

Mandates of the Special Rapporteur in the field of cultural rights; 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 independence of judges and lawyers and the Special Rapporteur on freedom of religion or belief

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur in the field of cultural rights; 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 independence of judges and lawyers and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 37/12, 42/22, 35/15, 43/4, 35/11 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **death sentence given to Mr. Yahaya Sharif-Aminu who was convicted of blasphemy for sharing a song in a WhatsApp group.**

Mr. Sharif-Aminu is a 22 year-old musician and Sufi Muslim, and a follower of the minority Tijaniyyah order living in Kano State. He is known as a singer and writer of religious songs.

According to the information received:

At or about the beginning of March 2020, Mr. Sharif-Aminu shared a song which he had written and performed on some WhatsApp groups. The song allegedly compared Prophet Muhammad to Sheikh Ibrahim Nyass, a renowned Islamic scholar associated with the Tijaniyyah order.

On 4 March 2020, a mob gathered outside of Mr. Sharif-Aminu's house and set it on fire. Mr. Sharif-Aminu was not home at the time, and he went into hiding.

Subsequently, a mob assembled outside of the Kano Hisbah Police headquarters demanding action against Mr. Sharif-Aminu. A former Governor of Kogi State in Nigeria, who led the protest, reportedly said that it was their mission to alert the Government to "do the needful" or they would take the law into their own hands.

The protests reportedly provoked the arrest of Mr. Sharif-Aminu, whose whereabouts were discovered. Subsequently, a four-month long trial was held behind closed doors, and throughout which Mr. Sharif-Aminu was denied legal representation and held incommunicado.

On 10 August 2020, Mr. Sharif-Aminu appeared without legal counsel in the Upper Shari'a Court sitting at Hausawa Filin Hockey district in Kano State. According to the judgement, he was found guilty of blasphemy against Prophet Mohammed based on section 382 (b) of the Kano State Shari'a Penal Code Law 2000. Mr. Sharif-Aminu plead guilty to the charges and was sentenced to death by hanging by the presiding judge in the proceedings which were closed to the public.

While Mr. Sharif-Aminu has been without legal representation throughout the legal proceedings before the Upper Shari'a Court, an appeal against the decision of that court was filed on his behalf by a civil society organisation invoking fundamental rights provisions under the Constitution on 3 September 2020. Reportedly, lawyers in Kano who may have been able and interested in representing him have been reluctant to do so out of fear of attacks, intimidation, retaliation or death. One lawyer, who had previously requested to meet with him was allegedly denied access to him by prison authorities.

Reports also indicate that there has been a worrying pattern of using the blasphemy law to target the religious minorities, including minors and non-believers, in Kano State.

The above-mentioned allegations, if true, appear to indicate grave human rights violations, including threats to the right not to be arbitrarily deprived of life as set forth in Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR, acceded to by Nigeria in 1993), as well as violations of the right not to be deprived arbitrarily of liberty as set forth in article 9 of the UDHR and of ICCPR, the right to a fair trial before an independent tribunal set out in article 14 of the ICCPR, the right to artistic freedom and to take part in cultural life as set out in Article 27 of the UDHR and Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, acceded to by Nigeria in 1993) and to the rights to freedom of thought, conscience and religion or belief and freedom of expression as stipulated in Article 18 and 19 of both the UDHR and the ICCPR.

We express grave concern that the death penalty has been imposed against Mr. Sharif-Aminu for the crime of blasphemy. We would like to bring to the attention of your Excellency's Government that, although the death penalty is not prohibited under international law, 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. Sharif-Aminu'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 non-violent artistic expressions, including expressions of religious 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, 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.

Article 14 of the ICCPR encompasses the right of any person charged with a criminal offence to defend himself/herself in person or through legal assistance of his/her own choosing; the right to be informed, if he/she does not have legal assistance, of this right; and to have legal assistance assigned to him/her, in any case where the interests of justice so require, and without payment by him/her in any such case if he does not have sufficient means to pay for it. The Basic Principles on the Role of Lawyers, endorsed by the General Assembly in 1985, stress that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings (principle 1) and include special safeguards for criminal justice matters (principles 5-8). Both the Covenant and the Basic Principles provide that the accused persons must have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. These provisions are an important element of the guarantee of a fair trial and an application of the principle of equality of arms. In General Comment No. 32, the Human Rights Committee pointed out that the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way (para. 10).

Furthermore, we have serious concerns about violation of his right to take part in cultural life and to the freedom necessary for creative activity as guaranteed by the ICESCR. Article 15 of the ICESCR, guarantees the right of all to take part in cultural life, and requires that States undertake to respect the freedom indispensable for creative activity, which clearly includes making music.

The former Special Rapporteur on cultural rights released a thematic study in 2013 on the right to freedom of artistic expression. In it, she recalled that "Art constitutes an important vehicle for each person...as well as groups of people, to develop and express their humanity, worldview and meanings assigned to their existence and development. People in all societies create, make use of, or relate to, artistic expressions and creations. Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies." (see A/HRC/23/34, paras. 2-3).

She also called upon decision makers, including judges, when resorting to possible limitations to artistic freedoms, should take into consideration the nature of artistic creativity (as opposed to its value or merit), as well as the right of artists to dissent, to use political, religious and economic symbols as a counter-discourse to dominant powers, and to express their own belief and world vision (para. 89d). Finally, she noted that States should abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. (para. 89e).

We also express concerns that Mr. Sharif-Aminu has been prosecuted on account of peaceful expression of his opinions and beliefs as protected under Articles 18 and 19 of the ICCPR. This would contravene both the letter and the spirit of article 6 (2, 4) of the ICCPR.

Under international human rights law, Mr. Sharif-Aminu has the right to freedom of thought, conscience and religion is protected. In its General Comment 22 to the ICCPR, 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...." 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 prosecuted for the mere peaceful manifestation or expression of his or her opinions or beliefs.

Article 19 of the ICCPR provides for the right to freedom of opinion and expression. The right covers expressions of all kinds and in any form, subject to the limitations in article 20, see General Comment no. 34 paras. 11 – 12. The Human Rights Committee has affirmed that Article 19 prohibits any form of criminalisation of blasphemy. Thus, the Committee states that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant see *id.* para. 48.

We would like to appeal to your Excellency's Government to promptly review the situation of Mr. Sharif-Aminu and ensure the protection of all his internationally guaranteed human rights. The relevant rights include his rights to life, to liberty, to personal security, to due process of law, and to a fair trial, including his right to seek the assistance of a lawyer of his choice and his right to appeal, as well as his rights to take part in cultural life and to artistic freedom, to opinion, belief and expression, and his right not to be persecuted for exercising these rights.

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. Sharif-Aminu's rights guaranteed by international human rights law. We call for his immediate, unconditional release as no one can be prosecuted simply for peaceful artistic expression, for the quashing of the death sentence, for a stay of any execution order which may be signed until this matter can be fully resolved in accordance with international human rights law, as well as for the effective protection of the victim and anyone seeking to assist him in defense of his human rights.

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. Sharif-Aminu and how it is compatible with Nigeria's international human rights obligations, including under the ICCPR and ICESCR.
3. Please explain on what legal grounds Mr. Sharif-Aminu 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 provide information on the efforts taken by the Government to ensure the protection and the realization of the rights of individuals to take part in cultural life and to the freedom necessary for creative activity, as well as to freedom of thought, conscience and religion, 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.

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.

We may consider to expressing our concerns publicly given that the imprisonment, prosecution and imposition of the death penalty of anyone for the sharing of a song on a Whatsapp group is a grave 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 an urgent 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.

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.

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.

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