

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA KEN 4/2017

27 January 2017

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 27/1, 25/18 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged detention and enforced disappearance of two South Sudanese nationals, Mr. **Dong Samuel Luak** and Mr. **Aggrey Idri Ezibon** respectively on 23 and 24 January 2017 in Nairobi, Kenya. Both individuals are members of the Sudan Peoples' Liberation Movement/Army-In Opposition (SPLM/A-IO). It is further alleged that they might be at imminent risk of deportation from Kenya to South Sudan.

Mr. **Dong Samuel Luak** is a prominent lawyer and human rights advocate. From 2002 to 2013, Dong Samuel was Secretary-General of the South Sudan Law Society, a South Sudanese civil society organization focused on promotion of justice, human rights and the rule of law. Following the outbreak of South Sudan's ongoing armed conflict in December 2013, he joined the SPLM-IO and is a member of its Human Rights and Justice Committee. He left South Sudan in August 2013 after receiving death threats following his defense of Pagan Amum, the former Secretary General of South Sudan's governing party, whom the South Sudanese Government had accused of treason. Mr. Dong Samuel, who has been registered as a refugee in Kenya since November 2016, is a vocal critic of the South Sudanese Government and is active on Facebook and Twitter. In October 2015, he was reportedly brutally attacked at his home in Nairobi by men thought to be linked to South Sudan's security services.

Mr. **Aggrey Idri Ezibon** is the Chair of the SPLM-IO Humanitarian Affairs Committee.

According to the information received:

On 23 January 2017, Mr. Dong Samuel Luak was on his way to board a bus and return to his residence. He was last seen in center of Nairobi at approximately 9:00 pm. He never arrived home.

On 24 January 2017, Mr. Aggrey Idri Ezibon was last seen in Kilimani at approximately 8:00 am. His fate and whereabouts remain unknown since then.

It is alleged that South Sudan's security personnel might be behind their abduction with the connivance of Kenyan security agents.

On the assumption that the two individuals might currently be detained in Kenya by the Kenyan authorities, a hearing before the judge at Milimani Court was requested to seek an injunction against their deportation and to file a request for habeas corpus. The hearing was held on 27 January 2017 at Milimani Law Courts. The court reportedly granted a habeas corpus order requesting the police to investigate the whereabouts of Mr. Dong Samuel and Mr. Aggrey Idri, as well as an order preventing their deportation without due process. The person in charge of criminal investigations for Nairobi County was also required to report to the Court on the investigations on Tuesday, 31 January. The court also ordered Safaricom, Airtel and Orange to cooperate with investigations and to provide data on the phones of Mr. Dong Samuel and Mr. Aggrey Idri.

It further reported that in recent years, Kenya has unlawfully deported several prominent opposition members from neighboring countries to their countries of origin, despite being recognized as refugees under Kenyan law and protests by the Office of the UN High Commissioner for Refugees (UNHCR).

Grave concern is expressed about the abduction of the two above-mentioned individuals and their physical and psychological integrity as their fate and whereabouts are currently unknown, a situation which places them at great risk of torture and other ill-treatment. Grave concern is also expressed at their imminent risk of deportation to South Sudan.

While we do not wish to prejudge the accuracy of these allegations, the Working Group would like to bring to the attention of your Excellency's Government the fundamental principles embodied in the Universal Declaration of Human Rights and other international instruments regarding the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law, particularly as these refer to persons deprived of their liberty.

The Working Group is also drawing the attention of your Excellency's Government to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

In connection with the above alleged facts and concerns, we are particularly concerned that given the serious risk of torture both would face in South Sudan, their deportation would also violate Kenya's obligations under the UN Convention Against Torture. The Working Group would like to draw the attention of your Excellency's Government on that, according to article 8 (1) of the Declaration, no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

The Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access by competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders and its articles 1,2 and 12.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

We would also like to bring to the attention of your Excellency's Government that should sources submit the allegations of enforced disappearance mentioned in this communication as cases to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by a separate correspondence.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the fate or whereabouts of the two above mentioned individuals.
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to these case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide information with respect to the measures taken to ensure their physical and psychological integrity.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

The Working Group wishes to bring to your Excellency's Government's attention that a similar communication has been addressed to the Government of South Sudan.

We would like to inform your Excellency's Government that this communication is going to be shared with the Commission on Human Rights on South Sudan, mandated to monitor and report on the situation of human rights in South Sudan and make recommendations for its improvement, in accordance with resolution 31/20 of 23 March 2016.

We would also like to inform your Excellency's Government that we are reserving the right to publicly express our concerns in a press release as we are of the view that the information upon is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
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