

**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 and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL NGA 4/2019

17 September 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 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 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of **Mr. Omoyele Sowore**.

Mr. Omoyele Sowore is a political activist, former Presidential candidate, and the founder of Sahara Reporters, an online news agency based in New York City that focuses on corruption, human rights abuses and other political misconduct in Nigeria.

According to the information received:

On 3 August 2019, Mr. Omoyele Sowore, who was travelling to Lagos, was arrested. The Security officers that arrested him did not inform him about charges brought against him, and later flew him to Abuja, where he has since been detained at the facility of the State Security Services. He was reportedly held incommunicado from 3 to 6 August 2019, during which time he had no access to a lawyer. On 6 August 2019, the Department of State Services brought an ex parte order from the Federal High Court in Abuja under Section 27(1) of the Terrorism Act 2013, which enables the detention of anyone planning to "commit an act of violence". On 8 August 2019, the Court issued the said order, which allows for the detention of Mr. Sowore for 45 days. On 28 August 2019, the Federal High Court rejected an application challenging the order filed by Mr. Sowore's lawyer.

The arrest and detention of Mr. Sowore follows a call he made on social media for a peaceful protest to take place on 5 August 2019, using the hashtag #RevolutionNow. The protest was meant to "demand the implementation of a minimum wage for Nigerians; the realisation of free education for all; the release of political prisoners and an end to systemic corruption; and measures for an economy that works for all". Reportedly, the announcement, made on social media on 27 July 2019, clearly called for a peaceful demonstration. The "rules of

engagement” reportedly called for the following: “We eschew all forms of violence. No protester should throw any object as little as stones or attack any security officials. We are aware of their intent to provoke the mass unduly by using undue tactics and sponsored agents, so as to give the protest a bad name. We encourage all Nigerians to remain calm as we are ready to fight these injustices to a logical conclusion.”

We express our concerns at the arrest and detention of Mr. Sowore, which appears to relate to his call for a peaceful protest in exercise of the rights to freedom of expression and of peaceful assembly. In this regard, we express further concern at the use of counter-terrorism legislation to criminalise expression that is dissenting or critical.

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 therefore 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 about the factual and legal basis for the arrest and detention against Mr. Sowore, as well as about his incommunicado detention and lack of access to a lawyer, and explain how they are compatible with the obligations of your Excellency’s Government under international human rights law, in particular with articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights.
3. Please provide information on the steps taken by your Excellency’s Government to safeguard the rights of freedom of expression and of peaceful assembly of the above-mentioned person in compliance with international human rights standards.
4. Please provide information regarding what steps have been taken to ensure a safe and enabling environment for human rights defenders to carry out their work free from fear or threats of violence, intimidation or other harassment, including judicial harassment.
5. Please provide information in details of how your Excellency’s Government’s counter-terrorism efforts comply with the United Nations Security Council resolutions [1373 \(2001\)](#), [1456\(2003\)](#), [1566 \(2004\)](#), [1624 \(2005\)](#), [2178 \(2014\)](#), [2341 \(2017\)](#), [2354 \(2017\)](#), [2368 \(2017\)](#), [2370 \(2017\)](#), [2395 \(2017\)](#) and [2396 \(2017\)](#); as well as Human Rights Council resolution [35/34](#) and General Assembly resolutions [49/60](#), [51/210](#), [72/123](#) and

[72/180](#), in particular with international human rights law, refugee law, and humanitarian law.

We would appreciate receiving a response within 60 days. Following this period, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

Leigh Toomey  
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

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**

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.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Sowore 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 14 of the International Covenant on civil and political rights (ICCPR), acceded to by Nigeria on 29 July 1993. We recall that "Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9" (CCPR/C/GC/35 para 17).

We would further like to refer your Excellency's Government to article 19 and 21 of the ICCPR, which protect the rights to freedom of opinion and expression and to freedom of peaceful assembly. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3) and 21 ICCPR, we recall that the State has to demonstrate that it is necessary to achieve a legitimate objective.

In this context, we wish to refer to resolution 12/16 of the Human Rights Council, which calls on States to refrain from imposing restrictions on discussion of government policies and political debate and reporting on human rights. In the same vein, the Human Rights Committee also clarified that States are required to ensure that the exchange of information and ideas about political issues between citizens, candidates and elected representatives can take place freely and without fear of repercussion (CCPR/C/GC/34, para. 20). Further, any restrictions on freedom of expression that a State may seek to institute under article 19(3), must not infringe upon the freedom to hold open political debate (CCPR/C/GC/34, para. 28).

In a recent report to the Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur clarified that stifling dissent and controlling the online space is not a legitimate government aim and directly infringes article 21. No person should be held criminally, civilly or administratively liable for the mere act of organising or participating in a peaceful protest (A/HRC/41/41, para. 40).

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would

like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence.

We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

In addition, the Special Rapporteur would also like to bring to the attention of the Government her 2018 report A/HRC40/52 entitled "Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders", and in particular would like to reiterate her observation at paragraph 36 "national counter-terrorism legislation increasingly includes provisions that restrict rights that are key to civil society: freedom of expression and opinion, freedom of association, freedom of assembly and freedom of religion". She would also like to bring to the attention of the Government paragraphs 75 (a) to (i) of the same report.