

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

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

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

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; 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

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16)
GMB 1/2011

10 October 2011

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 independence of judges and lawyers; 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 General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 17/2, 16/4 and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the arrest, detention and subsequent sentencing of human rights defenders Messrs. **Moses Richards** and **Lamin K. Mgohe**.

Mr. Richards is a lawyer, and former High Court Judge at the Special Criminal Division, who in the course of his work, as both a judge and a lawyer, has worked in defending victims of human rights abuses in politically sensitive cases. Mr. Mgohe is also a lawyer, and senior member of the Gambian Bar Association and a former magistrate.

According to the information received:

On 6 November 2010, it is reported that, acting on his client's instructions, Mr. Richards addressed a letter to the Sheriff of the High Court of Gambia. In the letter, Mr. Richards provided a list of grounds which according to his client would render undesirable the execution of a writ of possession.

On 15 December 2010, the Sheriff allegedly replied to Mr. Richards, copying the Office of the President among others. In his reply he reportedly accused Mr.

Richards of blackmail, showing disrespect to the Office of the President and giving false information to a public servant.

On 30 December 2010, Mr. Richards was arrested and detained at the National Intelligence Agency (NIA) headquarters in Banjul. The following day, he was reportedly charged with “giving false information” to a public servant contrary to section 114(a) of the Criminal Code and “sedition” contrary to Section 52(1)(a) of the Criminal Code. It is alleged that he was denied bail and was returned to police custody. According to information received Mr. Richards strongly denied the charges brought against him.

During the night of 2 January 2011, he was reportedly transferred to Mile II Central State prison without any court order providing for such a transfer. On 3 January 2011, following a three day strike organised by the Gambian Bar Association, the Banjul Lower Court reportedly released Mr. Richards on bail of 500 dalasis (approximately 13 Euros) and he was asked to deposit his travel documents with the Registrar of the Court.

On 19 September 2011, Mr. Moses Richards was convicted and sentenced to two years’ imprisonment with hard labour at Mile II Central State prison by the Banjul Magistrates’ Court. It is reported that he was immediately arrested and brought to Mile II Central State prison. It is alleged that the charges brought against Mr. Richards relate to acts which are ordinarily performed by lawyers in the course of representing their clients.

On 21 September 2011, the Gambia Bar Association called on the Government of the Gambia to free Mr. Richards and to prevent the degradation of the legal profession.

It is reported that such charges may form part of a pattern against human rights lawyers in the Gambia as in January 2011, similar charges of “making false documents without authority”, “false swearing” and “uttering false documents” were brought against another prominent lawyer, Mr. Lamin K. Mgobe.

On 26 January 2011, it is reported that lawyer Mr. Lamin K. Mboge was remanded at the Mile II Central State prison by the Banjul Magistrates’ Court. Mr. Mboge was charged with “making false documents without authority”, coupled with “false swearing” and “uttering false documents”, following a criminal complaint lodged by one of his clients over a landed property he allegedly sold to another prospective buyer without formal paperwork. Mr. Mboge denied the charges. On 31 January 2011, he was allegedly released on a bail of 200,000 dalasis (about 5,243 euros) with two Gambian sureties who must have landed properties within the greater Banjul area and should deposit their national identity

cards at the office of the Registrar. It is reported that as of today, the trial is still ongoing.

It is reported that the charges brought against both lawyers may have been fabricated in the lead up to the Presidential elections which are scheduled to take place on 24 November 2011, as an attempt to silence Gambian civil society and to intimidate those who promote human rights.

Concern is expressed that the arrest, detention and subsequent sentencing of Mr. Richards may be directly linked to his legal work in defence of human rights and the legitimate practice of his profession. Concern is further expressed that the case of Messrs. Richards and Mgobe may be an attempt to intimidate those, and in particular lawyers, who work in defence of human rights in the Gambia. Finally, concern is expressed regarding the physical and mental integrity of the aforementioned human rights defenders.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's Government's attention to the right to physical and mental integrity of Messrs. Moses Richards and Lamin K. Mgobe.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Richards is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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 and articles 9 and 14 of the International Covenant on Civil and Political Rights.

In this connection, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, 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."

Regarding the allegations that the charges brought against Messrs. Moses Richards and Lamin K. Mgobe are linked to their work as lawyers, we wish to draw the attention of your Excellency's Government to the Basic Principles on the Role of Lawyers (Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990), in particular principle 18 which stipulates that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions"; and principle 20 which states that "Lawyers shall enjoy civil and penal immunity for relevant statements made in

good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.”

We would also 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 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

- 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 urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Messrs. Moses Richards and Lamin K. Mgohe 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.

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 Messrs. Moses Richards and Lamin K. Mgobe in compliance with the above 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 above summary of these cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide detailed information on the legal basis for the charges brought against Messrs. Richards and Mgobe, as well as the arrest, subsequent sentencing and detention of Mr. Richards. Please also explain how these measures are compatible with international human rights norms and standards on the right to a fair trial as enshrined, inter alia, in article 14 of the International Covenant on Civil and Political Rights.
5. Please provide information about how the charges against the aforementioned lawyers and the sentence against Mr. Richards are compatible with international human rights norms and standards on the right to freedom of opinion and expression, as contained, inter alia, in the International Covenant on Civil and Political Rights (ICCPR), and international human rights norms and standards on the status and protection of human rights defenders as contained in, inter alia, the Declaration on human rights defenders.
6. In the event that the arrest and trial against of Mr. Richard is found to be unlawful under the applicable domestic law, please indicate whether, in accordance with international law, any disciplinary, administrative or penal action against the alleged perpetrators is provided for in national law, and if so, whether any such action has been taken and what they have resulted in.

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.

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

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

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