

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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

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(Please use this reference in your reply)

30 March 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 43/16, 44/5, 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 a number of threats and attacks against survivors of the Lekki shooting of 20 October 2020, including against witnesses in the Judicial Panel of Inquiry (JPI), Ms. Ibeh Kamsyochukwu ('Kamsi') and Ms. Dabira Adeyinka. Ms. Kamsyochukwu and Ms. Adeyinka are human rights defenders and members of the #EndSARS movement, and Ms Adeyinka is also the coordinator of the support group for the victims of the Lekki Tollgate shooting.

#EndSARS is a decentralized social movement and series of mass protests against police brutality in Nigeria. Their slogan calls for the disbanding of the Special Anti-Robbery Squad (SARS).

Special Procedures mandate holders have previously raised their concerns with your Excellency's Government concerning the 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) in communication NGA 6/2020, dated 28 October 2020. We regret that no response has been received to date to this communication. Special Procedures mandate holders also sent a communication about the threats made against Amnesty International Nigeria, that has documented the crackdown on the #EndSARS movement and the Lekki Toll Gate shooting, in communication NGA 7/2020. No response has been received yet to this communication either.

According to the information received:

In the evening of 20 October 2020, at around 18:50, as peaceful and unarmed end-SARS protesters gathered and sang the national anthem, they were reportedly barricaded by Nigerian armed forces at Lekki Toll Gate, in Lagos State. The armed forces then opened fire at the unarmed protesters. At least 12 protesters were reportedly killed during the shooting. The Nigerian Army initially denied the shooting but later stated that it had deployed soldiers at the toll gate on the orders of the governor of Lagos State. It is reported that pro-government supporters instigated violence at many of the demonstrations, providing cover for the police to use lethal force against peaceful protesters.

The aim of the crackdown was reportedly to instil fear, discourage peaceful protests and punish those demanding an end to widespread human rights violations by the police.

Despite witnesses and evidence about the shooting, government officials allegedly continued to deny that it had taken place. The Nigerian government issued a directive to all the states to set up judicial panels of inquiry to investigate complaints against SARS. The Lagos State Government eventually opened a Judicial Panel of Inquiry (JPI) to investigate the allegations, along with other documented abuse committed by the SARS. However, government officials and the military continue to deny that anybody was killed during the protests while restating their resolve to punish leaders of the #EndSARS movement against police violence.

It is reported that the investigation of the JPI has been repeatedly impeded by both the government and the army. The Nigerian Army has disbanded its legal team for the Lagos State Judicial Panel, effectively pulling out of the investigative hearing as more evidence surfaced indicating that Nigerian soldiers shot at peaceful protesters in October 2020. On 23 January 2021, the Nigerian Army, for the third time, failed to honour the summons issued to its officers by the Judicial Panel to appear before it. The Nigerian Army have also failed to present the officers involved in the shooting of the protestors.

In November 2021, the [JPI released a detailed report](#), detailing the violations that took place, and supporting the accounts of witnesses, as well as the repercussions that some of the witnesses have experienced.

Following the release of the JPI report, one of the survivors of the Lekki Toll Gate shooting, Ms. Ibeh Kamsyochukwu ('Kamsi') who testified before the panel, was attacked by a group of men with machetes. She survived this attack but has since feared for her life. A fellow survivor of the Lekki shooting, Ms. Dabira Adeyinka, took Kamsi to the hospital, recounting that "*Kamsi was butchered. Her bones were showing.*".

As Ms. Adeyinka exited the hospital, she found a note on her car, stating "*You're next. Game on.*" The note was accompanied by an image of her giving testimony to the JPI panel, but with the head removed from the photo.

So far no member of the army or security forces have been prosecuted for the human rights violations committed, while the judicial panels of inquiry set up to investigate abuses by officers have made very little progress. At the same time, witnesses to the inquiry panel proceedings, including Ms. Kamsyochukwu and Ms. Adeyinka, have been the subject of physical attacks and serious death threats.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we would like to express our most serious concerns about the threats and attacks, including death threats, against human rights defenders and activists of the #EndSARS movement, especially against those providing witness statements and evidence to the Judicial Panel of Inquiry. We are alarmed by the numerous alleged incidents of excessive use of force by the Nigerian armed forces, including violations that have reportedly led to the deaths of at least 12 protesters. We also express

concerns that so far no prosecutions of convictions have taken place neither with regards to the excessive use of force by the police and the military, nor regarding the threats and attacks against witnesses of the JPI proceedings.

We are troubled by the reported use of lethal force against unarmed protesters. In this regard, we would like to draw the attention of your Excellency's Government to the statement made by the then Special Rapporteur on extrajudicial, summary or arbitrary executions at the conclusion of the visit to Nigeria on 2 September 2019, which highlights that the legislation governing the use of lethal force, including the provisions of the Code of Criminal Procedure, the Administration of Criminal Justice Act, and the Police Order 237, are troublesome as they authorize the use of force without adequately restricting the nature of the force and setting out the principles of necessity or proportionality. In this regard, we wish to remind your Excellency's government that under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. In this regard, we reiterate the recommendations made by the Special Rapporteur in her report on the visit to Nigeria of 11 June 2021 (A/HRC/47/33/Add.2), inter alia, that your Excellency's Government should publicly condemn all extrajudicial executions and other unlawful killings and express commitment to pursue accountability for those crimes; establish professionally staffed and appropriately equipped forensic laboratories in key regional centres, and end all use of the military in public order situations while ensuring that police officers are adequately trained and equipped to deal with crowd control situations with the minimum use of force, in line with international law and standards.

We are further concerned by the alleged denial of the existence of shootings and the failure to carry out prompt, effective and ex officio investigations into incidents of shootings and to bring the alleged perpetrators to justice. We note that it has previously been observed by United Nations human rights mechanisms that there were 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). In its General Comment No. 36, the Human Rights Committee noted that investigations and prosecutions of potentially unlawful deaths should be conducted in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Deaths (2016), and must aim to ensure that those responsible are brought to justice, promote accountability and prevent impunity, and draw the necessary lessons for revising practices and policies to avoid repeated violations. We fear that if the allegations presented here are confirmed to be true, your Excellency's Government will have violated relevant international law and standards.

We express grave concern about the alleged death threats against Ms Adeyinka. In this regard, we remind that States must ensure effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats and must take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life including if appropriate through special measures such as the assignment of around-the-clock police protection.

We take note of, 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 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 be grateful for your observations 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 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. Please also include information on the investigations’ compliance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016). Please include information on whether the bodies of the killed protestors were examined by a medical and forensic doctor to determine the cause and circumstances of their death and if so please provide information on the findings. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information for the reasons thereof.
3. 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.
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 any investigations conducted into the attacks on and death threats against human rights defenders and witnesses Ms. Ibeh Kamsyochukwu and Ms. Dabira Adeyinka. If no investigations have taken place, please inform us why.
6. Please provide information on steps taken by your Excellency's government to ensure that human rights defenders, including #EndSARS activists and witnesses of JPI proceedings are able to carry out their work without fear of any intimidation, threats or reprisals in an enabling environment.
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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
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

Annex

Reference to international human rights law

In connection with above alleged facts 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. In addition, in its General Comment No. 31, the Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR.

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 right to freedom of peaceful assembly in its article 21. This right 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. Furthermore, General Comment 36 expects States Parties to take all necessary measures to prevent arbitrary deprivation of life by their law enforcement officials, including soldiers assigned to law enforcement missions. These measures include appropriate legislation to control the use of lethal force by law enforcement, procedures to ensure that law enforcement actions are properly planned consistent with the need to minimize the risk they pose to human life, mandatory reporting, review and investigation of lethal and other life-threatening incidents, and the provision of effective "less lethal" means and adequate protective equipment to forces responsible for crowd control to obviate the need to use lethal force.

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).

We would like to remind your Excellency’s Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency’s Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. This principle was reiterated by the Human Rights Council in Resolution 17/5 on the “Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions” (OP 4). The Council added that this includes the obligation “to identify and bring to justice those responsible ... to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions.” In addition to this, we would like to remind your Excellency’s Government that the Minnesota Protocol on the Investigation of

Potentially Unlawful Death states that “Investigations must, at a minimum, take all reasonable steps to: [... (e)] Determine who was involved in the death and their individual responsibility for the death” and “The investigation must determine whether or not there was a breach of the right to life. Investigations must seek to identify not only direct perpetrators but also all others who were responsible for the death, including, for example, officials in the chain of command who were complicit in the death” (para. 25).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association stated in a report in 2021 that providing accountability for violations of the rights to freedom of peaceful assembly and of association is essential to guarantee full exercise of those rights (A/HRC/47/24, para. 27). It was further indicated that “[a]ll complaints of human rights violations in the context of peaceful assemblies must be promptly, independently and thoroughly investigated. Additionally, a crucial element is to ensure accountability, bring perpetrators to justice, combat impunity and avoid repetition. It is also key that authorities publicly recognize when violations occur” (A/HRC/47/24, para. 46). Moreover, all perpetrators must be brought to justice and victims must be offered reparation even when they did not ask for remedies (A/HRC/47/24, para. 74, (f)).

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).

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

We would also like to refer to 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, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 12.

Article 12, paragraphs 2 and 3 of the Declaration provides that the State shall take all necessary measures to ensure the protection of everyone 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 regard, we would also like to refer your Excellency's Government to paragraph 4 of the Prevention and Investigation Principles according to which it is incumbent upon States to provide "effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats". The duty to protect the right to life requires State parties to take special protective measures for persons in situations of vulnerability who have been placed at particular risk because of specific threats, including human rights defenders. Following the Committee, State parties must respond "urgently and effectively" in order to protect individuals who find themselves under a specific threat, including by adopting special measures such as the assignment of around-the-clock police protection (CCPR/C/GC/36, para. 23). States parties may be in violation of article 6 even if such threats and situations do not result in loss of life (para. 7).