

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) Association (2010-1)
NGA 2/2013

17 April 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 15/21, 16/4, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged arbitrary arrest and continued detention of Mr. **Okorie David Okafor** and Mr. **Odukoya Oluwaseun**.

Mr. Okafor and Mr. Oluwaseun are affiliates of the Social and Economic Rights Action Centre (SERAC), an NGO based in Lagos established in 1995 to defend the economic and social rights of the urban poor in the city and elsewhere in Nigeria. SERAC has notably been engaged in advocacy against forced evictions in the Badia East community in Lagos on 23 February 2013. The evictions in question were the subject of an allegation letter sent to your Excellency's Government on 26 February 2013 by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. We regret that to date no reply to this communication has been received.

According to the information received:

On 26 March 2013, just after 3:00 pm, a SERAC vehicle and a second vehicle owned by the organization's Executive Director, Mr. Felix Morka, were traveling on CMD Road, close to the entrance to the Lagos-Ibadan Expressway. In response to an alleged traffic violation, several police officers forcibly pulled the

passengers out of the cars, including Mr. Moroka's four young children, and reportedly proceeded to beat the drivers, resulting in severe injuries to one of them. Subsequently, the passengers, drivers and vehicles were taken into custody at the office of the Lagos State Task Force on Environmental and Special Offences. Mr. Okorie David Okafor and Mr. Odukoya Oluwaseun, as the drivers of the two vehicles, were charged under provisions of the new Traffic Law of 2012.

It is reported that the Traffic Law carries disproportionate penalties for traffic violations, up to one year's imprisonment and forfeiture of the vehicles to the State. The case is reportedly being heard before a magistrate sitting in the Special Offences Court, a court housed in the Lagos State Task Force premises which allegedly performs summary procedures. In addition to the charges, conditions for bail were set by the magistrate requiring a N200,000 (about 1,250 USD) bond, a N100,000 (about 630 USD) deposit with the Registrar of the High Court, and two guarantors, one of whom must be a senior civil servant and one of whom must have landed property in Lagos State. It is alleged that these bail conditions are excessive and disproportionate. Mr. Okafor and Mr. Oluwaseun have since been remanded in prison, while the cars remain impounded.

It is further reported that the aforementioned incident is related to a growing threat against human rights defenders working on forced evictions in Nigeria. The aforementioned incident occurred immediately following a petition filed by SERAC to the World Bank, which resulted in an investigation on 15 March 2013, of the Lagos State Government's forced eviction and demolition of the Badia East community on 23 February 2013. In its petition, SERAC alleged that 150,000 people are at risk of being evicted in the context of the USD 200 million World Bank-funded Lagos Metropolitan Development and Governance Project (LMDGP).

Sources have also called our attention to the arrest, detention and on-going harassment of five Badia East evictees who are part of a lawsuit SERAC has filed against the Lagos State Government. Increased harassment of the evicted persons sleeping outside or in makeshift structures around the demolished area in Badia East has been reported since end of March 2013. It is alleged that the Task Force is now patrolling the area daily, knocking down temporary shelters and telling evictees to move on or go elsewhere.

Concern is expressed that the arrest and continued detention of Mr. Okafor and Mr. Oluwaseun may be linked to the peaceful and legitimate activities of SERAC in defence of human rights. Further concern is expressed at the violence allegedly perpetrated by the police during the arrest and continued violence and harassment against evictees of the Badia East community.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an

independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We also wish to draw the attention of your Excellency's Government to resolution 22/6 of the Human Rights Council adopted on 21 March 2013, which Nigeria co-sponsored. The resolution calls upon States inter alia to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law, including the principle of non-discrimination, and that such legislation is not used to impede or restrict the exercise of any human right, including freedom of expression, association and peaceful assembly, which are essential for the promotion and protection of other rights.

Regarding allegations received indicating that the situation of Mr. Okafor and Mr. Olawaseun is linked to their peaceful and legitimate activities in defence of human rights, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.
- article 12 paras 2 and 3 of the Declaration which provide 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing,

through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to refer your Excellency's Government to the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, that Nigeria acceded to on 29 July 1993, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the ICCPR, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

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 Mr. Okafor and Mr. Olawaseun in compliance with the forementioned international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Okafor and Mr. Olawaseun and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.

5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please also provide the details on how the actions undertaken by public officials regarding this case are compatible with the international norms and standards of the right to freedom of opinion and expression and the right to freedom of association.

7. Please kindly indicate what measures have been taken to ensure that human rights defenders, particularly those working on forced evictions, are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Okafor and Mr. Olawaseun are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders