Arrests and Detentions

Under international law, military authorities should not assert criminal jurisdiction over civilians except in special circumstances, specified by law.¹²³ Under Southern Sudan's laws, primary authority for law enforcement lies with civilian police, with limited authority for armed forces.¹²⁴ The Southern Sudanese constitution says the armed forces have no mandate for internal law and order, except as requested by civilian authorities when necessity requires.¹²⁵

Despite the legal proscription, military authorities continue to interfere in the administration of civilian justice by arresting civilians and detaining them in military facilities. Arrests by soldiers are more common in areas where the relationship between soldiers and the community has been troubled. In Nimule, a town on the border of Uganda and Central Equatoria, for example, local communities objecting to the presence of large numbers of predominantly Dinka soldiers and settlers from Jonglei have reported numerous cases of human rights violations by the soldiers, including arbitrary arrest and detentions.

In one example, Joseph Modi Lado Vuni, a trader from the Madi ethnic group, reported to Human Rights Watch that a soldier arrested, beat, and detained him for nine days in April 2008 after he tried to intervene in a dispute between the soldier and his brother over the

¹²² United Nations Office of the High Commissioner for Human Rights (OHCHR), "Arbitrary arrest and detention committed by national security, military and police," Tenth periodic report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, November 28, 2008, provides a far more thorough discussion of these problems.

¹²³ See UN Human Rights Committee, General Comment no. 32, The rights of minorities, UN Doc CCPR/C/21/Rev.1/Add.5 (1994) para 22.

¹²⁴ The criminal laws give soldiers some authority to make arrests in the context of keeping public order. Criminal Procedure Act, 2008, Sections 163-5. The new SPLA Act, passed in January 2009, also gives soldiers a role in internal security but does not specify what that entails.

¹²⁵ Interim Constitution of Southern Sudan, Article 154(5)

price of a welding job. The dispute escalated until he was surrounded by soldiers holding guns.¹²⁶

“They told me I was under arrest and started beating me all the way to the barracks. On reaching the barracks he ordered the soldiers to give me 100 lashes and put me jail.” Vuni alleges he was beaten severely in the following days, and only after friends and family intervened in his case was he released to police, who, he claims, did not detain him because his arrest was without legal basis and because they were afraid of being “stormed” by the army.

The head of the Southern Sudanese Human Rights Commission (SSHRC) has called the problem of illegal military detentions “common” and has spent considerable energy to “convince the SPLA that the law says you cannot detain people.”¹²⁷ In its first annual report, the SSHRC found that soldiers had arrested the majority of the detainees the Commission visited in six civilian detention facilities in 2007, often on orders from the relevant State Governor.¹²⁸

Both the UNMIS Human Rights Unit and the GoSS Human Rights Commission have reported soldiers have detained civilians in military barracks, including in secret detention facilities. In some locations parallel structures, relics of wartime structures, still rival civilian authority.¹²⁹ In 2007, a High Court judge in Eastern Equatoria discovered that nine prisoners in Kapoeta were held in military custody in shipping cargo containers in unacceptable conditions, rather than in Torit County prison.¹³⁰

Police Arrests and Detentions

The Southern Sudan Legislative Assembly adopted new criminal laws in 2008, but police in many locations have yet to receive copies or instruction, and continue to operate on the basis of the earlier 2003 laws passed by the SPLA and the 1991 criminal procedure act passed in Khartoum. Many police are not versed in the criminal law or in their roles and

¹²⁶ Human Rights Watch interview with Joseph Modi Lado Vuni, Juba, December 23, 2008.

¹²⁷ Human Rights Watch interview with head of Southern Sudan Human Rights Commission, Joy Kwaje, Juba, March 18, 2008.

¹²⁸ Southern Sudan Human Rights Commission (SSHRC), First Annual Report, July 2006-December 2007, p. 21.

¹²⁹ United Nations Office of the High Commissioner for Human Rights (OHCHR), “Arbitrary arrest and detention committed by national security, military and police,” Tenth period report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Sudan, November 28, 2008, p.24-25

¹³⁰ Isaac Vuni, “Four murderers escape from Police Custody in S.Sudan's Torit,” *Sudan Tribune*, February 3, 2007, <http://www.sudantribune.com/spip.php?article20084> (accessed February 3, 2009).

responsibilities. The Police Act is still pending in the assembly (as is legislation governing the fire brigade, wildlife, and prison services).

Illegal arrests and detentions occur throughout Sudan in similar patterns, reflecting practices often rooted in custom.¹³¹ In Southern Sudan a formal judicial system has been largely absent, and customary law, recognized in the constitution as a source of law, is especially pronounced.¹³² Most southerners in rural areas turn to traditional authorities for justice, rather than to the less accessible statutory courts located in main towns.

The SSPS, like the Sudan police force in the rest of the country, engage in the practice of arresting friends or family of suspects when suspects are not available. “Justice by proxy” reflects notions of collective responsibility.¹³³ In an example from Torit, police arrested a man for a murder committed by his brother at the request of the victim’s family to pressure the suspect’s family to pay compensation, or blood money known in Sudan by the Arabic term *diya*.¹³⁴

In Rumbek, a random visit by Human Rights Watch to the police station revealed a 40 year old woman detained instead of her son, who was accused of stealing clothes, and a 22 year old woman detained instead of her cousin, who had borrowed money and disappeared.¹³⁵ In another Rumbek case, the wives of two suspects were held instead of their husbands (who had absconded) for two weeks without charge and stated that they had been beaten while in custody.¹³⁶

Detention for debt is also widespread in Sudan, often justified by the concept of “protective custody”.¹³⁷ In an example from Yei, prisoners were held after completion of their sentences because they had not paid compensation, and the county judge ordered them to stay in detention supposedly for their protection against the families of their victims.¹³⁸ UNMIS human rights monitors have also documented the trend of police or judicial authorities

¹³¹ See “Tenth Periodic Report”.

¹³² Interim Constitution of Southern Sudan, 2005, <http://www.gurtong.org/constitution.asp> (accessed February 5, 2009)

¹³³ “Tenth periodic report,” p. 27-8; SSHRC, First Annual report, p.21.

¹³⁴ UNMIS internal report, December 2007, on file with Human Rights Watch.

¹³⁵ Human Rights Watch interview with police officers (names withheld), Rumbek, December 18, 2008.

¹³⁶ Human Rights Watch interview with international humanitarian organization staff (names withheld), Rumbek, December 18, 2008.

¹³⁷ Protective custody is not recognized as a valid reason for detention under Sudanese law, the ICCPR, or the ACHPR.

¹³⁸ UN confidential report, December 2007, on file with Human Rights Watch

detaining females in protective custody when they are victims of domestic violence, rather than prosecuting the abusive husband.¹³⁹

Across Southern Sudan, many prisoners serve time for morality offences involving extramarital sex because they could not afford to pay compensation.¹⁴⁰ UNMIS officials estimate that of the prisons and detention centres it monitors, nearly half the detainees are held for crimes committed by others as a way of pressuring families to reconcile or pay.¹⁴¹ These forms of detention are not based on law and violate national and international protections against arbitrary detention.¹⁴²

In many cases, individuals are detained at the request of family, traditional authorities, soldiers, or even politicians. For example, in March 2008 a group of soldiers beat a trader with a stone to make him divulge the whereabouts of a motorcycle driver whom they said collided with their vehicle. The soldiers then ordered police to arrest him and detain him for several days and the police complied.¹⁴³ In some instances, government authorities have ordered SPLA to conduct illegal detentions without seeking police or judicial involvement at all.¹⁴⁴

In the absence of any mental health services, authorities also detain mentally ill people, often at the request of relatives, in violation of the law. The head of the Southern Sudanese Commission for Human Rights told Human Rights Watch that mentally ill detainees are often held in shackles, without treatment or judicial review of their detention.¹⁴⁵

Authorities sometimes detain children at the behest of their parents, disregarding the age threshold for legal criminal responsibility under Sudanese law. According to one paramount chief in the Azande community of Western Equatoria, “If the parents ask, the chiefs will

¹³⁹ “Tenth periodic report,” p.33.

¹⁴⁰ “Tenth periodic report,” p.30.

¹⁴¹ Human Rights Watch interview with UNMIS Corrections staff, Juba, July 5, 2008.

¹⁴² See International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, Article 9 and African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, Art. 6 for governing trial and detention standards.

¹⁴³ Human Rights Watch interview with Ugandan trader (name withheld), Juba, March 27, 2008.

¹⁴⁴ “Tenth periodic report” details executive interference in the administration of justice. P.39

¹⁴⁵ Human Rights Watch interview with head of Southern Sudan Human Rights Commission, Joy Kwaje, March 18, 2008.

order the children to [suffer] lashings or prison sentences.”¹⁴⁶ The GoSS has enacted a Child Act and UNICEF and other agencies are training authorities in juvenile justice.

Discrimination Against Women and Girls

Family matters are governed by customary laws, usually applied by traditional authorities. Customary traditions of most of Southern Sudan’s ethnic groups limit the choices available to women and girls, particularly in respect of marriage, and are inherently discriminatory.¹⁴⁷ Judicial and traditional authorities acknowledge the need for harmonizing customary law with Sudan’s laws and constitutions, and ultimately with international standards. However, the task of harmonization invites difficult decisions including whether to codify oral customary law traditions. As of December 2008, the process had barely started.

Many cases of illegal arrest and detention of females stem from application of these customary laws, especially as they relate to dowry (or bride price) payments. In some cases, human rights monitors reported that police or traditional courts arrest and detain women and girls for refusing to marry someone that the family has chosen for her or for running away from the husband after dowry has been arranged or paid.¹⁴⁸

Police also arrest and detain women on adultery charges without a legal basis. The criminal law defines adultery as a crime by a married woman, but authorities do arrest unmarried women and girls for adultery.¹⁴⁹ Authorities apply the charge more frequently to females than to males. Human rights activists in Yei reported that a large percentage of women in detention there were detained on charges of adultery quite often at the behest of a jealous husband.¹⁵⁰ In Rumbek, UN police monitors reported that females are most commonly arrested and detained for either adultery or elopement, a charge police apply for pre-marital sexual relations although the charge does not appear in the statutory criminal codes.

¹⁴⁶ Human Rights Watch interview with Wilson Hassan, Yambio, December 6, 2008.

¹⁴⁷ Under the system of “bride wealth,” the groom’s family pays cattle for the bride so the bride’s family has an interest in marrying her to the highest bidder. Since the bride’s family must repay it if the couple divorces, women and girls are pressured to stay in their marriages, regardless of abuses they may suffer. In some traditions, the age of marriage is as low as 14.

¹⁴⁸ “Tenth Periodic Report,” p.30.

¹⁴⁹ UNMIS report December 2007, on file with Human Rights Watch; see also, Human Rights Watch, “*The Impact of the Comprehensive Peace Agreement and the New Government of National Unity on Southern Sudan*,” March 2006, <http://www.hrw.org/legacy/background/africa/sudano306/index.htm>.

¹⁵⁰ Human Rights Watch interview with member of Southern Sudan Law Society, Juba, July 4, 2008.

In recent months, police have also arrested and punished women and girls for wearing clothes they considered too tight or inappropriate, although this is not a crime under the criminal code. In 2007 and 2008, police conducted large campaigns—sometimes violently—arresting women for wearing trousers or skirts in Malakal, Yei, and Juba.¹⁵¹ In January 2009, the Commissioner's Office in Kapoeta, Eastern Equatoria, issued a similar decree, prohibiting "tight trousers and tight blouses with the navel exposed" among other offences and imposing a fine or jail time for violators.¹⁵²

Poor Conditions of Detention

Prison conditions are extremely poor across Southern Sudan, with many facilities lacking the most basic infrastructure. After visits to prisons in Lakes, Warrap and Eastern Equatoria the Southern Sudanese Human Rights Commission reported publicly on the poor sanitation, lack of ventilation, lack of beds, the failure to separate children from adults, and lack of medical care and food.¹⁵³ The Human Rights and Humanitarian Affairs Committee of the Southern Sudan Legislative Assembly reported very poor conditions in Malakal prison, particularly for mothers detained with their babies.¹⁵⁴

Some detainees alleged to the committee members serious ill-treatment including torture in retaliation for using the bathroom or seeking fresh air.¹⁵⁵ Detainees also reported inmate-on-inmate violence. One former detainee in Juba prison told Human Rights Watch he was beaten by other prisoners while police looked on. "We were about 30 people in a very small cell. There is no place to sleep there. The other prisoners beat me, they beat the new ones."¹⁵⁶

Another man who was urinating blood and had visible signs of beating said he had been kicked in the groin and stomach by a fellow prisoner.¹⁵⁷ One doctor told Human Rights Watch

¹⁵¹ Correspondence with international humanitarian organization staff (names withheld) in Yei, July 27, 2008; see also Gurtong news, "Trouser-wearing women worsening harassment and Kenya Sudan border," August 22, 2008, http://www.gurtong.org/ResourceCenter/weeklyupdates/wu_contents.asp?wkupdt_id=2326 (accessed October 2, 2008); "Sudan: Fashion Police Make Arrests," *Reuters*, October 7, 2008, http://www.nytimes.com/2008/10/08/world/africa/08briefs-FASHIONPOLIC_BRF.html?ref=world (accessed October 8, 2008).

¹⁵² Commissioner's Office, Kapoeta South County, Eastern Equatoria State, County Decree No.1-JAN-2009, January 19, 2009, on file with Human Rights Watch.

¹⁵³ Southern Sudan Human Rights Commission, First Annual Report, July 2006-December 2007.

¹⁵⁴ Southern Sudan Legislative Assembly Human Rights and Humanitarian Affairs Committee, Report on situation in Upper Nile, Sept 11-23, 2008, on file with Human Rights Watch, pp. 11-23.

¹⁵⁵ *Ibid*, p. 22

¹⁵⁶ Human Rights Watch interview with Ugandan trader (name withheld), Juba, March 27, 2008.

¹⁵⁷ Human Rights Watch interview with medical doctor (name withheld), Unity State, March 20, 2008.

that he regularly sees cases of injured detainees who are brought to the clinic by the police. The most common injuries are “broken bones, bruises, lacerations, beating with a stick.”¹⁵⁸

In this context, the problem of prolonged pre-trial detention is even more urgent. In many cases reported by UNMIS human rights monitors, detainees were held for prolonged periods without legal assistance or judicial review of their cases. In a case from Bor prison in Jonglei state, UNMIS monitors encountered a former SPLA soldier accused of murder who has not had access to a judge for two years.¹⁵⁹

In northern Bahr el Ghazal and Wau, 11 detainees were held from two to four years without arrest warrants and never appeared in court or received any legal assistance.¹⁶⁰ In Torit, detainees were kept in police cells for 23 days without charges brought against them.¹⁶¹ Since January 2007 there have been three prison riots resulting from frustration over lengthy detention periods on remand.¹⁶²

Lack of Oversight of Detentions by Judicial Institutions

Several actors in the criminal justice sector, including members of the Southern Sudan Human Rights Commission, are entitled to inspect prisons under the current legal framework. However, only judicial actors have the authority to order the release of illegally detained prisoners. There are insufficient judicial and prosecutorial personnel deployed to the regions to ensure the legality of continued detentions.¹⁶³

Judicial authorities have addressed the problem of illegal detentions in the past. In Lakes State, Special Courts comprised of traditional authorities and statutory court judges reviewed pre-trial detention cases in 2007-8. In February 2008 one court ordered the release of 45 detainees from Rumbek Central Prison after finding the charges without merit.¹⁶⁴ If conducted properly and by qualified individuals, such reviews could help alleviate crowding in the prisons and ensure the legality of detentions.

¹⁵⁸ Ibid.

¹⁵⁹ UNMIS HR bulletin, November 08, 2008, on file with Human Rights Watch

¹⁶⁰ UNMIS confidential document, December 2007, on file with Human Rights Watch.

¹⁶¹ UNMIS/South Sudan Peace Commission/UNOCHA/Sudan Council of Churches, “Brief Notes on the outstanding tribal differences in Sector 1 (Cases of Central and Eastern Equatoria States),” 2007, on file with Human Rights Watch

¹⁶² “Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Simar,” Human Rights Council, A/HRC/9/13, September 2, 2008, para. 71, <http://daccessdds.un.org/doc/UNDOC/GEN/Go8/159/95/PDF/Go815995.pdf?OpenElement> (accessed October 6, 2008).

¹⁶³ “Tenth period report”, pp.37-8

¹⁶⁴ UNMIS Human Rights bulletin, April 10, 2008, on file with Human Rights Watch.

X. Lack of Accountability for Human Rights Violations

According to one of the highest ranking judges in Southern Sudan, “there is a lot of aggressive behaviour and impunity for those with guns.” He attributed this to the militarization of the criminal justice system—soldiers taking the law into their own hands—and to the lack of independence in the judiciary, citing a well-known 2006 case in which a judge was beaten up in Aweil by guards in front of the Governor’s office.¹⁶⁵

Southern Sudan’s justice system is in an embryonic stage of development and still too weak to provide accountability for most human rights violations. The judiciary and prosecution staff from the Judiciary of Southern Sudan and the Ministry of Legal Affairs and Constitutional Development lack basic training, English skills, equipment, libraries, and other resources, and remain concentrated in Juba and other main towns. The State of Eastern Equatoria, for example had only five judges covering an area twice the size of Switzerland, while the even larger Western Bahr el Ghazal had judicial staff in only one town.¹⁶⁶

One obstacle to holding human rights violators accountable is the reluctance of police to investigate crimes involving soldiers or other security personnel. In many cases, police simply do not open a case. In an alleged case of rape of three Ugandan women by six soldiers from SPLA and Joint Integrated Units (joint forces made up of SPLA and SAF soldiers, created under the CPA) in the Torit market in December 2007, police refused to take victims’ statements and open an investigation.¹⁶⁷ Instead, police may refer victims to national security or to SPLA’s military police unit. Following the September 2008 violence in Rumbek, victims reported that police initially refused to open investigations, and referred people instead to SPLA.¹⁶⁸

The police’s reluctance to investigate human rights violations—including by other police—may reflect their fear of violent retaliation. In one incident in Western Equatoria in November 2007, a group of SPLA soldiers serving in the JIU at Yambio attacked local police, killing ten,

¹⁶⁵ Human Rights Watch interview with judge (name withheld), Juba, December 1, 2008.

¹⁶⁶ “Tenth periodic report,” p.37.

¹⁶⁷ “Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar,” Human Rights Council, A/HRC/7/22, March 3, 2008, para. 68. <http://www.unhcr.org/refworld/docid/47df89002.html> (accessed February 3, 2009).

¹⁶⁸ UNMIS Human Rights Bulletin, October 23, 2008, on file with Human Rights Watch.

including three senior police officers.¹⁶⁹ Authorities often cite the incident as illustrative of soldiers' interference in the justice system and impunity. The incident was prompted because the civilian police arrested a soldier suspected of killing another soldier.

The extent to which the military justice system punishes soldiers for human rights violations remains unclear as the courts martial are closed to the public.¹⁷⁰ After the clashes at Logurun and Iloili villages a local chief reported that the SPLA commander and 12 soldiers investigated the killings of civilians, but no one was punished for them.¹⁷¹ The SPLA subsequently launched an investigation into the incident.¹⁷² However, results have not been made public.¹⁷³ The results of investigations into the Rumbek violence have also not been made public.

SPLA is starting to develop a military justice system and improve accountability measures.¹⁷⁴ A new SPLA Act, passed in January 2009, could help provide guidance and discipline. The law defines military crimes and it applies the civilian penal code for non-military crimes. It also references a code of conduct to be drafted by military authorities.

The police disciplinary system also lacks transparency. Police who are implicated in human rights violations, such as arbitrary arrests and detentions, are rarely held accountable in the civilian courts. UNMIS monitors reported that in only one of the arbitrary arrest and detention cases they monitored were perpetrators disciplined.¹⁷⁵ According to UNMIS police advisers, the office of inspector general, based in Juba, has so far largely focused on minor disciplinary breaches such as drunkenness rather than serious human rights violations.¹⁷⁶ A Police Act, currently in draft, is urgently needed to clarify the roles and responsibilities of police and provide a basis for more transparent accountability.

¹⁶⁹ "Yambio killing death toll raised to 10," *Sudan Tribune*, November 8, 2007, <http://www.sudantribune.com/spip.php?article24647> (accessed Oct. 7, 2008).

¹⁷⁰ Human Rights Watch interviews with UNMIS staff, Juba, June 29, 2008, and by email correspondence, August 6, 2008.

¹⁷¹ Human Rights Watch interview with paramount chief, Hiyala, July 2, 2008.

¹⁷² "Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Simar," Human Rights Council, A/HRC/9/13, September 2, 2008, para. 68, <http://daccessdds.un.org/doc/UNDOC/GEN/Go8/159/95/PDF/Go815995.pdf?OpenElement> (accessed October 6, 2008).

¹⁷³ United Nations Security Council, "Report of the Secretary-General on Sudan," S/2009/61, January 30, 2009, para. 56.

¹⁷⁴ Human Rights Watch telephone interview with Capt. Robert Lubang, January 23, 2009.

¹⁷⁵ "Tenth Periodic Report," p.41.

¹⁷⁶ One UN Police adviser was not aware of any police officer disciplined for a human rights violation. Human Rights Watch interview (Confidential), January 20, 2009.

Committees in the legislative assembly, such as the Human Rights and Humanitarian Affairs Committee, investigate some of the larger-scale conflicts and document abuses including in detention facilities.¹⁷⁷ Their reports complement the work of the Southern Sudan Human Rights Commission (SSHRC) in raising awareness about human rights violations and trends, but the Commission's reports have not led to prosecutions for specific crimes. An assembly committee report on the massacre of 54 Didinga women and children by armed Toposa at Buda County, Eastern Equatoria, in May 2007 has not been discussed publicly because it is considered too sensitive.¹⁷⁸

In February, the legislative assembly passed a long-awaited bill giving the Southern Sudan Human Rights Commission legal standing to summons state actors. If the Commission is adequately supported by GoSS and donors, its work could provide the basis for prosecutions in criminal courts. Other commissions, notably Land and Anti-Corruption, will also help promote accountability for abuses. The Southern Sudan Anti-Corruption Commission collected some 14,000 complaints against officials in the first half of 2008 alone, but its enabling law is still pending.¹⁷⁹

¹⁷⁷ The Peace and Reconciliation Committee has also investigated incidents and issued reports

¹⁷⁸ Human Rights Watch interview with Hon. Mary Nyaulang, Juba, December 22, 2008.

¹⁷⁹ James Gatdek Dak, "South Sudan passes long awaited Anti-Corruption bill," *Sudan Tribune*, October 11, 2008, <http://www.sudantribune.com/spip.php?article28883> (accessed January 27, 2009).

XI. The Role of UN and International Donors

The United Nations Mission in Sudan (UNMIS) established in 2005 by Security Council resolution 1590, comprises close to 10,000 military personnel including military observers, protection force and staff for logistical support, 600 UN police advisers, as well as civilian staff including human rights monitors, protection and child protection officers, civil affairs officers, elections officers, and gender advisors.

The mission is mandated to support implementation of the CPA largely through monitoring of the ceasefire agreement and other aspects of the CPA. However, lack of access to many parts of Southern Sudan's vast and difficult terrain has hampered the mission's monitoring function by both military and civilian staff, and this has also affected its human rights monitoring work.¹⁸⁰ With many remote areas beyond reach except by flight, UN personnel are often not able to fully document deadly conflicts and their human rights implications. An inter-agency conflict management taskforce has been formed to improve monitoring of potential conflicts across Southern Sudan and could help GoSS plan more effective and appropriate responses.

UNMIS also has a mandate to protect civilians under imminent threat of physical violence, "in the areas of deployment of its forces and as it deems within its capabilities... and without prejudice to the responsibilities of the Government of Sudan."¹⁸¹ To date, the mission has not interpreted this provision robustly. To many observers, the mission's failure to protect civilians during and immediately after the May 2008 clashes at Abyei encapsulated its shortcomings in civilian protection.¹⁸² In an assessment of its own response to that crisis, UNMIS recommended additional military deployment to flashpoint areas.¹⁸³ The mission is in the process of redeploying forces to transitional areas, but it has not revised its directives to reflect a more robust interpretation of the civilian protection aspects of its mandate.

¹⁸⁰ UN Security Council Resolution 1590 (2005), S/Res/1590 (2005), March 24, 2005, article 16(viii), (ix) <http://www.unmis.org/english/documents/resolutions/res1590.pdf> (access September 4, 2008).

¹⁸¹ UN Security Council Resolution 1590 (2005), S/Res/1590 (2005), March 24, 2005, article 16(i), <http://www.unmis.org/english/documents/resolutions/res1590.pdf> (access September 4, 2008).

¹⁸² Human Rights Watch, *Sudan - Abandoning Abyei: Destruction and Displacement, May 2008*, July 2008, <http://www.hrw.org/en/reports/2008/07/21/abandoning-abyei-o>.

¹⁸³ United Nations Security Council, "Report of the Secretary-General on Sudan," S/2008/662, para.31-32, Oct 20 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/555/43/PDF/No855543.pdf?OpenElement> (accessed February 2, 2009).

Various UN and bilateral agencies are meanwhile making efforts to strengthen rule of law institutions. UNMIS police advisors co-locate in police stations and monitor cases and police holding cells, while UNMIS corrections officers monitor the main prisons. This presence, according to UN, has helped reduce incidents of illegal arrests and detentions in some locations.¹⁸⁴

Agencies and donors are also supporting police, courts, and prisons through training, material support, and by providing consultants to the judiciary and the Ministry of Legal Affairs and Constitutional Development. At the same time, agencies and donors have begun focusing more on security sector reform—a broad field that includes DDR, SPLA reform and rule of law programs.¹⁸⁵ A major goal is to promote civilian (rather than military) oversight of law and order functions such as civilian disarmament.

With many actors involved in security sector and rule of law work, donors should assess the need for more coordination to rationalize resources and provide support to fill gaps that improve human rights in the short term. For example, donors could provide more support for specialized training for soldiers and police on their roles and responsibilities and applicable human rights standards; increase support for judicial and traditional authorities to work together to reduce instances of illegal and pro-longed detentions; and give support to detention facilities designed to bring them in line with basic minimum human rights standards.

In the lead-up to elections, UN agencies and donors should help GoSS develop a coherent strategy for managing conflict in a manner that protects human rights rather than violates them. They should also help ensure public education about the elections begins well in advance.

¹⁸⁴ Human Rights Watch interviews with UNDP Rule of Law staff, Juba, June 26, 2008; Human Rights Watch interviews with UN Police staff, Juba, July 7, 2008.

¹⁸⁵ The UN Secretary-General, acknowledging that CPA implementation depends on successful integration of former SPLA combatants into professional military, police and other uniformed services, called for UN to coordinate security and justice sector projects more comprehensively. United Nations Security Council, “Report of the Secretary-General on the Sudan,” S/2008/267, para. 58, April 22, 2008, <http://www.un.org/Docs/journal/asp/ws.asp?m=S/2008/267> (accessed October 6, 2008).