

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on minority issues**

REFERENCE:  
AL NGA 5/2020

1 October 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on minority issues, pursuant to Human Rights Council resolutions 40/16, 44/5, 43/4, 41/12 and 43/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **proscription of the "Indigenous People of Biafra (IPOB)" in September 2017 as a terrorist organization, seemingly in accordance with the procedure established with Terrorism (Prevention) Act, 2011 as amended by the Terrorism (Prevention) (Amendment) Act, 2013.**<sup>1</sup> We understand that IPOB, established around 2012, is an organisation whose political objective is for the five majority Igbo States in South-East Nigeria to secede from the Federal Republic of Nigeria (Nigeria) through a regional referendum and to re-establish an independent sovereign state of "Biafra".<sup>2</sup>

We note that proscription is a serious legal step which *prima facie* impinges on a range of association, expression and political rights. Lawful proscription should only be carried out when absolutely necessary and subject to rigorous due process. Proscription should not be used as a means to quell legitimate political opinion and expression, nor to prevent individuals from exercising their rights of peaceful assembly and of association.

In this connection and related to the context and proscription of IPOB we are also writing about information we have received regarding increasingly harsh restrictions on freedom of expression and peaceful assembly, specifically in relation to expressions of support for "Biafran" independence or its advocates. In parallel, we address the persistent and growing allegations of instances of intimidation, excessive use force, and arrests of members and supporters of IPOB and other "pro-Biafra" organisations, notably in the context of public protests or demonstrations. We are concerned that these growing restrictions on fundamental freedoms, that have seemingly accelerated with the official designation of IPOB as a terrorist group, may

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<sup>1</sup> <https://ctc.gov.ng/wp-content/uploads/2020/03/TERRORISM-PREVENTION-AMENDMENT-ACT-2013.pdf>

<sup>2</sup> Zacchaeus Andangor (Rivers State University of Science and Technology). "Proscription of the indigenous people of Biafra (IPOB and the Politics of Terrorism)."

be indicative of a growing climate of intolerance towards the Igbo and Christian minorities in certain segments of Nigerian society.

Special Procedures mandate holders have previously communicated concerns regarding discrimination and violence against members of the Igbo minority in UA NGA 4/2017. Concerns about allegations of excessive use of force by Nigerian authorities against assemblies organised by members of another ethnic minority in Nigeria were also raised in AL NGA 5/2019. We regret that no replies were received to either of these communications.

According to the information received:

### **Historical Background**

On 6 July 1967, seven years after Nigeria gained its independence, the Nigeria-Biafra War, also known as the Nigerian civil war, began shortly after the Eastern Region of Nigeria had declared its independence from Nigeria on 30 May 1967. The Federal Government responded to the attempted secession with a partial military operation. This marked the beginning of a conflict that would claim the lives of between one and three million individuals, most of whom died of famine and disease. The war ended in January 1970 with the surrender of the armed forces of the short-lived “Biafran” government.

In recent decades, there has been a growing revival of support for independence in the majority-Christian south-east of Nigeria. This phenomenon appears largely driven by a younger generation made up of people who were born long after the conflict ended, but who nevertheless articulate disillusionment related to a perceived sense of economic disenfranchisement and political marginalisation.

In 1999, shortly after end of Nigeria's period of military rule, the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) was formed. MASSOB is a secessionist organization which supports the reestablishment of the Biafran state through peaceful means. MASSOB was reportedly banned in 2001 and its leader was imprisoned in 2005 on charges of treason.<sup>3</sup>

Around 2012, IPOB emerged as a splinter group from MASSOB. By 2015, IPOB had risen to regional prominence as the leading force of Igbo minority-led agitation for a sovereign state in the south-east. Although it focused on carrying out peaceful actions to this end, with a particular emphasis on media messaging and political protests, its rhetoric is reportedly more militant than its predecessor.<sup>4</sup> In particular, it appears that IPOB has pushed and promoted the demand for independence through the use of radio stations, most notably *Radio Biafra*, which broadcasts daily anti-Abuja and “pro-Biafra” programmes in English and the Igbo language, and by staging numerous protests and other

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<sup>3</sup> United Nations (UN). 6 November 2007. Integrated Regional Information Networks (IRIN). <<http://www.irinnews.org/report.aspx?ReportId=75173>>

<sup>4</sup> Zacchaeus Andangor (Rivers State University of Science and Technology). "Proscription of the indigenous people of Biafra (IPOB and the Politics of Terrorism)."

public gatherings. IPOB grew rapidly to become the largest Biafran independence organization by membership.

We understand that IPOB rallies were initially authorized to take place, but from September 2015 onwards this was no longer the case as Nigerian authorities began alluding to IPOB and its activities as a threat to the security of Nigeria.<sup>5</sup>

On 14 October 2015, the leader of IPOB was arrested in Lagos on charges of criminal conspiracy and treason. He was accused of inciting hatred, threatening state security, and mobilizing for secession. Following his arrest, it appears that regional tensions heightened significantly and there was a marked increase in the number of protests and demonstrations in the south-east of Nigeria. Despite the fact that most IPOB protests and gatherings that we have received reports of were largely non-violent, Nigerian Security Forces (NSF) reportedly violently broke up scores of IPOB or “pro-Biafra” rallies and meetings, killing and arresting dozens of their participants. Between 2015 and 2016, it is alleged that law enforcement officials killed at least 100 IPOB members in different public events in Aba (Abia State), and Awka and Onitsha (Anambra State). On 29 and 30 May 2016, during a demonstration, the Nigerian military opened fire on IPOB members and bystanders in Onitsha. It is alleged that at least 60 persons were killed and over 70 injured, many of whom were reportedly shot in the back.<sup>6</sup>

On 28 April 2017, following a long series of demonstrations across major cities in the south-east, IPOB’s leader was released. Nevertheless, IPOB continued to stage many rallies and public protests, and allegedly established a self-defence arm.

### **Designation of IPOB as a terrorist group**

On 15 September 2017, the Director of Defence Information of the Nigerian military stated that “the Armed Forces of Nigeria (...) confirm to the general public that IPOB from all intents, plans and purposes, as analysed, is a militant terrorist organization” and warned “unsuspecting” Nigerians to desist from joining the group.<sup>7</sup>

On 18 September 2017, the Nigerian President issued a presidential proclamation calling for IPOB to be proscribed as a terrorist organisation, in

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<sup>5</sup> See for example Nigeria Police Force, Press Release 8 September 2015, “IGP directs operation round up persons inciting violence nationwide” Available at : <https://www.facebook.com/ngpolice/photos/igp-directs-operation-round-up-persons-inciting-violence-nationwidethe-inspector/962267427148650/> and Abia state, Abia state governor condemns attempt to disturb the peace in the state, 19 January 2016, Available at: [www.abiastate.gov.ng/news/abia-state-governor-condemns-attempt-to-disturb-the-peace-in-the-state/](http://www.abiastate.gov.ng/news/abia-state-governor-condemns-attempt-to-disturb-the-peace-in-the-state/)

<sup>6</sup> End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her visit to Nigeria Agnes Callamard, United Nations Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions 2 September 2019. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24934&LangID=E>.

<sup>7</sup> ‘IPOB protesters’, Daily Post Nigeria, 15 September 2017.

accordance with the procedure established by the Terrorism (Prevention) Act 2011 as amended by the Terrorism (Prevention) (Amendment) Act, 2013.<sup>8</sup>

On 20 September 2017, the Attorney General and Minister of Justice made an *ex parte* application in the Nigerian Federal High Court of Abuja calling for the proscription of IPOB as a terrorist organization.<sup>9</sup> Specifically, the application called for the following orders to be granted: (1) declaring the activities of IPOB in Nigeria, and especially in the south-east, as tantamount to terrorism and illegal; (2) proscribing the continued existence of the IPOB, in group or as individuals; and (3) proscribing participation of any individual in any activities in furtherance of the IPOB's collective intent. The Court granted the injunctions.

On the same day, IPOB lawyers filed an application challenging the initiative.

On 21 September 2017 a Federal High Court in Abuja made the *ex parte* order judicially designating IPOB a an illegal and terrorist organisation and ordering its proscription as such.

Based on the order of the Federal High Court, the Federal Ministry of Justice then published the Terrorism (Prevention) (Proscription Order) Notice, 2017 in Volume 104 of the Official Gazette of the Federal Republic of Nigeria, which gave effect to the order of the Federal High Court and officially proscribed IPOB as a terrorist organization. The Proscription Order Notice stated that: "the General Public is hereby warned that any person or group of persons participating in any manner whatsoever in any form of activities involving or concerning the prosecution of the collective intentions or otherwise of the said groups will be violating the provisions of the Terrorism (Prevention) Act 2011, as amended in 2013."<sup>10</sup>

On 14 December 2017, IPOB lawyers filed a complaint to the African Court of Human and People's Rights (ACHPR) in respect of the designation and called on the body to make a request for provisional measures to be implemented by Nigeria.

On 18 January 2018, the domestic application filed by IPOB challenging the 20 September 2017 *ex-parte* order declaring it a terrorist organization was dismissed by the judge, reportedly on the basis that the affidavit evidence filed

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<sup>8</sup> Sections 2(1), (2) and (3) of the Terrorism (Prevention) Act 2011, which outline the procedure for obtaining a declaration proscribing an entity as a terrorist organization, describe the necessary steps as follows:(i) The President must give approval by way of a presidential proclamation that an organization or entity be declared a proscribed organization;(ii) Based upon the approval of the president, as contained in the presidential proclamation, the Attorney-General of the Federation, National Security Adviser or Inspector-General of Police may apply to the Judge in Chambers by way of *ex-parte* application for an order declaring a specified entity a proscribed organization.(iii) Where the court is satisfied with the affidavit evidence placed before it in support of the *ex-parte* application, it may grant the application declaring the specified entity a proscribed organization;(iv) An Order made under section 2(1) (c) of the Act is required to be published in the Official Gazette of the Federal Government and in two national newspapers

<sup>9</sup> Suit No. FHC/ABJ/CS/871/2017 (Attorney-General of the Federation v. Indigenous People of Biafra)

<sup>10</sup> Act No. 10, 2011.

by the Attorney-General proved that the existence of IPOB constituted a threat to national security.

On 8 March 2018, the ACHPR sent a letter to the President of Nigeria.<sup>11</sup> It noted in particular its Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism, which called on States to “ensure that the measures taken to combat terrorism fully comply with their obligations under the African Charter... and other international human rights treaties”.<sup>12</sup> The ACHPR also stated that, if confirmed, the designation would “constitute a gross violation of articles 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 19, 20” of the African Charter.<sup>13</sup> In its decision on seizure it further noted that the complaint reveals ‘prima facie’ violation of the African Charter.<sup>14</sup>

Consequently, the ACHPR called on the Nigerian President to intervene and ensure that the Government of Nigeria adopts Provisional Measures and not take any further action. The Nigerian Government was also asked to report back on the implementation of the provisional measures within 15 days of the receipt of the decision on seizure.<sup>15</sup> We have received no indications that the Government has responded to the Commission or complied with its requests.

On the contrary, there have been increasing reports that IPOB’s proscription has led to a rise in alleged violations of the rights of IPOB supporters and members of the Igbo minority. These have allegedly included arbitrary arrests and detention, torture and ill-treatment, enforced disappearances and threats to life, as well as extrajudicial killings. As all IPOB activities were declared illegal, and can lead to arrest and prosecution, several members of IPOB have been charged with treason, which is punishable by the death penalty.

### **Consequences of the proscription on freedoms of peaceful assembly and of expression**

Since the proscription, pre-existing restrictions in relation to expressions of support for regional independence reportedly harshened and, in some cases, became legally rooted on the proscription order of IPOB as a terrorist group. In particular, we have received numerous reports of instances where the possession or displaying of IPOB or “Biafran” flags and insignia during public protests or gatherings resulted in arrests and criminal charges for terrorist offences.

On 6 April 2018, three individuals were reportedly charged at the Federal High Court of Nigeria for “possessing and having displayed flags bearing

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<sup>11</sup> African Commission on Human and People’s Rights, ‘Communication 680/17: Nnamdi Kanu and Indigenous People of Biafra’, 23rd Extraordinary Session of the Commission, 13 to 22 February 2018

<sup>12</sup> ACHPR/Res.88, 5 December 2005.

<sup>13</sup> ACHPR/PROVM/NIGRA/680/17397/1869

<sup>14</sup> Decision of the African Commission on Human and Peoples’ Rights on Seizure, Communication 680/17, Nnamdi Kanu and Indigenous People of Biafra (represented by Adulbert Legal Services) v Federal Republic of Nigeria, adopted at 23rd extraordinary session, 13-22 February 2018.

<sup>15</sup> Decision of the African Commission on Human and Peoples’ Rights on Seizure, Communication 680/17, Nnamdi Kanu and Indigenous People of Biafra (represented by Adulbert Legal Services) v Federal Republic of Nigeria, adopted at 23rd extraordinary session, 13-22 February 2018.

IPOB (a proscribed organization), thereby committing an offence under s.33(1)(a) of the Terrorism (Prevention) Act Laws of the Federation 2011; and for belonging or professing to belong to a proscribed organisation (s.2(3)(i) of the same Act)".<sup>16</sup>

On 23 May 2018, during a MASSOB rally, at least 50 individuals were allegedly arrested for having displayed insignia of a terrorist organisation and wearing army fatigues. On May 2019, 140 members of IPOB were reportedly arrested in Nsukka, Enugu State for displaying banned insignia during an unlawful procession.

We have also received reports of attacks on funerals and religious events attended by IPOB members. For instance, on 7 April 2018, after an IPOB member's funeral, the NSF reportedly violently dispersed the crowd and 40 IPOB members allegedly went missing. On 12 December 2018, the NSF arbitrarily arrested 51 IPOB demonstrators in Aba during a peaceful religious protest. On 14 September 2019, the NSF allegedly surrounded more than 45 IPOB members and supporters on their way to a funeral before physically attacking them. The last attack was captured on film, which allegedly contains footage of the victims being labelled as 'runaway IPOB terrorists', and being told to denounce their "Biafran" identity by the security agents.

Without prejudging the accuracy of these allegations, we are deeply concerned by what appear to be disproportionate violations of fundamental rights and freedoms against supporters of "Biafran" independence and some members of the Igbo minority. In particular, we express our most serious alarm about allegations of severe violations to the right to life by Nigerian security forces in the context of the numerous demonstrations and public events organised or attended by "pro-Biafran" organisations or supporters since 2015, as well as instances of arrests and detentions of several individuals who allegedly organised, attended, or reported on these public gatherings. We respectfully remind your Excellency's Government that articles 6, 9, 18, 19, 21, 22, 26 and 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria in 2003, protect the rights to life, to not be subjected to arbitrary arrest or detention, to freedoms of thought, conscience, religion, opinion, expression, peaceful assembly and association, to equality without discrimination, and the rights of minorities.

In this regard, we are particularly concerned by the designation of IPOB as a terrorist organization and allegations that its leaders, supporters, sympathisers, and even some individuals who had merely displayed its symbols have been arrested and appear to have been charged as "terrorists" on occasion. While recognizing the rise of regional tensions, as well as a range of challenging political claims advanced by IPOB, we nonetheless warn against the categorization of uncomfortable or challenging political speech as terrorism. We respectfully advance our views that the human rights implications of this proscription are considerable and not in compliance with international human rights law binding on Nigeria, or with best practice in relation to counter-terrorism strategies.

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<sup>16</sup> Charge No.FHC/AWK/C/45/2018.

We remind your Excellency's Government that counter-terrorism conventions should be used as the appropriate trigger for determining what conduct is to be proscribed as terrorism, in the absence of a comprehensive multilateral treaty on terrorism.<sup>17</sup> This includes but is not limited to the International Convention for the Suppression of the Financing of Terrorism.<sup>18</sup> In addition, Security Council resolution 1566 (2004), as well as the report of the Secretary-General's High-level Panel on Threats, Challenges and Change, and the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provide clear guidance to States on appropriate conduct to be proscribed.<sup>19</sup> The definition of terrorism and terrorists acts must be confined to acts that are 'genuinely' terrorist in nature in accordance to the three cumulative elements identified by the Security Council in its resolution 1566 (2004), paragraph 3 supported and affirmed by the model definition of terrorism developed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism as best practice.<sup>20</sup> Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.<sup>21</sup>

This cumulative approach functions as a safety threshold to ensure that it is only conduct of a terrorist nature that is identified as terrorist conduct.<sup>22</sup> In this regard, we caution against the use of counter-terrorism rhetoric and regulation directed at activities and speech which do not legitimately fall within this category. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law and practice that fall short of international treaty obligations. She notes that to be "prescribed by law" a counter-terrorism prohibition must be framed in such a way that regulatory processes and substantive law are adequately accessible, so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so

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<sup>17</sup> E/CN.4/2006/98 para. 32.

<sup>18</sup> See also See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; E/CN.4/2006/98 paras 25-50, 72.

<sup>19</sup> A/59/565 (2004), para. 164 (d).

<sup>20</sup> A/HRC/16/51

<sup>21</sup> E/CN.4/2006/98, para 37.

<sup>22</sup> E/CN.4/2006/98, para.38.

that the individual can regulate his or her conduct accordingly.<sup>23</sup> This can also reduce the risk of counter-terrorism legislation being used to target civil society on political, racial, religious or other unjustified grounds.<sup>24</sup>

We also respectfully underline that the fact that a political organization may promulgate opinions that are different or contradictory to that of the views of the Government should not be the basis for the proscription of such an entity as a terrorist group. Pursuing minority rights protection or the recognition of the existence of a minority for instance, or even calls for self-determination do not on their own amount to terrorist activities.<sup>25</sup> In this regard we recall that IPOB's stated political objective is for the five Igbo-majority regions in south-eastern Nigeria to secede from the rest of the country through a referendum. We are of the view that any alleged acts of illegality and violence committed by IPOB or its members could have been addressed in accordance with the provisions of conventional criminal laws, in line with international law, without invoking the application of counterterrorism legislation.

We would also like to take this opportunity to further express our concerns about how Terrorism (Prevention) Act 2011 (as amended in 2013), appears to give the President significant discretion to label any organization a terrorist entity, as the applications by the Attorney General, National Security Adviser or Inspector General of Police seemingly depend "on the approval of the President to declare any entity to be a proscribed organisation."<sup>26</sup> In the apparent absence of any clear procedure for exercising this power, it would appear that the President could approve the proscription of any entity as a terrorist entity even in circumstances that are not clearly within the contemplation of the Terrorism (Prevention) Act, as amended. We are also concerned by the fact that since the application for any subsequent order declaring an entity a proscribed entity is usually made *ex parte*, and given the shroud secrecy around security-related information, the trial court may be denied the opportunity of having before it a balanced presentation of facts and may be persuaded to ascribe undue credibility to the limited information presented in the affidavit in support of the application.

In addition to our concerns about both the procedure and reasoning behind IPOB's proscription as a terrorist organization, we are deeply troubled by the alleged arrests and terrorism-related charges of numerous participants in several public protests or gatherings. Recalling the rights to freedom of expression, the right of peaceful assembly, and the freedom of association under articles 19, 21 and 22 of the ICCPR, we would like to recall that any restriction to these rights must comply with the requirements the relevant provisions of the Covenant. In this regard, we remind that the requirement that any restriction be provided by law precludes the use of laws that are unduly permissive and imprecise.<sup>27</sup> This is particularly relevant in this case, as IPOB appears to have become an umbrella movement for "pro-Biafran" sentiments more broadly, and some of the attendants of the recent protests were seemingly

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<sup>23</sup> E/CN.4/2006/98, para.46

<sup>24</sup> A/70/371, para. 46(c).

<sup>25</sup> GA resolution 49/151. Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights

<sup>26</sup> Terrorism (Prevention) Act 2011, as amended in 2013. Section 2 (1)

<sup>27</sup> See General Comment no. 34, para. 25.



sympathisers with the “Biafran” cause rather than members of IPOB itself. We are of the view that the apparent criminalisation of “membership” of an organisation, without clearly defining what constitutes “membership,”<sup>28</sup> inappropriately broadens the definition of terrorism, undermines legal certainty and creates clear and present risks to the protection of human rights and fundamental freedoms. We are profoundly concerned that Nigeria is creating a precedent in defining certain manifestation of protest as domestic terrorism and failing to distinguish between threats that are genuinely terrorist in nature and those which are not. It is the Government’s duty to demonstrate that any restriction to the rights enshrined in the Covenant are compatible with the requirements therein, and thus that there is objective reason to believe that acts that qualify as terrorism. Based on the information available to us, we do not believe that any such transparent process has been undertaken.

We reaffirm that regular criminal law and fair criminal justice process should be applied to those who have transgressed criminal law. Designating any violent action as terrorism does not advance the common interests of States in general, nor does it address the systematic inequalities and perceived discrimination that have given rise to extensive protest in the south-east of Nigeria in particular. While we appreciate the prerogative of the State to maintain order and defend its territorial integrity, we are concerned that the proscription and the increasingly human rights negating response to IPOB more broadly risk further exacerbating the grievances of the Igbo minority and majority-Christian south-eastern regions more broadly, and fuelling the flames used by “pro-Biafra” organizations. Accordingly, we respectfully urge your Excellency’ Government to reconsider the proscription of IPOB as a terrorist group and address the legal concerns on regulation of assembly, freedom of expression, and due process outlined in this communication. We stand ready to provide assistance in this regard.

In connection with the above alleged facts and concerns, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites other 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the rationale and justification for the decision to designate IPOB as a terrorist group and its activities as unlawful, and how this is compliant with international obligations of Nigeria, particularly in relation to the rights to freedom of religion or belief, expression, freedom of peaceful assembly and association, non-discrimination and the rights of minorities.

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<sup>28</sup> UNU and Institute for Integrated Transitions, *The Limits of Punishment*, p. 102.

3. Please explain how the designation of IPOB as a terrorist group, and the definition of terrorism in the Terrorism (Prevention) Act 2011 (as amended in 2013), are in line with the model definition of the Special Rapporteur on the promotion and protection of human rights while countering terrorism and the ACPHR Resolution on the Protection of Human Rights and the Rule of Law in the Fight Against Terrorism.
4. Please provide further information on the procedure for proscribing an organisation as a terrorist organisation in accordance with the Terrorism (Prevention) Act 2011 (as amended in 2013) and on the extent, limitations and oversight of the power bestowed upon the President's Office in terms of in this regard.
5. Please provide information about the existing legal and procedural framework that regulates the exercise of the rights to freedom of expression, peaceful assembly and association, and the rights of minority groups in Nigeria, and about the training provided to security and law enforcement officials about this legislative framework.

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.

Fionnuala Ní Aoláin

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan

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

Clement Nyaletsossi Voule

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

Fernand de Varennes

Special Rapporteur on minority issues

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 7, 11, 12, 18 and 19 and 20 of the Universal Declaration on Human Rights and Articles 2, 15, 18, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which Nigeria ratified on 29 July 1993, which guarantees the principle of *nullem crimen sine lege*, and the rights to freedom of expression and freedom of association. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights under articles 19 and 21 of the ICCPR must be provided by law and be necessary and proportionate to the aim pursued.

The scope of the right to freedom of expression is broad. Article 19(2) of the ICCPR "protects all forms of expression and the means of their dissemination", including political discourse, commentary on one's own and on public affairs, canvassing and discussion of human rights, such as boycott movements, see General Comment 34, para. 11. In order to be lawful, any restrictions imposed on the right to freedom of expression must be compatible with Article 19 (3) of the Covenant. That is, it must pursue one of the legitimate aims exhaustively listed in the provision, be provided by law, and be necessary and proportionate. The State has the burden of proof to demonstrate that any restrictions to the right to freedom of expression is compatible with the Covenant.

We also remind that the right to freedom of association is an essential components of democracy as it empowers individuals to "express their political opinions, engage in literary and artistic pursuits and other cultural, economic and social activities, engage in religious observances or other beliefs, form and join trade unions and cooperatives, and elect leaders to represent their interests and hold them accountable", as enunciated in the Human Rights Council Resolution 15/21.

Moreover, the 1981 Declaration of the General Assembly on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in its article 6 (h) stresses that the right to freedom of thought, conscience, religion or belief includes the freedom, "to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief".

We would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10). In this regard, we would like to bring to the attention of your Excellency's Government that the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)).

With respect to the use to counter terrorism and extremism justifications to restrict the legitimate exercise of freedom of expression, we would like to underline that any restriction on expression or information that a government seeks to justify on grounds of national security and counter terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34). We would like to stress that counter terrorism legislation with penal sanctions should not be misused against individuals peacefully exercising their rights to freedom of expression and freedom of peaceful association and assembly. These rights are protected under ICCPR and non-violent exercise of these rights is not a criminal offence. Counter terrorism legislation should not be used as an excuse to suppress peaceful minority groups and their members.

With regard to definitions of terrorism under domestic law and their use to proscribe organisations under international law. We bring your Excellency's Government attention to the "principal of legal certainty" under international law (ICCPR article 15(1)) which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para.34). Furthermore, any determination that an organisation be proscribed as a terrorist organisation must be made by 'an independent judicial body and there must always be a possibility to appeal a proscription decision to a judicial body'.<sup>29</sup> In addition, 'States that decide to criminalize the individual belonging to a "terrorist organization" should only apply such provisions after the organization has been qualified as such by a judicial body'.

Accordingly, we would like to express our concerns pertaining to the protection and role of civil society, including the media and human rights defenders, which seemingly been and may increasingly be negatively impacted by the application of this legislative decision. The Experts underscore that general assertions of conduct that threatens "national security" or sweeping interpretations of what constitutes terrorist conduct, without proper definitions and limitations, may severely curtail civic space, the work of human rights defenders, journalists, and other civil society actors. In her 2019 thematic report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism cautions that overly broad definitions of what constitutes threats to national security results in a chilling effect on civic space, the stigmatization of civil society actors, and excludes civil society from engaging in national and international fora.<sup>30</sup> Specifically, she noted that legislation criminalizing acts "affecting national security, political and social stability and [are] dangerous to the political, economic or social system" as they may criminalize legitimate thoughts, expressions and activities.<sup>31</sup> We also refer you to the Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa.

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<sup>29</sup> GA resolution A/61/267

<sup>30</sup> A/HRC/40/52, paras. 60, 61, 65.

<sup>31</sup> A/HRC/40/52, para. 46.

We would equally like to refer to article 6 of the ICCPR which provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. We would like to remind your Excellency's Government of the Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) also provides detail on the duty to investigate potential unlawful deaths "promptly, effectively and thoroughly, with independence, impartiality and transparency." This duty continues to apply in situations of internal disturbances and tensions, and armed conflict (para 20).

With regards to the allegations of excessive use of force in the context of public protests, we would respectfully like to refer you to the Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law officials, which provide that law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must be as far as possible avoided, using non-violent means. When employed, force must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary. The UN Basic Principles on the Use of Force and Firearms by Law officials provide that intentional lethal use of firearms should only be made when strictly unavoidable in order to protect life (principle 9).

We would further like to draw your Excellency's Government's attention to the Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (A/HRC/31/66), which states that "States have an obligation not only to refrain from violating the rights of individuals involved in an assembly, but to ensure the rights of those who participate or are affected by them", including the right to bodily integrity (A/HRC/31/66, para. 13). Furthermore, the report states that "the principle of legality requires that States develop a domestic legal framework for the use of force, especially potentially lethal force, that complies with international standards (see A/HRC/26/36, para. 56). The normative framework should specifically restrict the use of weapons and tactics during assemblies, including protests, and include a formal approval and deployment process for weaponry and equipment" and that "the use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality" (A/HRC/31/66, paras. 51 & 57).

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies

and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials. The Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, though not binding, provide an authoritative interpretation of the limits on the conduct of law enforcement forces. According to these instruments, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Medical assistance should be provided as soon as possible when necessary.

Recognizing that those affected are members of an ethnic, religious and linguistic minority, we also call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the ICCPR and the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1), as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). We wish to also refer to the African Charter on Human and Peoples' Rights, ratified by your Government on 22 June 1983, in particular articles 2 and 4 on the right to freedom from discrimination, based, among others, on race, ethnic group, colour and language and the right to life, respectively.