

PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Omoyele Sowore,
Citizens of the Federal Republic of Nigeria

v.

Government of the Federal Republic of Nigeria

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7¹
Submitted By:

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¹Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to *UN General Assembly Resolution 60/251*, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

Basis for Petition

As set forth in the attached Petition, the Government of the Federal Republic of Nigeria is arbitrarily depriving Omoyele Sowore of his liberty and continues to arbitrarily detain him. Mr. Sowore is a citizen of Nigeria and has been detained since August 3, 2019. He continues to be detained with stringent bail conditions and without access to his family.² An opinion is therefore sought from the Working Group finding Mr. Sowore's ongoing pretrial detention to be arbitrary and in violation of Nigeria's obligations under international law.

Mr. Sowore is a prominent human rights defender, journalist, pro-democracy campaigner, former presidential candidate and founder of Sahara Reporters -- a citizen's journalism platform that focuses on exposing corruption, human rights abuses and other political misconduct in Nigeria. Sowore has been a catalyst of change in Nigeria. He advocates against political corruption in Nigeria, the growing wealth gap, income inequality, the broken health care system and the inability for college graduates to find gainful employment.³ His Twitter account, has a following of over 100,000 people, where he is openly critical of President Buhari and human rights abuses attributed to his administration.⁴

In 2019, Sowore launched a movement he called "#RevolutionNow", which called for a nationwide peaceful protest against political corruption and bad governance. His political party, Africa Action Congress, declared August 5th the beginning of "Days of Rage" to further protest the lack of a level playing field in the February 2019 elections. Two days prior to the planned protest, the Nigerian Department of State Services (DSS) arrested Mr. Sowore for "threatening public safety, peaceful co-existence and social harmony in the country."⁵ There was no warrant for Mr. Sowore's arrest and he was detained in DSS custody for five days without being brought before a judge. Three days after his arrest, on August 6th, the Department of State Services sought an *ex-parte* order from the Federal High Court in Abuja to detain Sowore for an additional 90 days to conduct investigations without formally charging him. The court granted an order to detain Mr. Sowore for 45 days on August 8th, under a vague 2013 anti-terrorism legislation. When Mr. Sowore's legal team filed a motion to quash the 45-day detention order, the court refused to hear the motion until September 21st- the day the detention order expired. Mr. Sowore was detained for a total of 48 days without any formal charges filed against him. On September 20th seven criminal charges were levied against him:

- **Count 1:** (Conspiracy to commit Treasonable Felony, contrary to Section 516 of the Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004): Omoyele Stephen Sowore and Olawale Adebayo Bakare under the aegis of Coalition for Revolution (CORE), sometime in August 2019 in Abuja, Lagos and other parts of Nigeria did conspire to stage a revolution campaign on the 5th day of August 2019 tagged "#RevolutionNow" aimed at removing the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria during his term of office otherwise than by constitutional means.

² Alexis Shane, *Bergen County Resident, Nigerian Journalist Offered Stringent Bail and Remains in Prison*, NORTH JERSEY RECORD (Oct. 4, 2019), <https://www.northjersey.com/story/news/2019/10/04/nigerian-journalist-omoyele-sowore-offered-bail-but-remains-prison/3863751002/>

³ Nayaba Arinde and Chinedu Onyemaobi, *He Named His Movement "Revolution Now" and They Jailed Him*, AMSTERDAM NEWS (Aug. 8, 2019), <http://amsterdamnews.com/news/2019/aug/08/he-named-his-movement-revolution/>

⁴ Omoyele Sowore (@YeleSowore), Twitter (Aug. 2, 2019, 3:21pm), <https://twitter.com/YeleSowore/status/1157416280334491649>

⁵ THE NEWS, *Why We Arrested Sowore- DSS*, THE NEWS (Aug. 4, 2019), <https://www.thenewsnigeria.com.ng/2019/08/why-we-arrested-sowore-dss/>

- **Count 2:** (Treasonable Felony, contrary to Section 41(c) of the Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004): Omoyele Stephen Sowore and Olawale Adebayo Bakare under the aegis of Coalition for Revolution (CORE), sometime in August 2019 in Abuja, Lagos and other parts of Nigeria did conspire to stage a revolution campaign on the 5th day of August 2019 tagged “#RevolutionNow” aimed at removing the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria during his term of office otherwise than by constitutional means.
- **Count 3:** (Cyberstalking contrary to Section 24(1)(b) of the Cybercrimes (Prohibition, Prevention) Act, 2015): Omoyele Stephen Sowore, knowingly sent messages by means of press interview granted on “Arise Television” network which he knew to be false for the purpose of causing insult, enmity, hatred and ill-will on the person of the President of the Federal Republic of Nigeria.
- **Count 4:** (Transfer of funds contrary to Section 15(1) of the Money Laundering (Prohibition) Act, 2011): Omoyele Stephen Sowore on or about the 2nd day of April 2019 at Lagos and Abuja, transferred by means of swift wire, the sum of Nineteen Thousand, Nine Hundred and Seventy Five Dollars (\$19,975) from his United Bank for Africa Plc Account No.3002246104 credited by City Bank, New York City, USA, into Sahara Reporters Media Foundations GTB Account No.0424048298 with the aim of concealing or disguising the illicit origin of the funds.
- **Count 5:** (Transfer of funds contrary to Section 15(1) of the Money Laundering (Prohibition) Act, 2011): Omoyele Stephen Sowore on or about the 21st of May 2019 at Lagos and Abuja, transferred by means of swift wire, the sum of Twenty Thousand, Four Hundred and Seventy-Five Dollars (\$20,475) from his United Bank for Africa Plc Account No.3002246104 credited by Sahara Reporters Media Group Incorporated, New York, USA, via City Bank, N.A., New York City, USA with the aim of concealing or disguising the illicit origin of the funds.
- **Count 6:** (Transfer of funds contrary to Section 15(1) of the Money Laundering (Prohibition) Act, 2011): Omoyele Stephen Sowore on or about the 27th day of June 2019 at Lagos and Abuja, transferred by means of swift wire, the sum of Sixteen Thousand, Nine Hundred and Seventy-Five Dollars (\$16,975) from his United Bank for Africa Plc Account No.3002246104 credited by Sahara Reporters Media Group Incorporated, New York, USA, via City Bank, N.A., New York City, USA with the aim of concealing or disguising the illicit origin of the funds.
- **Count 7:** (Transfer of funds contrary to Section 15(1) of the Money Laundering (Prohibition) Act, 2011): Omoyele Stephen Sowore on or about the 16th of July 2019 at Lagos and Abuja, transferred by means of swift wire, the sum of Sixteen Thousand, Nine Hundred and Seventy-Five Dollars (\$16,975) from his United Bank for Africa Plc Account No.3002246104 credited by LANDRUM of 7E, 146 W 29th Street, New York, NY1001, USA, via City Bank Plc, with the aim of concealing or disguising the illicit origin of the funds.

Today Mr. Sowore remains in arbitrary detention awaiting trial in Abuja, Nigeria. He has been detained for a total of 88 days. Mr. Sowore’s contact with his wife and two children has been completely cut off since his wife’s interview with Democracy Now! on September 4th, 2019 where

she called for her husband's release. On September 24th a Federal High Court Judge, Taiwo Taiwo, ordered the immediate release of Mr. Sowore on the condition that he surrender his passport. On September 26th, Mr. Sowore met the release conditions, but the DSS refused to comply with the order and continued to unlawfully detain Mr. Sowore. On September 30th Mr. Sowore plead not guilty to all seven charges. On October 4th a new judge, Justice Ijeoma Ojukwu, unlawfully set new overly burdensome bail requirements that were so stringent and impossible to meet, seemingly designed as a punitive measure to ensure prolonged pretrial detention. These punitive conditions were set despite the fact that the previous order by Justice Taiwo Taiwo had not been overturned or amended by a superior court. Despite this fact, Justice Ojukwu granted Mr. Sowore bail with the overly burdensome conditions requiring a sum of N100 million naira (about \$280,000 United States dollars) with two sureties who must reside in Abuja, the Nigerian capital, and have landed properties in the capital worth the bail sum. The bail conditions also restrict him from talking to the press, engaging in protests and leaving the city of Abuja, even though he has no home in the city. Not only are these overly burdensome conditions vastly disproportionate to the facts of Mr. Sowore's case, but the impracticality amounts to an effective refusal of bail and *de facto* order of continued detention in an attempt to keep Mr. Sowore perpetually in custody. On October 21st Justice Ojukwu slightly reduced the financial conditions of Mr. Sowore's bail, however as of the date of this filing the conditions remain too burdensome to meet. Even if Mr. Sowore's family can find a way to meet these overly burdensome and punitive bail conditions, any "release" from the current detention facility, would still effectively result in a form of continued arbitrary detention of Mr. Sowore in a city (Abuja) in which he does not reside, in violation of his right to freedom of movement, and unlawfully restricting his legitimate activities to promote and protect human rights.

Accordingly, it is hereby requested that the Working Group consider this Petition a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

Questionnaire To Be Completed⁶

I. IDENTITY

1. **Family name:** Sowore
2. **First name:** Omoyele
3. **Sex:** Male
4. **Birth date or age (at the time of detention):** 48 years old
5. **Nationality/Nationalities:** Federal Republic of Nigeria
6. (a) **Identity document (if any):** (b) **Issued by:** (c) **On (date):** (d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Mr. Sowore is a human rights activist, journalist and former presidential candidate. He is the

⁶ *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

founder of “Sahara Reporters”, a citizen’s journalism platform that focuses on exposing corruption, human rights abuses and other political misconduct in Nigeria.

8. **Address of usual residence:**

II. ARREST

1. **Date of arrest:** August 3, 2019
2. **Place of arrest (as detailed as possible):** Mr. Sowore was arrested in his Lagos hotel room after midnight on August 3, 2019. The hotel's name is Montana Residence, 16 Oduduwa Way GRA, Ikeja Lagos.
3. **Forces who carried out the arrest or are believed to have carried it out:** Department of State Services (DSS)
4. **Did they show a warrant or other decision by a public authority?** No
5. **Authority who issued the warrant or decision:** N/A
6. **Reasons for the arrest imputed by the authorities:** The Public Relations Officer of DSS, Peter Afunanya, stated publicly that Mr. Sowore’s proposed #RevolutionNow peaceful protest presented a threat of revolution and insurrection in Nigeria as well as the forceful takeover of government.⁷ The Inspector-General of Police, Mohammed Adamu, described Mr. Sowore’s planned protests as a call that amounts to “treasonable felony and acts of terrorism.”⁸
7. **Legal basis for the arrest including relevant legislation applied (if known):** N/A

III. DETENTION

1. **Date of detention:** August 3, 2019
2. **Duration of detention (if not known, probable duration):** Mr. Sowore has been in detention from August 3, 2019 to the date of this communication.
3. **Forces holding the detainee under custody:** Department of State Services (DSS) - the primary domestic intelligence agency of Nigeria.
4. **Places of detention (indicate any transfer and present place of detention):** State Security Services headquarters in Abuja. The address is Aso drive three arms zone, Abuja, Nigeria
5. **Authorities that ordered the detention:** N/A

⁷ THE NEWS, *Why We Arrested Sowore- DSS*, THE NEWS (Aug. 4, 2019), <https://www.thenewsnigeria.com.ng/2019/08/why-we-arrested-sowore-dss/>

⁸ Samson Toromade, *How DSS Arrested Sowore Over RevolutionNow Movement (Video)*, PULSE (Aug. 5, 2019), <https://www.pulse.ng/news/local/sowore-revolutionnow-how-dss-arrested-saharareporters-founder-video/5dcrv6l>

6. **Reasons for the detention imputed by the authorities:** After 48 days of detention Mr. Sowore was charged with seven criminal charges: a treasonable felony charge and conspiracy to commit a treasonable felony for organizing a revolution campaign aimed at removing the President; a cyberstalking charge for an interview on “Arise Television” where he caused insult, enmity hatred and ill-will on the president; and four money laundering for transferring funds with the aim of concealing or disguising the illicit origin of the funds.
7. **Legal basis for the detention including relevant legislation applied (if known):** There is no legal basis for detention. Mr. Sowore faces possible sentencing under overly broad sections 516 and section 41(c) of the Criminal Code Act, Cap. C38 Laws of the Federation of Nigeria, 2004, section 24(1)(b) of the Cybercrimes (Prohibition, Prevention) Act, 2015 and section 15(1) of the Money Laundering (Prohibition) Act, 2011 invoked and applied in violation of the State’s international human rights obligations.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY

a. Statement of Facts

Part i of this section describes the Nigerian government’s documented history of suppressing fundamental rights such as freedom of expression and freedom of assembly and using arbitrary detentions to limit political and social activism. Part ii presents the case of Omoyele Sowore, a Nigerian activist, human rights defender, journalist and politician arbitrarily arrested and detained since August 3, 2019.

i. Human Rights Context in Nigeria

1. Relevant Political, Legal and Social Background in Nigeria

Nigeria is a federal republic composed of 36 states and the Federal Capital Territory (FCT).⁹ Nigeria’s multi-party system provides an opportunity for opposition parties to democratically assume power through elections, as seen through the recent 2015 election.¹⁰ In 2015, citizens elected President Muhammadu Buhari of the All Progressives Congress (APC) to a four year term in the first successful democratic transfer of power from a sitting president to a candidate of the opposition party in the country’s history.¹¹ However, citizens’ rights to freely participate in government directly and through democratically elected representatives remains impaired and undermined by vote buying, intimidation, the local domination of either the Nigerian military or illegal armed groups, influence from powerful domestic and international economic interests, and overall corruption.¹² Under the Buhari administration, the Nigerian government has been accused of rampant human rights abuses including arbitrary arrests, harassment of human rights defenders, activists and journalists.¹³ Amnesty International has documented killings of hundreds of state and non-state actors, extrajudicial executions, arbitrary arrests, detention, torture, violence against women, and undue restrictions on freedom of expression.¹⁴

⁹ U.S. Department of State, *Nigeria 2018 Human Rights Report* (2018), <https://www.state.gov/wp-content/uploads/2019/03/Nigeria-2018.pdf> [hereinafter *State Department 2018 Report*].

¹⁰ Freedom House, *Freedom in the World 2018: Nigeria* (2018), <https://freedomhouse.org/report/freedom-world/2019/nigeria> [hereinafter *Freedom House 2018 Report*].

¹¹ State Department 2018 Report, *supra* note 11.

¹² Freedom House, *supra* note 12.

¹³ Jide Oyekunle, *Amnesty International Urges Buhari to End Human Rights Violations, Abuses Buhari*, MSN (MAR. 5, 2019),

<https://www.msn.com/en-xl/africa/nigeria/amnesty-international-urges-buhari-to-end-human-rights-violations-abuses-buhari/ar-AACjFY6>

¹⁴ *Id.*

2. Civil Society and Arbitrary Detention in Nigeria

Although the constitution and law prohibit arbitrary arrest and detention, police and security services continue to employ these practices in violation of domestic and international law. Since 2013, the Nigerian military has arbitrarily arrested and detained thousands of persons in the context of the fight against Boko Haram.¹⁵ The right to peaceful assembly is constitutionally guaranteed in Nigeria,¹⁶ however, federal and state governments frequently ban public events perceived as threatening to national security, including those that could incite political, ethnic or religious tensions.¹⁷ Civil society has criticized the government for prohibiting or dispersing protests that are critical of the authorities.

3. Lack of Due Process Protections in Nigeria

Pretrial detentions are a severe problem in Nigeria's criminal justice system. Nigeria's prisons are largely overcrowded with over 70 percent of detainees being detained in pretrial custody, one-fifth of them have been held for over a year. Studies show that it is not uncommon for those accused of capital offences to spend over 10 years in pretrial detention.¹⁸

ii. The Detention of Omoyele Sowore

1. Background Information of Omoyele Sowore

Omoyele Sowore is a prominent human rights defender, activist, journalist, former presidential candidate and founder of the citizen's journalism site, Sahara Reporters. He is 48 years old, a husband and father of two children, ages 10 and 12.¹⁹ Mr. Sowore has been an activist and publicly critical of the Nigerian government since 1989 when he was a student at the University of Lagos.²⁰

Mr. Sowore also ran as a candidate in the February 2019 presidential elections. He garnered support early from the Nigerian public as he took a strong stance against corruption, Nigeria's wealth disparity, poverty and the country's failure to use its oil resources to provide jobs for its citizens.²¹ Following the election results, where President Buhari won a second term, Mr. Sowore called for peaceful protests of the irregularities documented during the 2019 elections and other issues of political corruption.²² In July 2019 he continued to criticize the Buhari administration and called for an "end to the shenanigans of government, an end to oppression, and the corruption of government."²³ Buhari and his administration have faced criticism for its human rights record, particularly the documented killings of hundreds of state and non-state actors, extrajudicial executions, arbitrary arrest, detention, torture and restrictions on freedom of expression. Mr. Sowore eventually started a movement he tagged, "#RevolutionNow," which called for nationwide peaceful protests on August 5th, 2019.

¹⁵ State Department 2018 Report, *supra note* 11..

¹⁶ *Constitution of the Federal Republic of Nigeria*, Ch.4 Sec. 40.

¹⁷ Freedom House, *supra note* 12.

¹⁸ Open Society Justice Initiative, *Facts Sheet: Improving Pretrial Justice in Nigeria*, OPEN SOCIETY JUSTICE INITIATIVE, (Feb. 2013), <https://www.justiceinitiative.org/publications/fact-sheet-improving-pretrial-justice-nigeria>

¹⁹ Alexis Shane, *Bergen County Resident, Nigerian Journalist Offered Stringent Bail and Remains in Prison*, NORTH JERSEY RECORD (Oct. 4, 2019), <https://www.northjersey.com/story/news/2019/10/04/nigerian-journalist-omoyele-sowore-offered-bail-but-remains-prison/3863751002/>

²⁰ Camille Augustin, *5 Things You Should Know About Nigerian Political Activist Omoyele Sowore*, VIBE,(Sept. 20, 2019), <https://www.vibe.com/2019/09/omoyele-sowore-detained-nigerian-activist-things-to-know>

²¹ Nayaba Arinde and Chinedu Onyemaobi, *He Named His Movement "Revolution Now" and They Jailed Him*, AMSTERDAM NEWS (Aug. 8, 2019), <http://amsterdamnews.com/news/2019/aug/08/he-named-his-movement-revolution/>

²² Reuters, *Nigeria Security Agents Arrest Activist for Calling for Revolution*, REUTERS(Aug. 4, 2019) <https://www.reuters.com/article/us-nigeria-politics/nigeria-security-agents-arrest-activist-for-calling-for-revolution-idUSKCN1UU0K5>

²³*Id.*

The Nigerian government placed Amnesty International on security watch on August 1st for allegedly reproducing a message by the organizers of the #RevolutionNow protests in a tweet.²⁴ Just two days before the protests were set to begin, Sowore was arrested and accused of attempting to take over the government. Despite his arrest and detention, the protests moved forward on August 5th. In Lagos State, officials surrounded the National Stadium, where the protesters planned to convene in the early morning.²⁵ Security forces arrested and fired teargas at peaceful protestors, forcefully dispersing the crowd and leaving a number of people injured.²⁶

2. Arbitrary Arrest and Detention of Omoyele Sowore

Mr. Sowore's social activism and calls for the #RevolutionNow peaceful protests led to escalating government harassment and his eventual arrest and detention. In early August of this year, he tweeted about his concern that the Nigerian government was surveilling him in his preparation of the #RevolutionNow protests,²⁷ still he continued to push forward with his planned peaceful protests and continued public criticism of President Buhari and his administration. On August 1st, the Nigerian government placed Amnesty International on security watch for allegedly retweeting a message by the organizers of the #RevolutionNow protests in a tweet²⁸ further demonstrating the government's surveillance of Mr. Sowore, his movement and the intention to quell any such protests. On August 3rd, two days prior to the planned protests, Mr. Sowore was arrested from his hotel in the early hours of the morning and held for days without being formally charged. Nigerian authorities immediately cut off his access to his wife and two children after his wife, Opeyemi Sowore, gave an interview with Democracy Now! calling for her husband's release. Mr. Sowore has been denied access to his family for over two months in violation of his rights. The Department of Security Services (DSS) publicly stated that Sowore's "call for a revolution" presented a threat of insurrection that warranted his arrest, even though it was widely known that Sowore's call for a peaceful pro-democracy protest was not a call for undemocratic political insurrection, let alone violent upheaval. There was no warrant for Mr. Sowore's arrest and he was detained in DSS custody for five days without being brought before a judge. Three days after his arrest, on August 6th, the Department of State Services sought an *ex-parte* order from the Federal High Court in Abuja to detain Sowore for an additional 90 days to conduct investigations without formally charging him. The court granted this request on August 8th, permitting the DSS to detain Mr. Sowore for 45 more days. This request was granted under an overly vague provision of the 2013 anti-terrorism law in violation of Nigeria's international human rights obligations. Mr. Sowore's legal team filed a motion to quash the 45-day detention order, however, the court refused to hear the motion until September 21st -- the day the detention order expired. Mr. Sowore was detained for a total of 48 days without any formal charges filed against him. On September 20th seven baseless criminal charges were levied against him including the crime of "cyberstalking" for allegedly insulting the president online, treasonable felonies, and money laundering. To date, no evidence of any wrongdoing for these extremely serious charges have been produced by the authorities, who solely rely on Mr. Sowore's lawful public statements and free exercise of his right to freedom of expression in their attempt to justify his continued arbitrary detention and specious prosecution.

²⁴ Human Rights Watch, *Nigeria: Activist's Detention a Sign of Growing Intolerance*, HUMAN RIGHTS WATCH (Aug. 7, 2019), <https://www.hrw.org/news/2019/08/07/nigeria-activists-detention-sign-growing-intolerance>

²⁵ *Id.*

²⁶ Abdur Rahman Alfa Shaban, *Nigeria Security Forces Disperse 'Revolution Now' Protestors in Lagos*, AFRICANEWS (Aug. 5, 2019), <https://www.africanews.com/2019/08/05/nigeria-security-forces-disperse-revolution-now-protesters-in-lagos/>

²⁷ Omoyele Sowore (@YeleSowore), Twitter (Aug. 2, 2019, 3:42pm), <https://twitter.com/YeleSowore/status/1157240173693931522>

²⁸ Human Rights Watch, *Nigeria: Activist's Detention a Sign of Growing Intolerance*, HUMAN RIGHTS WATCH (Aug. 7, 2019), <https://www.hrw.org/news/2019/08/07/nigeria-activists-detention-sign-growing-intolerance>

3. Overly Burdensome Bail Conditions Placed on Omoyele Sowore

On September 24th, upon the expiry of the 45-day extension of his pretrial detention, Justice Taiwo Taiwo ordered the DSS to release Mr. Sowore on bail should he surrender his passport. On September 26th Mr. Sowore met all conditions for release under Justice Taiwo Taiwo's order, but the DSS refused to comply.

Then on October 4th, after 62 days in DSS custody, a new judge, Justice Ijeoma Ojukwu unlawfully issued a new set of overly burdensome bail conditions despite the previous order remaining in effect without any amendments by a superior court. The new bail conditions were stringent and unduly burdensome making it virtually impossible to meet, effectively ensuring Mr. Sowore's continued arbitrary detention. Bail was set on the condition of a sum of N100 million naira (about \$280,000 United States dollars) with two sureties who must reside in Abuja, the Nigerian capital, and have landed properties in the capital worth the bail sum. The bail conditions also restrict him from talking to the press, engaging in protests, and leaving the city of Abuja, even though he has no home in the city. These strict conditions are unprecedented in Nigeria and for the crimes of which Mr. Sowore is accused, and effectively act as an order of detention. Even should Mr. Sowore be able to surmount the tremendous and unprecedented burdens of his bail requirements, the result would still relegate Mr. Sowore to a state of *de facto* arbitrary detention, unduly restricting his activities and movement, and forcing him to remain in Abuja where he has no residence.

4. Current Status

Mr. Sowore is still detained in a DSS detention facility in Abuja. Recently, the domestic court partially amended Mr. Sowore's bail conditions from N100 million naira to N50 million (approximately \$140,000 US dollars), this is still quite restrictive. The remaining conditions have remained in place, he cannot leave Abuja, speak to the press or participate in any protests. Mr. Sowore's communication with his wife and children, who live in the United States, remains cut off since his wife's September interview with Democracy Now!²⁹. He has not spoken to his family in over two months.

b. Legal Analysis

For the reasons set forth below, the detention of Mr. Sowore constitutes an arbitrary deprivation of his liberty³⁰ under Category I, Category II, Category III, and Category V as set forth by the United Nations Working Group on Arbitrary Detention (herein, the Working Group). The detention is arbitrary under Category I because it does not have any legal justification. The detention is arbitrary under Category II because it resulted from Mr. Sowore's exercise of his right to freedom of expression and freedom of peaceful assembly. The detention is arbitrary under Category III because the government's detention and prosecution of Mr. Sowore failed to meet minimum international standards of due process. The detention is arbitrary under Category V because Mr. Sowore was targeted by the government in part because of his political opinion and status as a human rights defender and journalist.

²⁹ Democracy Now!, *Nigerian Journalist & Activist Omoyele Sowore Remains Jailed for Calling for Peaceful Protests*, DEMOCRACYNOW! (Sept. 4, 2019), https://www.democracynow.org/2019/9/4/nigerian_journalist_activist_omoyele_sowore_jailed

³⁰ An arbitrary deprivation of liberty is defined as a "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. Id. "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 9 (1948) [hereinafter UDHR]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, Principle 2 [hereinafter Body of Principles].

i. Category I: No Basis for Detention

The detention of Mr. Sowore is arbitrary under Category I.

1. The Continued Detention of Mr. Sowore Violates Domestic and International Regulations on Pretrial Detention

A detention is arbitrary under Category I when it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty.”³¹

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”³² This right is reiterated by Article 9 of the UDHR and principles 2 and 36(2) of the Body of Principles.³³ The Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and State parties should ensure compliance with their legally prescribed procedures.”³⁴ Article 9(1) requires compliance with domestic rules that define such procedures for arrest such as specifying when a warrant is required and permitting access to counsel.³⁵ Section 35(3) of Nigeria’s 1999 Constitution states that any person who is arrested or detained shall be informed in writing within 24 hours of the facts and grounds of his arrest or detention.³⁶ Section 35(4) further provides that any person who is arrested or detained upon reasonable suspicion of having committed a crime shall be brought before a court within a reasonable time, a reasonable time is defined as up to 48 hours.³⁷ Thus, any time in excess of 48 hours that the accused spends in custody without being brought before a court constitutes an unlawful arrest and detention.

Here, the detention of Mr. Sowore violated Nigeria’s Constitutional limit. Nigerian authorities arbitrarily arrested Mr. Sowore on August 3, 2019, where he has remained in arbitrary detention ever since. He was detained for three days until the Nigerian Department of State Services (DSS) sought an *ex-parte* order from the Federal High Court in Abuja to detain Sowore for an additional 90 days pursuant to Section 27(1) of the Terrorism Act 2013, which is intended only to enable the detention of anyone planning to “commit an act of violence.” On August 8th, two days after the DSS’s request and five days after Sowore’s initial arrest, the Court granted the authorities permission to detain Mr. Sowore for 45 days without charge. The court further refused to hear a motion from Mr. Sowore’s legal team to quash the 45-day order until September 21st, when the detention order had expired. Mr. Sowore’s initial detention for five days exceeded the 48-hour constitutional limit. Thus, his continued detention in excess of 48 hours was unconstitutional and had no legal basis. Mr. Sowore’s additional 45-day detention granted under Section 27(1) of the Terrorism Act 2013 also exceeded the 48 hour constitutional limit and has no legal basis. Section 27(1) of the Terrorism Act 2013 provides that “the court may, pursuant to an *ex-parte* application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with.”

This section of the act is contrary to the right to personal liberty guaranteed under section 35 of the Nigerian Constitution and far exceeds the constitutional limit placed on pretrial detentions.

³¹ *Report of the Working Group on Arbitrary Detention*, A/HRC/30/69, Aug. 4, 2015, ¶8(a) [hereinafter *Revised Methods of Work*].

³² ICCPR, at art 9(1).

³³ UDHR, at art 9; Body of Principles, at principles 2 and 36(2).

³⁴ UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 23, (16 Dec. 2014).

³⁵ *Id.*

³⁶ *Constitution of the Federal Republic of Nigeria*, Sec. 35(3).

³⁷ *Id.*

Further, the act is vague and fails to define which persons can be subject to this 90-day detention, circumventing the 48 hour constitutional limit. The Working Group has continued to express its concern that antiterrorism laws “by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention” with the consequence that “legitimate democratic opposition ... becomes a victim in the application of such laws”³⁸ Mr. Sowore falls squarely within the population of victims the Working Groups seeks to protect. By relying on overly vague provisions of Nigerian law to subvert the protections against prolonged pretrial detention enshrined in the Nigerian constitution and Nigeria’s international human rights obligations, the Nigerian government’s continued detention of Mr. Sowore lacks any legitimate legal basis and is arbitrary under Category I.

2. The Charges against Mr. Sowore are without Merit and Cannot be Used as a Basis to Justify His Continued Detention

The seven charges brought against Mr. Sowore cannot justify his pretrial detention because their overly broad construction and specific application to Mr. Sowore violate both domestic and international law.

The right to freedom of expression is expressly protected under international and Nigerian law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a State Party, provides that “[e]veryone shall have the right of 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.”³⁹ The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR).⁴⁰ Further, Chapter 4 Section 39(1) of the Nigerian Constitution likewise guarantees the right to freedom of opinion and expression, “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”⁴¹ Article 19(3) of the ICCPR provides that restrictions on the right to freedom of expression are permissible only when they are 1) prescribed by law, 2) for a legitimate aim, and 3) necessary in a democratic society. To be “prescribed by law,” a law must be duly enacted and must be “formulated with sufficient precision to enable an individual to regulate his or her own conduct accordingly.”⁴² A law cannot allow for unfettered discretion upon those charged with its execution. Rather, “laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.”⁴³

Here, the provisions of Nigeria’s Cybercrimes (Prohibition, Prevention) Act, 2015 cannot be a legitimate basis to charge and detain Mr. Sowore because they are vague, open to broad interpretation, and are not formulated with sufficient precision to protect the fundamental right of freedom of expression. Mr. Sowore faces one charge under section 24(1)(b) of the Cybercrimes (Prohibition, Prevention) Act for causing “insult, enmity, hatred and ill-will” to the President of the Republic of Nigeria during his interview with “Arise Television.” Section 24(1)(b) makes it an offence for any person to knowingly or intentionally send a message or other matter by means of computer systems or networks that “he knows to be false, for the purpose of causing annoyance,

³⁸ Stella Nyanzi v. The Republic of Uganda, UN Working Group on Arbitrary Detention, Opinion No. 57/2017, UN Doc. HRC/WGAD/2017/57 (2017).

³⁹ ICCPR, art. 19(2).

⁴⁰ UDHR, art. 19.

⁴¹ Constitution of the Federal Republic of Nigeria, Ch. 4 Sec. 39(1).

⁴² Human Rights Committee, *General Comment No. 34(Article 19: Freedom of opinion and expression)*, para. 25, U.N. Doc. CCPR/C/GC/34 (2011) [hereinafter *HRC General Comment 34*], <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>.

⁴³ HRC General Comment 34, at para. 25

inconvenience, danger, obstruction, insult, injury, criminal intimidation, hatred, ill will or needless anxiety to another.”⁴⁴ Throughout the act, the drafters fail to define the terms “annoyance, inconvenience, insult, injury, hatred, ill-will or needless anxiety.” Such vague terms leave room for broad interpretation under the discretion of those charged with its execution, in violation of Article 19 of the ICCPR and the Nigerian Constitution. The restrictions on the right to freedom of expression must be “formulated with sufficient precision”⁴⁵, this section of the Cybercrimes (Prohibition, Prevention) Act fails to uphold that standard. Moreover, the Working Group has recognized that laws that are vaguely and broadly worded have a chilling effect on the exercise of freedom of expression.⁴⁶ Furthermore, the Working Group has found that such vague and broadly worded legislation violates Article 15 of the ICCPR and that any detention pursuant to proceedings that are incompatible with article 15 are necessarily arbitrary.⁴⁷

As such, section 24(1)(b) of the Cybercrimes (Prohibition, Prevention) Act cannot be considered as “prescribed by law,” and thus cannot be considered a legitimate restriction on the freedom of expression permissible under international law. Since the provision used to detain Mr. Sowore pretrial is not a legitimate law, his detention is arbitrary under Category I.

Mr. Sowore is also charged with treasonable felony and conspiracy to commit a treasonable offence for allegedly “conspiring” to stage a revolution on August 5, 2019 with aims of “removing the President and Commander-in-Chief of the Armed Forces of Nigeria during his term of office otherwise than by constitutional means.” Mr. Sowore faces these charges under Section 41(c) of the Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004 which provides for the crime: “to levy war against Nigeria in order by force or constraint to compel the President to change his measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe any House of the National Assembly or any other legislature or legislative authority.”

The specific application of this charge to Mr. Sowore is meritless and cannot be used to justify his continued detention. In calling for peaceful protest on August 5, 2019, Mr. Sowore called for Nigerians nationwide to exercise their fundamental right to peaceful assembly by publicly mobilizing to voice collective demand for a democratic government free of corruption, and to protest the wealth disparity and poverty facing the country. In the movement, which he named “#RevolutionNow,” Mr. Sowore not once called for violence nor the removal of the sitting president. The Nigerian government cannot point to any evidence to suggest that Mr. Sowore planned to “levy a war” against the Federal Republic of Nigeria. He has not been found to or accused of training people to overthrow the government, having contact with soldiers or any sort of mobilization that would equate to the crime of treasonable felony of which he is accused. The authorities have claimed that Mr. Sowore’s use of the word “revolution” in his calls for peaceful protests demonstrates his intent for insurrection.⁴⁸ However, the use of the word “revolution” in Nigeria (or elsewhere) is not a crime. In 2011 President Muhammadu Buhari and the ruling political party, the All Progressives Congress, called for “a revolution” similar to the recent one that took place in Egypt.⁴⁹ Neither President Buhari nor any member of the All Progressives Congress were arrested, prosecuted, nor faced charges for

⁴⁴ Cybercrimes (Prohibition, Prevention) Act sec. 24(1)(b)(2015), https://www.cert.gov.ng/file/docs/CyberCrime_Prohibition_Prevention_etc_Act_2015.pdf

⁴⁵ HRC General Comment 34, at para. 25

⁴⁶ Stella Nyanzi v. The Republic of Uganda, UN Working Group on Arbitrary Detention, Opinion No. 57/2017, UN Doc. HRC/WGAD/2017/57 para. 65 (2017).

⁴⁷ *Id.*

⁴⁸ THE NEWS, *Why We Arrested Sowore- DSS*, THE NEWS (Aug. 4, 2019), <https://www.thenewsnigeria.com.ng/2019/08/why-we-arrested-sowore-dss/>

⁴⁹ Olusola Fabiyi and Ade Adesomoju, *Ex-presidential Candidate Gets N100m Bail, Court Demands N50m Security Deposit*, PUNCH (OCT. 5, 2019) <https://punchng.com/sowores-legal-team-meets-over-stringent-bail-conditions/>

their choice of words.⁵⁰ Mr. Sowore has unfortunately been a target by the Buhari administration for exercising his right to freedom of expression through his publicly critical views of the government and is facing baseless claims because of his attempts to exercise his fundamental right to peaceful assembly in furtherance of his views and aims to promote and protect the human rights of all Nigerians.

In the State's application of Section 41(c) of the Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004, the State is attempting to criminalize Mr. Sowore's lawful actions protected by the Nigerian Constitution and Nigeria's international human rights obligations. Given the lawful and protected actions underlying these charges, there is likewise no legal basis for his detention under this law and therefore his continued detention under this provision is arbitrary under Category I.

Additionally, Mr. Sowore faces charges four charges under Section 15(1) of the Money Laundering (Prohibition) Act, 2011. Section 15(1) of the Money Laundering (Prohibition) Act, 2011 provides that it is a crime from any person to "convert or transfer resources or properties derived from illicit traffic in narcotic drugs and psychotropic substances or participation in an organized criminal group and racketeering, terrorism, terrorist financing, migrant smuggling, tax evasion, sexual exploitation, murder, forgery..." among other crimes, with the aim of either concealing or disguising the illicit origin of the resources or aiding any person involved to evade the illegal consequences of their actions.

Here, the provision of the Money Laundering (Prohibition) Act cannot be a legitimate basis to charge and detain Mr. Sowore because the acts proscribed in the statute cannot be attributed to Mr. Sowore. In the charging documents against Mr. Sowore the government charges him with four counts of violating Section 15(1) for transferring various sums of money from various bank accounts, including his personal bank accounts to that of the account of Sahara Reporters, his online citizen's journalism site. The charges state that he transferred funds with the "aim of concealing or disguising the illicit origin of the funds" This vague charge fails to assert which one of the various crimes Mr. Sowore is supposed to have committed in his transfer of such funds. Section 15(1) enumerates twenty-one crimes that can be associated with the crime of Money Laundering, yet Mr. Sowore's charging documents fail to list even one crime that his wire transfer is purported to be in furtherance of.

Since Mr. Sowore cannot be attributed to the crimes laid out in Section 15(1) of the Money Laundering Prohibition Act, 2011 there is no legal basis for his detention under this law and therefore his continued detention under this provision is arbitrary under Category I.

3. The Overly Burdensome Bail Conditions Amount to an Effective Order of Pretrial Detention and Were Unlawfully Set

On September 24th a Federal High Court Judge, Taiwo Taiwo, ordered the immediate release of Mr. Sowore on the condition that he surrender his passport. On September 26, Mr. Sowore met the release conditions, but the DSS refused to comply with the order and continued to unlawfully detain Mr. Sowore. On September 30th Mr. Sowore plead not guilty to all seven charges. On October 4th a new judge, Justice Ijeoma Ojukwu, unlawfully set new overly burdensome bail requirements that were so stringent and impossible to meet, seemingly designed as a punitive measure to ensure prolonged pretrial detention.

⁵⁰ *Id.*

These punitive conditions were set despite the fact that the previous order by Justice Taiwo Taiwo had not been overturned or amended by a superior court. The Lekki Forum of the Nigerian Bar Association has called on Justice Ijeoma Ojukwu to recuse herself for her actions in unlawfully ignoring the previous release order. Despite this fact, Justice Ojukwu granted Mr. Sowore bail with the overly burdensome conditions requiring a sum of N100 million naira (about \$280,000 United States dollars) with two sureties who must reside in Abuja, the Nigerian capital, and have landed properties in the capital worth the bail sum. The bail conditions also restrict him from talking to the press, engaging in protests and leaving the city of Abuja, even though he has no home in the city. Not only are these overly burdensome conditions vastly disproportionate to the facts of Mr. Sowore's case but the impracticality amounts to an effective refusal of bail and a *de facto* order of continued detention in an attempt to keep Mr. Sowore perpetually in custody. On October 21st Justice Ojukwu slightly reduced the financial conditions of Mr. Sowore's bail, however as of the date of this filing the conditions remain too burdensome to meet. Should Mr. Sowore's family find a way to meet these overly burdensome and punitive bail conditions, any "release" from the current detention facility, would still effectively result in a form of continued arbitrary detention of Mr. Sowore in a city (Abuja) in which he does not reside, in violation of his right to freedom of movement, and unlawfully restricting his legitimate activities to promote and protect human rights.

But for these overly burdensome new conditions unlawfully set by Justice Ijeoma Ojukwu on Mr. Sowore's bail, Mr. Sowore would have been freed from arbitrary detention under the original order of release by Justice Taiwo Taiwo.

i. Category II: Substantive Fundamental Rights

The detention of Mr. Sowore is arbitrary under Category II.

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, the arbitrary detention results "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration of Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights."⁵¹ In light of this, the detention of Mr. Sowore is arbitrary because the detention resulted from the exercise of his fundamental right to freedom of opinion and expression⁵² and freedom of assembly.⁵³

The right to freedom of expression is expressly protected under international and Nigerian law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a State Party, provides that "[e]veryone shall have the right of 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."⁵⁴ The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR). Further, Chapter 4 Section 39(1) of the Nigerian Constitution likewise guarantees the right to freedom of opinion and expression.⁵⁵

⁵¹ *Revised Methods of Work*, ¶7(e).

⁵² ICCPR, Art. 22.

⁵³ ICCPR, Art. 21.

⁵⁴ ICCPR, art. 19(2).

⁵⁵ *Constitution of the Federal Republic of Nigeria*, Ch.4 Sec. 39(1).

The right to freedom of assembly is also expressly protected under international and Nigerian law. Article 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a State Party, provides that “the right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”⁵⁶ The right to freedom of assembly is also protected by Article 20 of the Universal Declaration of Human Rights (UDHR). Further, Chapter 4, Section 40 of the Nigerian Constitution likewise guarantees the right to assemble freely.⁵⁷

Along with these express protections set forth in international and domestic law, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The concept of a human rights defender is codified under the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on December 9, 1998 (Declaration on Human Rights Defenders).⁵⁸ The Declaration on Human Rights Defenders affirms their role at the local, regional, national, and international levels. Journalists working on reporting of human rights abuses are explicitly recognized as falling under the definition of human rights defenders.⁵⁹ The UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) have since regularly reaffirmed the rights of human rights defenders to conduct their work.⁶⁰

Moreover, the Working Group has recognized the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”⁶¹ The UN Human Rights Committee, the body tasked with interpreting the ICCPR, has also specifically recognized that Article 19(2) protection “includes the right of individuals to criticize or openly and publicly evaluate their government without fear of interference or punishment.”⁶²

Despite international and Nigerian laws clearly guaranteeing individual rights to freedom of expression and freedom of assembly, the Nigerian government arbitrarily arrested and detained Mr. Sowore in direct retaliation to his lawful exercise of his right to freedom of expression and his attempt to exercise his right to freedom of assembly.

⁵⁶ ICCPR, Art. 21.

⁵⁷ *Constitution of the Federal Republic of Nigeria*, Ch.4 Sec. 40.

⁵⁸ Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Resolution 53/144, UN Doc. A/RES/53/144, (8 Mar. 1998).

⁵⁹ See, e.g., “Who is a Defender”, Website of the UN Special Rapporteur on the situation of human rights defenders, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

⁶⁰ Most recently, these bodies unanimously passed resolutions in support of the rights related to the work of human rights defenders and on the protection of human rights defenders in general and women human rights defenders in particular. See UN Human Rights Council, Protecting Human Rights Defenders, Resolution No. 22/6, UN Doc. A/HRC/22/L.13, (15 Mar. 2013); Promotion of 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: Protecting Women Human Rights Defenders, G.A. Resolution 68/181, UN Doc. A/RES/68/181, (18 Dec. 2013).

⁶¹ *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, UN Doc. A/HRC/WGAD/2012/62, ¶ 39, (21 Nov. 2012); see also, *Sotoudeh v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, UN Doc. A/HRC/WGAD/2011/21, ¶ 29, (27 Jan. 2011).

⁶² *De Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, ¶ 6.7, (29 Mar. 2005).

Mr. Sowore was targeted by the Nigerian government for his continued criticism of the government and calls for a nationwide pro-democracy protest. Mr. Sowore has been quite vocal about his critiques of the government. In July 2019 he openly criticized the Buhari administration, calling for an “end to the shenanigans of government, an end to oppression, and the corruption of government.”⁶³ His Twitter account, which has a large following of over 100,000 people, constantly critiqued President Buhari for his administration's repeated human rights violations and suppression of dissenting voices.⁶⁴ In early August of this year, he tweeted about his concern that the Nigerian government was surveilling him in his preparation of the #RevolutionNow protests. Still he continued to push forward with his planned peaceful protests and legitimate critique of President Buhari and his administration. On August 1st, the Nigerian government placed Amnesty International on security watch for allegedly retweeting a message by the organizers of the #RevolutionNow protests⁶⁵ further demonstrating the government’s surveillance of Mr. Sowore, his movement, and the government’s intention to quell any such peaceful protests critical of its actions. Finally, on August 3rd, two days prior to the planned protests, Mr. Sowore was arrested from his hotel in the early hours of the morning and held for days without being formally charged. Phone calls with his wife and two children were immediately cut off after his wife, Opeyemi Sowore, gave an interview with Democracy Now! calling for her husband’s release, further punishing Mr. Sowore and violating his rights in retaliation for his wife’s lawful exercise of her right to freedom of expression. The Department of Security Services publicly stated that Sowore’s call for a revolution presented a threat of “insurrection” that warranted his arrest, even though it was widely known that Sowore’s call for a peaceful pro-democracy protest was not a call for political insurrection or upheaval.

The attempts to prevent Mr. Sowore from continuing his political and social activism through arbitrary arrest, unlawful detention, and baseless criminal charges is in line with the Nigerian government’s broader history of attempting to suppress the free expression, free assembly, and civic activism of its country’s human rights defenders and journalists.⁶⁶ This constitutes a violation of Article 19(2) and Article 21 of the ICCPR, as well as Chapter 4 Sections 39 and 40 of the Nigerian constitution. Moreover, because of Mr. Sowore’s status as a human rights defender and journalist he enjoys special protection under international law with respect to his work to promote and protect human rights. Any government interference, such as arbitrary detention, which serves to restrict his speech or right to assemble is entitled to heightened scrutiny from the Working Group. It is precisely his work on the subject of pro-democracy, anti-corruption, and human rights that ultimately motivated the government to arbitrarily arrest and detain Mr. Sowore. As such, the detention in this case cannot meet the “particularly intense review” mandated by the jurisprudence of the Working Group, and should be found to be arbitrary under Category II.

i. Category III: Due Process Rights

The detention of Mr. Sowore is arbitrary under Category III.

A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal

⁶³Reuters, *Nigeria Security Agents Arrest Activist for Calling for Revolution*, REUTERS(Aug. 4, 2019) <https://www.reuters.com/article/us-nigeria-politics/nigeria-security-agents-arrest-activist-for-calling-for-revolution-idUSKCN1UU0K5>

⁶⁴ Omoyele Sowore (@YeleSowore), Twitter (Aug. 2, 2019, 3:21pm), <https://twitter.com/YeleSowore/status/1157416280334491649>
⁶⁵ Human Rights Watch, *Nigeria: Activist's Detention a Sign of Growing Intolerance*, HUMAN RIGHTS WATCH (Aug. 7, 2019), <https://www.hrw.org/news/2019/08/07/nigeria-activists-detention-sign-growing-intolerance>

⁶⁶International Service for Human Rights, *Submission to 56th session of the African Commission on Human and Peoples' Rights on the situation of human rights defenders - Nigeria* (2018), https://www.ishr.ch/sites/default/files/article/files/nigeria_achpr_briefing_paper_on_hrds_april_2015.pdf See also Amnesty International, *Endangered Voices Attack on Freedom of Expression in Nigeria*, AMNESTY INTERNATIONAL, (Oct. 14, 2019), <https://www.amnesty.org/en/countries/africa/nigeria/report-nigeria/>

Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁶⁷

1. Nigerian Authorities Violated Mr. Sowore’s Rights by Detaining Him Without a Judicial Order

Nigerian authorities have violated Mr. Sowore’s right to be detained by virtue of a judicial order. Article 9(1) of the ICCPR and Principle 2 of the Body of Principles prohibit arbitrary arrest and detention and state that no one shall be deprived of liberty except on such grounds and in accordance with the procedure established by the law. Section 35(1)(a) of the Nigerian Constitution reiterates such rights and states that every person shall not be deprived of liberty save an execution of the sentence or order of a court. Mr. Sowore’s arrest and subsequent detention was not accompanied by a warrant or judicial order.

2. Nigerian Authorities Violated Mr. Sowore’s Rights by Failing to Inform Him of Charges Against Him

Nigerian authorities have violated Mr. Sowore’s right to be informed of the reasons for his arrest. Under Articles 9(2) and 14(3)(a) of the ICCPR, and Principles 10 and 13 of the Body of Principles, Nigeria is obligated to guarantee that those arrested are informed of the reasons for their arrest and promptly informed of the charges brought against them. Section 35(3) of the Nigerian Constitution, further prescribes that those arrested or detained be informed in writing, within twenty-four hours, of the facts and grounds for his arrest or detention.⁶⁸ There was no warrant for Mr. Sowore’s arrest and he was detained in DSS custody for five days without being brought before a judge. The Nigerian Department of State Services did not officially charge Mr. Sowore until 48 days after his initial arrest, violating his right to be informed of the reasons of his arrest.

3. Nigerian Authorities Violated Mr. Sowore’s Rights by Failing to Promptly Bring Him Before a Judge

Nigerian authorities have violated Mr. Sowore’s right to be promptly brought before a judge and tried without undue delay. Article 9(3) and (4) of the ICCPR protects an individual’s right to challenge the legality of their continued detention. This right is reiterated by principles 4, 11(1), 32 and 37 of the Body of Principles.⁶⁹ Article 9(3) of the ICCPR requires that a detainee “be brought promptly before a judge or other officer authorized by law to exercise judicial power” and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”⁷⁰ The Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances.⁷¹ Further, section 35(4) of the Nigerian Constitution, specifies that any person who is arrested or detained upon reasonable suspicion of having committed a crime shall be brought before a court within a reasonable time, a reasonable time is defined as up to 48 hours.⁷²

Here, the Nigerian authorities violated Mr. Sowore’s right to promptly be brought before a judge. First, as explained above, the authorities failed to bring him before a judge within 48 hours, as prescribed by the Nigerian constitution and international law. Mr. Sowore was arrested on August 3, 2019 in his hotel and was held for three days before being presented to a judge, clearly exceeding the mandate that an accused detainee be brought before the court within 48 hours of arrest. On August 6, 2019 the DSS sought an *ex-parte* order from the Federal High Court in Abuja to detain Sowore for an

⁶⁷ *Revised Methods of Work*, ¶8(c).

⁶⁸ *Constitution of the Federal Republic of Nigeria*, Sec. 35(3).

⁶⁹ Body of Principles, at principles 4, 11(1), 32 and 37.

⁷⁰ General Comment No. 35, *supra* note 117, at ¶ 32.

⁷¹ *Id.*, at ¶ 33.

⁷² *Constitution of the Federal Republic of Nigeria*, Sec. 35(4).

additional 90 days to conduct investigations without formally charging him. This request was made under the vague 2013 anti-terrorism legislation described above. The court granted the DSS 45 additional days on August 8th. Mr. Sowore was detained for a total of three days before being presented to a judge and a total of 48 days without any formal charges filed against him.

By failing to bring Mr. Sowore before the court within 48 hours, Nigeria violated his right to be promptly brought before a judge.

4. Nigerian Authorities Violated Mr. Sowore's Right to Release Pending Trial

As well as requiring that detainees be allowed to promptly challenge their detention, Article 9(3) of the ICCPR also enshrines the right to an individual's release pending trial by confirming that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody" The Committee has found that "[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances."⁷³ Principles 38 and 39 of the Body of Principles further confirms that, except in special cases, a criminal detainee is entitled to release pending trial.⁷⁴ With further regard to article 9(3) of the Covenant, the Human Rights Committee has consistently held that "pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party."⁷⁵ The right to bail is also guaranteed under section 35(1) of the Nigerian Constitution.⁷⁶ Lastly, the Nigerian courts have found that conditions attached to the grant of bail must not be "suffocating, unbearable, unworkable and unduly burdensome."⁷⁷

On September 24th a Federal High Court Judge, Justice Taiwo Taiwo, ordered the immediate release of Mr. Sowore on the condition that he surrender his passport. On September 26, Mr. Sowore met the release conditions, but the DSS refused to comply with the order and continued to unlawfully detain Mr. Sowore. On September 30th Mr. Sowore plead not guilty to all seven charges. On October 4th a new judge, Justice Ijeoma Ojukwu, unlawfully set new overly burdensome bail requirements that were so stringent and impossible to meet, seemingly designed as a punitive measure to ensure prolonged pretrial detention. These punitive conditions were set despite the previous order by Justice Taiwo Taiwo had not been overturned or amended by a superior court. Despite this fact, Justice Ojukwu granted Mr. Sowore bail with the overly burdensome conditions requiring a sum of N100 million naira (about \$280,000 United States dollars) with two sureties who must reside in Abuja, the Nigerian capital, and have landed properties in the capital worth the bail sum. The bail conditions also restrict him from talking to the press, engaging in protests and leaving the city of Abuja, even though he has no home in the city. Not only are these overly burdensome conditions vastly disproportionate to the facts of Mr. Sowore's case but the impracticality amounts to an effective refusal of bail and *de facto* order of continued detention in an attempt to keep Mr. Sowore perpetually in custody. On October 21st Justice Ojukwu slightly reduced the financial conditions of Mr. Sowore's bail, however as of the date of this filing the conditions remain too burdensome to meet. Given the overwhelming public support and efforts of Mr. Sowore's family to continue to find

⁷³ General Comment No. 35, *supra* note 117, at ¶ 38.

⁷⁴ Body of Principles, at principles 38 and 39.

⁷⁵ Communication No. 526/1993, M. and B. Hill v. Spain (Views adopted on 2 April 1997), UN doc. GAOR, A/52/40 (vol. II), p. 17, para. 12.3.

⁷⁶ *Constitution of the Federal Republic of Nigeria*, Sec. 35(1).

⁷⁷ *ABACHA V. STATE* (2002) 5 NWLR (PT. 761) 638.

a way to meet these overly burdensome and punitive bail conditions, should Mr. Sowore ever be able to meet these conditions, any “release” from the current detention facility, would still effectively result in a form of continued arbitrary detention of Mr. Sowore in a city (Abuja) in which he does not reside, in violation of his right to freedom of movement, and unlawfully restricting his legitimate activities to promote and protect human rights.

First, Mr. Sowore was denied due process when the DSS failed to comply with the original release order by Justice Taiwo Taiwo after Mr. Sowore met those original conditions on September 26th. Due process was further denied when a new judge unlawfully added new overly burdensome requirements despite Justice Taiwo Taiwo’s order of release still being in effect, and without an amendment or nullification of Justice Taiwo Taiwo’s order by a superior court.

Second, the new financial requirements demanded by Justice Ojukwu’s order is a sum that is unduly burdensome on Sowore’s family and impossible to meet. The requested deposit of N100 million naira, with two sureties who have landed properties in the capital far outweighs the crimes Mr. Sowore is accused of. Mr. Sowore’s bail conditions are out of step with the Nigerian government’s typical assignment of bail and further demonstrates the government’s blatant targeting and attempted silencing of Mr. Sowore. The N100 million naira attached to Mr. Sowore’s bail for organizing a peaceful protest is comparable to bail amounts attached to individuals charged with far greater capital offenses. In 2009, three former bank chief executives faced charges for recklessly granting loans, share price manipulation and incessant corruption following a \$2.6 billion-dollar government bailout out.⁷⁸ The court set bail for the former chief executives at N100 million naira including sureties who own property in the capital Abuja. The Nigerian government cannot argue that Mr. Sowore’s call for a peaceful pro-democracy protest is equivalent to corruption charges of such a grand scale that similar bail conditions are warranted. Further, Mr. Sowore’s bail conditions require him to remain in the city of Abuja as he awaits trial. As has been alerted to the court, Mr. Sowore does not have a residence in Abuja. In restricting his movements to Abuja, the court, in the pretense of granting “release,” has essentially ensured Mr. Sowore’s continued detention.

Despite slight amendments made by Justice Ojukwu on October 21st, to date the bail conditions remain too burdensome to meet. By failing to grant Mr. Sowore bail with conditions that are neither suffocating, unbearable, unworkable or unduly burdensome; Nigeria has violated his right to be released pending trial, prolonging his arbitrary detention.

5. Nigerian Authorities Violated Mr. Sowore’s Right to Access his Family

Nigerian authorities are violating Mr. Sowore’s right to access his family. Article 17 of the ICCPR provides that no detainee or prisoner “shall ... be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence.”⁷⁹ This right is reiterated in Principle 15 of the Body and Principles which provides that “communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days”⁸⁰ and Principle 19 which confirms that “a detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family.”⁸¹

⁷⁸ Reuters, *Update 1-Nigeria Court Sets Strict Bail Terms for Bank Chiefs*, , REUTERS (SEPT. 14 2009), <https://www.reuters.com/article/nigeria-banks/update-1-nigeria-court-sets-strict-bail-terms-for-bank-chiefs-idUSLE4727520090914>

⁷⁹ ICCPR, Art. 17.

⁸⁰ Body of Principles, at principles 15.

⁸¹ Body of Principles, at principles 19.

The Nigerian authorities cut off all phone communication between Mr. Sowore and his children following his wife's interview with Democracy Now!, on September 4th, where she provided information on her husband's detention and made calls for his release.⁸² Prior to giving this interview Mrs. Sowore was able to talk with her husband over the phone during the month of August but hasn't spoken with him since. It has now been two months since she last spoke with her husband, far outlasting a matter of days - the standard provided for in Principle 15.

By cutting off all contact with his wife and two children during his detention, the Nigerian government is violating Mr. Sowore's right to access his family under international law.

i. Category V: Discrimination Based on a Protected Class

The detention of Mr. Sowore due to his political opinions, political participation, and status as a human rights defender and journalist is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory "based on . . . political or other opinion . . . that aims towards or can result in ignoring the equality of human beings."⁸³ Article 7 of the UDHR and Article 26 of the ICCPR further prohibits discrimination based on "political or other opinion." Similarly, Chapter 4 Section 42(1) of the Nigerian Constitution guarantees equality before the law on the basis of political opinion.⁸⁴

The facts at hand indicate that Mr. Sowore was arrested due to his political opinions, political participation and status as a human rights defender and journalist. Mr. Sowore's charges stem from his call for nationwide protests against corrupt government, and the violation of individual rights by the state. Mr. Sowore ran for president in the February 2019 elections and made headlines when he claimed that the results, that returned President Buhari to power, were not credible. He continued to call for free and fair elections and rallied the people of Nigeria to demand more of their government. Through his Twitter account he criticized the President and his administration for continuous human rights abuses, vote buying and other violations.⁸⁵ Thus, the facts indicate that Mr. Sowore was arrested in light of his political opinions and activities; by extension, his detention is discriminatory based on his political opinions and his status as a journalist and human rights defender.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

On September 20, 2019, Mr. Sowore was charged with seven meritless criminal charges. Mr. Sowore was charged after being detained for 48 days. The court granted bail on October 4th, but its conditions are so stringent and overly burdensome it has been impossible to date for Mr. Sowore to meet the requirements, thus ensuring his continued arbitrary detention. On October 21, 2019 the

⁸² Democracy Now!, *Nigerian Journalist & Activist Omoyele Sowore Remains Jailed for Calling for Peaceful Protests*, DEMOCRACYNOW! (Sept. 4, 2019), https://www.democracynow.org/2019/9/4/nigerian_journalist_activist_omoyele_sowore_jailed

⁸³ *Revised Methods of Work*, ¶7(e).

⁸⁴ *Constitution of the Federal Republic of Nigeria*, Ch.4 Sec. 42(1).

⁸⁵ Omoyele Sowore (@YeleSowore), Twitter (Aug. 2, 2019, 3:21pm), <https://twitter.com/YeleSowore/status/1157416280334491649>

financial burdens of his bail requirements were slightly lessened from N100 million naira to N50 million, however to date Mr. Sowore has still not been able to meet them. Even should Mr. Sowore be able to meet the new bail requirements at any point in the future, he will still remain effectively detained with his movement restricted to a city (Abuja) where he does not reside and his freedoms to exercise his fundamental rights to expression and assembly unduly restricted on an ongoing basis.

VI. CONCLUSION

The arrest and continued detention of Mr. Sowore is an egregious violation of his fundamental rights. The Government of the Federal Republic of Nigeria has violated the following rights under various provisions of the Nigerian Constitution, Nigerian laws, and international law in continuing to detain Mr. Sowore and attaching unduly burdensome bail conditions that effectively allows her continued detention.

- The right to be free from arbitrary detention;
- The right to freedom of expression;
- The right to freedom of assembly; and
- The right to due process, including the right to be detained only with a judicial order, the right to be informed of the reasons for arrest, the right to be promptly brought before a judge, the right to release pending trial, and the right of access to family.

We hereby request that the United Nations Working Group on Arbitrary Detention:

1. Issue an opinion finding Mr. Sowore's ongoing pretrial detention to be in violation of Nigeria's obligations under international law;
2. Call for Mr. Sowore's immediate release;
3. Request that the Government of Nigeria investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of Mr. Sowore; and
4. Request the Government of Nigeria to award Mr. Sowore compensation for the violations he has endured as a result of his unlawful arrest, arbitrary detention, and mistreatment while in state custody.

VII. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION



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