

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

14 March 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 51/8, 45/3 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged abduction and subsequent enforced disappearance from Nairobi, Kenya, of human rights defender Mr. Morris Mabior Awikjok, his alleged enforced deportation to South Sudan, his detention and torture, and the lack of information provided to his family members in Nairobi, Kenya.

Special Procedures mandate holders have previously communicated with your Excellency's Government regarding the alleged detention and enforced disappearance of two South Sudanese nationals in Nairobi, Kenya, SSD 1/2017. We regret that no reply has been received to date.

Mr. Morris Mabior Awikjok is a human rights defender and the head of Youth Alliance Network, a civil society organisation registered in South Sudan, a former teacher and former secretary general of the Warrap Worker Union in South Sudan. As a human rights defender, he has documented violations by certain members and leaders of the National Security Services (NSS) for allegedly inciting inter-communal conflict in Jonglei State and abuses across the country.

According to the information received:

On the evening of 4 February 2023, Mr. Awikjok was reportedly attacked in his home in Nairobi, Kenya by five armed men and a woman wearing a Kenyan police officer uniform, and a South Sudanese man in plain clothes. Without producing any arrest warrant, they pushed Mr. Awikjok's wife, seized mobile phones, laptops and documents, including his wife's travel documents. Finally, they took Mr. Awikjok away without disclosing information about his destination.

On 6 February 2023, a South Sudanese newspaper, The Dawn, reported that Mr. Awikjok had been "extradited" to Juba, to face charges.

Between 4 and 13 February 2023, the family was unaware of the fate and whereabouts of Mr. Awikjok.

On 13 February 2023, Mr. Awikjok's family members in Kenya received a phone call allegedly from a security source in South Sudan telling them that Mr. Awikjok was held in the Blue House national security detention centre where he had been badly tortured.

On 15 February 2023, the same source, who is also a member of Mr. Awikjok's local community in South Sudan, called to say that Mr. Awikjok had been moved from the detention centre and had been possibly taken to Luri Prison in Juba County in South Sudan, and that he allegedly was so badly tortured that no one was allowed to see him.

On 21 February 2023, Mr. Awikjok's family received a call from a reliable source informing them that he had been returned to the National Security detention facility also known as the "Blue House", was recovering from injuries sustained under torture, and was being investigated ahead of presenting him to court.

To date, his family has not received any official information as to his whereabouts, or his health condition, and he has had no access to legal assistance. Even after his family was indirectly informed about his whereabouts, they have not been informed of charges against Mr. Awikjok and have been unable to find a lawyer willing to take on his case as he had named powerful NSS leaders in his denunciation of their alleged human rights violations.

Mr. Awikjok has been living in Nairobi, Kenya, since April 2021, where he sought asylum as a result of death threats that he received in South Sudan due to his work on exposing human rights abuses. He remained in hiding during 2021 and in 2022 he resumed work on denouncing human rights violations in South Sudan and addressing alleged violations by NSS leaders, mostly on social media.

According to a report presented in March 2022 to the Human Rights Council by the UN Commission on Human Rights in South Sudan, human rights activists and journalists faced death threats, arbitrary detention, assets seizures and judicial harassment from the government, forcing civil society activists to flee the country. The level of violence reflected a struggle for political power at the national level, and was apparently linked to leaders of the NSS, according to the report¹.

A February 2023 update by the UN Commission on Human Rights in South Sudan pointed to a continuous shrinking of political and civic space in the country².

¹ A/HRC/49/78, paras 22-28

² <https://www.ohchr.org/en/taxonomy/term/1209>

Without prejudging the accuracy of the above allegations, we express our utmost concern at the continuous solitary confinement in an unknown location of Mr. Awikjok, his abduction and subsequent enforced disappearance and deportation to South Sudan, and his alleged torture and ill-treatment. We are also concerned that his fate, his whereabouts or any charges pressed against him have not been officially disclosed to his family, and that he has not had access to legal counsel.

If confirmed, the reported torture and ill-treatment of Mr. Awikjok in police custody would amount to a violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, set forth in article 5 of the Universal Declaration for Human Rights (UDHR). Under international human rights law, victims of torture and/or other ill-treatment must be afforded a right to complain about their treatment. Any such allegation must be promptly, impartially and independently investigated and victims should receive adequate reparation, if and as appropriate.

Insofar as the deprivation of liberty of Mr. Awikjok may be related to his human rights activities, we remind your Excellency's Government that article 9 of the UDHR guarantees the right not to be subjected to arbitrary arrest or detention. In accordance with the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the UDHR is arbitrary, including the right to freedom of opinion and expression (article 19) as well as the right to peaceful assembly and association (articles 20)³.

We remind that the right to life, the right not to be subjected to torture, the prohibition of arbitrary detention and the prohibition of enforced disappearance are *jus cogens* norms, also enshrined in international customary law, from which no derogation is permitted.

We would like also to draw your Excellency's Government's attention to the absolute and non-derogable prohibition of enforced disappearances (articles 2 and 7 of the United Nations Declaration on the Protection of all Persons from Enforced Disappearance) which has attained the status of *jus cogens*. Pursuant to the mentioned Declaration no State shall practice, permit or tolerate enforced disappearances. The Declaration also 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. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 9, 10, 11, 12 and 13 relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of 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

³ See Human Rights Committee, General Comment n. 35, Article 9 (Liberty and security of persons), CCPR/C/GC/35:
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H115979OVGGB%2BWPAXjdnG1mwFFfPYGIINfb%2F6T%2Fqwtc77%2FKU9JkoeDcTWWPIpCoePGBcMsRmFtoMu58pgnmzjyiyRGkPOekcPKtaaTG>

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. Moreover, article 13 further stipulates that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority.

We also make reference to the Working Group's study on Enforced disappearance and economic, social and cultural rights (A/HRC/30/38/Add.5), in particular paragraph 33-37 which highlights the chilling effect of the disappearance of journalists and human rights defender and states are called on to, "ensur[e] the existence of and respect for cultural diversity and the existence of space where multiple opinions, positions and interpretations of history can find their expression in the public sphere diminishes the level of vulnerability of those questioning in one way or another mainstream ideas and positions, and so prevents against targeting of human rights defender" (para 49). We wish to also make reference to the Working Group's report on enforced disappearances in the context of transnational transfers ([A/HRC/48/57](#), para. 38-60) outlines a number of recommendations to States to stop and prevent these practices, conduct independent and effective investigations into possible violations, hold perpetrators accountable and provide victims and their families with the right to an effective remedy.

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 are issuing this appeal in order to safeguard the rights of Mr. Awikjok from irreparable harm and without prejudicing any eventual legal determination.

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 in compliance with international instruments.

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 any comment you may have on the above-mentioned allegations.
2. Please provide information on the fate and whereabouts of Mr. Awikjok, as well as his physical and psychological integrity, and whether he has had access to medical attention, legal representation and to his family. Please provide detailed information on the measures taken to search for him pursuant to the 2019 Guiding Principles for the Search for Disappeared Persons

3. Please provide information on any investigation into the alleged forced removal, deportation, enforced disappearance, arbitrary detention and torture and ill-treatment of Mr. Awikjok, and whether those responsible have been brought to justice, or if not, what are the reasons.
4. Please provide the factual and legal basis for the forcible removal, deportation and detention of Mr. Awikjok and how this may be compatible with international human rights law.
5. Please provide information on the measures taken to ensure that Mr. Awikjok's family is protected against ill-treatment, intimidation, or reprisal.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of Mr. Awikjok, 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 responsible of the alleged violations.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations concerning Mr. Awikjok for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be examined by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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.

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.

We would like to inform your Excellency's Government that we have sent a copy of this letter to the Government of Kenya for information.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Aua Baldé
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression