

Mandates of the Special Rapporteur on freedom of religion or belief; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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 the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA NGA 3/2020

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on freedom of religion or belief; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/10, 42/22, 35/15, 34/18, 42/16, 34/5 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **alleged arbitrary arrest and detention of Mr. Mubarak Bala on the allegation that he had insulted the Prophet Mohammad in his Facebook posts.**

Mr. Mubarak Bala is a Nigerian human rights defender and President of the Humanist Association of Nigeria. He has been actively engaged in human rights education campaigns in which he promotes and defends human rights activism while raising awareness of freedom of religion or belief and religious extremism via different writings and posts on internet or social media platforms.

According to the information received:

On 28 April 2020, a number of detectives from the Kano State Police Command went to Mr. Bala's residence and arrested him. Mr. Bala's arrest was prompted by a petition filed with the Police Commissioner of Kano Command on 27 April alleging that he had insulted the Prophet Muhammad in a number of Facebook posts, which were in violation of Section 210 of the Penal Code of Kano State and Section 26(1) (c) of the Cybercrimes Act. The petition claimed that Mr. Bala "has been writing [stuff] on his Facebook page that [is] provocative and annoying to Muslims".

Mr. Bala was detained at Gbabasawa police station in Kaduna overnight before being transferred to Kano where the complaint was lodged. Since his detention in Kano, Mr. Bala has been held incommunicado and has not been granted access to his lawyer. His lawyer has had difficulty getting more information on his arrest or the details of the complaint. Mr. Bala has reportedly been beaten and tortured in detention. No information as to whether Mr. Bala has been formally charged with a crime has been made available to us.

Two days before his arrest, on 26 April 2020, at least 17,000 people signed an online petition calling for the closure of Mr. Bala's Facebook account. Moreover, people have left hateful comments under Mr. Bala's Facebook post, some calling for him to be killed. In addition, there have also been threats to burn down the police station where he is detained. Mr. Bala reportedly suffers from high-blood pressure, which put him at higher risk vis-à-vis COVID-19 while in detention in Kano state.

Mr. Bala had also previously been persecuted by the authorities for his atheist beliefs. In 2014, Mr. Bala was forcibly admitted to the psychiatric ward of Aminu Kano Teaching Hospital in Kano for 18 days after he had been assessed as needing psychiatric help for being an atheist. His father, formerly a senior member of the three Islamic religious authorities, had requested for Mr. Bala's detention after he renounced Islam and declared himself an atheist. Mr. Bala was released due to a strike at the time in the hospital in which he was held. Following his release, Mr. Bala reported receiving death threats up until his most recent arrest. It is reported that in Nigeria, there is a very small percentage of non-religious people; they have been facing social persecution and prohibitive social taboos.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concerns that Mr. Bala might be persecuted on the account of peaceful expression of his opinions and beliefs as protected under Article 18 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which was ratified by Nigeria in 1993. We are concerned that he may be prosecuted under blasphemy charges that can be sanctioned by capital punishment under both Sharia and customary law in Nigeria. This would contravene both the letter and the spirit of article 6 (2, 4) of the ICCPR. In the light of the many death threats that Mr. Bala reportedly received in connection with his alleged writings, we are gravely concerned about his safety in detention. We are also concerned that he has been allegedly ill-treated in detention, and possibly, subjected to torture; which if proven correct, would amount to violating the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as set forth in article 7 of the ICCPR; and articles 2, 15 and 16 of the Convention against torture (CAT) also ratified by Nigeria in 2001.

We are further concerned that Mr. Bala may be deprived of his rights to liberty and security of person; his right not to be arbitrarily arrested and detained; his right to be promptly charged and brought before a judge or to be released; and his right to a fair trial, including the right to have access to a lawyer of his choice, which are all internationally protected under articles 6, 7, 9, 10, 14 of the ICCPR; and his right to health, protected under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by Nigeria 1993.

Under international human rights law, Mr. Bala has the right to freedom of thought, conscience and religion. This right includes his freedom to have or to adopt a religion or belief of his choice, including his right not to follow any particular religion or belief, as provided by Article 18 (1) of the ICCPR. In its General Comment 22, para. 3, the United Nations Human Rights Committee, which is the highest UN body of experts authorized to interpret the ICCPR, stated that "[A]rticle 18 does not permit any limitations whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief of one's choice." Para. 5 provides that "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief." Furthermore, the peaceful expression and manifestation of one's thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity as provided by Article 18 (3) of the ICCPR. We would like to stress that no one should be persecuted for the mere peaceful manifestation or expression of his or her opinions or beliefs.

Article 19 of the ICCPR provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." In its General Comment 34, the Human Rights Committee explicitly affirmed that, "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible [with human rights]".

Without expressing at this stage an opinion on the facts of the case and on whether the reported detention is arbitrary or not, we would like to appeal to your Excellency's Government to promptly review the situation of Mr. Bala and ensure the protection of all his rights under international human rights law that he is entitled to as a citizen of Nigeria that has ratified all major human rights conventions. These includes his right to life, to liberty, to personal security, to physical and psychological integrity, to due process of law, and to fair trial, including his right to seek the legal assistance of a lawyer of his choice, as well as his rights to opinion, belief and expression, and his right not to be persecuted for them.

While it is not clear if Mr. Bala has been charged with blasphemy that carries death penalty, we wish to stress that, while not legally prohibited, the death penalty may be imposed only following compliance with a strict set of substantive and procedural requirements. In particular, capital punishment may only be carried out for the “most serious crimes”, involving intentional killing. We are concerned that Mr. Bala’s alleged offence which carries a sentence of death does not reach this threshold. The death penalty can never be applied as a sanction against religious conduct and/or non-religious forms of beliefs. States should also ensure that the death penalty is not applied as a result of discriminatory or arbitrary application of the law, including based on grounds of religion or belief. Moreover, in our view, it is impossible to impose the death penalty without violating the inherent dignity of the human person and, specifically, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (A/67/279, para. 79). The imposition and execution of a death sentence upon the conclusion of a trial in which due process and fair trial standards have not been respected constitutes an arbitrary killing for which the State is responsible.

We would like to further refer to the report of the Special Rapporteur on the right to health on deprivation of liberty (A/HRC/38/36) which highlights the misuse of psychiatric institutions for the detention and silencing of, inter alia, those with different opinions through medical diagnosis and isolation. He has repeatedly call for the elimination of institutionalization in mental health-care settings.

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.

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 steps taken by your Excellency’s Government to protect Mr. Bala’s rights guaranteed by international human rights law, and call for his immediate unconditional release as no one can be prosecuted for the mere and peacefully expression of one’s opinions and beliefs.

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 the observations of your Excellency's Government on the following matters:

1. Please provide additional information or comments you may have about the above-mentioned allegations.
2. Please provide the factual and legal basis of the arrest and detention of Mr. Bala and how it is compatible with Nigeria's international human rights obligations under ICCPR and CAT.
3. Please explain on what legal grounds Mr. Bala has been detained incommunicado since his arrest; why he has not been granted access to a lawyer of his choice upon his arrest and to his family. Please explain how his secret detention without contact with outsiders is compatible with the principles under article 14 of the ICCPR?
4. Please explain and provide the legal basis for the transfer of Mr. Bala from Kaduna Police Station to Kano state.
5. Please provide information about any effort undertaken by the relevant authorities to investigate the allegations of death threats made against Mr. Bala, and if these threats were confirmed, what measures have been taken to discourage them and to protect Mr. Bala from possible attacks on his life and security.
6. Please provide information on the efforts taken by the Government to ensure the protection and the realization of the rights of individuals to freedom of thought, conscience and religion, including freedom to change one's religion or belief or not to believe, and the right to freedom of expression as provided by Sections 38 and 39 of Nigeria's Constitution as well as above-mentioned international human rights instruments.
7. Please provide the details and, where available, the results of any investigation and judicial or other inquiries which may have been carried out, or which are foreseen, into the allegations of torture and other cruel, inhuman or degrading treatment or punishment alleged to have been inflicted upon Mr. Bala. If no such enquiries have been conducted, please explain why, and how this is compatible with the international human rights obligations of Nigeria.

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.

We may consider to expressing our concerns publicly given that the imprisonment or prosecution of anyone for the mere expression of his/her opinions and beliefs is a serious form of religious persecution and violation of Nigeria's international human rights obligations. We also believe that the wider public should be informed about the potential human rights implications of the case. We would however appreciate a prompt response to this letter clarifying the questions raised and indicating the action taken in the case. Any public expression of concern on our part will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Ahmed Shaheed

Special Rapporteur on freedom of religion or belief

Leigh Toomey

Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye

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

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment