

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL SSD 1/2019

27 February 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 34/5 and 31/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arrest, arbitrary detention and investigation of Mr. Peter Biar Ajak.

Mr. Peter Biar Ajak is a human rights defender and political commentator. He is one of the co-founders of the South Sudan Young Leaders Forum (SSYLF), a coalition of over 70 young South Sudanese church, civil society and youth leaders advocating for the resolution of the ongoing conflict. The SSYLF's primary goal is the mobilisation of informed youth to advocate for peace, democratisation and development. He also helped to found the Red Army Foundation, a non-profit organisation that supports those who were displaced by the Second Sudanese civil war as children.

According to the information received:

On the morning of 28 July 2018, Mr. Ajak was arrested by security officials at Juba International Airport while waiting to board a flight to Aweil County for an event organised by the Red Army Foundation. Upon his arrest, he was presented a warrant which was more than one week old and which did not specify the reason for his arrest. Similarly, security officials did not verbally indicate the reason for his arrest. He was taken into custody and immediately transported to the National Security Service (NSS) headquarters in Juba, where he was held for three weeks in solitary confinement and denied access to legal counsel.

On 31 July 2018, one of Mr. Ajak's legal representatives submitted a formal complaint in the form of a written petition to the Prosecutor General of the Ministry of Justice, on the grounds that he had not been permitted access to his client and calling for his release. The petition was rejected on the basis that investigations were pending. That same day, Mr. Ajak's legal representatives were permitted to view the "terms of reference" for the investigation, which instructed investigators to look into Mr. Ajak's Twitter, Facebook, TV appearances, involvement with the SSYLF, meetings abroad and travel within South Sudan. In previous weeks, Mr. Ayak had made a number of posts on Twitter criticising the ongoing conflict in South Sudan and calling for political change. Moreover, attempts to register the SSYLF had previously been denied, and at least two of its events had been shut down by Government authorities. Mr. Ajak's lawyers were not provided a copy of these terms of reference, nor were they given any reason as to why the investigation had been initiated.

On 2 August 2018, a three-member committee was created by the NSS to investigate Mr. Ajak's social media activities, political commentary, and SSYLF activities.

On 15 August 2018, one of Mr. Ajak's lawyers were permitted to review preliminary notes about the investigation at the local police station, where they learned that the investigation had been transferred from the NSS to the police, and that an investigator named "Colonel Alex" had been appointed to re-investigate and confirm NSS findings. Mr. Ajak's lawyers further discovered that Mr. Ajak was being investigated for serious offences under the South Sudanese Penal Code Act 2008, including "concealing treason" under Section 65, "insurgency, banditry, sabotage or terrorism" under Section 67 and "publishing or communicating false statements prejudicial to South Sudan" under Section 75.

On 12 September 2018, approximately seven weeks after Mr. Ajak's arrest, his lawyers were permitted by the Office of the Chief Prosecutor to meet with Mr. Ajak for three hours. Prior to this, one of Mr. Ajak's lawyers had reportedly been denied access to his client on 11 separate occasions. The next day, following a meeting with police, his lawyers were informed of an expanded set of allegations against Mr. Ajak, including "treason" under Section 64 of the Penal Code and training and recruiting for insurgency, banditry, sabotage or terrorism under Sections 68 and 69. If charged and found guilty, Mr. Ajak could face the death penalty.

Mr. Ajak remains in detention without charge and has yet to be brought before a judge. It remains unclear as to whether his detention is in compliance with the observed procedural safeguards contained in the National Security Service Act, 2014, particularly regarding Section 55 of the Act regarding the issuance of arrest warrants. He has been interrogated at least twice by NSS officers, who questioned him about his political activism, travel to conferences, consultations with international non-governmental organisations and organisational funding, and he

has only been permitted to meet with his lawyers twice since his arrest. Despite repeated statements from the Government of South Sudan confirming that the investigation into Mr. Ajak was nearly complete in late 2018, Mr. Ajak was informed in January 2019 that the initial investigation against him had been “cancelled” and that a new investigation would take place, with a new Chief Prosecutor replacing the previous investigator. No information was provided as to the reasons behind such decision. At a later date, one of Mr. Ajak’s lawyers was told that the new investigator was simply taking over the previous investigation.

During Mr. Ajak’s detention, he has reportedly received very limited medical care and was denied access to a doctor some weeks ago when he fell ill. In addition, he has received only one meal a day since early October as a result of a collective punishment following a stand-off between detainees and NSS guards on 7 October 2018, despite the fact that he had not participated and had remained peaceful throughout. Mr. Ajak and another detainee are reportedly facing charges in connection with the stand-off. Mr. Ajak’s family have been able to visit him, but have had visits repeatedly denied for long periods of time. Multiple requests for visitation by representatives of the United Nations Mission in South Sudan (UNMISS) and the Office of the High Commissioner for Human Rights (OHCHR) have remained unanswered. In addition to repeated verbal requests, letters were sent by the Director of the UNMISS Human Rights Division to the NSS Director of Legal Affairs Directorate on 10 September 2018, and to the NSS Director General on 28 January 2019, to which no replies have been received.

We express serious concern over the investigations into Mr. Ajak’s political activities and work in defence of human rights. Moreover, the scope of the investigation, which includes statements that Mr. Ajak made on Twitter, Facebook and television, indicates an intention on the part of law enforcement authorities to criminalise him for exercising his right of freedom of opinion and expression, which is guaranteed under article 19 of the Universal Declaration of Human Rights (UDHR). We also note that the wording of Section 75 of the South Sudanese Penal Code Act 2008 is overly broad and vaguely written, and may be used in an abusive fashion to criminalise freedom of opinion and expression and silence dissenting voices in the country. We wish to highlight that under the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, no one may be punished for criticising or insulting the nation, the State or its symbols, the Government, its agencies, or public officials unless the criticism or insult was intended and likely to incite imminent violence. Furthermore, any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

We would also like to draw your Excellency’s Government’s attention to previous reports of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/70/371, para. 46(c)), and the Special Rapporteur on the promotion of the right to freedom of opinion and expression (A/HRC/17/27 para. 34), in which concerns are expressed over the use of national

security and counter-terrorism legislation by States as a means to criminalise free expression and the legitimate work of civil society.

We rest concerned that Mr. Ajak has also been targeted by law enforcement as a result of his association with the SSYLF, given his alleged interrogation on their activities and funding, and remind your Excellency's Government that freedom of association is guaranteed under UDHR article 20. Further, in relation to previous denial of SSYLF's registration, it is important to stress that states should ensure, where procedures governing the registration of civil society organisations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive. (A/RES/22/6/OP8).

We wish to further express our concerns over the alleged arbitrary arrest and detention of Mr. Ajak and the failure of authorities to charge him, present him before a judge or provide him with modalities to challenge the legality of his detention. These concerns are compounded by Mr. Ajak's reported lack of adequate access to legal counsel. We remind your Excellency's Government of the guarantees included in articles 3, 9 and 10 of the UDHR which protect the right to liberty, to not be arbitrarily arrested or detained and to have a fair and public hearing. In this regard we would also like to draw your Excellency's Government's attention to Principles 10, 11 and 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

We express final concern over Mr. Ajak's alleged lack of access to family members and medical care and the failure of authorities to respond to visitation requests issued by UNMISS and OHCHR, along with his alleged restricted access to food as a result of a collective punishment against prisoners, and remind your Excellency's Government that article 5 of the UDHR provides that no one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. Furthermore, Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by South Sudan on 30 April 2015, prohibits acts of cruel, inhuman or degrading treatment or punishment and requires that States Parties conduct a prompt and impartial investigation when there are grounds to believe that such acts have occurred.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual bases for the investigation of Mr. Ajak. Please further provide any information there may be with regards to any charges against him.
3. Please provide information on the legal basis for the alleged arrest and continued detention of Mr. Ajak, along with information as to why his access to legal representation has been curtailed. Please also provide information as to how Mr. Ajak's continued detention without charge and limited access to legal counsel are compatible with international human rights standards.
4. Please explain why Mr. Ajak's access to family visitation has been limited. Please further explain the reasons why Mr. Ajak's access to medical care and food has been limited and explain how these limitations are compatible with international human rights standards.
5. Please provide information on any investigations that have been undertaken concerning alleged acts of cruel, inhuman or degrading treatment or punishment that Mr. Ajak may have suffered. If neither has been undertaken, please explain why.
6. Please indicate what measures have been taken to ensure that human rights defenders in South Sudan are able to carry out their peaceful and legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an

opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

**Annex**  
**Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to articles 3, 5, 9, 10, 19 and 20 of the Universal Declaration of Human Rights (UDHR), which guarantee the right to liberty, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right not to be arbitrarily arrested or detained, the right to a fair and public hearing, the right to freedom of opinion and expression, including the right to impart information and ideas through any media and regardless of frontiers, and the right to freedom of association.

We further highlight that Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by South Sudan on 30 April 2015, prohibits acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It also requires states to conduct a prompt and impartial investigation in cases where there is reasonable grounds to believe that an act of cruel, inhuman or degrading treatment or punishment has occurred.

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 29 of the UDHR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would also like to refer to the Human Rights Committee General Comment No. 34 (2011), on the right to freedom of opinion and expression. Accordingly, "all forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. It is incompatible with paragraph 1 to criminalise the holding of an opinion." The General Comment further establishes that "the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty."

We wish to draw your Excellency's Government's attention to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which affirm that no one may be punished for criticising or insulting the nation, the State or its symbols, the Government, its agencies, or public officials, or a foreign nation, State or its symbols, Government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence. The Principles further state that any restriction on expression or information

that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that: (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

We further wish to draw your Excellency's Government's attention to the Report of the Special Rapporteur on the promotion of the right to freedom of opinion and expression, in which he raised his concerns that legitimate online expression is being criminalised in contravention of States' international human rights obligations, whether it is through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalise expression on the Internet. Such laws are often justified on the basis of protecting an individual's reputation, national security or countering terrorism, but in practice are used to censor content that the Government and other powerful entities do not like or agree with. (A/HRC/17/27 para. 34).

We would like to bring to your Excellency's Government's attention that in his report to the General Assembly on impact of counter-terrorism measures on civil society, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para. 46(c)). We further wish to bring to your Excellency's Government's attention Human Rights Council resolution 34/5 which states that in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human rights defenders or have hindered their work and endangered their safety in a manner contrary to international law and recognizes that there is an urgent need to address, and to take concrete steps to prevent and stop, the use of legislation to hinder or limit unduly the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law.

We would like to draw your Excellency's Government's attention to Human Rights Council Resolution 22/6 which calls upon States to respect, protect and ensure the right to freedom of association of human rights defenders. States should ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive. Such procedures should allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and should be in conformity with international human rights law. (A/RES/22/6/OP8).

We also wish to refer to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, specifically Principle 10, which states that “anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him”, Principle 11, which states that “a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” and that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law”, and Principle 15 which states that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”.

We also would like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, and in particular Principle 1 that establishes that “All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings”; as well as Principle 8, that provides that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In connection with the above alleged facts and concerns we would like to refer your Excellency’s Government to the fundamental principles set forth in 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. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to specifically bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b), which states that everyone has the right to form, join and participate in non-governmental organisations, associations or groups.
- Article 6 (a, b and c), which reprises the right to know, seek obtain, receive and hold information about all human rights and fundamental freedoms, to publish, impart or disseminate to others views on such information, and to study, discuss and form opinions on such information.
- Article 8 (2), which notes the right to submit proposals to governmental organisations, agencies and bodies concerned with public affairs criticism

and proposals for improving their functioning, and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realisation of human rights and fundamental freedoms.

- Article 12 (2), which states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.