



AMERICAN **BAR** ASSOCIATION

Center for Human Rights



Nigeria v. Eromosele Adene and Nicholas Mbah

April 2022

TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR:

Staff at the American Bar Association Center for Human Rights drafted this report. The **American Bar Association** (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** mobilizes lawyers to help threatened advocates, protect vulnerable communities, and hold governments accountable under law. It has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. It is an implementing partner in the Clooney Foundation for Justice's TrialWatch initiative.

ABOUT THE EXPERT:

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ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE:

The **Clooney Foundation for Justice** (CFJ) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Ranking exposing countries' performance and use it to support advocacy for systemic change.

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EXECUTIVE SUMMARY



Michael Hamilton, a member of the Trial Watch Experts Panel, assigned these trials a grade of D:

The failure to adduce credible evidence to substantiate the criminal charges against Mr. Eromosele Adene and Mr. Nicholas Mbah – both of whom were legitimately exercising their rights to freedom of expression and assembly as protected under the International Covenant on Civil and Political Rights and the African Charter – strongly suggests that the prosecution in their cases was initiated for predominantly ulterior political motives. The serious interferences with these rights have been compounded by significant irregularities during the trial process and further interferences with other fundamental rights (including the right to freedom from arbitrary detention).

Since the end of 2020, the American Bar Association (ABA) Center for Human Rights has monitored proceedings against Eromosele Adene and Nicholas Mbah in Lagos, Nigeria as part of the Clooney Foundation for Justice’s TrialWatch initiative. Both cases show how the Nigerian authorities have used criminal charges, detention, and trials to retaliate against those who have peacefully participated in the #EndSARS demonstrations against police brutality. In particular, it appears that the police prosecutors who initiated the cases never had sufficient evidence to support their allegations that the accused acted anything but peacefully. As such, there are strong grounds to conclude that the proceedings against Adene and Mbah constitute an abuse of process and have entailed prosecutorial misconduct as well as interferences with the right to freedom of expression and right to freedom of peaceful assembly.

The Special Anti-Robbery Squad (SARS) was formed in 1992 as an independent unit tasked with combating robbery. Since SARS’ creation, there have been reports of abuses such as beatings, torture, bribes, and arbitrary detention. After years of public outcry and little progress, the movement to reform SARS gained renewed momentum in October 2020, when a video of a SARS officer shooting a man was circulated on social media and the #EndSARS hashtag started to trend globally. Demonstrations spread throughout the country, calling for not only the termination of SARS but broader governmental reforms. The security forces countered largely peaceful protests with force, in some cases firing tear gas and live rounds into crowds. Meanwhile, the authorities rounded up demonstrators, many of whom have since spent lengthy periods of time in detention pending trial.

On October 20, 2020, military officers shot and killed at least nine #EndSARS protesters at the Lekki toll gate in Lagos. Soon after, the demonstrations fizzled out. Although SARS has officially been disbanded, police abuses have persisted, judicial panels established to provide a remedy to SARS victims have largely stopped

operating or have stalled in paying out awards, and the authorities continue to use the judicial system to harass those involved in the protests.

Nicholas Mbah and Eromosele Adene were prominent participants in the #EndSARS protests who were arrested in Lagos soon after the Lekki toll gate incident. Adene, who was arrested at home on November 7, 2020 following his call for renewed protests, spent nine days in jail before being released on bail. The case against him for various breach of peace offenses (including breach of peace by offensive publication in connection with a flyer promoting demonstrations) was thrown out almost a year later, on October 18, 2021, for want of prosecution. Mbah, who was arrested on October 29, 2020 after taking part in the #EndSARS protests, spent almost eight months in pretrial detention before being released on bail. His prosecution for unlawful assembly, breaking curfew, and attempted arson of a local secretariat is ongoing.

The trajectory of these cases indicates that they constituted an abuse of process as well as a violation of prosecutorial ethics. First, the underlying allegations changed dramatically throughout the course of the proceedings. Adene was initially accused of criminal incitement and cyberstalking (as well as with breach of peace offenses). Police prosecutors later withdrew the incitement and cyberstalking allegations. Mbah was initially charged with committing armed robbery as well as with waging an armed assault on government property and setting two police cars on fire. The police subsequently withdrew these counts, ultimately charging Mbah with unlawful assembly, breaking curfew, and attempted arson of a local secretariat. The shifting allegations in both cases suggest that the authorities were attempting to pin any criminal charge on the accused as opposed to assessing whether there was evidence of a crime.

Second, the prosecution has failed to present evidence that either Adene or Mbah acted anything but peacefully and appears to have attempted to purposely deceive the respective presiding magistrates. In Adene's case, the police initially claimed that he "was arrested on the protest ground with exhibits caught on him." However, it was soon apparent, including through video footage, that Adene had been arrested at home. Meanwhile, no "exhibits" – meaning inculpatory evidence of the crime – were ever presented in court. Similarly, in Mbah's case, the police claimed that he was in possession of weapons at the time of arrest, consistent with the original charges of armed robbery and an armed assault on government property. The presence of weapons was cited in the police request to detain Mbah, which was approved by the magistrate. The armed robbery and armed assault charges, however, soon disappeared and no evidence of weapons was ever presented to the court (let alone evidence that Mbah had attempted to burn down the local secretariat – one of the remaining charges). Again, the fluctuating allegations made by the police prosecutors denote the spuriousness of the charges.

Third, the cases were riddled with irregularities. Neither Adene nor Mbah, for example, was brought before a court following arrest in the time frame prescribed by Nigerian legislation – 48 hours. Instead, Adene waited nine days to receive judicial review of his detention and Mbah four days. Subsequently, even after a court had ordered Mbah’s release on bail five months into his detention, prison officials refused to release him on a range of trifling procedural grounds, suggesting that detention was more of a retaliatory punishment than a necessary preventive measure. It is worth noting that the cases were brought by police prosecutors – not the public prosecutor’s office, meaning that those prosecuting the #EndSARS protesters were part of the same body whose actions were the subject of the protests.

Fourth, as mentioned above, the trials of Mbah and Adene took place against the backdrop of the judicial harassment of #EndSARS protesters. While a Lagos court ultimately threw out the case against Adene, the case against Mbah is still pending.

In addition to abuse of process issues, there are strong grounds to conclude that the proceedings violated the rights to free expression and peaceful assembly, which are protected by the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights, to which Nigeria is party. Under these treaties, any limitations on the right to freedom of speech and peaceful assembly must be prescribed by law, have a legitimate objective, and be necessary and proportionate. Speech critical of the government, including assemblies with a political message, is worthy of heightened protection due to its importance in a democratic society.

As discussed above, there appears to have been no objective for the proceedings against Mbah and Adene beyond retaliation for their advocacy against state abuses, in contravention of the rights to freedom of expression and peaceful assembly. In contributing to an ongoing dialogue about a pressing public issue – police brutality – Mbah and Adene deserved protection, not persecution.

While Adene’s case concluded in October, Mbah is still facing criminal trial a year after the initial charges. The Yaba Magistrate Court is due to resume consideration of his case on June 24 and, meanwhile, charges that are reportedly based on the same underlying acts have been filed before the Lagos High Court. Assuming further failure by the State to produce evidence of unlawful conduct and in line with the positive precedent set in Adene’s case, the proceedings against Mbah should be swiftly terminated. More broadly, the government must cease politically motivated prosecutions against peaceful #EndSARS protesters and must provide remedies where appropriate to both those awaiting awards before judicial panels and those who have been unjustly charged, detained, and prosecuted for their peaceful role in the demonstrations.



A. POLITICAL AND LEGAL CONTEXT

Government and Legal System

Nigeria has a federal system of government, including both federal and state judicial systems.¹ At the federal level, the Supreme Court is the highest appeals court and has limited original jurisdiction.² The second highest appeals court, the Court of Appeal, holds appellate jurisdiction³ and sits in the country's capital, Abuja. There are an additional 19 divisions of the Court of Appeal located throughout the country.

One level down, the Federal High Court – based in Abuja but with divisions in each of Nigeria's 36 states – is primarily a court of original jurisdiction, hearing both criminal and civil matters.⁴ On the same level but within the State system are State High Courts, State Customary Courts of Appeal, and State Sharia Courts of Appeal, which operate pursuant to – respectively – English, customary, and Sharia law, reflecting the country's heritage and diversity.⁵ The Constitution establishes a High Court for all 36 states⁶ and Sharia Courts of Appeal and Customary Courts of Appeal as required.⁷ Abuja, its own entity outside the State system known as the Federal Capital Territory (FCT), has its own High Court, Customary Court of Appeal, and Sharia Court of Appeal.⁸

Below the State and FCT appellate courts are Magistrate Courts, Customary Courts, and Sharia Courts. The cases against Eromosele Adene and Nicholas Mbah were brought before Magistrate Courts in Lagos and, with respect to Mbah, the prosecution is seeking to move the case to the Lagos High Court.

Arbitrary Arrest and Detention

Concerns about arbitrary arrest and detention in Nigeria are widespread. In August 2019, the United Nations Human Rights Committee highlighted

allegations of arbitrary arrests by law enforcement agents ... the arrest of a large number of women, without charge, for alleged links with Boko Haram by the military; lengthy pretrial detention and incommunicado detention, especially in cases involving suspected Boko Haram fighters; frequent denial of basic legal safeguards, such as the right to be informed of charges and the right to

¹ Constitution of Nigeria, 1999, Part 1 and Article 6. Available at https://www.constituteproject.org/constitution/Nigeria_1999.pdf.

² Id. at Articles 230.1, 232.1, 2.

³ Id. at Articles 237.1, 240.

⁴ Id. at Articles 249.1, 251.1.

⁵ See id. at Articles 270.1-284.

⁶ Id. at Article 270.1.

⁷ Id. at Articles 275.1, 280.1.

⁸ Id. at Articles 255.1-269.

communicate with a lawyer or to notify family members; and a discretionary granting of bail (arts. 2, 9 and 14).⁹

In its 2020 Country Report on Human Rights Practices in Nigeria, the U.S. State Department likewise cited the issue of arbitrary arrests and detentions.¹⁰ According to the State Department, detainees are often held incommunicado without access to their lawyers or families.¹¹ Police have reportedly requested bribes from detainees to either “take them to court hearings or to release them.”¹²

Under domestic law, arrested persons must be brought before a magistrate within 48 hours.¹³ As documented by the U.S. State Department, the Nigerian authorities do not always comply with this requirement.¹⁴ Even arrestees who are brought before a judge face extended pretrial detention, described by the State Department as a “serious problem.”¹⁵ From 2011-2015, available data from Nigeria’s Bureau of Statistics showed that more than 70 percent of the prison population consisted of pretrial detainees.¹⁶ 2020 produced similar figures; data from the Nigeria Correctional Service showed that 74 percent of the prison population consisted of pretrial detainees, many of whom had already spent years in detention.¹⁷

According to the U.S. State Department and the UN, conditions of detention generally fail to meet international standards. The former has characterized conditions in prisons and jails as “harsh and life threatening,”¹⁸ with reports of “torture, gross overcrowding, food and water shortages, inadequate medical treatment, exposure to heat and sun, and infrastructure deficiencies that led to inadequate sanitary conditions that could result in death.”¹⁹ In its 2019 Concluding Observations the UN Human Rights Committee also expressed concern about “the poor conditions of detention in police cells, military detention facilities and other places of detention, in particular regarding overcrowding, sanitary conditions and access to medical care, food and water.”²⁰ Like the State Department, the

⁹ Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, U.N. Doc. CCPR/C/NGA/CO/2, August 29, 2019, para. 36.

¹⁰ U.S. State Department, “2020 Country Report on Human Rights Practices: Nigeria”, 2021, pg. 11. Available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/nigeria/>.

¹¹ *Id.* at pgs. 11-12.

¹² *Id.* at pg. 12.

¹³ *Id.* at pg. 11.

¹⁴ *Id.*

¹⁵ *Id.* at pg. 12.

¹⁶ Quartz Africa, “Up to three-quarters of the Nigerian prison population is serving time without being sentenced”, January 24, 2017. Available at <https://qz.com/africa/892498/up-to-three-quarters-of-nigeriasprison-population-is-serving-time-without-being-sentenced/>. See also Open Society Justice Initiative, “Improving Pretrial Justice in Nigeria”, February 2013. Available at <https://www.justiceinitiative.org/publications/fact-sheet-improving-pretrial-justice-nigeria>.

¹⁷ U.S. State Department, “2020 Country Report on Human Rights Practices: Nigeria”, 2021, pg. 12. See also Committee Against Torture, Concluding Observations in the absence of the initial report of Nigeria, U.N. Doc. CAT/C/NGA/COAR/1, 2021, (Advance Unedited Version), para. 17 – noting especially that “around 72 per cent of the prison population is still awaiting trial.”

¹⁸ *Id.* at pg. 1.

¹⁹ *Id.* at pg. 9.

²⁰ Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, U.N. Doc. CCPR/C/NGA/CO/2, August 29, 2019, para. 34. See also Committee

Committee received reports of “torture, including for obtaining confessions.”²¹ Amnesty International has echoed these allegations, stating that “[i]n order to obtain quick ‘confessions’ pending investigation, the so-called ‘holding charge,’ officers often torture suspects and detain them in conditions that amount to ill treatment.”²²

Fair Trial Rights

The Nigerian judicial system has been criticized for failing to uphold fair trial rights. As documented by the U.S. State Department, authorities often do not respect the right to be promptly informed of the charges, the right to trial within a reasonable time, the right to be present at trial, the right to receive the counsel of an attorney of choice, the right to adequate time and facilities to prepare a defense, the right to call and examine witnesses, and the privilege against self-incrimination.²³

According to the State Department, noncompliance with fair trial standards is “most frequently due to a lack of capacity.”²⁴ The United Nations Human Rights Committee has likewise linked fair trial issues to “a lack of resources and staff.”²⁵

Prosecutorial and judicial independence is also of concern. In its 2019 Concluding Observations on Nigeria, the UN Human Rights Committee remarked on “political influence and corruption in the judiciary.”²⁶ According to the United Nations Office on Drugs and Crime, it is not uncommon for judges and prosecutors to receive bribes to, among other things, expedite proceedings and do away with fines.²⁷ As stated by Freedom House, “political interference [and] corruption ... remain important problems.”²⁸

The Creation and Attempted Reform of SARS

In 1992, the Lagos State Commissioner of Police Simeon Danladi Midenda created the Special Anti-Robbery Squad (SARS) as an independent unit tasked with combating robbery. As Midenda later stated, SARS “operated in plain clothes and

Against Torture, Concluding Observations in the absence of the initial report of Nigeria, U.N. Doc. CAT/C/NGA/COAR/1, 2021, (Advance Unedited Version), para. 19.

²¹ Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, U.N. Doc. CCPR/C/NGA/CO/2, August 29, 2019, para. 32; Committee Against Torture, Concluding Observations in the absence of the initial report of Nigeria, U.N. Doc. CAT/C/NGA/COAR/1, 2021, (Advance Unedited Version), para. 15.

²² Amnesty International, “Torture in Nigeria: In summary”, 2014. Available at <https://www.amnesty.org/en/wp-content/uploads/2021/07/afr440052014en.pdf>.

²³ U.S. State Department, “2020 Country Report on Human Rights Practices: Nigeria”, 2021, pg. 15.

²⁴ *Id.* at pg. 13.

²⁵ Human Rights Committee, Concluding observations on Nigeria in the absence of its second periodic report, U.N. Doc. CCPR/C/NGA/CO/2, August 29, 2019, para. 38.

²⁶ *Id.*

²⁷ U.N. Office on Drugs and Crime, “Corruption in Nigeria: Patterns and Trends”, December 2019, pgs. 50-51. Available at https://www.unodc.org/documents/nigeria/Corruption_Survey_2019.pdf.

²⁸ Freedom House, “2021 Freedom in the World Report: Nigeria”, 2021. Available at <https://freedomhouse.org/country/nigeria/freedom-world/2021>.

used plain vehicles that could not be associated with security or any government agency.”²⁹

By 2002, SARS units had been established in the other states of Nigeria and the FCT.³⁰ SARS was further included as one of the 13 units under the Nigeria Police Force Criminal Investigation and Intelligence Department, the highest investigating arm of the Nigerian police.³¹ Though SARS’ mandate was initially limited to robbery cases, it was expanded in 2002 “to [the] arrest, investigat[ion], and prosecut[ion of] suspected armed robbers, murderers, kidnappers, hired assassins, and other violent criminals.” Around this time, SARS officers began to carry arms in public.³²

Reports of abuses committed by SARS officers quickly proliferated. These abuses included: extrajudicial killings; torture;³³ arbitrary arrests; unlawful detention; enforced disappearances;³⁴ and sexual violence.³⁵ In 2016, Amnesty International described a “pattern of ruthless human rights violations where victims are arrested and tortured until they either make a ‘confession’ or pay officers a bribe to be released.”³⁶ Between the years 2017 and 2020 alone, Amnesty International documented 82 cases of extortion, torture, and ill treatment by SARS – and “the consistent failure by the Nigerian authorities to bring perpetrators to justice.”³⁷ Although the government pledged to investigate in “the few instances” where violations became “public knowledge,” Amnesty found that no investigations or prosecutions of perpetrators occurred in the documented cases.³⁸

National and international bodies have regularly commented on impunity for SARS abuses. As early as 2007, the UN Special Rapporteur on Torture noted that “torture [was] an intrinsic part of how police operate” in Nigeria, and that the system was unable to “effectively investigate allegations, protect victims of serious human rights

²⁹ Time, “The Nigerian Government Has Pledged to #EndSARS and Reform the Police. This Isn’t the First Time They’ve Made that Promise”, October 28, 2020. Available at <https://time.com/5904345/endsars-history-nigeria/>.

³⁰ Amnesty International, “#EndSARS Movement: From Twitter to Nigerian Streets”, February 2021. Available at <https://www.amnesty.org/en/latest/campaigns/2021/02/nigeria-end-impunity-for-police-violence-by-sars-endsars/>.

³¹ Nigeria Police Force, “Force Criminal Investigation and Intelligence Department.” Available at <https://www.npf.gov.ng/departments/investigation.php>.

³² Amnesty International, “#EndSARS Movement: From Twitter to Nigerian Streets”, February 2021.

³³ Committee Against Torture, Concluding Observations in the absence of the initial report of Nigeria, U.N. Doc. CAT/C/NGA/COAR/1, 2021, (Advance Unedited Version), paras. 13, 33.

³⁴ Amnesty International, “#EndSARS Movement: From Twitter to Nigerian Streets”, February 2021.

³⁵ Harvard Human Rights Journal, “#EndSARS: The Movement Against Police Brutality in Nigeria”, November 2020. Available at <https://harvardhrj.com/2020/11/endsars-the-movement-against-police-brutality-in-nigeria/>.

³⁶ Amnesty International, “Nigeria: Special Police Squad ‘Get Rich’ Torturing Detainees and Demanding Bribes in Exchange for Freedom”, September 21, 2016. Available at <https://www.amnesty.org/en/latest/press-release/2016/09/nigeria-special-police-squad-get-rich-torturing-detainees/>.

³⁷ Amnesty International, “Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS)”, June 2020. Available at <https://www.amnesty.org/en/documents/afr44/9505/2020/en/>.

³⁸ Id.

violations, and bring law enforcement officials ... to account.”³⁹ It cited several accounts of Nigerians – including a child aged 15 – who had been tortured or held incommunicado by SARS.⁴⁰

In late 2017, a video was posted on Twitter that showed a crowd chasing after a van carrying SARS officers who had allegedly just killed a young man.⁴¹ In response, Nigerians launched the #EndSARS campaign, using the Twitter hashtag to share their own accounts of abuse at the hands of SARS officers.⁴² Activist Segun Awosanya created an online petition calling for the government to disband SARS,⁴³ with over ten thousand people signing on before the petition was formally submitted to Nigeria’s National Assembly.⁴⁴ When the National Assembly rejected the petition in favor of reforming SARS, Nigerians protested in a number of cities.⁴⁵

In December 2017, the Inspector General of the Police (IGP) Ibrahim Idris announced the reorganization of all SARS units.⁴⁶ Under this new arrangement, a national Federal Anti-Robbery Squad (F-SARS), headed by the Commissioner of Police in Abuja, was created.⁴⁷ State-level SARS units were to work under the national F-SARS unit.⁴⁸ Idris also ordered the investigation of allegations of abuse against SARS officers and “recommend[ation of] punitive actions.”⁴⁹

In late December 2017, the IGP announced that all SARS units were prohibited from conducting stop and search operations and were “solely mandated” to investigate cases of armed robbery and violent crime.⁵⁰ At the same time, President Muhammadu Buhari signed into law the Anti-Torture Act, which “prohibits and criminalizes the use of torture by law enforcement agencies and provides for

³⁹ Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, U.N. Doc A/HRC/7/3/Add.4, November 22, 2007. Available at <https://undocs.org/A/HRC/7/3/Add.4>.

⁴⁰ *Id.*

⁴¹ BBC News, “Nigeria’s #ENDSARS Campaign at Police Brutality Video”, December 4, 2017. Available at <https://www.bbc.com/news/world-africa-42225314>. See also Amnesty International, “Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS)”, June 2020.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ The Choate News, “ENDSars Movement Combats Police Brutality in Nigeria”, November 13, 2020. Available at <https://thechoatenews.choate.edu/2020/11/13/endsars-movement-combats-police-brutality-in-nigeria/>.

⁴⁵ *Id.*

⁴⁶ Vanguard, “Anti-SARS Campaign: IG Orders Investigation of Anti-Robbery Squad”, December 4, 2017. Available at <https://www.vanguardngr.com/2017/12/anti-sars-campaign-ig-orders-investigation-anti-robbery-squad/>.

⁴⁷ Nigeria Police Force, “Press Release Re: #EndSARSNow Campaign · IGP Orders Immediate Re-Organization of Special Anti-Robbery Squad (SARS) Across the Country”, December 5, 2017. Available at https://npf.gov.ng/information/pressdetails.php?news_id=287.

⁴⁸ *Id.*

⁴⁹ Vanguard, “Anti-SARS Campaign: IG Orders Investigation of Anti-Robbery Squad”, December 4, 2017.

⁵⁰ Vanguard, “I-G Bans SARS from Conducting Stop and Search Operations”, December 22, 2017. Available at <https://www.vanguardngr.com/2017/12/g-bans-sars-conducting-stop-search-operations/>.

penalties for violations.”⁵¹ According to Amnesty International (as of 2020), no law enforcement official has ever been charged under this act.⁵²

In August 2018, with reports of SARS abuses continuing,⁵³ Acting President Yemi Osinbajo ordered the IGP to again overhaul SARS, as it appeared that the measures announced in December 2017 had not been implemented.⁵⁴ Sahara Reporters, an online news agency run by journalist and Nigerian opposition critic Omoyele Sowore, stated: “After what it seems to be a total disregard of the first order made on 4th of December, 2017, the Police had for the second time announced a re-ordering of SARS operation nationwide [sic].”⁵⁵

Specifically, the IGP announced that “SARS teams nationwide would work under FSARS”; that the Commissioner of the Police in charge of F-SARS would report to the IGP; that SARS units were banned from conducting stop and search operations; and that the SARS mandate was limited to armed robbery and violent crime.⁵⁶ In addition, Osinbajo created the Presidential Panel on the Reform of the Special Anti-Robbery Squad and ordered the National Human Rights Commission (NHRC) to lead the panel’s efforts to investigate alleged human rights violations based on complaints submitted by victims.⁵⁷

In January 2019, just months after the attempted re-organization, the acting IGP Mohammed Adamu announced that F-SARS would disband,⁵⁸ with control over SARS units returning to the state commissioners of police – a decentralization of operations that the IGP described as an effort to “stop the current slide in policing standards.”⁵⁹

⁵¹ Amnesty International, “Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS)”, June 2020.

⁵² *Id.*

⁵³ See BBC News, “Yomi Shogunle Dey for Hot Water as Nigerians Wan Pursue di Police oga from Twitter”, July 27, 2018. Available at <https://www.bbc.com/pidgin/media-44984091>.

⁵⁴ Sahara Reporters, “After Osinbajo’s Order, Police Rename SARS ‘Federal Special Anti-Robbery Squad (SARS)’”, August 14, 2018. Available at <http://saharareporters.com/2018/08/14/after-osinbajos-order-police-rename-sars-federal-special-anti-robbery-squad-fsars>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Vanguard, “NHRC Begins Investigations of SARS Unlawful Acts in S-South, Receives 17 Petitions”, August 20, 2018. Available at <https://www.vanguardngr.com/2018/08/nhrc-begins-investigation-of-sars-unlawful-acts-in-s-south-receives-17-petitions/>. See also U.S. State Department, “2019 Country Report on Human Rights Practices: Nigeria”, 2020. Available at <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/nigeria/>; The Punch, “Presidential Panel Okays State Police, SERAP, CACOL Seek NASS Action”, June 4, 2019. Available at <https://punchng.com/presidential-panel-okays-state-police-serap-cacol-see-nass-action/>.

⁵⁸ Amnesty International, “Nigeria: Disbandment of FSARS Not Enough to End Police Atrocities”, January 21, 2019. Available at <https://www.amnesty.org/en/latest/news/2019/01/nigeria-disbandment-of-fsars-not-enough-to-end-police-atrocities/>. See also Sahara Reporters, “BREAKING: New IGP Orders Immediate Disbandment of F-SARS”, January 21, 2019. Available at <http://saharareporters.com/2019/01/21/breaking-new-igp-orders-immediate-disbandment-f-sars>.

⁵⁹ The Guardian, “New IGP Mohammed Adamu Orders Disbandment of FSARS”, January 21, 2019. Available at <https://guardian.ng/news/new-igp-mohammed-adamu-orders-disbandment-of-fsars/>. See also Pulse, “SARS: IGP Adamu Orders Immediate Disbandment of SARS”, January 21, 2019. Available at <https://www.pulse.ng/news/local/sars-igp-adamu-orders-immediate-disbandment-of-police-unit/yenlxxw>.

In April 2019, SARS officers accidentally killed a bystander in a soccer bar during a police raid, an incident that drew widespread condemnation.⁶⁰ Subsequently, in June 2019, the Presidential Panel released its report, recommending that the IGP dismiss 37 SARS officers, prosecute 24 officers, investigate the identity of a further 22 officers involved in violations, pay compensation to 45 complainants, and issue public apologies with respect to five complaints.⁶¹ In response, Buhari ordered the IGP, Ministry of Justice, and the NHRC “to work out the modalities for the implementation of the Report within 3 months.”⁶² While some SARS officers faced dismissal and prosecution for their unlawful actions, the Panel’s recommendations were largely unenforced, and SARS officers continued to enjoy impunity.⁶³

The 2020 #EndSARS Protests

On October 3, 2020, a video allegedly depicting SARS officers dragging two men from a hotel in Delta state, shooting one of them, and driving away in a vehicle was posted to Twitter.⁶⁴ The #EndSARS campaign gained traction once more, with the hashtag trending globally.⁶⁵

Starting on October 8, protests demanding that SARS be disbanded spread throughout the country. They were largely peaceful. Nigerian security forces responded with violence, using tear gas, water cannons, and live rounds against peaceful protesters.⁶⁶ Pro-government armed individuals also intervened in peaceful protests, attacking demonstrators.⁶⁷ On October 10, a young man named Jimoh Isiaka was killed by police who allegedly opened fire at a protest in Oyo State.⁶⁸ The next day, at least two more people were killed in a protest against Isiaka’s death.⁶⁹

⁶⁰ Global Voices, “Young, Dreadlocked or Tattooed in Nigeria? Police Might Harass or Kill You”, April 7, 2019. Available at <https://globalvoices.org/2019/04/07/young-dreadlocked-or-tattooed-in-nigeria-police-might-harass-or-kill-you/>. See also Channels TV, “#EndSARS: Nigerian Justice System Has Failed to Prevent, Punish Torture - Amnesty International”, April 1, 2019. Available at <https://www.channelstv.com/2019/04/01/endsars-nigerian-justice-system-has-failed-to-prevent-punish-torture-amnesty-international/>.

⁶¹ Premium Times, “Buhari Orders IGP, Justice Minister to Work out Implementation of Report on SARS Reform”, June 3, 2019. Available at <https://www.premiumtimesng.com/news/headlines/333204-buhari-orders-igp-justice-minister-to-work-out-implementation-of-report-on-sars-reform.html>. See also The Punch, “Presidential Panel Okays State Police, SERAP, CACOL Seek NASS Action”, June 4, 2019. Available at <https://punchng.com/presidential-panel-okays-state-police-serap-cacol-see-nass-action/>.

⁶² The State House, Abuja, “President Muhammadu Buhari Receives Report of SARS Reform”, June 3, 2019. Available at <https://statehouse.gov.ng/news/president-muhammadu-buhari-receives-report-of-sars-reform/>.

⁶³ See U.S. State Department, “2019 Country Report on Human Rights Practices: Nigeria”, 2020; Amnesty International, “Time to End Impunity: Torture and Other Violations by Special Anti-Robbery Squad (SARS)”, June 2020.

⁶⁴ BBC News, “End Sars: How Nigeria’s Anti-Police Brutality Protests Went Global”, October 17, 2020. Available at <https://www.bbc.com/news/world-africa-54575219>; The Guardian, “#EndSARS Protests Gaining Global Attention”, October 9, 2020. Available at <https://guardian.ng/news/nigerians-endsars-protests-gaining-worldwide-attention/>.

⁶⁵ The Guardian, “#EndSARS Protests Gaining Global Attention”, October 9, 2020.

⁶⁶ Human Rights Watch, “Nigeria: Crackdown on Police Brutality Protests”, October 16, 2020. Available at <https://www.hrw.org/news/2020/10/16/nigeria-crackdown-police-brutality-protests#>.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id.

Although the state governor of Oyo confirmed that at least three people had been killed and six injured in protests, the police denied that they had shot at protesters.⁷⁰

On October 11, the government announced that “the SARS unit would be disbanded, ... [that] its members [would] be integrated into other police units following ‘psychological tests,’ and [that] SARS [would] be replaced by a Special Weapons and Tactical Team.”⁷¹ According to the police, SARS personnel would not be reassigned to the SWAT team.⁷² On October 15, the governor of Lagos State created the Judicial Panel of Enquiry and Restitution for Victims of SARS Related Abuses in the State, tasked with investigating allegations of human rights violations and providing compensation to victims.⁷³ In the following days, 28 other states and the FCT established similar judicial panels to investigate SARS abuses.⁷⁴ The mandate of certain panels was later expanded to include investigating acts of violence perpetrated during the October #EndSARS protests.⁷⁵

In light of the failed reforms of previous years, however, the #EndSARS protests continued. Protesters broadened the scope of their demands, calling for an end to police brutality in all its forms and for accountability for abuses committed by all law enforcement officials.⁷⁶ The Nigerian security forces again responded with violence. On October 20, the deadliest day of protests, the military opened fire on peaceful protesters at the Lekki toll gate in Lagos, killing at least 9 (though reported numbers vary) and injuring scores more.⁷⁷

⁷⁰ Id.

⁷¹ Id.

⁷² The Conversation, “Nigerians Got Their Abusive SARS Police Force Abolished - But Elation Soon Turned to Frustration”, December 8, 2020. Available at <https://theconversation.com/nigerians-got-their-abusive-sars-police-force-abolished-but-elation-soon-turned-to-frustration-150355>.

⁷³ Vanguard, “Sanwo-Olu Sets Up 7 Man Panel of Inquiry, Restitution for Victims of #EndSARS, Related Abuses”, October 15, 2020. Available at <https://www.vanguardngr.com/2020/10/sanwo-olu-sets-up-7-man-panel-of-inquiry-restitution-for-victims-of-endsars-related-abuses/>.

⁷⁴ Native, “Here’s What We Know So Far About the End SARS Judicial Panels”, November 4, 2020. Available at <https://thenativemag.com/heres-know-endsars-judicial-panels/>; Premium Times, “#EndSARS Anniversary: One Year After, What Has Happened to Protesters’ Five-Point Demand?”, October 20, 2021. Available at <https://www.premiumtimesng.com/news/headlines/490594-endsars-anniversary-one-year-after-what-has-happened-to-protesters-five-point-demand.html>.

⁷⁵ See Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021. Available at <https://www.hrw.org/news/2021/10/19/nigeria-year-no-justice-endsars-crackdown>.

⁷⁶ Human Rights Watch, “Nigeria: Crackdown on Police Brutality Protests”, October 16, 2020; CNN, “Nigeria Dissolves Controversial Police Unit Accused of Brutality”, October 11, 2020. Available at <https://www.cnn.com/2020/10/11/africa/nigeria-police-sars-intl/index.html>; Premium Times, “#EndSARS: Nine Persons Killed, Four ‘Presumed Dead,’ 33 Shot, Assaulted in Lekki Tollgate Shooting”, November 16, 2021.

⁷⁷ Premium Times, “#EndSARS: Nine Persons Killed, Four ‘Presumed Dead,’ 33 Shot, Assaulted in Lekki Tollgate Shooting”, November 16, 2021; Amnesty International, “#EndSARS Movement: From Twitter to Nigerian Streets”, February 2021; Human Rights Council, Visit to Nigeria: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard, U.N. Doc. A/HRC/47/33/Add.2, June 11, 2021, paras. 74-75; Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Letter of Allegation to the Government of Nigeria, U.N. Doc. AL NGA 6/2020, October 28, 2020. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25669>.

Estimates of protester deaths over the course of the protests vary. On October 25, a *Washington Post* article placed the total number of deaths since the start of the protests at over 100.⁷⁸ Two Nigerian political scientists documented 29 killings of protesters by the army and police between October 9 and October 21,⁷⁹ while Amnesty International estimated that at least 38 people died in protests across Nigeria on October 20 alone.⁸⁰ Notably, after the Lekki tollgate incident on October 20, the protests largely fizzled out.

During the month of October, the police arrested hundreds of protesters, holding them incommunicado for hours or days, denying them access to legal counsel, and bringing “trumped-up charges.”⁸¹ In early November, IGP Adamu announced that 1,590 people suspected of taking part in violence during the protests had been arrested.⁸² EndSARS Legal Aid, a network of lawyers working to release those arrested for participating in the #EndSARS protests, has documented 352 arrests of peaceful protesters, and has succeeded in obtaining the release of 337 protesters.⁸³

In addition to the arrest and detention of protesters, the Nigerian authorities employed other forms of harassment to crack down on the demonstrations.⁸⁴ The Central Bank, for example, froze the assets of at least 20 people who had “donat[ed], collect[ed], or disburs[ed] funds to support the protesters,”⁸⁵ claiming that the bank was investigating links to terrorism financing.⁸⁶ Multiple media organizations were fined for using social media footage of the protests in their reporting.⁸⁷ Meanwhile, protesters and #EndSARS activists have been subject to anonymous “threatening phone calls and messages” and travel restrictions.⁸⁸

See also Action Group on Free Civic Space, “#ENDSARS- Police Brutality, Protests & Shrinking Civic Space in Nigeria”, March 2021. Available at <https://closingspaces.org/endsars-police-brutality-protests-and-shrinking-civic-space-in-nigeria/>.

⁷⁸ Washington Post, “The Roots of the #EndSARS Protests in Nigeria”, October 25, 2020. Available at <https://www.washingtonpost.com/outlook/2020/10/25/roots-endsars-protests-nigeria/>.

⁷⁹ Security Journal, “Protests and Blood on the Streets: Repressive State, Police Brutality and #EndSARS# Protest in Nigeria”, September 7, 2021. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8456068/>.

⁸⁰ Amnesty International, “#EndSARS Movement: From Twitter to Nigerian Streets”, February 2021.

⁸¹ See Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021.

⁸² Peoples Gazette, “Thug Violence: Over 1,500 Suspects Arrested Nationwide: IG Adamu”, November 3, 2020. Available at <https://gazettengr.com/thug-violence-over-1500-suspects-arrested-nationwide-ig-adamu/>.

⁸³ #EndSARS Legal Aid. Available at <https://endsarslegalaid.co/>.

⁸⁴ Reuters, “Threats, Detentions and Frozen Assets: Nigeria’s Protesters Depict Pattern of Intimidation”, November 30, 2020. Available at <https://www.reuters.com/article/nigeria-protests-aftermath-insight-idUSKBN28A19W>

⁸⁵ Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021.

⁸⁶ Reuters, “Threats, Detentions and Frozen Assets: Nigeria’s Protesters Depict Pattern of Intimidation”, November 30, 2020.

⁸⁷ The Guardian, “NBC Fines Arise TV, Channels, AIT over ‘Unprofessional Coverage’ of #EndSARS Protest”, October 26, 2020. Available at <https://guardian.ng/news/nbc-fines-arise-tv-channels-ait-over-unprofessional-coverage-of-endsars-protest/>; Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021.

⁸⁸ Reuters, “Threats, Detentions and Frozen Assets: Nigeria’s Protesters Depict Pattern of Intimidation”, November 30, 2020; Human Rights Watch, “Nigeria: A Year On, No Justice for

A Year and a Half On

Approximately a year and a half has passed following the #EndSARS protests of October 2020. The Nigerian security forces have continued to violently suppress protests in the sporadic demonstrations that have occurred since, numerous protesters remain in detention, and the Judicial Panels have largely been in deadlock.

In February 2021, the police arrested several peaceful protesters who were demonstrating against the re-opening of the Lekki toll gate. There were reports that those detained were beaten and tortured.⁸⁹ On October 20, 2021, police fired tear gas at protesters who had gathered at the Lekki toll gate for the one-year anniversary of the killing of #EndSARS demonstrators.⁹⁰

Many #EndSARS protesters are still detained, with reports on numbers varying. In September 2021 the Nigeria News Network stated that over 300 such individuals remained imprisoned in Lagos alone.⁹¹ In October 2021, Nicholas Mbah, one of the accused whose case is examined in this report and who was detained in Lagos, placed the number at over 200.⁹² He further noted that many of those detained had yet to appear in court or be charged with a crime.⁹³ Meanwhile, as documented by Sahara Reporters, as of September 2021 11 #EndSARS protesters were still detained in Oyo State.⁹⁴ Across the country, there have been reports of police denying detainees access to counsel and medical care.⁹⁵

Over 2,700 petitions have been submitted to the Judicial Panels established to investigate reports of human rights violations committed by SARS (or, in the case of the #EndSARS protests, by other members of the security forces).⁹⁶ While these

#EndSARS Crackdown”, October 19, 2021; The Guardian, “Anger over Harassment, Arrest of #EndSARS Protesters”, November 14, 2020. Available at <https://guardian.ng/news/anger-over-harassment-arrest-of-endsars-protesters/>.

⁸⁹ Global Voices, “Nigerian Protesters Arrested for Resisting Reopening of the Lagos Lekki Toll Gate”, February 17, 2021. Available at <https://advox.globalvoices.org/2021/02/17/nigerian-protesters-arrested-for-resisting-reopening-of-the-lagos-lekki-toll-gate/>; Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021.

⁹⁰ Associated Press, “Nigerian Police Fire Tear Gas at Anniversary of Protest”, October 20, 2021. Available at <https://apnews.com/article/africa-police-police-reform-robbery-lagos-43e0252321f098b42de1a4a2467f2e4f>.

⁹¹ Per Second News, “300 #ENSARs Protesters Still Languishing in Lagos Prisons without Trial - New Nigeria Network”, September 10, 2021. Available at <https://persecondnews.com/2021/09/10/300-ensars-protesters-still-languishing-in-lagos-prisons-without-trial-new-nigeria-network/>.

⁹² Associated Press, “Year After Deadly Protests, Police Still Accused”, October 21, 2021. Available at <https://www.seattletimes.com/nation-world/world/year-after-nigerias-deadly-protests-police-still-accused/>.

⁹³ Id.

⁹⁴ Sahara Reporters, “TakeItBack Movement Condemns Delay Tactics in Trial of #EndSARS Protesters Detained for 10 Months”, September 23, 2021. Available at <http://saharareporters.com/2021/09/23/takeitback-movement-condemns-delay-tactics-trial-endsars-protesters-detained-10-months>.

⁹⁵ Amnesty International, “Nigeria: No Justice for Victims of Police Brutality One Year after #EndSARS Protests”, October 19, 2021. Available at <https://www.amnesty.org/en/latest/press-release/2021/10/nigeria-no-justice-for-victims-of-police-brutality-one-year-after-endsars-protests/>.

⁹⁶ Premium Times, “#EndSARS Anniversary: One Year After, What Has Happened to Protesters’ Five-Point Demand?”, October 20, 2021.

Panels have awarded compensation in a number of cases,⁹⁷ some petitioners have yet to receive their awards, and decisions have not generally been made public.⁹⁸ In Panels that are ostensibly still operating, many petitioners have long been awaiting decisions on awards. Such delays have been fueled by a lack of funding, the failure of police officers to appear as witnesses at hearings, the intimidation of witnesses by police officers, and lengthy adjournments.⁹⁹ In nine states, Panels have indefinitely postponed proceedings.¹⁰⁰

Notably, the Judicial Panels have “no authority to make binding decisions” beyond compensation to petitioners.¹⁰¹ With respect to accountability, the Panels can only make recommendations – that charges be filed against a specific police officer, for example – to the state governor.¹⁰² If adopted, the recommendations “can be enforced as a judgment of the State High Court.”¹⁰³ However, it appears that charges can only be brought against police or military officers in court if the officer has already been fired following an internal disciplinary process.¹⁰⁴

Judicial Harassment of Civil Society

The cases against Nicholas Mbah and Eromosele Adene reflect a larger pattern of spurious charges brought against activists, journalists, and protesters in Nigeria.

In 2019, for example, the ABA Center for Human Rights started monitoring the case of journalist Omoyele Sowore as part of TrialWatch. Sowore was arrested alongside activist Olawale Bakare after he launched the #RevolutionNow movement, a nationwide protest against political corruption and bad governance.¹⁰⁵ Sowore and Bakare were charged with treason, among other offenses. As found by an ABA CHR TrialWatch report, the proceedings “violated ... Mr. Sowore’s right to freedom of expression, right to freedom of assembly, and right to trial without undue delay, as well as best practices in prosecutorial ethics.”¹⁰⁶ More than two years later, the trial is still ongoing and the prosecution has yet to present any evidence of treason.

⁹⁷ Associated Press, “Year After Deadly Protests, Police Still Accused”, October 21, 2021. See also CNN, “Nigerian Judicial Panel Condemns 2020 Lekki Toll Gate Shooting as ‘A Massacre’”, November 16, 2021.

⁹⁸ Premium Times, “#EndSARS Anniversary: One Year After, What Has Happened to Protesters’ Five-Point Demand?”, October 20, 2021. See also Committee Against Torture, Concluding Observations in the absence of the initial report of Nigeria, U.N. Doc. CAT/C/NGA/COAR/1, 2021, (Advance Unedited Version), para. 13.

⁹⁹ Id.; Amnesty International, “Nigeria: No Justice for Victims of Police Brutality One Year after #EndSARS Protests”, October 19, 2021.

¹⁰⁰ Associated Press, “Year After Deadly Protests, Police Still Accused”, October 21, 2021.

¹⁰¹ Human Rights Watch, “Nigeria: A Year On, No Justice for #EndSARS Crackdown”, October 19, 2021.

¹⁰² Id.

¹⁰³ Id.

¹⁰⁴ Id.

¹⁰⁵ American Bar Association Center for Human Rights “Nigeria: A Preliminary Report on Criminal Proceedings against Omoyele Sowore”, December 16, 2020. Available at https://www.americanbar.org/groups/human_rights/reports/prelim_report_omoyele_sowore_nigeria/.

¹⁰⁶ Id.

Those who speak out against the government are frequently targeted with charges of breaching the public peace, an offense criminalized in various State Penal Codes. The Lagos State Penal Code, for example, establishes the offenses of “provoking breach of peace by offensive publication”; conducting oneself “in a manner likely to cause a breach of peace”; “unlawfully assembl[ing] together [and] begin[ning] to act in a disorderly manner as to disturb the peace”: and assembly in which “three or more persons ... conduct themselves in such a manner, as to cause persons ... to fear on reasonable grounds that the persons so assembled will disturb the peace, or will by such assembly provoke other persons to disturb the peace.”¹⁰⁷

In August 2019, at least four journalists covering the #RevolutionNow protests were arrested in Cross River state. Two of these journalists – Jeremiah Achibong and Ugbal Jonathan – were charged with unlawful assembly and breaching the public peace.¹⁰⁸ A court acquitted Achibong and Jonathan in August 2020 on the basis that the prosecution had failed to establish a prima facie case against the defendants.¹⁰⁹

In its 2020 Country Report on Human Rights Practices, the U.S. State Department noted that peaceful #RevolutionNow protesters had been arrested and charged with “conduct likely to cause breach of peace” in Lagos, Osun, and Kano States.¹¹⁰

This pattern persisted during the #EndSARS protests. In the February 2021 protest against re-opening the Lekki toll gate, 40 protesters were charged with two counts of conduct likely to breach public peace¹¹¹ and one count of failing to comply with COVID-19 quarantine procedures.¹¹² A court in Lagos struck out these charges in March 2021.¹¹³

In October 2021, journalist Sikiru Obayarese was charged with “breach of peace for videoing the Divisional Police Officer” in connection with his coverage of memorials marking the one-year anniversary of the killings at the Lekki toll gate.¹¹⁴ Obayarese

¹⁰⁷ Criminal Law of Lagos State, 2015, Articles 44(1), 45(1), 57, 166(d).

¹⁰⁸ Committee to Protect Journalists, “Police in Nigeria Assault, Arrest Journalists Covering #RevolutionNow Protests”, August 26, 2019. Available at <https://cpj.org/2019/08/police-in-nigeria-assault-arrest-journalists-cover/>.

¹⁰⁹ Sahara Reporters, “#RevolutionNow: Court Discharges, Acquits Two Journalists in Calabar”, August 25, 2020. Available at <http://saharareporters.com/2020/08/25/revolutionnow-court-discharges-acquits-two-journalists-calabar>.

¹¹⁰ U.S. State Department, “2020 Country Report on Human Rights Practices: Nigeria”, 2021, pg. 26.

¹¹¹ The first count was for conspiring to “commit a misdemeanor to wit conduct likely to cause a breach of peace,” and the second count was for gathering to “harass and causing unnecessary alarm and panic in a manner likely to cause a breach of peace.”

¹¹² Premium Times, “#OccupyLekkitollgate: Police Charge Protesters with ‘Breaching Public Peace, COVID-19 Protocol’”, February 13, 2021. Available at <https://www.premiumtimesng.com/news/top-news/442660-occupylekkitollgate-police-charge-protesters-with-breaching-public-peace-covid-19-protocol.html>.

¹¹³ Vanguard, “#OccupyLekki: Court Strikes Out Charges against 40 Arrested Protesters”, March 12, 2021. Available at <https://www.vanguardngr.com/2021/03/occupylekki-court-strikes-out-charges-against-40-arrested-protesters/>.

¹¹⁴ Committee to Protect Journalists, “Nigerian Police Assault, Detain Journalists Covering Memorials Marking Lekki Toll Gate Killings”, November 1, 2021. Available at <https://cpj.org/2021/11/nigerian-police-assault-detain-journalists-covering-memorials-marking-lekki-toll-gate-killings/>.

said a police officer beat him at the station and others threatened to kill him.¹¹⁵ The charges were subsequently withdrawn.¹¹⁶

Notably, COVID-19 regulations have been a key tool in the crackdown on criticism of the government. As stated by Freedom House, in 2020 “Nigerian authorities ... used COVID-19 measures to detain journalists or impede their work.”¹¹⁷ Amnesty International likewise observed that in 2020 abuses of “the rights to freedom of expression, peaceful assembly and freedom of movement ... were prevalent in the context of enforcing COVID-19 measures.”¹¹⁸ Specifically, the police have repeatedly arrested protesters for violating COVID-19 protocols.¹¹⁹ As mentioned above, in February 2021 the police charged 40 protesters demonstrating against the re-opening of Lekki toll gate with breaches of COVID-19 regulations.¹²⁰

B. CASE HISTORY

Nicholas Mbah

Nicholas Mbah is a musician and activist who was a prominent participant in the #EndSARS protests in the Ojo area of Lagos.¹²¹ Members of the Lagos State Task Force arrested Mbah while he was withdrawing money from an ATM machine on October 29, 2020.¹²² According to Mbah, the officers beat him, forced him into their vehicle, and brought him to the Ojo police station, where he was held incommunicado and where officers repeatedly tried to force him to write a statement incriminating himself.¹²³ Mbah stated that he was beaten at the police station for refusing to make a confession.¹²⁴ After two days Mbah was transferred to the Pantti detention facility at the State Criminal Investigation Department in the Yaba area of Lagos.¹²⁵

On November 2, Mbah was arraigned by the Commissioner of Police (in Nigeria, police are authorized to undertake prosecutions in certain circumstances) before the Magistrate Court in Yaba, Lagos on the following four counts: conspiring to commit the felonies of “Armed Robbery, Arson, [and] Rioting” under Section 299 of the Criminal Law of Lagos; setting two police patrol vehicles valued at 20 million naira

¹¹⁵ Id.

¹¹⁶ Id.

¹¹⁷ Freedom House, “2021 Freedom in the World Report: Nigeria”, 2021.

¹¹⁸ Amnesty International, “Nigeria 2020.” Available at <https://www.amnesty.org/en/location/africa/west-and-central-africa/nigeria/report-nigeria/>.

¹¹⁹ Premium Times, “Police Arrest Protesters for Allegedly Violating COVID-19 Regulations”, February 17, 2021. Available at <https://www.premiumtimesng.com/news/more-news/443445-police-arrest-protesters-for-allegedly-violating-covid-19-regulations.html>.

¹²⁰ Premium Times, “#OccupyLekkitollgate: Police Charge Protesters with ‘Breaching Public Peace, COVID-19 Protocol’”, February 13, 2021.

¹²¹ Premium Times, “INTERVIEW: #EndSARS: My Eight- Month Ordeal in Kirikiri Prison - Protester”, June 21, 2021. Available at <https://www.premiumtimesng.com/news/top-news/469100-interview-endsars-my-eight-month-ordeal-in-kirikiri-prison-protester.html>.

¹²² Id.

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

(around \$48,000 USD) on fire under Section 341; participating in an unlawful assembly “to disturb public peace” under Section 45 (1) (2); and arming himself with weapons and attacking the Ojo Local Government and Ojo Police Stations and looting properties valued at two hundred million naira (around \$486,000 USD) under Section 297.¹²⁶ Mbah was charged alongside tricycle driver Ugwumba Chimizie, who was reportedly “picked up on the street for chatting away ... that some boys in Ojo wanted to burn the police station.”¹²⁷ Neither Mbah or Chimizie had counsel at their arraignment on November 2: they were reportedly “denied legal representation by the Nigeria Police Force.”¹²⁸ Further, Mbah stated that the hearing was the first time he had been informed of the charges.¹²⁹ Notably, the time limit for bringing detainees to court under domestic legislation is 48 hours: Mbah was brought before a court four days after his arrest and detention.

The Commissioner of Police submitted a request for Mbah’s remand to custody, which was approved by the magistrate.¹³⁰ The remand request claimed that Mbah was in possession of offensive weapons at the time of arrest and that the police had fingerprint evidence.¹³¹ More than one year on, the police prosecutor has yet to present any of this evidence to the court. Beyond stating that there was reasonable suspicion that Mbah had committed the listed crimes and that there was a need for further investigation, no justification was given for Mbah’s detention.¹³²

Mbah noted of his participation in the #EndSARS protests that the “area” was “peaceful and calm,” with neither “fight nor destruction.”¹³³ He also stated that the protests ended on October 20, consistent with media reports,¹³⁴ although he was arrested for offenses allegedly committed on October 23. Mbah was remanded to Kirikiri medium security prison.¹³⁵ According to reports, by late November Mbah was able to obtain access to counsel.¹³⁶

¹²⁶ Sahara Reporters, “Human Rights Lawyer Demands Release of #EndSARS Protester ‘Dying in Kirikiri Prison’”, November 20, 2020. Available at <http://saharareporters.com/2020/11/20/human-rights-lawyer-demands-release-endsars-protester-%E2%80%98dying-kirikiri-prison%E2%80%99>. See also Commissioner of Police, Charge Sheet, November 2, 2020.

¹²⁷ Sahara Reporters, “After Outrage from Nigerians, Arrested Protester, Nicholas Mbah, Allowed to Speak with Family”, November 23, 2020. Available at <http://saharareporters.com/2020/11/23/after-outrage-nigerians-arrested-protester-nicholas-mbah-allowed-speak-family>.

¹²⁸ Sahara Reporters, “Human Rights Lawyer Demands Release of #EndSARS Protester ‘Dying in Kirikiri Prison’”, November 20, 2020. See also Commissioner of Police, Charge Sheet, November 2, 2020.

¹²⁹ Sahara Reporters, “After Outrage from Nigerians, Arrested Protester, Nicholas Mbah, Allowed to Speak with Family”, November 23, 2020.

¹³⁰ Sahara Reporters, “Human Rights Lawyer Demands Release of #EndSARS Protester ‘Dying in Kirikiri Prison’”, November 20, 2020. See also Commissioner of Police, Request for Remand, November 2, 2020.

¹³¹ Commissioner of Police, Request for Remand, November 2, 2020.

¹³² *Id.*

¹³³ Premium Times, “INTERVIEW: #EndSARS: My Eight- Month Ordeal in Kirikiri Prison - Protester”, June 21, 2021.

¹³⁴ Al Jazeera, “A Year On, Women Still Picking Up Pieces from #EndSARS Protests”, October 20, 2021. Available at <https://www.aljazeera.com/news/2021/10/20/a-year-on-women-still-picking-up-pieces-from-endsars-protests>.

¹³⁵ Sahara Reporters, “After Outrage from Nigerians, Arrested Protester, Nicholas Mbah, Allowed to Speak with Family”, November 23, 2020.

¹³⁶ *Id.*

At this time, Mbah’s lawyer publicly stated that Mbah’s health was deteriorating but that he had been denied specialized medical care.¹³⁷ Mbah had previously suffered medical complications from a surgery in July 2018.¹³⁸

On March 16, Mbah and his co-accused were formally charged before the Chief Magistrate Court in Yaba, Lagos on the following three counts: unlawful assembly in which they “[began] to act in a disorderly manner as to disturb the peace” under Section 45(1) of the Criminal Law of Lagos State; breaking the 72-hour curfew imposed on October 20 under Section 123; and unlawfully attempting “to set fire on [sic] Ojo Local Government Secretariat” under Section 342.¹³⁹ These charges differed from those originally presented at Mbah’s arraignment and omitted any mention of the use of weapons, which the remand request claimed Mbah had in his possession at the time of his arrest. Mbah pleaded not guilty on all counts. The Yaba Magistrate Court granted Mbah bail for 50,000 naira, or around \$120 USD, adjourning the case until April 30.¹⁴⁰

However, according to reports, prison officials delayed releasing Mbah on bail, requiring the defense to obtain a series of documents from the court despite the fact that Mbah had fulfilled bail conditions.¹⁴¹ In April, the Judiciary Staff Union of Nigeria – a union of court workers – went on strike nationwide to demand that courts regain financial autonomy from the executive,¹⁴² further delaying Mbah’s release. The scheduled hearing on April 30 did not go ahead because of the strike.¹⁴³

On June 15, Mbah was released from Kirikiri Prison on bail, having spent 8 months behind bars.¹⁴⁴

On July 30, the Yaba Magistrate Court sat. Defense counsel was present but Mbah and the police prosecutor were absent.¹⁴⁵ The judge informed defense counsel that the public prosecutor had recommended that the case be filed before the Lagos High

¹³⁷ Id.

¹³⁸ Sahara Reporters, “Human Rights Lawyer Demands Release of #EndSARS Protester ‘Dying in Kirikiri Prison,’” November 20, 2020.

¹³⁹ Trial Monitor’s Notes, March 16, 2021. See also Commissioner of Police, Charge Sheet, March 16, 2021.

¹⁴⁰ Id. See also: Gist on Gist, “Court Grants #EndSARS Protesters Bail as Defense Counsel Alleges Bribe Demands”, March 17, 2021. Available at <https://gistongist.com/court-grants-endsars-protesters-bail-as-defense-counsel-alleges-bribe-demands/>.

¹⁴¹ See Oloris Upergal, “EndSARS Protester, Nicholas Mbah, Freed after 8 Months in Prison”, June 17, 2021. Available at <https://olorisupergal.com/2021/06/17/endsars-protester-nicholas-mbah-freed-after-8-months-in-prison/>; Foundation for Investigative Journalism, “Magistrate’s ‘Illegible’ Handwriting Delaying Release of Two #EndSARS protesters from Kirikiri”, March 30, 2021. Available at <https://fij.ng/article/magistrates-illegible-handwriting-delaying-release-of-two-endsars-protesters-from-kirikiri/>.

¹⁴² The Guardian, “Nigeria’s Court Strike Paralyzes Underfunded Justice System”, May 26, 2021. Available at <https://www.theguardian.com/global-development/2021/may/26/nigerias-court-strike-paralyses-underfunded-justice-system>.

¹⁴³ Id.; Trial Monitor’s Notes, April 30, 2021.

¹⁴⁴ Oloris Upergal, “EndSARS Protester, Nicholas Mbah, Freed after 8 Months in Prison”, June 17, 2021.

¹⁴⁵ Trial Monitor’s Notes, July 30, 2021.

Court.¹⁴⁶ The defense lawyer stated that he had yet to be notified of such. The court adjourned the case until September 24.¹⁴⁷

On September 24, the judge did not come to court and the matter was adjourned until December 17.¹⁴⁸ According to defense counsel, in this period formal charges were filed against Mbah before the Lagos High Court. Mbah, however, has yet to be arraigned and counsel has yet to receive the charge sheet. As stated by counsel, with respect to the underlying facts the potential case before the Lagos High Court is substantively similar to that before the Magistrate Court and, if it proceeds to arraignment, would supersede and suspend the Magistrate Court proceedings. On December 17, the hearing before the Magistrate Court was adjourned to March 25 because neither the prosecutor nor Mbah were present. On March 25, the court did not sit. The trial was adjourned to June 24.

Eromosele Adene

Like Nicholas Mbah, Eromosele Adene is a musical artist and activist who was a prominent voice in the #EndSARS campaign.¹⁴⁹ Among other things, he had called for renewed protests in Lagos (his phone number was on flyers advertising the protests).¹⁵⁰ On November 7, 2020, in the early hours of the morning, Adene was arrested in his home in Lagos by over a dozen police officers, who reportedly used force.¹⁵¹ According to Adene's lawyer, he was subsequently transferred without court order to Abuja, where he was held by the Police Federal Criminal Investigation Division.¹⁵²

On November 15, Adene was transported from Abuja back to the custody of the Lagos State Police Command. Adene's lawyer stated that Adene was returned to Lagos because "the government does not have any evidence against him that warrants a federal offense."¹⁵³

¹⁴⁶ Id.

¹⁴⁷ Id.

¹⁴⁸ Trial Monitor's Notes, September 24, 2021.

¹⁴⁹ BBC News, "Eromosele Adene: #EndSARS Protest Promoter Eromosele Free from Police Net", November 19, 2020. Available at <https://www.bbc.com/pidgin/tori-54978981>.

¹⁵⁰ Premium Times, "Police Detain EndSARS Activist Eromosele Adene for Days Without Charge - Lawyer", November 10, 2020. Available at <https://www.premiumtimesng.com/news/headlines/425447-police-detain-endsars-activist-eromosele-adene-for-days-without-charge-lawyer.html>.

¹⁵¹ Pulse, "Court Grants #EndSARS Campaigner, Eromosele, N1 Million Bail as Police Remand Request Fails", November 17, 2020. Available at <https://www.pulse.ng/news/local/endsars-court-grants-eromosele-n1-million-bail/t08c87j>; Reuters, "Threats, Detentions and Frozen Assets: Nigeria's Protesters Depict Pattern of Intimidation", November 30, 2020.

¹⁵² Premium Times, "Police Detain EndSARS Activist Eromosele Adene for Days Without Charge - Lawyer", November 10, 2020; Pulse, "Court Grants #EndSARS Campaigner, Eromosele, N1 Million Bail as Police Remand Request Fails", November 17, 2020.

¹⁵³ Premium Times, "Detained Protester, Eromosele Adene, Returned to Lagos", November 16, 2020. Available at <https://www.premiumtimesng.com/news/top-news/426381-detained-protester-eromosele-adene-returned-to-lagos.html>.

Adene was arraigned before a Lagos court on November 16:¹⁵⁴ nine days after his initial arrest, in contravention of Nigerian legislation requiring detainees to appear before a court within 48 hours. The Lagos Police Commissioner requested that the court remand Adene to custody for 30 more days,¹⁵⁵ stating that Adene was “suspected to have committed” criminal incitement, cyber stalking, provoking a breach of public peace, and conduct likely to cause the breach of peace, and that he had been “arrested with exhibits.”¹⁵⁶ The presiding magistrate adjourned ruling on the request until the next day,¹⁵⁷ citing a large media presence.¹⁵⁸ As documented by Sahara Reporters, “[d]espite the fact that video of the police arresting Adene at his home went viral, the police told the court that Adene was arrested on the protest ground with exhibits caught on him.”¹⁵⁹ The police also denied that Adene was ever transferred to Lagos.¹⁶⁰ On November 17, a different judge rejected the request for remand and released Adene on bail for 1 million naira, or around \$2,500 USD.¹⁶¹

Adene’s trial began on December 7 before the Chief Magistrate Court in Yaba, Lagos. The registrar read out the charges to Adene, which were different from those on the request for remand form.¹⁶² Adene was formally charged with three counts: conspiring to “commit felony to wit Provoking Breach of Peace” under Section 411 of the Criminal Law of Lagos State; provoking “Breach of Peace by offensive publication” under Section 57 (1) (a) (b); and conduct “likely to cause a Breach of Peace” under Section 168.¹⁶³ The second count on the charge sheet referenced a publication that allegedly stated: “ENDSARS MARCH AGAINST POLICE BRUTALITY AND EXTRAL [sic] JUDICIAL MURDER OF OUR PROTESTING COLLEAGUES.” No further information was provided. Adene pleaded not guilty on all counts.¹⁶⁴

When the magistrate opened discussion about scheduling a date for trial, the prosecution requested that proceedings be delayed so that the prosecution could “put [their] house in order.” The magistrate adjourned the case until January 11, 2021.¹⁶⁵

¹⁵⁴ Pulse, “Court Grants #EndSARS Campaigner, Eromosele, N1 Million Bail as Police Remand Request Fails”, November 17, 2020.

¹⁵⁵ Id.

¹⁵⁶ Commissioner of Police, Request for Remand, November 16, 2020.

¹⁵⁷ Pulse, “Court Grants #EndSARS Campaigner, Eromosele, N1 Million Bail as Police Remand Request Fails”, November 17, 2020.

¹⁵⁸ Sahara Reporters, “Court Adjourns Hearing in Case of EndSARS Protester, Eromosele, after Judge Complains of Large Media Presence”, November 16, 2020. Available at <http://saharareporters.com/2020/11/16/court-adjourns-hearing-case-endsars-protester-eromosele-after-judge-complains-large-media>.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ Pulse, “Court Grants #EndSARS Campaigner, Eromosele, N1 Million Bail as Police Remand Request Fails”, November 17, 2020.

¹⁶² Trial Monitor’s Notes, December 7, 2020.

¹⁶³ Commissioner of Police, Charge Sheet, December 7, 2020.

¹⁶⁴ Trial Monitor’s Notes, December 7, 2020.

¹⁶⁵ Trial Monitor’s Notes, December 7, 2020.

On January 11 and February 15 (the next scheduled hearings), the court did not sit, absent any explanation. On March 17, the court was in session but the trial did not proceed because Adene's defense lawyer had a meeting at the Nigerian Bar Association and was not in attendance.¹⁶⁶

On April 20, the court was not open due to the nationwide strike of court workers described above. On July 26, a Monday, the court sat. The prosecutor was absent, having explained that he was required to appear before the #EndSARS Judicial Panel. The defense, however, stated that the Judicial Panel did not meet on Mondays and that the case had been ongoing since November due to "excuses upon excuses." The defense requested that the case be struck out for want of diligent prosecution. The magistrate responded that the court would grant the prosecution one more opportunity and adjourned the trial to October 18.¹⁶⁷

On October 18, the court sat. After the prosecution stated that it was not ready for trial, the magistrate struck out the case for want of diligent prosecution. In the magistrate's words, "the court had given the Prosecution one last chance to show the court it was willing to prosecute the case."¹⁶⁸

¹⁶⁶ Trial Monitor's Notes, March 17, 2021.

¹⁶⁷ Trial Monitor's Notes, July 26, 2021.

¹⁶⁸ Trial Monitor's Notes, October 18, 2021.



A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice's TrialWatch initiative, the American Bar Association Center for Human Rights deployed monitors to proceedings against Eromosele Adene and Nicholas Mbah before the Yaba Chief Magistrate Court in Lagos, Nigeria. The monitors did not experience any impediments in entering the courtroom and used the CFJ TrialWatch App to record and track what transpired in court and the degree to which the defendants' fair trial rights were respected.

B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade, TrialWatch Expert Michael Hamilton reviewed notes taken during the proceedings, and court documents. Hamilton concluded:

The failure to adduce credible evidence (for example, of imminent violent action or of non-peaceful intentions) to substantiate the charges against Mr. Eromosele Adene and Mr. Nicholas Mbah – both of whom were legitimately exercising their rights to freedom of expression and peaceful assembly as protected under the ICCPR and African Charter – strongly suggests that the prosecution in these cases was initiated for predominantly ulterior political motives.

This interference with the rights to freedom of expression and assembly relied on broadly construed criminal law provisions (including 'provoking breach of peace by offensive publication' and 'unlawful assembly'). As applied in the cases of Mbah and Adene (but also on their face), these offences are difficult to reconcile with the protections afforded by international human rights law (which instead emphasize that restrictions on core political rights must be narrowly drawn).

These interferences with the rights to freedom of expression and assembly have been compounded by significant irregularities during the trial process (including the failure to provide reasons for arrest in a timely manner, and failure to bring the arrestees promptly before a court) as well as further serious interferences and alleged interferences with fundamental rights (including, in the case of Mr. Mbah, the right to freedom from arbitrary detention and torture).



A. APPLICABLE LAW AND STANDARDS

This report draws upon the International Covenant on Civil and Political Rights (the “ICCPR”); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; the African Charter on Human and Peoples’ Rights (the “African Charter”); jurisprudence from the African Commission on Human and Peoples’ Rights (the “African Commission”), tasked with interpreting the African Charter and considering individual complaints of Charter violations; jurisprudence from the African Court on Human and Peoples’ Rights (the “African Court”), which – complementing the African Commission’s work – is tasked with interpreting and applying the African Charter; the African Commission’s Resolution on the Right to Recourse and Fair Trial (the “Fair Trial Resolution”); the African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (the “Fair Trial Guidelines”); the African Commission’s Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the “Luanda Guidelines”); the African Commission’s Declaration of Principles on Freedom of Expression and Access to Information in Africa; the African Commission’s Guidelines on Freedom of Association and Assembly in Africa; and the Convention against Torture.

The African Court has “jurisdiction ... [over] all cases and disputes submitted to it in respect of the interpretation and application of the African Charter on Human and Peoples’ Rights, (the Charter), the Protocol [on the Court’s establishment] and any other relevant human rights instrument ratified by the States concerned.”¹⁶⁹ Nigeria ratified the African Charter in 1983 and the Protocol in 2004.¹⁷⁰ Notably, the African Court has frequently relied on jurisprudence from the European Court of Human Rights, finding that the Court has analogous jurisdiction and is guided by instruments similar to the African Charter.¹⁷¹ The Court has also stated that where the ICCPR provides for broader rights than those of the Charter, it can apply the ICCPR if the country under consideration has already acceded to or ratified it.¹⁷² Nigeria acceded to the ICCPR in 1993 and ratified the Convention against Torture in 2001.

¹⁶⁹ African Court on Human and Peoples’ Rights, “Welcome to the African Court.” Available at <https://www.african-court.org/wpafc/welcome-to-the-african-court/>.

¹⁷⁰ African Commission on Human and Peoples’ Rights, “State Parties to the African Charter.” Available at <https://www.achpr.org/statepartiestotheafricancharter>; African Union, “List of Countries which have signed, ratified/acceded to the Protocol of the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights.” Available at https://au.int/sites/default/files/treaties/36393-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf.

¹⁷¹ See Jamil Ddamulira Mujuzi, “The African Court on Human and Peoples’ Rights and Its Protection of the Right to a Fair Trial”, *The Law and Practice of International Courts and Tribunals*, December 5, 2017, pg. 193. Available at https://brill.com/abstract/journals/lape/16/2/article-p187_187.xml.

¹⁷² African Court on Human and Peoples’ Rights, *Alex Thomas v. Tanzania*, App. No. 005/2013, November 20, 2015, paras. 88-89; African Court on Human and Peoples’ Rights, *Wilfred Onyango Nganyi et al v. Tanzania*, App. No. 006/2013, March 18, 2016, paras. 165-166.

B. INVESTIGATION AND PRETRIAL VIOLATIONS

Right to be Informed of the Reasons for Arrest

Under Article 9(2) of the ICCPR, authorities must give an arrested person notice of the reasons for arrest “at the time of arrest.”¹⁷³ Receiving prompt notice of the reasons for arrest enables the arrestee “to seek release if [he or she] believe[s] that the reasons given are invalid or unfounded.”¹⁷⁴ The reasons provided must include both the legal grounds for arrest as well as facts regarding what the arrestee is alleged to have done.¹⁷⁵

The United Nations Human Rights Committee has stated that an individual must be provided with such an explanation “immediately upon arrest” barring exceptional circumstances, such as the need for an interpreter.¹⁷⁶ In *M.T. v. Uzbekistan*, for example, the Human Rights Committee found a violation of Article 9(2) where police officers failed to promptly inform a human rights activist of the reasons for her arrest, charging her the subsequent day with “offending an officer” and “refusing to follow police orders.”¹⁷⁷

Under the African Commission’s Fair Trial Guidelines, “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest.”¹⁷⁸ The Commission has correspondingly found a violation of Article 6 of the African Charter where individuals were not informed at the time of arrest of the reasons for their arrest.¹⁷⁹

According to Mbah’s counsel, Mbah only learned of the reason for his arrest at his arraignment – four days after his arrest.¹⁸⁰

There was no possible justification for delaying this notification. As such, the conduct alleged violated the rights of Mbah under Article 9(2) of the ICCPR and Article 6 of the African Charter.

Judicial Review

¹⁷³ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 24.

¹⁷⁴ *Id.* at para. 25.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at para. 27.

¹⁷⁷ Human Rights Committee, *M.T. v. Uzbekistan*, U.N. Doc. CCPR/C/114/D/2234/2013, October 21, 2015, paras. 2.1, 7.7–7.8.

¹⁷⁸ African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003, Principle M(2)(a).

¹⁷⁹ African Commission on Human and Peoples’ Rights, Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh & 13 others) v. Angola, Communication No. 292/04, May 2008, paras. 54–55. Available at <https://www.refworld.org/cases,ACHPR,51b6fd4e7.html>.

¹⁸⁰ Sahara Reporters, “After Outrage from Nigerians, Arrested Protester, Nicholas Mbah, Allowed to Speak with Family”, November 23, 2020. Available at <http://saharareporters.com/2020/11/23/after-outrage-nigerians-arrested-protester-nicholas-mbah-allowed-speak-family>.

Mbah was detained for four days before being brought before a court and Adene was detained for nine days before being brought before a court. In both cases, this delay violated international and regional standards.

Under Article 9(3) of the ICCPR, individuals held in custody pursuant to an arrest must “be brought promptly before a judge or other officer authorized by law to exercise judicial power.”¹⁸¹ According to the UN Human Rights Committee, this “requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”¹⁸² The time between arrest and a judicial hearing should not exceed 48 hours unless the circumstances are “exceptional.”¹⁸³

In *Borisenko v. Hungary*, the Human Rights Committee held that the accused’s unexplained detention for three days prior to presentation before a judicial officer violated Article 9(3) of the ICCPR.¹⁸⁴ Similarly, there is no indication that either Adene’s or Mbah’s case presented “exceptional” circumstances that would justify the – respectively – nine and four day delays.

Under the African Charter – like the ICCPR – a detained person is entitled to prompt judicial review. Article 6 of the Charter provides that “no one may be arbitrarily arrested or detained.” Principle M(3) of the Fair Trial Guidelines elaborates on this requirement, stating that those arrested or detained on a criminal charge “shall be brought before a judicial officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”¹⁸⁵

The African Commission has clarified that presentation before a court or judicial officer serves a number of purposes, including assessment of whether there is a sufficient legal reason for the arrest and/or detention; assessment of whether bail should be granted; and safeguarding of the given individual’s rights and well-being.¹⁸⁶

As such, the period of approximately four days between Mbah’s arrest on October 29 and appearance before a court on November 2 and the period of approximately nine days between Adene’s arrest on November 7 and appearance before a court on November 16 fail to fulfil the promptness requirements set forth above, violating Nigeria’s obligations under the ICCPR

¹⁸¹ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 32.

¹⁸² *Id.*

¹⁸³ *Id.* at para. 33.

¹⁸⁴ Human Rights Committee, *Rostislav Borisenko v. Hungary*, U.N. Doc. CCPR/C/76/D/852/1999, October 14, 2002, para. 7.4. See also Human Rights Committee, *Kovsh v. Belarus*, U.N. Doc. CCPR/C/107/D/1787/2008, July 5, 2013, paras. 7.2-7.5.

¹⁸⁵ African Commission on Human and Peoples’ Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, Principle M(3)(a).

¹⁸⁶ *Id.* at Principle M(3)(b).

and the African Charter. Notably, Nigeria’s Constitution requires that detainees appear before a court within 48 hours.

Right to be Free from Arbitrary Detention

The pretrial detention of Mbah failed to meet the requirements of the ICCPR. Mbah was detained for approximately eight months – from his arrest on October 29 to his release from prison on June 15.

Article 9(1) of the ICCPR stipulates: “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” The United Nations Human Rights Committee has noted that with respect to detention, the concept of “arbitrariness” must be “interpreted broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of ... reasonableness, necessity and proportionality.”¹⁸⁷ Not only should pretrial detention be the exception and as short as possible, but also detention must be “lawful” (in accordance with domestic law) and “reasonable and necessary in all circumstances.”¹⁸⁸ This means that pretrial detention is appropriate for only a limited number of purposes: namely, to prevent flight, interference with evidence, and the recurrence of crime.¹⁸⁹

Article 6 of the African Charter similarly protects the right to liberty and security of person, prohibits arbitrary arrest and detention, and guarantees that “[n]o one may be deprived of his freedom except for reasons and conditions previously laid down by law.” According to the African Commission, detention must be a “last resort and should only be used where necessary and where no other alternatives are available.”¹⁹⁰ The African Commission’s Luanda Guidelines require that there be “reasonable grounds to believe that the accused has been involved in the commission of a criminal offence that carries a custodial sentence,” and a showing that “there is a danger that he or she will abscond, commit further serious offences or ... a danger that the release of the accused will not be in the interests of justice.”¹⁹¹

In evaluating the reasonableness and necessity of pretrial detention, courts must undertake an “individualized determination” of the accused’s particular

¹⁸⁷ Human Rights Committee, *Izmet Oselik et al v. Turkey*, U.N. Doc. CCPR/C/125/D/2980/2017, September 23, 2019, para. 9.3.

¹⁸⁸ Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10.

¹⁸⁹ Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, August 19, 2010, para. 10.4.

¹⁹⁰ African Commission on Human and Peoples’ Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines)*, 55th Ordinary Session, April 28–May 12, 2014, para. 10(b).

¹⁹¹ *Id.* at para. 11(a)(ii).

circumstances.¹⁹² Vague pronouncements fail to meet this standard.¹⁹³ In *Eligio Cedeño v. Bolivarian Republic of Venezuela*, for example, the court imposed pretrial detention due to the risk of flight, citing the fact that the defendant had significant financial resources and owned an airplane.¹⁹⁴ The UN Human Rights Committee concluded that this reasoning relied on “mere assumption” as to why the defendant’s pretrial detention was necessary and reasonable.¹⁹⁵ As such, the Committee found that Article 9 had been violated.¹⁹⁶

Reference to the severity of the charges alone is likewise insufficient. As stated by the Committee, “[p]retrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”¹⁹⁷ Courts must additionally examine whether non-custodial alternatives, such as bail and monitoring devices, “would render detention unnecessary in the particular case.”¹⁹⁸

With respect to Mbah’s case, the remand request issued by the police prosecutor and approved by the Yaba Magistrate Court at the hearing on November 2 lacked appropriate justification for detention, rendering the measure arbitrary. The police prosecutor requested that Mbah be detained pretrial on the grounds that there was reasonable suspicion that Mbah had committed the crime, that further investigation was needed, that weapons had been found in Mbah’s possession, and that there was fingerprint evidence (neither the weapons nor fingerprint evidence have been presented in court – more on this below). The remand request contained no explanation regarding the necessity or reasonableness of Mbah’s detention, not only lacking the requisite “individualized determination” but failing to refer to any of the permissible justifications for imposing pretrial detention: that Mbah might flee, interfere with the evidence, or commit further crime. It appeared that the court did not consider non-custodial alternatives, such as bail.

Notably, even assuming there had been reasonable suspicion that Mbah had committed the acts of arson and aggravated robbery, this would not have been a sufficient rationale for pretrial detention: as mentioned above, the nature of the offense should not be determinative of whether the accused is detained. Likewise, the need for additional investigation is irrelevant unless coupled with a showing of likelihood of interfering with evidence.

¹⁹² See Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38. See also Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10; Human Rights Committee, *Van Alphen v. the Netherlands*, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, para. 5.8; Human Rights Committee, *Mikhail Marinich v. Belarus*, U.N. Doc. CCPR/C/99/D/1502/2006, July 16, 2010, para. 10.4; Human Rights Committee, *Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, para. 9.8.

¹⁹³ *Id.*

¹⁹⁴ Human Rights Committee, *Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 2.5.

¹⁹⁵ *Id.* at para 7.10.

¹⁹⁶ *Id.*

¹⁹⁷ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38.

¹⁹⁸ *Id.*

Finally, from March 16 to June 15, Kirikiri prison officials kept Mbah in custody in the face of a judicial order that he be released (as detailed at more length below), meaning that his detention was without legal basis and thereby arbitrary.

Defiance of Orders of Release

In *Moriana Hernandez Valenina de Bazzano v. Uruguay*, the United Nations Human Rights Committee found a violation of Article 9(1) where the applicant was “kept in custody in spite of a judicial order of release.”¹⁹⁹ Similarly, in its opinion on the case of Omoyele Sowore in Nigeria, in which state security officials refused to release Sowore after he had fulfilled his bail conditions,²⁰⁰ the United Nations Working Group on Arbitrary Detention emphasized:

any time an order for release, even for release on bail, is made and the detainee is not released, the subsequent detention becomes without legal ground. Maintaining a person in detention after release has been ordered by a court competent to exercise control over the legality of detention is a manifest violation of ... article 9 of the Covenant and renders the detention arbitrary, because it lacks legal basis.²⁰¹

In Mbah’s case, the Yaba Magistrate Court granted bail on March 16 and Mbah fulfilled bail conditions soon thereafter.²⁰² Subsequently, prison officials refused to release him, imposing procedural hurdles such as requiring the defense to obtain certain documents from the court. As noted by the UN Working Group on Arbitrary Detention, “any time an order for release, even for release on bail is made and the detainee is not released, the subsequent detention becomes without legal ground ... and renders the detention arbitrary.” As such, Mbah’s detention for more than two months after a judicial order for his release was arbitrary.

Right to Counsel

Article 14(3)(b) of the ICCPR guarantees accused persons the right to “communicate with counsel of [their] own choosing.” Defendants must be granted “prompt access to counsel”²⁰³ at all stages of criminal proceedings, including during the initial detention period. In *Kelly v. Jamaica*, for example, the UN Human Rights Committee found a violation of Article 14(3)(b) where police officers ignored the complainant’s request to

¹⁹⁹ Human Rights Committee, *Moriana Hernandez Valentini de Bazzano v. Uruguay*, U.N. Doc. CCPR/C/7/D/5/1977, August 15, 1979, para. (10)(i).

²⁰⁰ Clooney Foundation for Justice, “Nigerian Journalist Must Be Released on Bail”, November 22, 2019. Available at <https://cfj.org/wp-content/uploads/2019/11/20191122-Sowore-Nigeria-Statement.pdf>.

²⁰¹ United Nations Working Group on Arbitrary Detention, Opinion No. 27/2020 Concerning Omoyele Sowore: Nigeria, U.N. Doc. A/HRC/WGAD/2020/27, October 6, 2020, para. 54.

²⁰² Foundation for Investigative Journalism, “Magistrate’s ‘Illegible’ Handwriting Delaying Release of Two #EndSARS protesters from Kirikiri”, March 30, 2021.

²⁰³ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2017, para. 34.

speak to a lawyer for the first five days he was in custody.²⁰⁴ A violation of Article 14(3)(b) was also found in *Lyashkevich v Uzbekistan*, where the complainant was interrogated without “access to the legal counsel of his choice.”²⁰⁵

Article 14(3)(b)’s counterpart, Article 14(3)(d), guarantees “all accused of a criminal charge to defend themselves in person or through legal counsel of their own choosing.”²⁰⁶

Like the ICCPR, Article 7(1)(c) of the African Charter provides for the right to defense, which includes access to counsel. The African Commission’s Fair Trial Guidelines affirm the right to counsel at all stages of a criminal prosecution, characterizing the right to legal representation “as the best means of legal defence against infringements of human rights and fundamental freedoms.”²⁰⁷ According to the African Commission, “[t]his right begins when the accused is first detained or charged.”²⁰⁸ Notably, the European Court of Human Rights has stated that access to an attorney at the investigation stage is critical, particularly during interrogations held in custody.²⁰⁹

In the present case, Mbah was reportedly interrogated without counsel immediately following his arrest and repeatedly asked to sign a statement indicating his guilt. As noted above, the right to counsel applies during detention and may be particularly crucial during interrogation.

Moreover, at Mbah’s arraignment – at which the police prosecutor’s remand request was approved – Mbah was without counsel, reportedly because he was “denied legal representation by the Nigeria Police Force.”²¹⁰ The dire consequences of this hearing – the court’s rejection of bail and Mbah’s detention for five months – highlight the absolute necessity of providing an accused with legal assistance: Adene, in contrast, had a lawyer at his arraignment and the court refused to grant the prosecution’s request for remand to custody. There might have been a similar outcome in Mbah’s case had a lawyer been present.

The above facts reflect a violation of Article 14(3)(b) and 14(3)(d) of the ICCPR and Article 7(1) of the African Charter.

²⁰⁴ Human Rights Committee, *Kelly v. Jamaica*, U.N. Doc. CCPR/C/57/D/537/1993, July 17, 1996, para. 9.2.

²⁰⁵ Human Rights Committee, *Lyashkevich v Uzbekistan*, U.N. Doc. CCPR/C/98/D/1552/2007, May 11, 2010, para. 9.4.

²⁰⁶ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2017, para. 37.

²⁰⁷ African Commission on Human and Peoples’ Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, 2003, Principle N(2)(a).

²⁰⁸ *Id.* at Principle N(2)(c-d).

²⁰⁹ European Court of Human Rights, *Mader v. Croatia*, App. No. 56185/07, June 21, 2011, paras. 150-158 (violation of Article 6(3)(c) where detainee was denied access to a lawyer for the first three days of police custody).

²¹⁰ Sahara Reporters, “Human Rights Lawyer Demands Release of #EndSARS Protester ‘Dying in Kirikiri Prison’”, November 20, 2020. See also Commissioner of Police, Charge Sheet, November 2, 2020.

Torture and Inhuman Treatment

The prohibition on torture enshrined in Article 7 of the ICCPR and Article 5 of the African Charter is a critical component of international human rights law. While the ICCPR does not define torture and the United Nations Human Rights Committee has explicitly declined to “draw up a list of prohibited acts or to establish sharp distinctions between the different types of punishment or treatment” prohibited under Article 7,²¹¹ Article 1 of the Convention against Torture, to which Nigeria is party, defines torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²¹²

The African Commission and Court have endorsed this definition of torture.²¹³ In *Malawi African Association and Others v. Mauritania*, for example, the African Commission found a violation of Article 5’s prohibition on torture where individuals were subjected to beatings, sleep deprivation, and solitary confinement, and were correspondingly forced to make inculpatory statements.²¹⁴ In a Nigerian case, the Commission ruled that keeping an individual in leg irons and handcuffs and beating him violated Article 5.²¹⁵

In the present case, Mbah reported treatment amounting to torture, consistent with documentation from bodies such as the U.S. State Department and the United Nations Human Rights Committee about the prevalence of torture in Nigerian detention facilities. He stated that police officers beat him both during the arrest and after he arrived at the station. Some of the abuse may have been “intentionally inflicted” for the purposes of “obtaining ... information or a confession”: Mbah relayed that an officer beat him at the police station after he refused to write a confession and that the day after the beating officers again asked him to write the statement.

²¹¹ Human Rights Committee, General Comment No. 20, March 10, 1992, para. 4

²¹² Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 1.

²¹³ African Commission on Human and Peoples’ Rights, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, 32nd Ordinary Session, October 17-23, 2002, para. 4; African Court on Human and People’s Rights, Alex Thomas v. United Republic of Tanzania, App. 005/2013, November 20, 2015, para. 144.

²¹⁴ African Commission on Human and Peoples’ Rights, *Malawi African Association and Others v. Mauritania*, Communication Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, May 11, 2000, paras. 115-118.

²¹⁵ African Commission on Human and Peoples’ Rights, International PEN, Constitutional Rights Project, Civil Liberties Organisation and Interights (on behalf of Ken Saro-Wiwa Jnr.) v. Nigeria, Communication Nos. 137/94, 139/94, 154/96 and 161/97 October 31, 1998, paras. 78-81.

Based on Mbah's allegations, which are consistent with other reporting on the conduct of the Nigerian police, his rights under Article 7 of the ICCPR and Article 5 of the African Charter were violated.

C. OTHER FAIRNESS CONCERNS

Right to Freedom of Expression

There are strong grounds to conclude that the proceedings against Adene and Mbah violated their right to freedom of expression.

International and Regional Standards on Freedom of Expression as Applied to Crime of "Offensive Publication"

The right to freedom of expression is guaranteed by Article 19 of the ICCPR and Article 9 of the African Charter. Any restrictions on freedom of expression must i) be provided by law (known as the principle of legality); ii) serve a legitimate objective; and iii) be necessary to achieve and proportionate to that objective.²¹⁶ The African Commission has laid out the same requirements.²¹⁷

As stated by the UN Human Rights Committee, in order to comply with the principle of legality, legislation must be "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly ... [and] may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution."²¹⁸ The UN Special Rapporteur on Freedom of Expression has likewise noted: "the restriction must be provided by laws that are precise, public and transparent; it must avoid providing authorities with unbounded discretion."²¹⁹

Adene was specifically charged with provoking breach of peace by "offensive publication." Offensiveness, however, is by its nature a subjective concept. The law provides no further guidance. It is unclear what degree of perceived offensiveness would merit criminal charges or if the offended person could be any individual or would need to be the subject of the offending speech. This imprecision gives the authorities broad discretion with respect to charging decisions, rendering the provision ripe for abuse and making it difficult for an individual to conform his or her conduct accordingly.

Further, so-called "offensive" publications are protected by the right to freedom of expression. As stated by the UN Human Rights Committee, the guarantee of

²¹⁶ See Human Rights Committee, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, 1999, para. 12.2. See also UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression and opinion, U.N. Doc. A/74/486, October 9, 2019, para. 6.

²¹⁷ African Commission on Human and Peoples' Rights, *Media Rights Agenda and Others v. Nigeria*, Communication Nos. 105/93, 128/94, 130/194, 152/96, 1998, paras. 68–69.

²¹⁸ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 25.

²¹⁹ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of freedom of expression, U.N. Doc. A/74/486, October 9, 2019, para 6(a).

freedom of expression “embraces even expression that may be regarded as deeply offensive.”²²⁰ The UN Special Rapporteur on Freedom of Expression has explained that restrictions on freedom of expression “were designed in order to protect individuals against direct violations of their rights” and were “not intended to suppress the expression of critical views, controversial opinions or politically incorrect statements” or “to protect belief systems from external or internal criticism.”²²¹ The European Court has likewise repeatedly affirmed that the right to freedom of expression encompasses ideas or information “that offend, shock or disturb.”²²² As such, the “offensive publication” provision under which Adene was charged contravenes the right to freedom of expression, both on its face and as applied.

The Prosecution of Mbah and Adene

Under Article 19(2) of the ICCPR, the right to freedom of expression is recognized to include the “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.” The United Nations Human Rights Committee places a high value on “uninhibited expression,” particularly in “circumstances of public debate concerning public figures in the political domain and public institutions.”²²³ The right to freedom of expression can intersect with the right to freedom of assembly (see further below), including in the context of assemblies used to convey political criticism.²²⁴

As noted above, any restriction on freedom of expression must (i) be provided by law, such that individuals are able to regulate their conduct accordingly, (ii) pursue a legitimate aim, and (iii) be necessary and proportional.²²⁵ Under the ICCPR, the only legitimate grounds for restricting freedom of expression are to preserve respect for the rights or reputation of others, to protect national security, to protect public order, to protect public health, and to protect public morals.²²⁶ When invoking one of these grounds to justify a restriction on freedom of expression, the State “must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by

²²⁰ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 11.

²²¹ U.N. General Assembly, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, U.N. Doc. A/HRC/7/14, February 28, 2008, para. 85. Available at <https://undocs.org/A/HRC/7/14>.

²²² European Court of Human Rights, *Handyside v. the UK*, App. No. 5493/72, December 7, 2017, para. 49; European Court of Human Rights, *Sekmadienis LTD. V. Lithuania*, App. No. 69317/14, January 30, 2018, para. 70.

²²³ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 38.

²²⁴ See Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, paras. 4, 32, 49.

²²⁵ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 22.

²²⁶ ICCPR, Article 19(3). See also Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, paras. 28-29.

establishing a direct and immediate connection between the expression and the threat.”²²⁷

According to the UN Human Rights Committee, a restriction “violates the test of necessity if the protection could be achieved in other ways that do not restrict freedom of expression.”²²⁸ The necessity requirement overlaps with the proportionality requirement, as the latter means that a restriction must be the “least intrusive instrument amongst those which might achieve their protective function.”²²⁹ In this vein, the Special Rapporteur on Freedom of Expression has noted that only the gravest of speech offenses should ever be criminalized: child pornography, incitement to terrorism, public incitement to genocide, and advocacy for national, racial, or religious hatred.²³⁰ As stated by the Rapporteur, it is never permissible to levy criminal penalties in response to other forms of expression given the “significant chilling effect” that occurs.²³¹

The African Charter imposes similar standards. In 2019, the African Commission on Human and Peoples’ Rights adopted the Declaration of Principles on Freedom of Expression and Access to Information in Africa (Declaration), reaffirming the fundamental importance of the right to freedom of expression guaranteed by Article 9 of the African Charter.²³² The Declaration sets forth a test identical to that established by the UN Human Rights Committee: that any limitation on speech must be “prescribed by law; serve[] a legitimate aim; and [be] a necessary and proportionate means to achieve the stated aim in a democratic society.”²³³ Legitimate aims are “to preserve respect for the rights or reputations of others; or to protect national security, public order or public health.”²³⁴

With respect to necessity and proportionality requirements, the Declaration asserts that any limitation on freedom of expression must “originate from a pressing and substantial need that is relevant and sufficient; [must] have a direct and immediate connection to the expression ... and be the least restrictive means of achieving the stated aim; and [must] be such that the benefit of protecting the stated interest outweighs the harm to the expression.”²³⁵

²²⁷ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 35.

²²⁸ *Id.* at para. 33.

²²⁹ *Id.* at para. 34.

²³⁰ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, U.N. Doc. A/66/290, August 10, 2011, paras. 40, 81.

²³¹ *Id.* at para. 83.

²³² African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Adopted at the 65th Ordinary Session, October 21 to November 10, 2019. Available at <https://www.achpr.org/legalinstruments/detail?id=69>.

²³³ *Id.* at Principle 9.1.

²³⁴ *Id.* at Principle 9.3.

²³⁵ *Id.* at Principle 9.4.

Proportionality analysis entails consideration of whether the prescribed punishment is excessive.²³⁶ As stated by the African Court, “[a]part from serious and very exceptional circumstances for example, incitement to international crimes, public incitement to hatred, discrimination or violence or threats against a person or a group of people, because of specific criteria such as race, colour, religion or nationality, ... violations of laws on freedom of speech and the press cannot be sanctioned by custodial sentences.”²³⁷

Like the UN Human Rights Committee, the African Commission has emphasized that “[s]peech addressing matters of public concern, public interest or political or policy affairs, including criticism of the state or state officials, including as exercised in the context of an assembly, [must be] given maximum protection under the right to freedom of expression.”²³⁸

In the present cases, Mbah and Adene’s conduct was protected by their right to freedom of expression – and indeed merited heightened protection.

As mentioned above, Adene was charged with three breach of peace offenses, including provoking a breach of peace by offensive publication. The charge sheet states that Adene was liable for this offense because of a publication reading: “ENDSARS MARCH AGAINST POLICE BRUTALITY AND EXTRAL [sic] JUDICIAL MURDER OF OUR PROTESTING COLLEAGUES.” With respect to the two remaining breach of peace offenses, the charge sheet merely lists the time and location of the offense without providing further details. Notwithstanding the scarcity of information regarding the underlying acts for which Adene was prosecuted, all reports indicate that the proceedings were based on Adene’s call for renewed #EndSARS protests in Lagos: a flyer promoting such protests, presumably featuring the quote cited in the charge sheet, was posted before Adene’s arrest and contained Adene’s phone number.

The speech underlying Adene’s call to assemble warranted “maximum protection under the right to freedom of expression” because it concerned political matters that were part of ongoing public debate: abuses committed by SARS officers.

In order to comply with the standards set forth above, the restrictions on Adene’s speech – i.e., his arrest, detention, and criminal prosecution – would have had to meet legality requirements, possess a legitimate objective, and be necessary and proportional. As discussed above, the crime of offensive publication with which Adene was charged was insufficiently precise, falling short of legality standards.

²³⁶ African Court on Human and Peoples’ Rights, *Lohe Issa Konate v. Burkina Faso*, App. No. 004/2013, December 5, 2014, para. 149.

²³⁷ *Id.* at para. 165.

²³⁸ African Commission on Human and Peoples’ Rights, *Guidelines on Freedom of Association and Assembly in Africa*, Adopted at the 60th Ordinary Session, May 8-22, 2017, para. 79. Available at https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf.

With respect to legitimate aim, there are significant indicia that the objective of the authorities' actions was to crack down on peaceful dissent. It does not appear that Adene's supposed call for or participation in demonstrations entailed violence or was anything other than peaceful (the publication referred to in the charge sheet in no way invokes violence), and, in any event, the prosecution never put forth evidence in court of such. Further, as discussed in the background section, international and domestic organizations have documented the widespread weaponization of the judicial system against #EndSARS protesters.

Even assuming that the goal of the restriction was to protect public order or national security, the State failed to "demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat." The prosecution did not present evidence that Adene's call for protests endangered the peace or posed any other type of threat: indeed, because of the lack of evidence supporting the charges, the Yaba Magistrate Court struck out the case for want of prosecution.

Finally, with respect to necessity and proportionality requirements, the institution of criminal proceedings carrying a custodial penalty was clearly not the "least intrusive instrument amongst those which might achieve their protective function."²³⁹ As mentioned above, the criminalization of speech is only appropriate where grave crimes have been committed, such as incitement to terrorism or advocacy for national, racial, or religious hatred. The prosecution did not allege that the speech at issue in the Adene's case met this threshold. As such, Adene's prosecution violated necessity and proportionality requirements.

Likewise, it appears that Mbah's arrest, detention, and criminal prosecution were primarily aimed at suppressing his right to peacefully voice criticism of the government through protest, in violation of the requirement that restrictions on freedom of expression possess a legitimate objective and be necessary and proportional (this will be discussed at length in the following sections).

Freedom of Assembly

There are strong grounds to conclude that the proceedings against Mbah and Adene violated their right to freedom of peaceful assembly.

Article 21 of the ICCPR and Article 11 of the African Charter protect the right to peaceful assembly. As stated by the United Nations Human Rights Committee, the right to peaceful assembly is a "fundamental human right," which "entails

²³⁹ Human Rights Committee, General Comment No. 34, U.N. Doc. CCPR/C/GC/34, September 12, 2011, para. 33.

the possibility of organizing and participating in a peaceful assembly ... in a public location.”²⁴⁰

The Human Rights Committee has explained that Article 21 “protects the non-violent gathering by persons for specific purposes, principally expressive ones.”²⁴¹ The Guidelines on Freedom of Association and Assembly in Africa, adopted by the African Commission on Human and Peoples’ Rights, provide that “an assembly should be deemed peaceful if its organizers have expressed peaceful intentions, and if the conduct of the assembly participants is generally peaceful.”²⁴² Notably, “[p]eaceful’ shall be interpreted to include conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.”²⁴³

Indeed, even where violent incidents occur, the UN Human Rights Committee has emphasized that “[i]solated instances of such conduct” should “not suffice to taint an entire assembly as non-peaceful.”²⁴⁴ In like manner, the African Commission’s Guidelines on Freedom of Association and Assembly in Africa note that “[i]solated acts of violence do not render an assembly as a whole non-peaceful.”²⁴⁵

Article 21 protection under the ICCPR extends to organized and spontaneous assemblies alike, as well as to participants, organizers, and anyone disseminating information about or otherwise facilitating assemblies.²⁴⁶ In addition, “[g]iven that peaceful assemblies often have expressive functions, and that political speech enjoys particular protection as a form of expression, it follows that assemblies with a political message should enjoy a heightened level of accommodation and protection.”²⁴⁷

Correspondingly, under Article 21 no restriction of the right of peaceful assembly is permissible “unless it is (a) imposed in conformity with the law; and (b) 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.”²⁴⁸ As stated by the UN Human Rights Committee, “States are obliged ...

²⁴⁰ Human Rights Committee, *Strizhak v. Belarus*, U.N. Doc. CCPR/C/124/D/2260/2013, November 1, 2018, para. 6.5. See also Human Rights Committee, *Giménez v. Paraguay*, U.N. Doc. CCPR/C/123/D/2372/2014, September 26, 2018, para. 8.3.

²⁴¹ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 4.

²⁴² African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, Adopted at the 60th Ordinary Session, May 8-22, 2017, para. 70.

²⁴³ *Id.* at para 70(a). See similarly, Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, paras.7 and 15.

²⁴⁴ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 19.

²⁴⁵ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, Adopted at the 60th Ordinary Session, May 8-22, 2017, para. 70(b).

²⁴⁶ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, paras. 13-14, 33-34.

²⁴⁷ *Id.* at para. 32.

²⁴⁸ Human Rights Committee, *Giménez v. Paraguay*, U.N. Doc. CCPR/C/123/D/2372/2014, September 26, 2018, para. 8.3. See also Human Rights Committee, *Strizhak v. Belarus*, U.N. Doc. CCPR/C/124/D/2260/2013, November 1, 2018, para. 6.5.

not to prohibit, restrict, block, disperse or disrupt peaceful assemblies without compelling justification, nor to sanction participants or organizers without legitimate cause.”²⁴⁹

With respect to public order restrictions:

States parties should not rely on a vague definition of ‘public order’ to justify overbroad restrictions on the right of peaceful assembly. Peaceful assemblies can in some cases be inherently or deliberately disruptive and require a significant degree of toleration. ‘Public order’ and ‘law and order’ are not synonyms, and the prohibition of ‘public disorder’ in domestic law should not be used unduly to restrict peaceful assemblies.²⁵⁰

The African Charter likewise limits restrictions on peaceful assembly. The Guidelines on Freedom of Association and Assembly in Africa assert that “[t]he law shall not allow assemblies to be [restricted] based on overly broad or vague grounds.”²⁵¹

Similar to the requirements set forth by the Human Rights Committee, African bodies have established that “any limitations imposed [on the right to peaceful assembly] shall be in accordance with the principle of legality, have a legitimate public purpose, and be necessary and proportionate means of achieving that purpose within a democratic society.”²⁵² In the words of the African Commission, “[r]easons adduced to impose conditions shall be relevant, sufficient, convincing and compelling, and based on a reasonable assessment of the relevant facts including a risk assessment.”²⁵³

Turning to the cases at hand, it appears that Adene and Mbah were arrested, detained, and prosecuted for their – respectively – promotion of and participation in peaceful assemblies. No evidence (let alone evidence constituting a “compelling” justification or “legitimate cause” to impose restrictions) was presented that either individual had anything other than peaceful intentions.

With respect to Adene’s prosecution for various breach of peace offenses, the only detail mentioned in the charge sheet was Adene’s supposed involvement in a publication promoting an “ENDSARS MARCH AGAINST POLICE BRUTALITY AND EXTRAL [sic] JUDICIAL MURDER OF OUR PROTESTING COLLEAGUES.” As noted above, the UN Human Rights Committee has emphasized that the right of peaceful assembly under Article 21 not only protects actual gatherings but also “[a]ssociated activities conducted by an individual or by a group, outside the

²⁴⁹ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para 23.

²⁵⁰ *Id.* at para. 44.

²⁵¹ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, Adopted at the 60th Ordinary Session, May 8-22, 2017, para. 85.

²⁵² *Id.*

²⁵³ *Id.* at para. 91(c).

immediate context of the gathering but which are integral to making the exercise meaningful.”²⁵⁴ As such, States are specifically obligated to facilitate and protect the “dissemination of information about an upcoming event” and restrictions on such activity must be “narrowly drawn”.²⁵⁵ Given these requirements and that the publication at issue contained no indication of violence, the charges against Adene flew in the face of express protection in international human rights law for activities that seek to promote upcoming peaceful assemblies.

Meanwhile, Mbah was charged with unlawful assembly in which he “[began] to act in a disorderly manner as to disturb the peace”; breaking curfew; and unlawfully attempting “to set fire on [sic] Ojo Local Government Secretariat.” In terms of the charge of “unlawful assembly” it is worth noting that “the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection.”²⁵⁶ As such, for a charge of unlawful assembly to be sustained, it is imperative that demonstrable evidence of unlawful activity be presented. Yet no evidence of Mbah’s perpetration of attempted arson, let alone evidence of Mbah’s “disorderly” conduct has been produced thus far (more than a year into the proceedings).

Indeed, the cases against both individuals – taking into account that both Mbah and Adene were prominent participants in the #EndSARS protests, that in both cases there was no evidence of anything but peaceful conduct, and that at the time, many similar prosecutions of peaceful #EndSARS protesters were taking place, particularly in Lagos – seem to have rested purely on the political opinion motivating the assemblies, in violation of the African Charter and ICCPR and, in particular, in contravention of the principle that “no one should be harassed or face other reprisals as a result of their presence at or affiliation with a peaceful assembly.”²⁵⁷

Notably, the African Commission’s Guidelines on Freedom of Association and Assembly in Africa assert:

Where the authorities have pursued groundless or disproportionate sanctions or dispersal, or have pursued sanctions or dispersal with the aim of harassing particular assemblies, those responsible shall be held liable for violating the right to freedom of assembly.²⁵⁸

Abuse of Process

In sum, it appears that the prosecutions of Mbah and Adene were driven by an improper motive: namely, to suppress the exercise of freedom of expression

²⁵⁴ Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, para. 33.

²⁵⁵ *Id.* at para. 33.

²⁵⁶ *Id.* at para. 16.

²⁵⁷ *Id.* at para. 33.

²⁵⁸ African Commission on Human and Peoples’ Rights, Guidelines on Freedom of Association and Assembly in Africa, Adopted at the 60th Ordinary Session, May 8-22, 2017, para. 103(d).

and peaceful assembly. While the ICCPR and African Charter proscribe the abuse of judicial proceedings for political purposes – for example, the United Nation Human Rights Committee has determined that detention on the basis of human rights and journalistic work violates the right to liberty protected by Article 9(1)²⁵⁹ – neither the Committee nor African bodies have established clear standards for assessing such situations.

Guidance from the European Court of Human Rights is therefore useful. Article 18 of the ECHR states: “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.” The European Court has found that in evaluating whether an ulterior motive for prosecution exists, circumstantial evidence – including the political climate and timing of the proceedings,²⁶⁰ whether there were reasonable grounds to bring the charges,²⁶¹ how the proceedings were conducted,²⁶² and whether the ultimate decision was well-reasoned and based on law²⁶³ – may be probative. The seemingly selective targeting of a specific individual may also be relied upon as a circumstantial indicator.²⁶⁴

In analyzing prosecutions that may have been brought for improper aims, the Court has emphasized that cases that implicate democratic values should be subjected to heightened scrutiny.²⁶⁵

Per the guideposts set forth by the European Court and as discussed in detail below, there are significant indicia that the prosecutions of Adene and Mbah stemmed from purely political motivations.

First, with respect to the timing and broader political context, the cases against Mbah and Adene took place amidst countrywide protests against the abuses perpetrated by SARS. In response to these protests, which were largely

²⁵⁹ Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, April 6, 2018, para. 7.7. See also Human Rights Committee, *Melnikov v. Belarus*, U.N. Doc. CCPR/C/120/D/2147/2012, September 4, 2017, para. 8.8; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, April 4, 2018, paras. 2.19, 8.7.

²⁶⁰ See European Court of Human Rights, *Selahattin Demirtaş v. Turkey (no. 2)*, App. No. 14305/17, December 22, 2020, para. 429; European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, 2017, November 28, 2017, paras. 320-322; European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 107; European Court of Human Rights, *Rasul Jafarov v. Azerbaijan*, App. No. 69981/14, March 17, 2016, paras. 159-161; European Court of Human Rights, *Mammadli v. Azerbaijan*, App. No. 47145/14, April 19, 2018, para. 103.

²⁶¹ See European Court of Human Rights, *Khodorkovskiy v. Russia*, App. No. 5829/04, May 31, 2011, para. 258; European Court of Human Rights, *Khodorkovskiy and Lebedev v. Russia*, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 908.

²⁶² European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, para. 171.

²⁶³ European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 108.

²⁶⁴ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, paras.168-170.

²⁶⁵ See *id.* at paras. 173-175.

peaceful, prosecutions were launched against hundreds of demonstrators, in many cases on spurious grounds. Moreover, such proceedings appear to have been particularly prevalent in Lagos, where it has been reported that a significant number of protesters remain in jail. As such, the prosecution of Adene and Mbah falls in line with broader patterns. In terms of timing in the specific cases, it is notable that Adene was arrested in advance of protests that he had apparently helped promote. Meanwhile, Mbah was arrested shortly after the Lekki toll gate incident in Lagos, in the aftermath of which the police rounded up protesters.

Second, the trajectory of the respective cases indicates that there were not reasonable grounds for prosecution. As discussed at length above, the police prosecutors failed to present evidence in either case that the accused had acted in a manner that was not peaceful. Moreover, the underlying allegations shifted dramatically throughout the course of the proceedings. With respect to Adene, for example, he was initially accused of criminal incitement and cyberstalking (as well as with breach of peace offenses). The police later withdrew the incitement and cyberstalking allegations. With respect to Mbah, the police initially charged him with armed robbery as well as with an armed assault on government property and the setting on fire of two police cars. The police subsequently withdrew these charges. The shifting allegations in both cases indicate that the authorities were attempting to pin any criminal charge on the accused as opposed to assessing whether there was evidence of a crime.

Further, in Adene's case, the police initially claimed that he "was arrested on the protest ground with exhibits caught on him."²⁶⁶ However it was soon apparent, including through video footage, that Adene had been arrested at home.²⁶⁷ Meanwhile, no "exhibits" – meaning inculpatory evidence of the crime – were ever presented in court. Similarly, in Mbah's case, the police claimed that he was in possession of weapons at the time of his arrest, consistent with the original charges of armed robbery and an armed assault on government property. The presence of weapons was cited in the police request to detain Mbah, which was approved by the magistrate. The armed robbery and assault charges, however, soon disappeared and no evidence of weapons was ever presented to the court. Again, the fluctuating allegations made by the authorities denote the spuriousness of the charges.

Third, regarding the conduct of the proceedings, both cases were riddled with irregularities. Neither Adene nor Mbah, for example, was brought before a court following arrest in the time frame prescribed by Nigerian legislation – 48 hours. Instead, Adene waited nine days to obtain judicial review of his detention and Mbah four days. Subsequently, even after a court had ordered Mbah's release on bail five months into his detention, prison officials refused to release him on a

²⁶⁶ Id.

²⁶⁷ See CorrectNG, "#EndSARS: Drama in Court as Police Deny Arresting Eromosele from His Home Despite Video Evidence", November 16, 2020. Available at <https://www.correctng.com/endsars-drama-in-court-as-police-deny-arresting-eromosele-from-his-home-despite-video-evidence/>.

range of trifling procedural grounds, indicating that detention was more of a punishment than a necessary measure. Additionally, Mbah claimed that he was beaten in detention and repeatedly asked to sign a confession, with the authorities denying his requests for access to a lawyer. When his remand hearing finally came, he had no legal representation – reportedly because of the authorities’ refusal to provide him counsel.

Against this backdrop, it appears that the proceedings against Mbah and Adene were a means of retaliating against them for their participation in the #EndSARS protests and call for police reform. The cases are particularly concerning in that they implicate democratic values – the ability of citizens to peacefully express their opinions about state abuses.

Prosecutorial Misconduct

The actions of the police prosecutors who pursued the cases against Mbah and Adene breached best practices on prosecutorial ethics. Under the United Nations Guidelines on the Role of Prosecutors, prosecutors in criminal proceedings must “not initiate or continue prosecution,” or should “make every effort to stay proceedings, when an impartial investigation shows the charges to be unfounded.”²⁶⁸ Guidelines produced by the International Association of Prosecutors (IAP Guidelines), which complement the UN Guidelines on the Role of Prosecutors, require prosecutors to proceed in criminal cases “only when a case is well-founded upon evidence reasonably believed to be reliable and admissible,” and to “not continue with a prosecution in the absence of such evidence.”²⁶⁹

As referenced above, it appears that the prosecution never had sufficient evidence to charge Mbah or Adene. In particular, both cases saw the prosecution fail to substantiate charges that the accused had acted in a manner that was not peaceful, instead requesting adjournments, not showing up to court, and/or claiming that investigations were still underway. Indeed, the prosecution never secured the appearance of supporting witnesses in Adene’s case and has yet to secure the appearance of witnesses in Mbah’s case.

With respect to Adene, the Yaba Magistrate Court struck out the proceedings in October 2021 for want of prosecution. With respect to Mbah, the proceedings before the Yaba Magistrate Court are ongoing – now more than a year since they first began.

In light of the above, there are strong grounds in each case to conclude that the “charges [were] unfounded,” contravening best practices on prosecutorial ethics.

²⁶⁸ United Nations Office of the High Commissioner for Human Rights, United Nations Guidelines on the Role of Prosecutors, 1990, para. 14. Available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>.

²⁶⁹ International Association of Prosecutors, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, 1999, Principle 4.2(d). Available at [https://www.iap-association.org/getattachment/Resources-Documents/IAP-Standards-\(1\)/English.pdf.aspx](https://www.iap-association.org/getattachment/Resources-Documents/IAP-Standards-(1)/English.pdf.aspx).

CONCLUSION AND GRADE



In the course of the #EndSARS movement, Mr. Eromosele Adene and Mr. Nicholas Mbah sought to legitimately exercise their rights to freedom of expression and peaceful assembly as protected under Articles 9 and 11 of the African Charter on Human and Peoples' Rights, and Articles 19 and 21 of the International Covenant on Civil and Political Rights.

The charges brought against Mbah and Adene rely on broadly construed criminal law provisions (including 'provoking breach of peace by offensive publication' and 'unlawful assembly'). As applied in their cases (but also on their face), these offences are difficult to reconcile with the protections afforded by international human rights law (which instead emphasize that restrictions on core political rights must be narrowly drawn). Indeed, human rights protections both extend to offensive speech and afford protection to 'unlawful assembly' so long as it remains peaceful.

The combination of the shifting grounds cited to justify prosecution and the wholesale failure to adduce credible evidence to substantiate the charges (evidence, for example, of imminent violent action or of non-peaceful intentions on the part of either Adene or Mbah) points inexorably to the conclusion that not only have these cases involved unnecessary and disproportionate interferences with fundamental rights but that they have been initiated for predominantly ulterior political motives and thus constitute an abuse of process.

In addition, these interferences with the rights to freedom of expression and assembly have been compounded by significant irregularities during the trial process (including, the failure to provide reasons for arrest in a timely manner; and not bringing the arrestees promptly before a court) as well as further serious interferences and alleged interferences with fundamental rights (including, in the case of Mbah, both arbitrary detention and torture).

While the case against Adene has been struck out, the case against Mbah is still ongoing before the Yaba Magistrate Court, more than a year after it was first initiated. Meanwhile, related charges have recently been filed against Mbah before the Lagos High Court. Assuming further failure by the State to produce evidence of unlawful conduct, the courts should, respectively, act swiftly to terminate the cases and spare Mbah from continuing harassment for exercise of his fundamental rights.

GRADE

D



GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”²⁷⁰ and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

²⁷⁰ ICCPR, Article 26.