

February 26, 2018

H.E. Salva Kiir Mayardit  
President of the Republic of South Sudan  
c/o Permanent Mission of the Republic of South Sudan to the United Nations  
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Your Excellency:

**Re: Concerns regarding the detention and disappearance of lawyer Dong Samuel Luak**

I write on behalf of the Law Society of Ontario\* to voice our grave concern over the detention and disappearance of lawyer Dong Samuel Luak. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Dong Samuel Luak is a prominent South Sudanese lawyer and human rights activist. According to information available, Dong Samuel Luak went missing on January 23, 2017. Dong Samuel Luak was removed forcibly from Nairobi and detained at the National Security Service (NSS) headquarters prison facility in Juba, South Sudan. He was removed from this facility on January 27, 2017. Dong Samuel Luak's whereabouts and fate are still unknown.

Sources have advised that Dong Samuel Luak was detained by the Kenyan authorities and was at risk for deportation. When a habeas corpus application was filed on January 27th on his behalf, the Kenyan High Court ordered an investigation into his whereabouts. The confirmation that he was in Juba in the custody of South Sudanese authorities indicates that he was illegally removed from Kenya.

Opponents of the South Sudan government, real or perceived, have been targets of abuse and threats apparently from government sources, even when outside the country's borders. Numerous activists and opposition members who fled South Sudan have reported threats and intimidation by suspected South Sudanese government agents in the region. Dong Samuel Luak fled South Sudan in 2013, but continued to

denounce human rights abuses and corruption after he moved to Nairobi in August 2013.

Dong Samuel Luak was a registered refugee with the office of the United Nations Human Rights Commissioner for Refugees. The UN Convention Against Torture prohibits the return of people to places where they risk being subjected to torture or other ill-treatment. If Dong Samuel Luak was deported by Kenyan authorities, this action would be a violation by Kenya of the principle of non-refoulement under the 1951 Refugee Convention.

The forcible disappearance and return of Dong Samuel Luak to South Sudan, where he was at risk of human rights violations including torture and other ill-treatment, violates international law as well as regional and national Kenyan law. Enforced disappearances and torture are both crimes under international law in all circumstances and may be subject to prosecution as war crimes or crimes against humanity.

While Kenyan authorities have denied any involvement in or knowledge of the illegal actions, in recent years Kenya has allowed the deportation of several people with refugee status to their countries of origin.

Since South Sudan's civil war began in December 2013, the NSS has arbitrarily detained dozens of perceived opponents, often subjecting perceived opponents to torture and ill-treatment such as with electric shocks, beatings and harsh conditions. Authorities have also been responsible for enforced disappearances, with the authorities denying knowledge of a detention or abduction, as part of a campaign against those perceived to be government opponents.

On December 21, 2017, the South Sudan government and other opposition groups signed the Cessation of Hostilities Agreement (CoHA) in Addis Ababa, Ethiopia in an effort to revitalize the 2015 Agreement for the Resolution of Conflict in South Sudan. As part of the new agreement, the government of South Sudan is required to release all political prisoners and detainees, prisoners of war and anyone deprived of their liberty for reasons related to the conflict and hand them over to the International Committee of the Red Cross (ICRC).

The Law Society is deeply troubled by Dong Samuel Luak's situation and urges Your Excellency to comply with South Sudan's obligations under international human rights laws, including the United Nations' *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 17 states:

Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Furthermore, Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

The Law Society urges the Government of South Sudan to:

- a. disclose immediately the fate and whereabouts of Dong Samuel Luak;
- b. make public the reasons for Dong Samuel Luak's ongoing detention if he is in custody and, unless a legal basis for his continued detention

can be demonstrated, release him without delay and ensure that he is returned home;

- c. ensure that Dong Samuel Luak is not subjected to torture or other ill-treatment, has regular, unrestricted access to his family, lawyers of his choice and medical care;
- d. carry out a thorough, impartial and effective investigation into the enforced disappearance of Dong Samuel Luak and ensure those responsible are held to account;
- e. guarantee in all circumstances the physical and psychological integrity of Dong Samuel Luak;
- f. guarantee that adequate reparation will be provided to Dong Samuel Luak if he is found to be a victim of human rights abuses;
- g. put an end to all acts of harassment and acts of violence against lawyers in South Sudan;
- h. ensure that all people in South Sudan, including lawyers and judges, are able to exercise freely their freedom of association, peaceful assembly, opinion and expression, including when such expression is critical of government institutions and actions;
- i. ensure that all lawyers and judges in South Sudan are adequately safeguarded by the authorities such that they are able to carry out their professional duties and activities free from intimidation, hindrance, harassment, improper interference, the threat of criminalization or other human rights violations; and
- j. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Yours truly,

Paul Schabas  
Treasurer

*\*The Law Society of Ontario is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

*The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.*

cc:

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