

Mandates of 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 situation of human rights defenders

REFERENCE:
UA NGA 1/2018

22 January 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 33/30, 34/18 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and alleged arbitrary detention of **Mr. Timothy Elombah**, journalist and editor of an online website, and his brother **Mr. Daniel Elombah**, publisher and lawyer based in the United Kingdom, at their home in the city of Nnewi, Anambra state, on 1 January 2018.

Mr. Timothy Elombah is a journalist and editor of the online website Elombah. The website Elombah (<http://Elombah.com>) appears to cover Boko Haram issues and has reported critically on the Nigerian President's son.

According to the information received:

In the early morning hours of 1 January 2018, Mr. Timothy Elombah and Mr. Daniel Elombah were arrested at their home in Nnewi (Anambra state) by the Federal Special Anti-Armed Robbery Squad (SARS). They were not informed about the reasons of their arrest.

They were driven to the SARS Nnewi office where they were briefly detained and then to the SARS headquarters in Awkuzu, where they were handed over to officers from the Special Tactics Squad (STS). Mr. Timothy Elombah and Mr. Daniel Elombah were transferred to the STS Abuja office around 5:00 p.m.

Thereafter, Mr. Daniel Elombah was released around midnight, but he was not allowed to leave the country. Mr. Timothy Elombah remains in detention.

During their detention, it emerged that Nigeria's Inspector General of Police (IGP) had ordered their arrest following a critical article on the IGP. Mr. Timothy Elombah has denied writing and publishing on his website Elombah the article that was used as the basis for their arrest.

Without expressing at this stage an opinion on the facts of the case, we express our concern about the arrest and alleged arbitrary detention of Mr. Timothy Elombah and Mr. Daniel Elombah, which appear to be closely linked to Mr. Timothy's Elombah legitimate exercise of his right to freedom of expression in Nigeria. These allegations are particularly worrisome given that Mr. Timothy Elombah denies being the author of the article for which they are allegedly being persecuted. We are equally concerned about the apparently illegal basis upon which Mr. Timothy Elombah remains detained, as it appears to represent a form of retaliation for his journalist work and a criminalisation of his right to freedom of expression. We are also concerned by the chilling effect that such actions may have on other journalists, human rights defenders and civil society representatives operating in Nigeria.

Without making any judgment as to the accuracy of the information made available to us, the above allegations appear to be in contravention with the right to liberty and security of person, which includes the right not to be subject to arbitrary arrest or detention and to fair proceedings before an independent and impartial tribunal, as well as the right to freedom of expression, guaranteed under articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Nigeria on 29 July 1993.

Any limitation to the right to freedom of expression must meet the criteria established by article 19(3) of the ICCPR. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality. Such limitations must be applied only for those objectives prescribed by article 19(3) and must be directly related to the specific need on which they are predicated. Article 19 of the ICCPR also protects all forms of expression and the means of their dissemination, including internet-based modes of expression. The Human Rights Committee also established in General Comment 34 that "any restrictions on the operation of websites, blogs or any other internet-based (...) are only permissible to the extent that they are compatible with paragraph 3" (CCPR/C/GC/34, paragraph 43).

We would like to refer to the Human Rights Council resolution 33/2 on safety of journalists (A/HRC/RES/33/2) adopted on 6 October 2016, which "recognises that the work of journalists often puts them at a specific risk of intimidation, harassment and violence, the presence of which often deters journalists from continuing their work or encourages self-censorship, consequently depriving society of important information" and "urges the immediate and unconditional release of journalists and media workers who have been arbitrarily arrested or arbitrarily detained."

We further refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and

Protect Universally Recognised Human Rights and Fundamental Freedoms, known as the UN Declaration on Human Rights Defenders, and in particular articles 1, 2, 6 and 12.

The full texts of the human rights instruments and standards recalled above are available on 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 Excellency's Government to safeguard the rights of the above-mentioned person(s) 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 about the charges brought against Mr. Timothy Elombah, as well as the factual and legal basis for his arrest and detention and that of his brother David Elombah. Please explain how his detention is compatible with Nigeria's obligations under international human rights law, in particular with articles 9, 14 and 19 of the ICCPR.
3. Please provide information on the legal basis to prevent Mr. David Elombah from travelling outside the country and how this measure is compatible with Nigeria's obligation under article 12 of the ICCPR.

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

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders