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BROKEN PROMISES: ARBITRARY DETENTION BY SOUTH SUDAN'S INTELLIGENCE AGENCIES CONTINUES

“Before my life was fine. There, I saw things that were horrible [...] people being killed in front of you [...] I never thought I would come out of there alive.”¹

Gatwich (pseudonym), Male Former Detainee

SUMMARY

Since the start of South Sudan’s internal armed conflict in December 2013, hundreds of people, mostly men, have been detained under the authority of the National Security Service (NSS) and Military Intelligence Directorate in various detention facilities across the capital city, Juba and subjected to torture and other forms of ill-treatment. Others have been forcefully disappeared. Many of those who have been detained have been held under the category of “political detainees” on allegations that they have communicated with, or supported the opposition.

Based on interviews conducted by Amnesty International researchers with victims and witnesses in Juba between May 2016 and December 2017 this short briefing highlights arbitrary arrests, prolonged and arbitrary detention without charge, enforced disappearance and torture and other ill-treatment perpetrated against real or perceived government opponents by the NSS and Military Intelligence at a number of sites in Juba, including, but not limited to the NSS Headquarters in Jebel neighborhood, NSS Riverside, Gyiada Military Barracks and a detention facility at Gorom military base. This briefing is based on follow up research and new evidence and builds on a similar briefing published by Amnesty International in April 2016, *Denied Protection of the Law: National Security Service Detention in Juba, South Sudan*² to draw attention to the continued use of unlawful detention, torture and other ill-treatment by the NSS and Military Intelligence in the country’s now over four-year old violent conflict. We have removed names and other identifying features of victims and witnesses for their protection.

Amnesty International has documented numerous arbitrary detentions by the NSS in multiple facilities where detainees are often subjected to torture and other ill-treatment – some held incommunicado without access to a lawyer, or family members. In the NSS prison headquarters in the Jebel Neighbourhood, detainees are fed a monotonous diet of beans and *posho*. Amnesty International has also previously received reports that on some days detainees are not fed at all. Most detainees sleep on the floor. Some have been badly beaten, especially during interrogation, or as a form of punishment.

¹ Gatwich (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

² See, Amnesty International, “South Sudan: Denied protection of the law: National Security Service Detention in Juba, South Sudan,” AFR 65/3844/2016 15 April 2016, available at: www.amnesty.org/en/documents/afr65/3844/2016/en/.

Due to the poor conditions of the prisons, as well as inadequate access to medical care, the health of those detained usually severely deteriorated.³

While prolonged and arbitrary detentions, enforced disappearances and torture and other ill-treatment have all been frequently employed by the Government of South Sudan since the initial outbreak of the conflict in December 2013, there appears to have been an increase in the targeting of those seen to be aligned with the opposition following the clashes between government and opposition forces in Juba in July 2016. Indeed, as part of the government's increasingly brutal counter-insurgency campaign, people are often singled out by security agents on the basis of their ethnic identity, which has become increasingly conflated with their assumed political allegiance.

South Sudan's political environment has, furthermore, become increasingly intolerant and repressive of any form of criticism of government actions and policies, leading to intimidation, harassment and detention of civil society activists, human rights defenders and independent journalists. This has led to an environment of self-censorship for media and human rights workers and with the pervasive state surveillance, people no longer feel safe to speak freely and openly about the country's ongoing conflict. The UN Commission on Human Rights in South Sudan reported in February 2018, "[t]he National Security Service (NSS) has increasingly employed surveillance and arbitrary detention to silence political opponents and civil society voices."⁴

Suspicion and mistrust including among friends, colleagues and neighbors has become common, threatening the social fabric of communities and groups in South Sudan. Some of the victims and witnesses that Amnesty International interviewed identified neighbours, or people they had known previously as being responsible for their initial arrest. Amnesty International research has also revealed that some of the detentions are triggered by personal issues and that people in government are abusing their power to target personal enemies by labelling them as opposition supporters.⁵

On the occasion of the National Day of Prayer on 10 March 2017, South Sudan's President, Salva Kiir pledged to release political detainees. Notwithstanding the release of around 30 detainees from the NSS Headquarters in August 2017, Amnesty International has received credible evidence that the NSS continued to hold real or perceived government opponents in prolonged detention without charge or trial after this date.

What's more, the Government of South Sudan has, thus far, failed to investigate the use of arbitrary detentions and related-violations, or to hold those suspected of criminal responsibility accountable, or provide victims with reparations. These abuses continue to happen in spite of the Cessation of Hostilities (COH) agreement signed on 21 December 2017, which committed both government and opposition forces to release all remaining political detainees. The government recommitted to releasing political detainees when they signed the "Khartoum Declaration of Agreement Between Parties of the Conflict of South Sudan" signed at the end of June 2018. However, Amnesty International has, again, received credible evidence that NSS continued to arrest and hold people after this date.

³ See, Amnesty International, "Urgent Action: Fifteen Released, Five Still Arbitrarily Detained," *AFR 65/7144/2017*, 19 October 2017, available at: www.amnesty.org/download/Documents/AFR6571442017ENGLISH.pdf.

⁴ Report of the Commission on Human Rights in South Sudan, "A/HRC/37/CRP.2, 23 February 2018, available at: www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx, p. 11.

⁵ Amnesty International, "South Sudan: Denied protection of the law: National Security Service Detention in Juba, South Sudan," *AFR 65/3844/2016* 15 April 2016, available at: www.amnesty.org/en/documents/afr65/3844/2016/en/.

BACKGROUND

South Sudan formally seceded from Sudan on 9 July 2011 becoming the world's newest nation, ushering in what many had hoped would be a permanent end to the decades-long armed conflict. Any optimism was short-lived, however, when on 15 December 2013, an internal armed conflict erupted, plunging the country into a brutal war that continues over four years later. The fighting that erupted in South Sudan in December 2013 resulted, in part, from political tensions within the Sudan People's Liberation Movement/Army (SPLM/A), specifically between President Salva Kiir and former Vice President Riek Machar who had served as Vice President between 2005 and July 2013 before he was dismissed by the President after announcing his plans to run against him in the presidential elections.

The violence, which broke out in the military barracks in the capital city, Juba, in mid-December 2013 quickly escalated, with government forces targeting civilians based on their ethnicity and perceived political affiliation with the newly established opposition. Within a matter of days, the conflict spread to other areas of the country increasingly unfolding along ethnic lines. The SPLM/A fractured further with some maintaining allegiance to the government and others defecting to support the armed opposition, led by former Vice President Reik Machar, which came to be known as the SPLM/A-In Opposition (IO). Both groups deliberately targeted civilians perceived to be ethnically and/or politically aligned with one or the other side.

The events in Juba when the conflict first erupted in December 2013 were repeated once again on 8 July 2016 when fighting broke out again between government and armed opposition forces, destabilising the capital over a four-day period and causing the deaths of hundreds of civilians. The fighting was marked by serious violations of international human rights and international humanitarian law with evidence of government soldiers deliberately killing and systematically raping civilians⁶ and detaining and torturing perceived "rebels."

Since the clashes in Juba in July 2016, which effectively signalled the collapse of the August 2015 peace agreement, the conflict spread to previously unaffected areas of the country, including the Equatoria region and Western Bahr-el Ghazal. At the same time, the conflict became more complex, and with its geographic expansion, came to encompass a number of different armed groups with varying grievances and objectives – each with loose alliances to the SPLM/A, or SPLM-IO. The result has been the strengthening of a government/anti-government dichotomy that has contributed to a massive polarization between ethnic groups with each side targeting civilians seen to be associated with the "enemy."⁷ Part of this targeting of perceived "enemies" has involved arbitrary arrests, prolonged and arbitrary detentions, torture and other ill-treatment and enforced disappearances by state security agents, specifically the NSS and Military Intelligence.⁸ As the UN Panel of Experts on

⁶ Amnesty International, *South Sudan: "If men are caught, they are killed, if women are caught, they are raped" – atrocities in Equatoria Region turn country's breadbasket into a killing field*, 4 July 2017, Index number: AFR 65/6612/2017, available at: www.amnesty.org/en/documents/afr65/6612/2017/en/.

⁷ See, Nicki Kindersley and Oystein H. Rolandsen, "Prospects for Peace and the UN Regional Protection Force in South Sudan," *Briefing*, available at: <https://academic.oup.com/DocumentLibrary/afr/afr/Briefing%20South%20Sudan%20Intervention.pdf>; Amnesty International, *South Sudan: "If men are caught, they are killed, if women are caught, they are raped" – atrocities in Equatoria Region turn country's breadbasket into a killing field*, 4 July 2017, Index number: AFR 65/6612/2017, available at: www.amnesty.org/en/documents/afr65/6612/2017/en/.

⁸ See, "Report of the Commission on Human Rights in South Sudan," *A/HRC/24/63*, 6 March 2017, available at: www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx; Report of the Commission on Human Rights in South Sudan, *A/HRC/37/CRP.2*, 23 February 2018, available at: www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx;

South Sudan pointed out in their April 2018 report, there has also been a “growing securitization of the South Sudan state.”⁹

PROLONGED AND ARBITRARY DETENTIONS, TORTURE AND OTHER ILL-TREATMENT IN JUBA, SOUTH SUDAN

Detainees are held without charge, or being presented in court. They are often subjected to torture and other ill-treatment and are regularly denied access to their family members. They are also not provided with medical care. Numerous detainees have died, or been killed in the custody of government security agencies.¹⁰

During their arrest, detainees are dragged from their homes and thrown into trucks and taken from their home areas, or places of work to detention sites in Juba. For instance, one victim described being brought to a smaller facility in Juba near the airport, which had an underground component prior to being transferred to NSS Headquarters in Jebel.¹¹ Those who are arrested are often accused of trying to “spoil the government”¹² by communicating with and/or mobilizing people on behalf of the opposition. After detention, people are held without any investigation, charges, or access to a lawyer. Some are held incommunicado without access to family members, or the outside world.

Moses (pseudonym) was arrested in Juba in July 2014 and held at multiple NSS detention facilities, including NSS Headquarters and NSS Riverside before being released almost three years later. He was never charged.

“Since I was arrested, I was tortured by NSS forces because I was accused of mobilizing youth [...] They put me under gun point and they came with ropes and they started to beat me using sticks and metal poles in my side and others were kicking me. They were NSS agents. I know one of them because he was from my village.”¹³

Gatluak (pseudonym) was arrested in Juba in February 2014 and taken to Bilpham where he stayed for over two years.

“...When you complained, they beat you. They used to tell us that ‘you are rebels and you do not deserve to be treated as you want...you stupid cockroaches, you must die in prisons...’”¹⁴

Human Rights Watch, “South Sudan: Arbitrary Detention, Torture-Military, National Security Service Routinely Beat Detainees,” 18 May 2015, available at: www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture; Amnesty International, “South Sudan: Denied protection of the law: National Security Service Detention in Juba, South Sudan,” AFR 65/3844/2016 15 April 2016, available at: www.amnesty.org/en/documents/afr65/3844/2016/en/; Amnesty International, “South Sudan: Dozens of detainees at risk of death in shipping containers,” 27 May 2016, available at: www.amnesty.org/en/latest/news/2016/05/south-sudan-dozens-of-detainees-at-risk-of-death-in-shipping-containers/.

⁹ Letter dated 12 April 2018 from the Panel of Experts on South Sudan addressed to the President of the Security Council, S/2018/292, 12 April 2018, p. 20.

¹⁰ South Sudan: Open Letter from Secretary-General Salil Shetty to President Salva Kiir on Prolonged Detentions, Enforced Disappearances, and Reported Deaths While in Government Custody,” AFR 65/5970/2017, 28 March 2017, www.amnesty.org/en/documents/afr65/5970/2017/en/.

¹¹ Joseph (pseudonym), Interview, Juba, South Sudan, 14 December 2017

¹² Joseph (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

¹³ Moses (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

¹⁴ Gatluak (pseudonym), Interview, Juba, South Sudan, 9 November 2016.

Joseph (pseudonym) who was arrested and held at NSS headquarters after being transferred from another site in Juba spoke of being stripped and beaten during his initial arrest.

“They stripped us and removed our clothes and then started beating us.”¹⁵

Nyeduop (pseudonym) was taken to Bilpham in July 2016 after being beaten, stripped and forced to dance naked in front of government soldiers.

“I could not imagine that I could be treated like that in my own country...People from a tribe are arrested arbitrarily, taken even without being taken to court and charged for their wrongs...”¹⁶

Conditions inside NSS detention facilities are poor. Detainees are kept in cramped, over-crowded and poorly ventilated shipping containers, or cells – some of which were alleged to be between 2 by 3 meters wide. Detainees have limited, or no access outside of their cells. Prior to being charged, and later sentenced to death for treason after being unlawfully deported from Kenya to South Sudan in November 2016, **James Gatdet** was kept in solitary confinement at NSS Headquarters in Juba with no access to sunlight, or physical activity and extremely limited human interaction.¹⁷ The NSS Headquarters is a two-story building in Jebel neighborhood where detainees are kept.

At NSS places of detention, detainees are subjected to inhuman and degrading conditions and ill-treatment, including being made to drink water from the toilet, defecate and urinate in front of fellow detainees and kept in unsanitary circumstances,¹⁸ which has a palpable impact on detainees’ physical and mental health. Detainees are fed a poor diet and a very small amount of food – sometimes fed only once in a day. Amnesty International has also previously received reports that on some days detainees are not fed at all. Medical assistance is almost non-existent.

Amnesty International received information that at least 20 detainees died while in government custody in Juba between February 2014 and December 2016.¹⁹ An additional four men, **Mike Tyson, Alison Mogga Tadeo, Richard Otti and Andria Baambe**, all held without charge for alleged links with the opposition since 2014, died between February 2017 and July 2017 as a result of harsh prison conditions and inadequate access to medical care.²⁰ Some detainees were apparently allowed to be taken to medical facilities, but usually only after their health had deteriorated considerably.

¹⁵ Joseph (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

¹⁶ Nyeduop (pseudonym), Interview, Juba, South Sudan, 5 September 2016.

¹⁷ Amnesty International, “Urgent Action: Man Held in Poor Conditions, Denied Family Visits,” *AFR 65/7283/2017*, 19 October 2017, available at: www.amnesty.org/en/documents/afr65/7283/2017/en/.

¹⁸ Joseph (pseudonym), Interview, Juba, South Sudan, 14 December 2017.; Moses (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

¹⁹ South Sudan: Open Letter from Secretary-General Salil Shetty to President Salva Kiir on Prolonged Detentions, Enforced Disappearances, and Reported Deaths While in Government Custody,” *AFR 65/5970/2017*, 28 March 2017, www.amnesty.org/en/documents/afr65/5970/2017/en/.

²⁰ Amnesty International, “South Sudan 2017/2018,” available at: www.amnesty.org/en/countries/africa/south-sudan/report-south-sudan/.

Joseph (pseudonym), was arrested in January 2015 and held at NSS Headquarters for two years after being accused of communicating with members of the armed opposition. He was detained without charge and denied access to a lawyer and family members.

“If [they think] you misbehave[d] then they beat you, or if the soldiers come in when they are drunk they beat you [...] The torturing there is beyond [words]– some people were beaten very badly. Some people are tortured even with electric shock [...] People are beaten to the level of collapsing.”²¹

Detention conditions and torture and other ill-treatment by the Military Intelligence Directorate at Gyiada military barracks and the Gorom military base, located 20 km south of Juba, were described as particularly brutal. Victims testified about going days without food and being held in incredibly hot and congested shipping containers. As Amnesty International documented previously, dozens of detainees were at risk of death in poorly ventilated shipping containers at Gorom in May 2016, fed once, or twice per week and given insufficient drinking water.²² Torture and beatings were routine for many detainees held by Military Intelligence at both Gyiada and Gorom. Victims and other witnesses spoke about being badly beaten with sticks, logs, belts and whips. Amnesty International has also received allegations about the use of electrocution as a torture method by both NSS and Military Intelligence.

James (pseudonym) was picked up by Military Intelligence when trying to run to the UN base on Yei Road in Juba during clashes in July 2016. He was taken to the Gyiada detention place in Juba.

“[...] They tied me and put me in the chair and beat me and they put it on your nipples [electric wires] and they shock – once in the morning and once at night. Sometimes they leave us and sometimes they do it because of an order”²³

Diarrhoea is prevalent in places of Military Intelligence detention due to the poor quality of water, sanitation and hygiene, including with human feces left inside cells in either small containers, or pieces of cloth. In Gyiada alone, Amnesty International received allegations of at least 10 detainees died as a result of beatings, torture and untreated illnesses. One witness alleged that the bodies of the dead were left in the cell with other detainees for periods exceeding 24 hours.²⁴

At Gorom, former detainees also testified about not being able to speak with one another inside their containers and being punished by the guards for doing so.²⁵ If people tried to escape, they risked being shot.²⁶ Amnesty International also received information that some detainees were allegedly killed and injured by having nails hammered into their skulls, however, Amnesty International has not been able to independently verify these allegations.

Gatwich (pseudonym) was detained by Military Intelligence in the aftermath of the July 2016 clashes in Juba.

²¹ Joseph (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

²² Amnesty International, “South Sudan: Dozens of detainees at risk of death in shipping containers,” 27 May 2016, available at: www.amnesty.org/en/latest/news/2016/05/south-sudan-dozens-of-detainees-at-risk-of-death-in-shipping-containers/.

²³ James (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

²⁴ James (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

²⁵ Gatwich (pseudonym), Interview, Juba, South Sudan, 15 December 2017.; Nyajah (pseudonym), Interview, Juba, South Sudan, 16 May 2016.

²⁶ Gatwich (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

"[...] When they come to the container to kill someone, they will put the person that they want to kill to one side [of the container] and tell us to watch. Most of the indoor deaths are nails and sticks [...] If you look, it looks like people are being killed and it is organized, it is not an individual decision [...]"²⁷

Gatwich (pseudonym), himself, was also badly beaten on the night of his arrest by Military Intelligence officials.

"[...] The same night [I was arrested] they brought a dull knife and they pierced me and said that I was linked to the rebels and Nuer commanders in my family. They wanted me to talk."²⁸

Although women are more often the targets of sexual violence in South Sudan's conflict, as Amnesty International documented in July 2017, men also experience sexual violence, including rape, forced nudity and genital mutilation and torture, especially when in detention.²⁹

Wiyual (pseudonym) was arrested in February 2014 and detained at an NSS detention facility in Juba town and had his testicles pierced with sewing needles when being interrogated.

"They used sewing needles... We were being interrogated while they were doing it. They would ask us, 'Where is Riek Machar?' There is still pain up to now in my testicles... I can't have sex."³⁰

Michin (pseudonym) was arrested in February 2014, as well and detained without charge at Bilpham Military Barracks for over two years.

"They were asking me to accept that I was a soldier and a bodyguard of Riek Machar [...] I kept telling them that I was just a trader... They could not listen. They tortured me. They squeezed my testicles and sprayed my eyes with pepper... they twisted my middle finger and they inserted a burning matchstick into my anus."³¹

²⁷ Gatwich (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

²⁸ Gatwich (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

²⁹ See, Amnesty International, "South Sudan: 'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations," *AFR 65/6469/2017*, 24 July 2017, available at: www.amnesty.org/en/documents/afr65/6469/2017/en/.

³⁰ Interview with Wiyual (pseudonym), Nairobi, Kenya, 17 November 2016, cited in Amnesty International, "South Sudan: 'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations," *AFR 65/6469/2017*, 24 July 2017, available at: www.amnesty.org/en/documents/afr65/6469/2017/en/, p. 43.

³¹ Interview with Michin (pseudonym) in Juba POC, South Sudan, 9 November 2016, cited in Amnesty International, "South Sudan: 'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations," *AFR 65/6469/2017*, 24 July 2017, available at: www.amnesty.org/en/documents/afr65/6469/2017/en/, p. 43.

In March 2017, Amnesty International confirmed the detention of at least 28 men in a prison within the compound of the NSS Headquarters in Jebel neighborhood.³² Around 18 were released between April and August 2017.³³ Most had been held for between two and three years.³⁴

James Gatdet, former spokesperson for the Sudan People's Liberation Movement/Army-In Opposition (SPLM/A-IO), was on 12 February sentenced to death by hanging after being convicted for treason. **William Endley**, a South African national and former adviser to Riek Machar, was on 23 February convicted and sentenced to death by hanging under the National Security Service Act of 2014.³⁵

Since the beginning of 2018, the NSS has continued to conduct arbitrary arrests and detentions. **Peter Biar Ajak** was arrested by NSS at Juba International Airport on Saturday 28 July 2018, and at the time of writing in mid-August, had been held at NSS Headquarters without charge, or access to a lawyer.³⁶

The 2011 Transitional Constitution of South Sudan protects people from "*arrest, detention, deprivation or restriction of his or her liberty*" and being "*arbitrarily deprived of his or her life.*"³⁷ It also contains protections from "*torture or cruel, inhuman or degrading treatment or punishment,*" for which no derogation exists even in times of emergency.³⁸ The 2008 South Sudan Code of Criminal Procedure Act, furthermore, provides that a detained person can only be held "*in detention, for a period not exceeding twenty-four hours for the purposes of investigation.*"³⁹ The National Security Service Act also provides that detainees must "*be brought before a magistrate as soon as is reasonably practicable within 24 hours.*"⁴⁰

Similar protections exist under international law, including the right to be charged within a reasonable period of time, the right to judicial review of the lawfulness of detention, the right to be tried within a reasonable period of time and the right to access legal counsel. Detainees also have the right to adequate food, medical care, and sanitation. Torture and cruel, inhuman or degrading treatment or punishment are also prohibited under the UN Convention against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment, which South Sudan acceded to in April 2015.

³² South Sudan: Open Letter from Secretary-General Salil Shetty to President Salva Kiir on Prolonged Detentions, Enforced Disappearances, and Reported Deaths While in Government Custody," *AFR 65/5970/2017*, 28 March 2017, www.amnesty.org/en/documents/afr65/5970/2017/en/.

³³ Amnesty International, "South Sudan 2017/2018," available at: <https://www.amnesty.org/en/countries/africa/south-sudan/report-south-sudan/>.

³⁴ Amnesty International, "South Sudan 2017/2018," available at: <https://www.amnesty.org/en/countries/africa/south-sudan/report-south-sudan/>; There are 4 men who remained in detention after August 2017 - Tartisio Oshini, Ayume Dada, Lado James and Ochaya Godfrey Saverio. See, Amnesty International, "Urgent Action: Fifteen released, five still arbitrarily detained," *AFR: 65/7144/2017*, 19 October 2017, available at: <https://www.amnesty.org/download/Documents/AFR6571442017ENGLISH.pdf>.

³⁵ Amnesty International, "Urgent Action: Two men sentenced to death by hanging," *AFR 65/8036/2018*, 20 March 2018, available at: www.amnesty.org/download/Documents/AFR6580362018ENGLISH.pdf.

³⁶ Amnesty International, "Urgent Action: Detained Activist Denied Access to a Lawyer," *AFR 65/8853/2018*, 31 July 2018, available at: <https://www.amnesty.org/download/Documents/AFR6588532018ENGLISH.pdf>.

³⁷ The Transitional Constitution of the Republic of South Sudan, 2011, available at:

www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf.

³⁸ The Transitional Constitution of the Republic of South Sudan, 2011, available at:

www.sudantribune.com/IMG/pdf/The_Draft_Transitional_Constitution_of_the_ROSS2-2.pdf.

³⁹ Southern Sudan Code of Criminal Procedure Act, 2008, available at: www.gurtong.net/LinkClick.aspx?fileticket=HwVixTfxA0Y%3D&tabid=342.

⁴⁰ National Security Service Act.

On 8 October 2014, the South Sudan National Legislative Assembly passed the National Security Service Bill, which purported to give the NSS extensive powers of arrest, detention and seizure without adequate safeguards against abuse of these powers. The Bill does not specify recognized detention sites or guarantee basic due process rights, such as the right to counsel or to be tried within a reasonable period of time as guaranteed by the 2011 Transitional Constitution. The bill has faced considerable domestic and international opposition.

Amnesty International has repeatedly recommended that the NSS powers be limited to intelligence gathering, as envisioned by the 2011 Transitional Constitution, which mandates the NSS to “*focus on information gathering, analysis and to advise the relevant authorities.*” The powers to arrest, detain, conduct searches, seize property and use force should be clearly excluded from the NSS’s powers. The powers of search and arrest should only be exercised by an appropriate law enforcement agency in accordance with the law.

ENFORCED DISAPPEARANCES

Numerous people have also been victims of enforced disappearances after having been picked up by security agents or removed from detention facilities. **Dong Samuel Luak**, a prominent South Sudanese lawyer and human rights activist and **Aggrey Idri**, a member of the Sudan People’s Liberation Movement-in Opposition (SPLM-IO) went missing on the night of 23 and 24 January 2017 in Nairobi, Kenya. Amnesty International received credible information that the two men were seen at the NSS Headquarters detention place in Juba on 25 and 26 January 2017. They were then removed from this facility on 27 January 2017 – apparently at night. Their current fate and whereabouts are unknown.

The forcible disappearance and return of these two men to South Sudan from Kenya where they risk human rights violations, including torture and ill-treatment violates international law, as well as regional and domestic law in Kenya. Dong Samuel Luak is a registered refugee with the United Nations High Commissioner for Refugees (UNHCR) in Kenya. Aggrey Ezbon Idri has resided in Kenya on a visitor’s pass since the conflict in South Sudan broke out in mid-December 2013. Both deportations amount to a violation of the *non-refoulement* obligation under international law.

Credible sources indicated that the two men had been detained by Kenyan authorities and must have been forcibly deported to South Sudan. However, both South Sudanese and Kenyan officials have denied having them under their custody and did not provide any information on their whereabouts. Their disappearance is believed to be a result of collaboration between Kenyan and South Sudanese authorities.

On 22 February 2017, a judge in the High Court of Kenya stated that the disappearance of the two was related to the fluid political situation in South Sudan and that there was no evidence of Kenya’s involvement. The judge also ruled against the *habeas corpus* application made by families of the victims and other interested parties. The court also ordered the police to continue its investigations into the disappearance of the two individuals. On 17 October 2017, police presented their investigation into the disappearance of the two men. The judge ruled that there were several gaps in the investigation that needed to be satisfied by the police and that the matter be adequately investigated. The investigation is still underway.

In another case of enforced disappearance, **Anthony Nyero**, a staff member of the United Nations Mission in South Sudan (UNMISS) in Torit was arrested on the evening of 17 September 2014 by NSS

and taken to Juba where he was detained at the NSS Riverside facility and then transferred to the NSS Headquarters. **James Lual**, an UNMISS security guard in Wau, was arrested by NSS on 23 August 2014 and initially detained at Riverside and then in early 2015 was transferred to the same NSS Headquarters. Both were subjected to torture and other ill-treatment while in NSS detention and accused of being in contact with the SPLM-IO. They have not been seen since 2016.

Other international human rights monitors have also documented cases of enforced disappearances in South Sudan.⁴¹ Under international law, an enforced disappearance is any form of deprivation of liberty by agents of the state followed by a refusal to acknowledge the deprivation of liberty, or concealment of the fate or whereabouts of the disappeared person(s). Enforced disappearances are crimes under international law. If committed in the framework of an armed conflict, enforced disappearances may amount to a war crime, and in the case of a widespread, or systematic attack, can constitute a crime against humanity.

NEED FOR PHYSICAL AND PSYCHOLOGICAL REHABILITATION

James (pseudonym)

"...[T]he thing that is very difficult now is my mind. I am always having headaches and my joints are hurting and I have fever every day and there is no treatment."⁴²

Once released from detention, former detainees often suffer from severe physical ailments caused by their time in detention, as well as serious mental distress, including lingering fears of being re-arrested, feelings of shame and stigma, chronic stress and the trauma of having witnessed, or experienced killings, torture and other ill-treatment.

Most of the detainees are males who are perceived to be aligned politically and/or ethnically to the opposition. Most of these men are also the sole breadwinners for their families to provide food and shelter.⁴³ The livelihoods of former detainees have been devastated and they have few opportunities to support themselves and their families, which is another significant source of stress.

The physical and mental health consequences of being held in such poor conditions, often for extended periods of time can be long-lasting. Common medical problems experienced by former detainees include high blood pressure and body aches, sight and walking problems, and other health conditions caused by poor conditions and insufficient access to medical assistance in detention.

After being released, many detainees have not been able to get adequate medical support due to lack of financial means and absence of services tailored to the unique needs of victims of government torture. Similarly, men who have experienced sexual and gender-based violence in detention, not only undergo grave physical pain, but also experience extreme shame and stigma. However, specialized services tailored to the experiences of male survivors of sexual and gender-based violence are often non-existent.

⁴¹ See, Human Rights Watch, "South Sudan: Arbitrary Detention, Torture-Military, National Security Service Routinely Beat Detainees," 18 May 2015, available at: www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture.

⁴² James (pseudonym), Interview, Juba, South Sudan, 15 December 2017.

⁴³ Amnesty International, "South Sudan: Denied protection of the law: National Security Service Detention in Juba, South Sudan," *AFR 65/3844/2016* 15 April 2016, available at: www.amnesty.org/en/documents/afr65/3844/2016/en/.

Moses (pseudonym)

“My health is not good. I am not feeling well up to today [...] I cannot afford to buy medicines. I am feeling chest pain and pain in my head and I just buy pain killers and make things numb. Now I am even addicted to pain killers [...] There is no psychological support.”⁴⁴

Some national and international non-governmental organizations provide medical aid services, but these barely meet the demands for basic medical assistance amongst former detainees – many of whom are in need of long-term treatment, which they cannot easily afford. Former detainees interviewed by Amnesty International who had been able to obtain initial medical treatment described ongoing problems with their physical health that have not been properly addressed.

Victims of gross violations of international human rights law and humanitarian law are entitled to prompt, effective and adequate reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the crimes committed against them.⁴⁵

CONCLUSIONS AND RECOMMENDATIONS

Despite the release of around 30 former detainees from NSS Headquarters in August 2017 without charge, Amnesty International believes many more remain detained at NSS and Military Intelligence detention sites in the capital, Juba. The South Sudan Government must end practices of prolonged and arbitrary detentions, torture and other ill-treatment of detainees, as well as end enforced disappearances.

In addition to President Salva Kiir’s pledge to release political detainees on the occasion of the National Day of Prayer on 10 March 2017, Article 9 of the Cessation of Hostilities (COH) Agreement signed between parties to the conflict on 21 December 2017 states that both government and opposition forces “shall release...to the International Committee of the Red Cross (ICRC) without delay: (a) any person who has been deprived of his or her liberty for reasons related to the conflict; (b) any Prisoners of War (POWs); (c) all political prisoners and detainees; and (d) any abducted women and children.”⁴⁶ The agreement required that parties submit to the ICRC a complete list of POWs, political prisoners and detainees by 24 December 2017 and release all political prisoners and detainees within 14 days⁴⁷ – a commitment that was reiterated through the June 2018 Khartoum Declaration. However, the government has yet to comply with this obligation.

Regardless of the status of the implementation of the COH agreement, or Khartoum Declaration, the government must immediately release all NSS and Military Intelligence Directorate detainees, or, if credible evidence of a recognized offence exists, charge them promptly and present them in court

⁴⁴ Moses (pseudonym), Interview, Juba, South Sudan, 14 December 2017.

⁴⁵ The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles) recognize five forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

⁴⁶ High Level Revitalization Forum, “Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access,” Republic of South Sudan, Addis Ababa, 21 December 2017, available at: <https://igad.int/attachments/article/1731/1712%2021%20Signed%20CoH%20Agreement.pdf>.

⁴⁷ High Level Revitalization Forum, “Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access,” Republic of South Sudan, Addis Ababa, 21 December 2017, available at: <https://igad.int/attachments/article/1731/1712%2021%20Signed%20CoH%20Agreement.pdf>.

and end prolonged and arbitrary detentions. The trail of broken promises around the release of political detainees must end.

To the Government of South Sudan:

Release, or charge with internationally recognisable criminal offences, all remaining detainees being held at NSS and Military Intelligence detention facilities in the capital city, Juba and the rest of the country in line with the obligations under domestic and international law

Provide prompt and adequate reparation to individuals released without charge and individuals convicted after unfair trials, including medical and psycho-social rehabilitation.

Initiate prompt, effective and impartial investigations into NSS and Military Intelligence detention practices, including enforced disappearances, deaths in custody, torture and other ill-treatment, and bring those suspected of criminal responsibility to justice in open, accessible civilian courts and without recourse to the death penalty.

Establish an official moratorium on executions with a view towards abolishing the death penalty and quash the convictions and death sentences of James Gatdet and William Endley and ensure that they are granted a retrial that is in line with international standards for a fair trial and without recourse to the death penalty.

Amend the National Security Service Bill to exclude from the NSS powers to arrest, detain, conduct searches, seize property and use force in order to ensure that the Act complies with international, regional and national human rights norms and standards.

Cooperate with the African Union to quickly establish the Hybrid Court for South Sudan (HCSS) as provided for in the August 2015 Agreement for the Resolution of the Crisis in South Sudan (ARCSS) to further ensure that those bearing criminal responsibility for abuses can be brought to justice.