

# DENIED PROTECTION OF THE LAW

## NATIONAL SECURITY SERVICE DETENTION IN JUBA, SOUTH SUDAN

**“If you criticize [the government] you will be arrested, tortured and killed for no reason. That’s how [my cousin] was arbitrarily arrested; that’s how he will be lost if there is no intervention. And that’s how we, the family members, will lose a brother, father, community member and future leader of South Sudan.”**

Cousin of NSS detainee

### INTRODUCTION

Since the start in December 2013 of an internal armed conflict between the Government of South Sudan and the Sudan Peoples’ Liberation Movement/Army-In Opposition (SPLM/A-IO), the National Security Service (NSS) has arbitrarily detained perceived government opponents, sometimes for over a year. NSS detainees are not charged by prosecutors, and they do not appear before magistrates for judicial review of the lawfulness of their continued detention. Detainees are, in effect, denied any protection of the law.

This briefing paper highlights the unlawful detention of 35 men in the NSS headquarters in the Jebel neighbourhood of Juba, the capital of South Sudan. Amnesty International has confirmed, through multiple reliable sources, that these men are detained in the NSS headquarters. For 16 detainees, Amnesty International has also been able to confirm details such as the date of their arrest and the apparent reasons for detention. For the 19 others, the only confirmed information is their name.

None of the 35 detainees have access to legal counsel, and they have not been charged or presented in court. In at least one case the NSS has denied a detainee contact with his lawyer, despite the lawyer’s requests to meet with his client. In another case, a lawyer representing one of the detainees secured a court summons to have his client brought to court, but the NSS refused to bring him on two occasions. According to the lawyer, “The courts here are powerless in the face of the security power and authority.”<sup>1</sup> Relatives of other detainees told Amnesty International that they either could not afford a lawyer or that they did not think it was worth the effort to hire one, as they had little hope that the authorities would ever charge or take the detainee to court.

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<sup>1</sup> Amnesty International communication with lawyer of detainee.

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Some of these detainees are held *incommunicado*, without any access to family members or the outside world. Where authorities have refused to acknowledge the deprivation of liberty or the whereabouts of a detained person, the detention may constitute an enforced disappearance. In a public discussion about government detentions held in Juba on 7 April 2016, the president's spokesperson reportedly denied that the government holds any political detainees, except Joseph Bangasi Bakosoro, the former governor of Western Equatoria state.<sup>2</sup>

Though the individuals detained in the NSS headquarters are mostly accused of supporting or contacting the SPLM/A-IO, or mobilizing others on their behalf, Amnesty International believes that some of the detentions are in fact triggered by other personal issues. In the words of one detainee's relative, "When the conflict broke out in December 2013, anybody in the government was at liberty to accuse his or her opponents. Many innocent South Sudanese were arrested just because of petty, petty personal grudges which were turned to be support of SPLM-IO. Many met their fate in cold-murder and disappeared in no man's hand."<sup>3</sup>

Conditions of detention are poor. Detainees are fed a monotonous diet, and sometimes eat only once a day. Without proper bedding, they sleep on the floor. They have little access to natural light. Some have been beaten, especially during interrogation or as punishment for breaking internal detention rules. They also do not have access to adequate medical care. Such conditions amount to ill-treatment. Amnesty International considers that the treatment could also amount to torture in some cases.

The 35 men named in this briefing represent just a small fraction of individuals who have been arbitrarily detained by the Government of South Sudan. Amnesty International believes that others are detained within the NSS headquarters in Juba and in other NSS facilities. South Sudan's military has also engaged in arbitrary detentions.<sup>4</sup>

These arbitrary detentions have significantly impacted the lives both of those detained as well as their extended families. One detainee was on the verge of getting married when the NSS arrested him, and another missed the birth of his daughter. Many detainees have wives and children who relied on their incomes for school fees and basic needs, including housing and food. The cousin of one detainee said, "Now, his children are destitute. None of them are in school because there is no money."<sup>5</sup> One detainee is a university professor who was making an important contribution to educating South Sudanese youth.

Family members of some detainees have lost hope that they will ever see their relatives again. All relatives Amnesty International spoke with described the government's total failure to respect any basic criminal procedural safeguards as particularly distressing and frustrating. One detainee's father, who was able to see his son in detention said, "I told [the] NSS that if there are no charges, he should be released. They said they were investigating, investigating, investigating [...] and if nothing is found he will be released. This was over one year ago, and there are still no written charges against him."<sup>6</sup>

Amnesty International calls on the NSS to immediately and unconditionally release all detainees who have not been charged, or charge them with a recognizable offence and bring them before a competent civilian judicial authority.

## DOMESTIC AND INTERNATIONAL LAW

The prolonged arbitrary detention of these 35 men violates both South Sudanese and international law. South Sudan's Transitional Constitution provides that "no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with procedures prescribed by law."<sup>7</sup> According to the Constitution, anyone arrested should be promptly informed of the reasons for arrest and any charges against him or her, produced in court within 24 hours, and guaranteed

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<sup>2</sup> Amnesty International communication with three individuals present at the discussion, April 2015.

<sup>3</sup> Amnesty International communication with cousin of NSS detainee, 14 April 2016.

<sup>4</sup> UNMISS, *The State of Human Rights in the Protracted Conflict in South Sudan*, December 2015, p. 31-33, available at: [http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/Human%20Rights%20Update%20Report%20of%204%20December%202015%20\(final\).pdf](http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/Human%20Rights%20Update%20Report%20of%204%20December%202015%20(final).pdf)

<sup>5</sup> Amnesty International interview with cousin of NSS detainee, 11 April 2016.

<sup>6</sup> Amnesty International interview with father of NSS detainee, 12 April 2016.

<sup>7</sup> Transitional Constitution, Art. 12. Even during a state of emergency, the prohibition against torture, and the right to litigation or the right to a fair trial cannot be suspended. Transitional Constitution, Art. 190 (a).

the right to defend himself through a lawyer of his choice or have legal aid assigned to him by the government if he cannot afford a lawyer.<sup>8</sup> The National Security Service Act (NSS Act) itself provides that detainees must “be brought before a magistrate as soon as is reasonably practicable within 24 hours.”<sup>9</sup>

International law provides similar procedural safeguards for individuals in detention, including the right to be charged within a reasonable period of time, to judicial review of the lawfulness of detention, to be tried within a reasonable period of time, and to access legal counsel. Enforced disappearance is a crime under international law which, if committed in the framework of an armed conflict, may amount to a war crime. If committed as part of a widespread or systematic attack, enforced disappearance may also constitute a crime against humanity.

Detainees also have the right to adequate food, medical care, and sanitation. Torture and cruel, inhuman or degrading treatment or punishment are prohibited under the Transitional Constitution as well as by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which South Sudan acceded to in April 2015.

International law also requires the government to notify family members of the fate or whereabouts of all those deprived of liberty, and to allow access to family members. This is an important safeguard against both enforced disappearances, as well as against torture and other ill-treatment.

Nevertheless, the NSS Act of 2014 grants the NSS sweeping powers to arrest and detain, without ensuring adequate judicial oversight or safeguards against abuse. Despite the obligations of South Sudan under international law, the Act does not provide for basic human rights, such as detainees being held in official places of detention, the right to counsel or the right to be tried within a reasonable period of time. The law effectively gives a *carte blanche* to the NSS to continue and extend its longstanding pattern of arbitrary detentions with total impunity.

## ARRESTED IN CENTRAL EQUATORIA STATE



### AYUME DADA

Ayume Dada was arrested on 5 January 2015 in Juba, South Sudan. Following his arrest, he was held in a newly constructed NSS building in the area of Juba known as Juba town. After some months, he was transferred to the NSS building in the Jebel neighbourhood of Juba. He is accused of supporting the SPLM/A-IO, but has not been charged with any offence. He does not have access to legal counsel and has not been brought before a court. Ayume Dada’s two wives travelled from outside of Juba to visit him in December 2015, but the NSS refused to let them see him. Ayume Dada has seven children.



### CHANDIGA FELIX

Chandiga Felix was arrested in July 2014, in the Jebel Market area of Juba. He was working as a motorcycle driver. He spent some months in an NSS building in the area of Juba known as Juba town and was then transferred to the NSS headquarters in the Jebel neighbourhood of Juba. He does not have access to legal counsel and has not been presented in court. He has been denied contact with his family. He is married and has four children.

<sup>8</sup> Transitional Constitution, Art. 19.

<sup>9</sup> National Security Service Act, Art. 54 (2).



### LADO JAMES

Lado James has spent close to two years in NSS detention. He is a soldier in South Sudan's national army. He was arrested in July 2014 in the Jebel Market area of Juba. He spent some months in an NSS building in the area of Juba known as Juba town and was then transferred to the NSS headquarters in the Jebel neighbourhood of Juba. He is accused of supporting the SPLM/A-IO, but has not been charged with any offence. He does not have access to legal counsel and has not been presented in court. His wife travelled from outside of Juba to visit him in December 2015, but the NSS refused to let her see him. Lado James has three children.



### LEONZIO ANGOLE ONEK

Leonzio Angole Onek was arrested on 7 December 2015 at around 4pm while driving from the University of Juba campus to his home in the University's faculty compound. NSS officers drove him to the NSS headquarters where he is currently being held. The NSS has not charged him or disclosed any reason for his prolonged arbitrary detention. Since his detention, the NSS has allowed him to periodically leave the detention facility to seek medical care in Juba. His condition, however, requires medical analysis and treatment that is unavailable in South Sudan. The NSS has not permitted him to leave the country to access this treatment.

Onek holds a PhD in biochemistry from Lancaster University in the United Kingdom. He has taught at the University of Juba since 2010 and was appointed Dean of the College of Applied and Industrial Sciences in 2014.



### JOSEPH BANGASI BAKOSORO

Joseph Bangasi Bakosoro, the former governor of Western Equatoria state, was detained on 22 December 2015 at around 3pm by the NSS. He had gone to the NSS headquarters in the Jebel neighbourhood of Juba after being summoned by the authorities. He has not been charged or presented in court. He has been denied access to a lawyer. He was initially denied access to his family, but since early March 2016, relatives have been allowed to visit him regularly.



### BENJAMIN TABAN

According to media reports, Benjamin Taban, an evangelist working for Christian Outreach Ministries, was arrested at night on 30 October 2014 in Morobo.<sup>10</sup> Amnesty International was not able to independently verify this information.

<sup>10</sup> *Radio Tamazuj*, "Pastor abducted by gunmen in Morobo, Central Equatoria," 30 October 2014, available at <https://radiotamazuj.org/en/article/pastor-abducted-gunmen-morobo-central-equatoria>



### **SOKIRI FELIX WANI**

According to Human Rights Watch, NSS officers arrested Sokiri Felix Wani on 25 July in Kajo Keji. He is detained in the NSS headquarters in the Jebel neighbourhood. He is accused of supporting Alfred Ladu Gore, the deputy chairman of the SPLM/A-IO.<sup>11</sup> Amnesty International was not able to independently verify this information.



### **ALISON MOGGA TADEO**

According to Human Rights Watch, NSS officers arrested Alison Mogga Tadeo on 25 July in Kajo Keji. He is detained in the NSS headquarters in the Jebel neighbourhood and is accused of supporting Alfred Ladu Gore.<sup>12</sup> Amnesty International was not able to independently verify this information.



### **ALORO JOHN**

Aloro John is a businessman. He was arrested on 15 December 2015 in Juba and is detained at the NSS headquarters in the Jebel neighbourhood. According to information available to Amnesty International, his detention was prompted by a personal dispute. The NSS has not informed him of the reasons for his arrest, charged him or presented him in court. He has four children, ages 15, 12, 5 and 3. His wife recently travelled to Juba to visit him and went to the NSS headquarters four times over the course of a month. NSS officers acknowledged his presence in detention, but repeatedly refused for her to see him.



### **MICHAEL SOKIRI**

Michael Sokiri was living in Juba and working at a bank. He travelled to Yei in January 2015 to visit his family, and was arrested one night while there. The NSS accused him of communicating with Alfred Ladu Gore, but has not charged him with any offence or presented him in court. He is in his mid-40s, is married and has three daughters. His family relied on his income to pay their school fees. For the past year, none of them have been able to attend school. Family members have tried to visit him on at least seven separate occasions. Each time, NSS agents told them that visits are not allowed. His family cannot afford to pay for a lawyer.

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<sup>11</sup> Human Rights Watch, "South Sudan: Arbitrary Detention, Torture: Military, National Security Service Routinely Beat Detainees," 18 May 2015, available at <https://www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture>

<sup>12</sup> Human Rights Watch, "South Sudan: Arbitrary Detention, Torture: Military, National Security Service Routinely Beat Detainees," 18 May 2015, available at: <https://www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture>

## ARRESTED IN EASTERN EQUATORIA



### JOREM ESERU

Jorem Eseru was arrested in Kapoeta, Eastern Equatoria state on 9 October 2014. He is a Ugandan national and was working with Kapoeta Development Initiative, a community-based non-governmental organization that works on education, health, water and sanitation, and food security. Following his arrest, NSS officers reportedly beat him on his hands and feet. According to information available to Amnesty International, his detention was prompted by a personal dispute. He has not been charged with any offence, provided with legal counsel, or presented in court. He is married and has a four year old daughter.



### LOKOLONG JOSEPH

Lokolong Joseph was arrested on 20 November 2015 in Ikotos and immediately transported to Juba. He was working as a civil servant with the Lopa/Lafon county administration. He is detained in the NSS building in the Jebel neighbourhood. NSS officers have allowed family to visit him on two occasions, but limited the visiting period to under fifteen minutes. No family members have seen him since June 2015 as NSS officers have, on multiple occasions, refused family visits, including from his wife. He has reportedly been beaten while in detention. Lokolong Joseph has three wives and 12 children ages 16 and under.

## ARRESTED IN WESTERN BAHR EL GHAZAL



### GEORGE LIVIO BAHARA

George Livio Bahara was a journalist with the United Nations' Radio Miraya. The NSS arrested him in Wau on 22 August 2014 and then transported him to Juba on 24 August. He is detained in the NSS building in the Jebel neighbourhood. He is accused of supporting and being in contact with the SPLA-IO, but he has not been charged with any crime or appeared in court. NSS has denied requests from his lawyer to meet with him. He is 30 years old and a father of three children.



### JUSTINE WANAWILA

Justine Wanawila was working for the National Anti-Corruption Commission office in Wau. He is a former Catholic priest, but left the priesthood in 2011. On 23 August 2014, the NSS summoned him to their office in Wau. He was subsequently detained and transported to Juba where he is currently held at the NSS office in Jebel. His family members do not know the reason for his arrest or continued detention, but reported rumours are that he is accused of supporting the SPLM/A-IO. He has not been charged or presented in court. His family members have not tried to visit him, as they cannot afford to travel from

Wau to Juba. Before being detained, he provided financial support to four of his sister's children, including paying their school fees. Wanawila is 47 years old.



### **MARTIN AUGUSTINO**

Martin Augustino worked as an administrator in the offices of the Catholic Diocese of Wau. On 23 August 2014, he received a phone call from the NSS summoning him to the NSS office in Wau. He went, was detained and then transported to Juba the next day. He is currently held in the NSS headquarters in Jebel. He is accused of mobilizing youth to join the SPLM/A-IO, but has not been charged or presented in court. NSS has granted him regular family visits. He is in his 40's and has five children. His youngest daughter was born while he was in detention.

## **ARRESTED IN WESTERN EQUATORIA**



### **JUSTIN YASIR**

Justin Yasir is a 34 year old businessman and electrician who was living in Yambio. He was arrested at the end of December 2015 at his house. A few days later, he was taken to Juba. He is detained in the NSS headquarters in Jebel. He has not been informed of the reasons for his arrest, charged or presented in court.

## **ADDITIONAL DETAINEES**

Amnesty International has confirmed, through multiple reliable sources, the continued detention of the following 19 men in the NSS building in the Jebel neighbourhood.

- Andria Baambe
- Angelo Banaveso
- Daniel Bakumba
- Davide Peter
- Eli Duku Nimaya
- Emilio Paul
- Gwagbwe Christopher
- John Mboliako
- Joseph Ngec
- Justine Peter
- Kennedy Kenyi

- Loreom Joseph Logie
- Mike Tyson
- Ochaya Godfrey Saverio
- Ocitti Richard Okumu
- Otihi Lawrence
- Paul Baba
- Richard Otti
- Tartisio Oshini

## CONCLUSION AND RECOMMENDATIONS

The Agreement on the Resolution of the Crisis in South Sudan (ARCSS), signed by the parties to the conflict and other stakeholders in August 2015, requires the parties to “ensure the immediate and unconditional release of [...] all those detained in connection with the conflict.”<sup>13</sup> Despite this provision, these 35 detainees have remained in detention. In early April 2016, as members of the SPLM/A-IO returned to Juba ahead of the formation of the Transitional Government of National Unity (TGoNU) provided for in the peace agreement, media reports indicated a surge of new detentions by the Government of South Sudan, in Juba and elsewhere in the country, because of their perceived political affiliation.<sup>14</sup> Amnesty International believes that in the second week of April, NSS officers detained dozens of additional men and women in the NSS headquarters in the Jebel neighborhood of Juba.

Regardless of the status of implementation of the peace agreement or the allegations against these men, the South Sudanese government must end this practice of arbitrary detention. The NSS should immediately and unconditionally release from detention all individuals who have not been charged, or charge them with a recognizable offence and bring them before a competent civilian judicial authority. Any detainee charged with an offence should immediately be transferred to a lawful place of detention, allowed to receive visits from family members and access to legal counsel. They should also be provided with independent medical assistance.

The government should initiate prompt, effective and impartial investigations into NSS detention practices, including enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment. The government should bring all those suspected of criminal responsibility to justice in open, accessible civilian courts and in fair trials without recourse to the death penalty. The government should immediately suspend military and civilian officials against whom there is credible information that they may have committed crimes under international law or human rights violations, until those allegations can be independently and impartially investigated.

Though conducting investigations and holding those suspected of criminal responsibility accountable is the primary responsibility of the Government of South Sudan, it has so far failed to demonstrate a willingness to discharge this obligation. It is therefore critical that the African Union Commission quickly establishes the Hybrid Court for South Sudan (HCSS) provided for in the August 2015 peace agreement. The HCSS should ensure that its investigations include arbitrary detention, enforced disappearances, torture and other crimes under international law.

Once formed, the Transitional Government of National Unity (TGONU) should quickly establish the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparations Authority (CRA), also provided for in the August 2015 peace agreement. Once established, both institutions should

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<sup>13</sup> Agreement on the Resolution of the Crisis in South Sudan (ARCSS), Chapter II, Art. 1.10, available at: [http://www.jmecsouthsudan.com/full\\_agreement.php](http://www.jmecsouthsudan.com/full_agreement.php)

<sup>14</sup> According to *Sudan Tribune*, at least 16 members of the SPLM-IO’s media team were arrested in Juba. *Sudan Tribune*, “SPLM-IO deputy chairman, Alfred Ladu, arrives in Juba,” 12 April 2016. *Radio Tamazuj*, “Mass arrests in South Sudan’s Northern Bahr el Ghazal state,” 12 April 2016, available at <https://radiotamazuj.org/en/article/mass-arrests-south-sudans-northern-bahr-el-ghazal-state>



ensure that they give adequate attention to the issue of arbitrary detention, enforced disappearances and torture by the NSS and government military. Victims of arbitrary detention should be granted reparation, including compensation and rehabilitation, as well as psychological rehabilitation for any mental health consequences of their time in detention.

Vesting national security agencies with police powers, such as to arrest and detain, is not in itself a violation of international law when subject to certain strict conditions. Many countries, however, have opted to exclude powers of arrest and detention from security agencies because the secretive nature of their work and the concomitant lack of accountability are prone to result in an abuse of these powers. This is particularly the case where adequate custodial safeguards are lacking, as in South Sudan's NSS Act. Amnesty International has therefore repeatedly called for NSS activities to be limited to "information gathering, analysis and advice to the relevant authorities," as envisaged by the Transitional Constitution.<sup>15</sup> The NSS Act should be amended to explicitly exclude from the NSS powers to arrest, detain, conduct searches, seize property and use force and to ensure that the Act complies with international, regional and national human rights norms and standards.

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<sup>15</sup> Transitional Constitution, Arts. 159(e), 160(4).