

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.**

REFERENCE:  
UA NGA 1/2017

8 February 2017

Dear Mr. Peters Omologbe Emuze,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 33/9, 25/5, 31/16 and 25/13.

In this connection, we would like to bring to the attention of your Government information we have received concerning the **alleged arbitrary detention of Mr. Ibrahim Al-Zakzaky and his wife Zeinat Al-Zakzaky, since 14 December 2015.**

According to information received:

On 14 December 2015, Mr. Ibrahim Zakzaky, the leader of the Islamic Movement of Nigeria (IMN), a Shi'ite Muslim minority group, and his wife, Ms. Zeinat Al-Zakzaky, were detained by the Nigerian security forces at his residence in the locality of Zaria, Kaduna State. The detention took place during the course of an incident in which members of the Nigerian military allegedly killed more than 350 people, supporters of the IMN, in Zaria, between 12 and 14 December 2015.

It is reported that the confrontation erupted in the afternoon of 12 December 2015, when hundreds of IMN supporters blocked a section of the Sokoto Road in Zaria town, in front of the IMN headquarters (known as "Hussainiya"), and refused to clear the road to allow the convoy of the Chief of Army Staff to pass. After failed attempts by army officers to convince IMN supporters to allow the convoy to pass, soldiers opened fire with live ammunition, killing at least seven people and injuring several others. A soldier was also reportedly killed in the clashes.

On the same day, hours later, soldiers were deployed to other locations in the city of Zaria where IMN supporters were gathered, including the residential compound of the IMN leader, located in the Gyallesu neighborhood, around 3 kilometers away from the Hussainiya. Hundreds of supporters were gathered at Ibrahim Al-Zakzaky's compound, as a religious ceremony was scheduled to take place on 12

December 2015, while others had gone there after the incident at the Hussainiya earlier in the day, as they could not reach the Hussainiya and because they wanted to protect their leader, who they feared could be arrested or harmed.

It is reported that soldiers killed more than 100 IMN supporters in Gyallesu neighborhood between the evening of 12 December 2015 and the morning of 14 December 2015. Ibrahim Al-Zakzaky and his wife were reportedly shot and severely injured by the military before being arrested and taken to an unknown location. Since then, Mr. Al-Zakzaky and his wife have been detained in custody of the Department of State Service (DSS), which has stated that Mr. Al-Zakzaky and his wife were being held in “protective custody”. To date, no formal charges have been brought up against them.

In January 2016, a Commission of Inquiry with broad terms of reference was established by the Kaduna State Governor to investigate the incident. It is reported that the Commission initially delayed the beginning of its hearings until Mr. Al-Zakzaky and his wife were granted access to their lawyers, which did not happen until the end of March.

In April 2016, the Commission started its public hearings. However, the legal team of the IMN decided to withdraw from the Commission’s proceedings in protest against the continued detention of Mr. Al-Zakzaky and his wife without formal charges having been pressed against them. It is alleged that Mr. Al-Zakzaky instructed his followers not to participate in the Commission proceedings and that the Commission never summoned Mr. Al-Zakzaky to the hearings, despite the fact that its terms of reference allowed the Commission to do so.

On 2 December 2016, a ruling by the Federal High Court of Abuja did not find evidence that Mr. Al-Zakzaky had consented to being held in “protective custody” and ordered the unconditional release of Mr. Al-Zakzaky and his wife within a period of 45 days from the date of the ruling. The ruling also provided for financial compensation for Mr. Al-Zakzaky and his wife.

On 5 December 2016, the Commission of Inquiry issued its report (dated August 2016), entitled “White Paper on the report of the Judicial Commission of Inquiry into the clashes between the Islamic Movement in Nigeria (IMN) and the Nigerian Army (NA) in Zaria, Kaduna State, between Saturday 12<sup>th</sup> and Monday 14<sup>th</sup> December 2015”.

The White Paper does not contain any reference to the detention of Mr. Al-Zakzaky and his wife without charges since 14 December 2015 nor does it make any recommendations in this regard. However, the White Paper contains some references, in very broad terms, with respect to Mr. Al-Zakzaky’s responsibility in

the incident, stating that he “*should be personally held responsible for all the acts of commission and omission of the entire membership of the Islamic Movement in Nigeria in its clashes with the Nigerian Army for refusing to call his members to order when required to do so*”.

On 16 January 2017, the 45 day period given by the Federal High Court of Abuja to release Mr. Al-Zakzaky and his wife expired, without Mr. Al-Zakzaky and his wife having been released.

It is alleged that during the entire time of his detention, the health condition of Mr. Al-Zakzaky has deteriorated due to the injuries suffered during his arrest when, as a consequence of gunshots, he lost his left eye, his right eye was severely damaged and had a serious injury in his right thigh. Mr. Al-Zakzaky and his wife received some medical attention at a DSS medical center during the three first months following their detention and, after being moved to a detention house, they were visited periodically by doctors to check on their blood pressure and on Mr. Al-Zakzaky’s eyesight. It is alleged that after July 2016, medical attention from DSS was discontinued and that, despite numerous requests by Mr. Al-Zakzaky to receive specialized healthcare, including adequate medical treatment for his right eye, his requests were not granted and no explanation was provided as for the reasons to reject such requests.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention with international law, in particular the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria on 29 July 1993.

In addition, we would like to draw the attention of your Government to Principle 4 of the United Nations Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.” Furthermore, Principle 5 provides that, “[w]hen the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment”.

We are appealing to your Government to ensure the right to freedom of religion or belief, in accordance with article 18 of the ICCPR and the UDHR, which provide that the State has positive obligations, in cases where religious minorities are the victims of acts of intolerance or religious violence, including when these acts are perpetrated by non-State individuals or groups, to take the necessary steps to ensure that religious minorities can exercise their right to freedom of religion or belief in complete safety. Article 2 (1) of the 1981 Declaration of the General Assembly also emphasizes that no one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.

Recognizing that Mr. Al-Zakzaky and his wife are members of a religious minority in Nigeria, we would like to bring to your Government attention the international standards regarding the protection of the rights of persons belonging to religious minorities, in particular to article 27 of the ICCPR, that guarantees minorities, *inter alia*, the right to profess and practice their own religion. Moreover, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires States to protect the existence and identity of religious minorities within their territories, to adopt appropriate legislative and other measures to achieve those ends (article 1) and to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1). Furthermore, we draw the attention of your Government to the Recommendations of the sixth and eighth sessions of the Forum on Minority Issues, on “Guaranteeing the rights of religious minorities” (2013), and “Minorities in the criminal justice system” (2015), respectively.

In addition, regarding the access to specialized medical care needed by Mr. Al-Zakzaky, allegations above appear to be in contravention of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Nigeria on 29 July 1993. Article 12 of the ICESCR guarantees the right of everyone to the enjoyment of the highest attainable standard of physical health, which includes an obligation of States to respect, protect and fulfill the realization of this right. Violations of the obligation to respect are those State actions, policies or laws that contravene the standards set out in article 12 of the Covenant and are likely to result in bodily harm, unnecessary morbidity and preventable mortality. (General Comment 14. E/C.12/200/4, paras. 34-37 and 50). In addition, Principle 9 of the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, indicates that all prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation. Moreover, as outlined by the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), the provision of health care is the responsibility of the state authorities and prisoners should enjoy the same standards of health care that are available in the community (Rule 24(1)). Rule 27(1) furthermore provides that all prisons shall ensure prompt access to medical

attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals.

Finally, we would also like to remind your Government of its obligation under international human rights standards to prevent anyone living on its territory from being subjected to human rights violations. In the case of Mr. Al-Zakzaky and his wife, the Government should ensure their immediate release as per the ruling of the Federal High Court of Abuja and immediate access of Mr. Al-Zakzaky to specialized health care.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for continued detention of Mr. Al-Zakzaky and his wife and explain how their detention without formal charges pressed against them is compatible with international norms and standards as stated, inter alia, in the UDHR, the ICCPR and the ICESCR.
3. Please justify the use of “protective custody” and the conditions for invoking such measure. Please provide details of the measures taken by your Excellency’s Government to ensure an early and safe release of Mr. Al-Zakzaky and his wife.
4. Please, provide detailed information about the healthcare provided to Mr. Al-Zakzaky and his wife while in detention, including about access to specialized medical treatment to address sequelae of injuries sustained during his arrest. Kindly explain why requests to transfer Mr. Al-Zakzaky to a medical facility to receive specialized medical treatment have been denied.
5. Please indicate what measures have been adopted to ensure that persons belonging to religious minorities, including members of the Shi’a community,

can be free from discrimination and exercise their right to freedom of religion and belief.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Finally, we would like to highlight that, after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Urgent appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the urgent action procedure and the regular procedure.

Please accept, Mr. Peters Omologbe Emuze, the assurances of our highest consideration.

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