

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL NGA 6/2020

28 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 44/5, 42/22, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged excessive use of force by police and soldiers against individuals protesting police brutality leading to the deaths and injuries of protesters, as well as the lack of investigations into human rights violations allegedly committed by the Special Anti-Robbery Squad (SARS).**

According to the information received:

Excessive use of force against protestors

Since 8 October 2020, protests have taken place in 21 states of Nigeria against police brutality, killings and extortion by the Special Anti-Robbery Squad (SARS), as part #EndSARS movement which was launched in November 2017.

The protests were triggered after a video began to circulate of SARS officer beating a man to death.

The protestors have five demands:

- Immediate dissolution of SARS and release of all arrested during the protests;
- Justice and compensation for all who died through police brutality;
- An independent body to be set up within 10 days to investigate and prosecute all reports of police misconduct,
- Psychological evaluation and retraining of SARS operatives before they are deployed to any other Police Unit; and,
- Adequate remuneration for Nigerian Police.

In response to the largely peaceful protests, the police have used water cannons, tear gas and live ammunition at protestors leading to an unknown

number of deaths. Hundreds of protestors have been injured, including after being beaten by police officers with sticks and batons. An unknown number of individuals have been arrested. Allegedly armed men believed to be supported by the security forces or authorities in some cases have attacked some protestors or attempted to make protests violent. Reportedly, at least 56 people have died across the country since the 8 October 2020.

Specific incidents and responses from the authorities include:

- On 10 and 11 October 2020, protests were dispersed in Ogbomoso, Oyo, leading to the deaths of three people and injuries to others.
- On 11 October 2020, police dispersed protestors in Abuja with tear gas and water cannons and beat protestors with sticks and batons.
- Also on 11 October, the Inspector General of the Police dissolved the SARS and called for its members to be re-deployed.
- On 12 October 2020, police in Surulere, Lagos opened fire to disperse protestors. Reportedly dozens of protestors were arrested and police refused to allow some of them to access their lawyers. They were later released after interventions from senior government officials.
- On 13 October 2020, a press release from the Presidential Spokesperson noted that the Federal Government agreed to the protestors' five demands following a meeting with various stakeholders including the Inspector General of Police, the National Human Rights Commission (NHRC), Ministry officials, representatives of civil-society organisations and activists. Also on 13 October 2020, the Public Relations Officer of the Nigerian Police Force announced the SARS would be replaced by a "Special Weapons and Tactical Team."
- On 14 October 2020, protestors in Abuja were attacked by "thugs" resulting in the death of a bystander.
- On 15 October 2020, the National Economic Council directed regional state governments and the Federal Capital Territory Administration to establish judicial panels of inquiry to investigate police brutality including extrajudicial killings and other violations committed by the SARS and other units and to reach out to protestors in this process. The NHRC has also announced another Independent Investigative Panel as well as several measures to implement recommendations from a previous panel on SARS including naming 35 officers to be prosecuted, 50 to be demoted, the payment of financial sums to 30 victims and public apologies from the police to 15 families.
- Also on 15 October 2020, protestors in Lagos were attacked by "thugs," armed with machetes and axes. The Federal Government prohibited demonstrations in the Federal Capital Territory.

- On 17 October 2020, protesters in Osun were attacked by “thugs,” leading to the deaths of two protestors.
- On 19 October 2020, Benin prison in Edo state was attacked by “thugs” leading Edo state to declare a curfew.
- On 20 October 2020, there was violence by “thugs” in Lagos, in response to which the Governor announced a 24 hour curfew coming into operation on 4 p.m. of the same day and called for protestors to stay home.
- At 4.45 p.m. on 20 October 2020, Lagos state workers were witnessed dismantling the CCTV cameras at Lekki Toll Gate where peaceful protestors had gathered and were singing and waving Nigerian flags.
- At 6.45 p.m. soldiers arrived in the Lekki Toll Gate area and street lights went off. The soldiers opened fire without warning. At least 12 individuals were killed at Lekki Toll Gate. The Lagos state Governor stated 25 people were injured but denied that any individuals had been killed. During the incident, soldiers prevented ambulances from entering the area to treat injured individuals, some of whom later died. Some of those killed and injured were taken away by the military. The Nigerian Army claims that no troops were deployed in the area.
- At around 8 p.m on the same evening, protestors at Alausa were attacked by soldiers and police from the Rapid Response Squad, leading to two deaths and one critical injury.
- On 21 October 2020, the Vice President issued tweets expressing his condolences for those killed in the Lekki Toll Gate and promising justice.
- Also on 21 October 2020, protestors in Lagos attacked and set on fire two Bus Rapid Transit stations, a TV station, and the National newspaper and attempted to break into the Oriental hotel. These buildings are linked to the former Governor of Lagos state who is reported to own the Lekki Toll Plaza and believed to have instigated actions against the protestors at the Plaza for blocking the area. Several police stations were also set on fire in Lagos and there were reports of arson attacks in other parts of the country including Enugu, Umuahia and Aba and reported fatalities including in other parts of Lagos.
- On 22 October 2020 there were several attacks on prisons. Detainees are reported to have escaped from prisons in Ondo and Delta state and an attempted escape from the Correctional Service Centre Ikoyi was foiled.

- Also on 22 October 2020, the President addressed the nation without mentioning the Lekki Toll Gate incident.
- Several states have announced curfews. The Inspector General of Police announced the deployment of riot police nationwide.

Previous investigations into the SARS

The SARS had been accused of numerous alleged human rights violations since its establishment including widespread torture, deaths in custody and extrajudicial killings.

Since 2015, the authorities have announced several plans to ban or reform SARS. In August 2018, the Inspector General of the Police announced a reform, renaming the squad as the Federal Special Anti-Robbery Squad (FSARS), which would be overseen by a high-ranking police officer. Its mandate was limited to armed robbery and kidnappings.

Also in August 2018, the then Acting President directed the NHCR to investigate the allegations against SARS. In June 2019 the NHRC presented its report to the President. The report was not made public. In October 2020, the report was presented to the Attorney General, Minister of Justice and the Police Service Commission.

Use of the military in policing

As of January 2020, the military was involved in security operations in 35 of the 36 states of Nigeria, including taking over policing functions and leading to multiple extrajudicial killings in different areas.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concern at multiple alleged incidents of excessive use of force by police and soldiers to disperse peaceful protests denouncing human rights violations carried out by the SARS, including violations reportedly leading to the deaths of protestors. We are particularly alarmed by allegations that the CCTV cameras were disabled and lights turned off in the Lekki Toll Gate incident prior to soldiers using live ammunition on protestors which suggests the actions may have been premeditated. We are also concerned by the alleged arrests and beating of protestors as well as the attacks on protestors by armed individuals alleged in some cases to have been supported by the security forces or authorities. While we note the abolishment of the SARS and the announcement that the protestors' demands will be met, we are concerned by the formation of another unit. We are further concerned that there has been, to date, no full investigations into alleged human rights violations committed by the SARS or other branches of law enforcement.

We underline that peaceful assemblies should not be subject to use of force by law enforcement officials. Where force is unavoidable, it must comply with the strict principles of necessity and proportionality, as per international law and standards. Firearms should only be used against an imminent threat either to protect life or to prevent life-threatening injuries. Should lethal force be used, restraint must be

exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary. We are seriously concerned that the allegations received indicate that the force used in relation to these protests do not comply with international human rights norms.

With regard to the reports of attacks on protesters by armed individuals we underline that the State has a responsibility to protect peaceful protesters and ensure that there is an enabling environment for protesters to assemble safely, and to take action against those who instigate violence.

We further wish to recall that arrests as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression and freedom of assembly (see Human Rights Committee General Comment No. 35, para. 17).

We note that in a 2005 visit report, the then Special Rapporteur on extrajudicial, summary or arbitrary executions observed that there have been frequent complaints of arbitrary and excessive use of force, but few, if any investigations or prosecutions (E/CN.4/2006/53/Add.4, para 60). We further note that Nigeria has accepted recommendations to prevent, investigate and prosecute law enforcement officials suspected of committing human rights violations such as extrajudicial executions during its Universal Periodic Review cycles.

We would also like to refer to the end of visit statement issued by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 2 September 2019, which noted that there were countless allegations of excessive use of force by police in Nigeria and that the SARS had been accused of multiple human rights violations. Additionally, she highlighted the legislation governing the use of lethal force including provisions of the Code of Criminal Procedure, the Administration of Criminal Justice Act, and the Police Order 237, is problematic as it authorizes the use of force without adequately restricting the nature of the force and setting out the principles of necessity or proportionality.

We also concur with the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions in her end of mission statement, including that (i) the Government, under the leadership of its President, draws a road map to address the quasi systemic absence of effective investigations and prosecution and of access to justice, particularly for the most vulnerable Nigerians; (ii) Every death or serious injury in police custody, and every alleged extrajudicial execution, ought to be adequately and impartially investigated by an independent body. Officers suspected of being responsible should be suspended pending investigation; those who use legitimate lethal force should be cleared and those who are implicated in extrajudicial executions should be dismissed and brought before an ordinary civilian court and guaranteed the right to a fair trial in accordance with international standards without recourse to the death penalty; (iii) The Government should condemn publicly all extrajudicial executions and other unlawful killings, including of suspected armed robbers, and announce that perpetrators will be brought to justice in fair trials before ordinary civilian courts and without recourse to death penalty.

We concur with, and call on Nigeria to act urgently upon, the recommendations made by the Human Rights Committee in its Concluding Observations in 2019 which recommended that Nigeria “take measures to effectively prevent and eliminate all forms of excessive use of force by law enforcement agents, including by revising legislation and policies controlling the use of force by law enforcement officials, taking due account of the Committee’s general comment No. 36 on the right to life and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Should the facts alleged above be confirmed, they would amount to a violation of the right to life, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security and the rights to freedom of opinion and of peaceful assembly, as codified in articles 6, 7, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) to which Nigeria accessed on 29 July 1993.

In this connection, we refer your Excellency’s Government to the **Annex on Reference to international human rights law** attached to this letter, which enumerates some of the main international human rights norms and standards that appear to be contravened by the previous 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 be grateful for the observations of your Excellency’s Government on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legality, necessity and proportionality of the law enforcement officials’ use of force in the context of the above-mentioned recent demonstrations. Please explain measures taken to ensure that the use of force is exercised in compliance with international human rights law, particularly the right to life and the rights to freedom of opinion and of peaceful assembly.
3. Please provide information on measures taken by your Excellency’s Government to carry out a prompt, impartial, independent and effective investigation into the alleged excessive force and deaths of protestors and any measures taken to hold any perpetrators accountable. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information for the reasons thereof.
4. Please provide information on any investigations conducted into the attacks on protestors by armed individuals, and reports that these groups may have been supported by or backed by the security forces or authorities.
5. Please provide information on the number of people arrested and detained during the above-mentioned protests including the number of

those who have been released and of those who are still in detention. Please also provide information on the legal and factual basis for the arrests and detention of protesters, including any charges brought against them.

6. Please provide information on any investigations into alleged human rights violation committed by the SARS, including information on the incidents being investigated, the alleged offences and the number of individuals prosecuted. Please also provide information on the reported formation of a Special Weapons and Tactical Team and the steps taken to ensure the new Team carries out its duties in line with human rights standards.
7. Please provide information on measures taken to ensure legislative provisions regulating the use of force by law enforcement officials is in line with international human rights standards.

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.

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 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.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

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Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

With regard to Article 6 of the ICCPR, the Human Rights Committee, charged with monitoring compliance with the Covenant, has indicated that the obligation under Article 6 "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 even if such threats and situations do not result in loss of life", CCPR/C/GC/36 para. 7. The obligation entails taking all necessary measures to prevent arbitrary deprivations of life, including by soldiers tasked with law enforcement missions, *ibid.* para. 13

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes "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 like to remind your Excellency's Government that any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19 (3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We further recall that the ICCPR guarantees the rights to freedom of peaceful assembly and of association in its articles 21 and 22. These rights can be subject to certain restrictions in strict conditions of necessity and proportionality.

In the policing of assemblies, the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from harm (CCPR/C/GC/AGO/CO/1 para 21). In this regard we refer to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). In particular, principle 9 provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. Principles 12, 13 and 14 restrict the use of firearms to situations of violent assemblies and provide that force and firearms may only be used as a last resort when unavoidable and require exercising the utmost restraint. Should lethal

force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

We should like to refer to General Comment N° 37 on article 21 of the International Covenant on Civil and Political Rights which stipulates that “Only law enforcement officials trained in the policing of assemblies, including on the relevant human rights standards, should be deployed for that purpose. Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies. The military should not be used to police assemblies, but if in exceptional circumstances and on a temporary basis they are deployed in support, they must have received appropriate human rights training and must comply with the same international rules and standards as law enforcement officials.” (CCPR/C/GC/37, para.80).

We further refer to the compilation of practical recommendations for the proper management of assemblies (A/HRC/31/66) recalls that the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality (para. 57). These principles apply to the use of all force, including potentially lethal force. Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Furthermore, firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60).

According to article 9 of the ICCPR, anyone deprived of liberty shall be immediately informed about the reasons for the arrest, promptly notified about the charges and brought before a judge. Under article 9 (3), pre-trial detention must not be the rule but an exception, which needs to be necessary, proportional and only in the interest of justice.

Article 9 (4) of the Covenant provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. In this respect, “[t]he right to bring proceedings applies in principle from the moment of arrest and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible. In general, the detainee has the right to appear in person before the court, especially where such presence would serve the inquiry into the lawfulness of detention or where questions regarding ill-treatment of the detainee arise. The court must have the power to order the detainee brought before it, regardless of whether the detainee has asked to appear” (CCPR/C/GC/35, para. 42) . Moreover, “[t]o facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take

proceedings for a decision on the lawfulness of their detention” (Ibid, para. 46; see also A/HRC/45/16, paras. 50-55).

Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary (See General Comment No. 35 of the Human Rights Committee, paras. 17 and 53). Article 10 requires for all persons under any form of deprivation of liberty to be treated with humanity and with respect for the inherent dignity of the human person.

With regards to security of person in article 9(1) of the ICCPR, this right concerns freedom from injury to the body and the mind, or bodily and mental integrity regardless of whether the victim is detained or non-detained (CCPR/C/GC/35, para. 3 and 9). As interpreted by the Committee, “the right to personal security also obliges States parties to take appropriate measures (...) to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury”. Furthermore, we would like to recall that “States have a duty to prevent and redress unjustifiable use of force in law enforcement” (CCPR/C/GC/35, para. 9).