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Systematic harassment of civil society, journalists, private sector and critics by South Sudan's intelligence agency

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.¹ Despite two peace agreements and in violation of national and international laws, the NSS continues to systematically harass and target civil society members, journalists, private sector employees and real or perceived critics of government and senior officials through arbitrary and unlawful arrest and prolonged detention. Those suspected of criminal responsibility for these violations act with impunity and are not held to account.

Recent cases of arbitrary arrest and detention

Since the beginning of the conflict in December 2013, Amnesty International has documented individuals detained without charge and kept in holding facilities with no access to families, medical treatment, or legal representation and threatened by the NSS for their alleged support to, or communication with, former armed opposition groups, or for freely expressing opinions critical of the government or specific government officials.²

For example, on 29 May 2020, **Kanybil Noon**, a civil society representative on the Strategic Defense and Security Review Board (SDSR), a body of the 2018 revitalized peace agreement, was arbitrarily arrested and detained in Blue House, the NSS's headquarters in the country's capital Juba, without access to a lawyer. At the time of writing, the NSS had only permitted one family visit. In late 2019, Kanybil Noon had been charged with defamation, a case initiated by the Director of the NSS's Internal Security Bureau, Akol Koor, in connection with his Facebook posts and letter to President Salva Kiir Mayardit in which he alleges that Akol Koor abuses his power. At the time of Kanybil Noon's arrest on 29 May 2020, this defamation case was still ongoing.³

¹ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index AFR 65/8823/2018).

² Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index AFR 65/8823/2018); See, for instance also, Amnesty International, "Urgent Action: Detained Activist Denied Access to a Lawyer", 31 July 2018; Amnesty International, "Urgent Action: Detained Youth Activist Denied Family Visits", 10 July 2019.

³ Amnesty International, "Urgent Action: Member of Peace Agreement Body Detained", 23 June 2020.

On 30 June 2020, a human rights lawyer filed an application before the High Court of South Sudan in Juba seeking Kanybil's unconditional release or appearance in court. The lawyer served the NSS's Chief Legal Advisor.⁴

On 16 June 2020, the NSS arbitrarily arrested and detained **Moses Monday**, Executive Director of the Organization for Non-Violence and Development (ONAD), a civil society organization that is part of a coalition publicly demanding financial accountability and transparency in South Sudan. He was arrested in relation to a billboard that the coalition had put up in the capital Juba as part of their "Gurush wen?" (Where is the Money?) campaign.⁵ Moses Monday was released without charge on 25 June 2020⁶ after spending nine days in an NSS-run detention center along the Nile river, known as "Riverside", without access to a lawyer and without charge. Moses Monday's arrest is a clear violation of South Sudan's obligations under international and regional human rights law and South Sudanese laws, which only allow detention without charge for 24 hours and guarantee the rights to liberty and security of people, and the presumption of innocence and fair trial rights.⁷

Individuals working in the private sector have also been arbitrarily arrested and detained by the NSS. For example, **Biswick Tiyamaru Kaswaswa**, a Malawian national, was arrested at Kigali International Airport in Rwanda on 26 October 2018 en route to Dar es Salaam, Tanzania, on allegation of criminal breach of trust of US\$ 350,000 levelled against him by the South Sudanese-registered company he worked for.⁸ He was detained in Rwanda before being extradited to South Sudan on 7 December 2018.

Under Rwanda's extradition law, the Minister of Justice should not grant extradition "if the requested person would be subjected to torture or cruelty, inhuman or degrading treatment or if that person has not received or would not receive the minimum guarantees in criminal proceedings as provided for under the International Covenant on Civil and Political Rights of 19 December 1966."⁹ In addition, the Convention against Torture, to which Rwanda is a party, imposes a clear and unconditional obligation on Rwanda, not to "expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".¹⁰ Any assurances that South Sudan may have given that Biswick Tiyamaru Kaswaswa would not be subjected to torture or granted a fair trial are insufficient given the country's track

⁴ Defense Counsel, Release him unconditionally or produce him before the court: A statement on Kanybil Noon Deng's detention by the National Security Service (sic), 2 July 2020. On file with Amnesty International.

⁵ Eye Radio, NSS detains "Gurush wen?" activist, 17 June 2020, eyeradio.org/nss-detains-gurush-wen-activist/;

⁶ Eye Radio, Activist Moses Monday released, 27 June 2020, <https://eyeradio.org/activist-moses-monday-released/>;

⁷ Articles 12 and 19 of the 2011 Transitional Constitution; Articles 6(c), 53(1)(g), 54 and 55 of the 2014 NSS Act. The powers of arrest granted to the NSS by the 2014 NSS Act exceed the limits of the powers granted to the NSS by article 159 of the 2011 Transitional Constitution. Article 64(1) of the 2008 Code of Criminal Procedure Act restricts remand of people in police custody to 24 hours. Protections against arbitrary arrest and detention and fair trial rights are also found in articles 6 and 7 of the African Charter on Human and Peoples' Rights which South Sudan ratified in October 2013 and deposited in May 2016. In June 2019, the Parliament of South Sudan allowed the ratification of the International Covenant on Civil and Political Rights (ICCPR) which contains safeguards against arbitrary arrest and detention and guarantees fair trial rights in articles 9 and 14 respectively. See, 5 UN Office of the High Commissioner for Human Rights, Press briefing note, 7 June 2019, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E.

⁸ Criminal breach of trust under article 348 in the 2008 Penal Code Act. See, Legal Administration & Public Prosecution Attorney of Jubek, Terekeka and Yei River States, Warrant of Arrest, no date, on file with Amnesty International; Directorate General of Immigration Emigration Kigali International Airport, Handover sheet, 26 October 2018, on file with Amnesty International; Satiro & Co Advocates, Letter requesting authorities at Kigali International Airport to not permit Biswick Tiyamaru Kaswaswa to travel on grounds that he had stolen 350,000 USD from the company they represented and writing that they would take the legal procedure the following day, 25 October 2018, on file with Amnesty International.

⁹ Article 16.2 of the Republic of Rwanda's Law N° 69/2013 of 02/09/2013 on Extradition

¹⁰ Article 3.1 of the Convention against Torture.

record and lack of independent judicial system¹¹ – Rwanda’s obligations under its own and international laws remain in place.

According to Biswick Tiyyamaru Kaswaswa and a close relative, between 7 December 2018 and February 2019, he was detained in several detention places, and moved back and forth between official and unofficial detention facilities. These places of detention included a metal shipping container in Atlabara neighbourhood, an unofficial NSS detention centre, Malakia police station and Juba Central Prison, where he remained from February 2019 until his release in March 2020.

Biswick Tiyyamaru Kaswaswa and a close relative report that, throughout Biswick Tiyyamaru Kaswaswa’s time in NSS and South Sudan National Police Service (SSNPS) custody at Atlabara and Malakia respectively, he was subjected to beatings on numerous occasions, including during interrogation, and threatened with death to obtain a confession, resulting in severe mental suffering.¹² Amnesty International has reasons to believe that these acts amount to torture and other forms of ill-treatment and violate South Sudan’s obligation under the Convention Against Torture, as well as under regional and South Sudanese laws.¹³

Biswick Tiyyamaru Kaswaswa told Amnesty International: “[...] some officers who started threatening me in [the] presence of the police. They introduced themselves as NSS and said we are going to cut you in pieces, we are going to throw you in a sack, and we are going to throw you in the Nile River. We know you took this money; you have to pay back this money. If you don’t pay back this money, we are going to kill you for sure. They were calling my brother, saying that he had to sell my properties in Malawi. They even called my brother. Then put me back in police cell. [...] Then another day, another officer said if you don’t give back this money, we are going to put you in Blue House. If you go in Blue House, you will not come out, they will kill you”.¹⁴

Recalling another interrogation by the NSS, Biswick Tiyyamaru Kaswaswa told Amnesty International: “I started crying, the way they were intimidating me was too harsh. They said because I was not cooperating, they would give me 50 strokes a day with rubber, which is tied using a holder. So, I was shocked and traumatized. They said I had to give the number of my wife so they can say that I was no longer going to Malawi and that they were going to kill me. After that inquiry, they locked me back in the container.”¹⁵

During his days spent in Atlabara, Biswick Tiyyamaru Kaswaswa reports that together with another detainee, he was forced to work and that they “[...] had to clean the toilets, wash the cars and pick up things in the compound and then they would lock us up again.”¹⁶

In April 2019, Biswick Tiyyamaru Kaswaswa was brought before a County Court and charged with criminal breach of trust. After a trial that lasted nearly a year, the County Court dismissed the case

¹¹ Amnesty International, “Do you think we will prosecute ourselves?” *No prospects for accountability in South Sudan* (AFR 65/1105/2019)

¹² Amnesty International phone interview with a close relative of Biswick Tiyyamaru Kaswaswa, 18 February 2019; Amnesty International phone interview with Biswick Tiyyamaru Kaswaswa, 3 March 2019. Amnesty International phone interview with Biswick Tiyyamaru Kaswaswa, 23 and 29 June 2020.

¹³ Article 18 of the 2011 Transitional Constitution; UN Convention against Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which South Sudan acceded to in April 2015, and its first protocol, enabling individuals to submit claims before the Committee Against Torture; Article 5 of the African Charter on Human and Peoples’ Rights which South Sudan ratified in October 2013 and deposited in May 2016. The protection from torture is also protected by international customary law.

¹⁴ Amnesty International phone interview with Biswick Tiyyamaru Kaswaswa, 23 June 2020.

¹⁵ Amnesty International phone interview with Biswick Tiyyamaru Kaswaswa, 29 June 2020.

¹⁶ Amnesty International phone interview with Biswick Tiyyamaru Kaswaswa, 29 June 2020.

due to insufficient evidence in March 2020 and ordered Biswick Tiyamaru Kaswaswa's immediate release.¹⁷ Biswick Tiyamaru Kaswaswa was released from prison and then travelled to Malawi. The company appealed the County Court's decision before the High Court which overturned the County Court's decision in May 2020 and ordered Biswick Tiyamaru Kaswaswa's arrest.¹⁸ An appeal on Biswick Tiyamaru Kaswaswa's behalf is currently pending before the Court of Appeal.

Amnesty International is concerned that, if Biswick Tiyamaru Kaswaswa were extradited from Malawi, he would be at risk of torture in South Sudan. The organization calls on the Government of Malawi to protect Biswick Tiyamaru Kaswaswa's rights and prevent his extradition if it were requested.

Patterns of torture, poor conditions and no access to family and lawyers in detention centres

Since the outbreak of the conflict in December 2013, Amnesty International has documented the use of torture and other forms of ill-treatment against detainees by NSS officers and Military Intelligence Directorate (MID) officials during interrogation or as a form of punishment.¹⁹

For example, **Odong** (pseudonym), a former civil society volunteer recruited as an NSS trainee, who was detained in a village close to the western city of Wau on 8 November 2015, transferred to Blue House in Juba the next day, and released approximately three years later on 18 August 2018 told Amnesty International: "What they do [...] They take the battery then they connect it to wires and then they shock people. They do that when everyone is locked, and they do it on the open space. From midnight up to 2-3 am. I witnessed [this happen to] someone called John (pseudonym), Wani (pseudonym) as well as Richard (pseudonym)."²⁰

Detainees are held incommunicado and generally without access to a lawyer. Due to torture, other forms of ill-treatment, poor detention conditions and inadequate access to medical care, the health of detainees often deteriorates substantially, at times resulting in their deaths. Amnesty International received information that at least 20 detainees died in government custody in Juba between February 2014 and December 2016.²¹ Between February 2017 and July 2017, an additional four men, **Mike Tyson, Alison Mogga Tadeo, Richard Otti** and **Andria Baambe**, who were all held without charge for alleged links with the opposition since 2014, died as a result of harsh prison conditions and inadequate access to medical care.²²

Likewise, **Abdalah** (pseudonym), a civil society member who was arbitrarily arrested and detained in the south-west of the country on 8 August 2018, transferred to Blue House and released in October 2018, told Amnesty International: "We had water to drink, to bathe. But if you bathe in it, something comes up on your skin. It comes and goes. It's like pimples, it makes you scratch. I used to be sick. [...] In Juba, my back continued paining and my head. My head, there was dizziness. The muscles on the back of the neck could pain. It felt my head was rotating and you want to fall down. Getting a

¹⁷ Criminal Division of the Juba County Court, Judgement in case CCD/GAH5/2020, 1 April 2020, on file with Amnesty International.

¹⁸ High Court, Juba, Criminal Appeal no. 15/2020, on file with Amnesty International.

¹⁹ Amnesty International, *Denied Protection of the Law: National Security Service Detention in Juba* (AFR 65/3844/2016); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index AFR 65/8823/2018)

²⁰ Amnesty International interview with former detainee, 10 November 2018.

²¹ Amnesty International, South Sudan: Open Letter from Secretary-General Salil Shetty to President Salva Kiir on Prolonged Detentions, "Enforced Disappearances, and Reported Deaths While in Government Custody" (AFR 65/5970/2017); See also Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index AFR 65/8823/2018).

²² Amnesty International, *Report 2017/18: The state of the world's human rights* (Index POL 10/6700/2018); Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan's Intelligence Agencies Continues* (Index AFR 65/8823/2018)

doctor was very difficult. If you can get access to the doctor, he will give you a painkiller. When I was getting weak, he gave me multivitamin.”²³

Recounting the conditions in the Blue House, **Odong** (pseudonym) said: “There is hunger. At times there is no food completely. If it comes, it is very poor. Flour is rotten. Beans with maggots.”²⁴

NSS operates beyond its constitutional mandate

Over the years, the NSS has become increasingly powerful, acting as a *de facto* police force to protect the interests of the government and senior government and military officials, acting well beyond its constitutional mandate, which limits the powers of the NSS to “information gathering, analysis and advice to the relevant authorities.”²⁵

In contradiction to the 2011 Transitional Constitution, the 2014 NSS Act endows the security agency with police-like powers to arrest, detain, conduct searches and seize property in relation to national security without a clear definition of crimes and offences against the state and without adequate safeguards to prevent abuse of these powers.²⁶ The NSS’s track record to date underpins legitimate concerns that the current legal framework facilitates the commission of crimes under international law and human rights violations by NSS agents. Yet, urgent calls for South Sudanese authorities to reign in the NSS and bring the NSS Act in line with the country’s 2011 Transitional Constitution and its obligations under regional and international human rights law have not been heeded.²⁷

The 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) obliges South Sudanese authorities to amend legislation including the 2014 NSS Act. The National Constitutional Amendment Committee (NCAC) drafted an amendment bill which was submitted to the Ministry of Justice and Constitutional Affairs in mid-2019, but it has yet to be discussed in parliament²⁸ and enacted into law. This was supposed to have been done before the formation of the Revitalized Transitional Government of National Unity (R-TGoNU) which, after two postponements, the signatories started forming on 22 February 2020.²⁹

RECOMMENDATIONS

Amnesty International calls on the Government of South Sudan to:

- Immediately release all those arbitrarily detained, or charge them with a recognizable offence under international law without trumping up charges and, if there is sufficient admissible

²³ Amnesty International interview with former detainee, 5 December 2018.

²⁴ Amnesty International interview with former detainee, 10 November 2018.

²⁵ Section 159 of the Transitional Constitution of the Republic of South Sudan, 2011.

²⁶ Chapter III, section 13 of the Act provides the NSS with unqualified powers to, for example: “request any information, statement, document, or any relevant material from any suspect and potential witness”; “monitor, investigate and conduct search of suspect and places”; “seize weapon, machine, tool, automobile or any gadget suspected to be connected with an offence or crime against the state”; “arrest and detain suspects in accordance with the provisions of this Act in crimes related to National Security”; and “monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interest so as to prevent misuse by users.”

²⁷ Amnesty International, Amnesty International Urges South Sudan to Address National Security Service Violations and Crimes, [Statement](#) delivered at the Human Rights Council on 12 March 2019 (AFR 65/0011/2019).

²⁸ The 2018 revitalized peace agreement obliges signatories to reconstitute and expand the Transitional National Legislative Assembly (TNLA), but at the time of writing, the parties have failed to do so.

²⁹ Amnesty International, South Sudan: Forthcoming unity government must reform security service and set up hybrid court ([Press release](#), 22 February 2020).

evidence, try them in fair trials before ordinary civilian courts without recourse to death penalty;

- Ensure that detainees are not subjected to torture and other forms of ill-treatment while in detention and grant detainees' access to adequate medical care, lawyers of their own choosing, and also allow family visits;
- To initiate prompt, effective and impartial investigations into NSS detention practices, deaths in custody, torture and other forms of ill-treatment, and to publicly disclose the findings, and hold those suspected of criminal responsibility accountable in fair trials before ordinary civilian courts without recourse to the death penalty;
- To amend the 2014 NSS Act in line with the 2011 Transitional Constitution and with South Sudan's regional and international human rights obligations, including the rights to liberty, to freedom from torture and other ill-treatment, to a fair trial, to privacy, to judicial protection against abuse, and to provide explicit guarantees of due process rights and custodial safeguards, bring it in line with the principle of legality and specify permissible places of detention.