

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL NGA 3/2019

9 May 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 34/18, 32/32 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 sentencing to 12 years in prison of Mr. **Ibrahim Garba Wala** on charges of criminal defamation, public incitement and unlawful assembly.

According to the information received:

Mr. Ibrahim Wala, popularly known as IG Wala, is a human rights defender and convener of the Citizens Action to Take Back Nigeria (CATBAN). He has led protests against corruption and other human rights violations in various parts of Nigeria.

Mr. Wala was first arrested in January 2018, and spent 21 days in police custody before his arraignment. His arrest was based on a petition filed by Mr. Abdullahi Mukhtar, chairman of the National Hajj Commission of Nigeria (NAHCON), alleging that Mr Wala used his Facebook page to incite the public against him and to defame his integrity and that of the NAHCON. Mr. Wala's arraignment on 24 January 2018 was based on a Facebook post of 26 September 2017, in which he accused Mr. Mukhtar of embezzlement of the funds of NAHCON, following the 2017 Hajj. Mr. Wala's Facebook post stated: "Official documents made available to CATBAN reveal that the Chairman of NAHCON, after the 2017 Hajj operations, makes not less than N3 billion for himself. In the interim, CATBAN tends to question how NAHCON expended the total sum of N97,906,500,00 accrued from the payment of N1.5 million by each individual that made up the 65,271 being the total number of Nigerian Muslim pilgrims for 2017".

On 15 April 2019, the High Court of the Federal Capital Territory (FTC) in Maitama found Mr. Ibrahim Wala guilty on three out of the four charges filed against him by the Inspector General of the Police and the Attorney General of the Federation. He was convicted for managing an unlawful society (Section 973 of the Penal Code), public incitement (Section 114) and defamation of character

(Section 391), and sentenced him to 12 years in prison. The judge dismissed the charge of criminal intimidation for lack of merit.

Justice Jalilu also ruled that CATBAN is unregistered and that they committed the offence of an unlawful assembly. Additionally, the judge stressed that Mr Wala was unable to provide evidence to back his claims that Mr Mukhtar “enriched himself with N3 billion”. In his ruling, the judge also held that the failure of the accused to provide relevant documents to back his allegations, rendered the case of the prosecution less cumbersome.

Mr. Wala was re-arrested after his conviction on 15 April 2019, and taken into custody. He is currently being held in Suleja Prison in Niger State, Nigeria.

We express our concerns at the use of criminal defamation charges against Mr. Ibrahim Garba Wala, in relation to his post on social media. We have expressed our consistent view, in line with General Comment No. 34 of the Human Rights Committee, that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty” (CCPR/C/GC/34, para 47). We are also seriously concerned at the severity and length of the prison term, which are disproportionate to the gravity of the offence. We would further like to stress that criminal sanctions, in particular imprisonment, for libel and defamation are not deemed proportional with an effective exercise of the right to freedom of opinion and expression.

We express further serious concerns regarding the fact that the judgment appears to imply that an assembly, even if convened without prior authorization, becomes a priori unlawful if convened by an unregistered organization, which is not the case under relevant international human rights standards.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information about the charges against Mr. Ibrahim Garba Wala, as well as the factual and legal basis for his arrest, detention and conviction, and explain how they can be deemed 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 about steps taken, if any, to repeal criminal defamation provisions in Nigeria, in favour of civil defamation laws.
4. Please indicate what measures have been taken to ensure that human rights defenders and other civil society actors in Nigeria can operate in an enabling environment and can carry out their legitimate activities, offline and online, without fear of reprisals threats, harassment or criminalisation of any kind.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

David Kaye

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

Clément Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

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 fair proceedings before an independent and impartial tribunal, as well as the right to freedom of expression, guaranteed under articles 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 reiterate the recommendations by the Human Rights Committee, that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty” (CCPR/C/GC/34, para 47).

Finally, we would like to refer your Excellency’s Government 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 Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. Article 6 (b) and c) of the declaration provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.