

**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; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
UA NGA 2/2021

26 April 2021

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; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/10, 42/22, 44/5, 43/4, 42/16, 43/16, 44/8, 43/8 and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of **the prolonged arbitrary arrest and detention of Mr. Mubarak Bala**.

Mr. Mubarak Bala, an atheist persecuted as a religious or belief minority and a Nigerian human rights defender who promotes human rights education, the right to freedom of religion or belief and speaks out against religious extremism, was the subject of a previous communication, UA NGA 3/2020 sent to your Excellency's Government on 4 May 2020. To our regret, we did not receive any response to our communication.

According to the information received:

Mr. Mubarak Bala has been held in detention in Kano State for nearly a year since he was allegedly arbitrarily arrested on 28 April 2020. His arrest was instigated by some allegations that Mr. Bala had been posting provocative messages on his Facebook which were considered to have insulted the Prophet Muhammad and annoyed fellow Muslims in violation of Section 210 of the Penal Code of Kano State and Section 26(1) (c) of the Cybercrimes Act.

Since Mr. Bala's arrest and detention, he has not been formally charged, brought before a judge or released despite different appeals made by his lawyers. In addition, the requests to transfer Mr. Bala from the detention facility in Kano State to Abuja for security reason have been unduly ignored despite the continuous death threats he receives in Kano State. Recently, prison inmates allegedly come to know about the allegations of blasphemy against Mr. Bala and he fears for his life and safety in detention. Furthermore,

it is unclear if Mr. Bala has received any proper medical treatment and medication to treat his high-blood pressure. This pre-existing health condition puts him at higher risk vis-à-vis COVID-19.

On 8 May 2020, Mr. Bala's lawyer filed a fundamental rights petition to the Federal High Court of Nigeria in Abuja against three respondents i.e. the Inspector General of Police, Nigeria Police Force and the Attorney General of the Federation. The petition challenged the arrest and continuous detention of Mr. Bala at an unknown detention centre following the expression of his opinions about religion through Facebook on the basis that it violated his rights to personal liberty, fair hearing, freedom of thought, freedom of expression and freedom of movement as provided by Sections 35(1), (2), (3), (4) and (5) (a); 36(5), 38, 39 and 41 of the Constitution of the Federal of Nigeria 1999 as amended, hereafter known as the '1999 Constitution', (supra) and Articles 6, 7(1) (c), 8, 9(2) and 12(1) of the African Charter on Human and Peoples Rights (Enforcement and Ratification ) Act (supra), hereafter known as the 'African Charter'. The petition also challenged the denial of Mr. Bala's right to legal representation of his choice upon arrest which is guaranteed under Sections 34 and 35(2) of the 1999 Constitution and Articles 3 and 5 of the African Charter.

In October 2020, Mr. Bala was finally granted access to his lawyer for the first time. Since then, his lawyer was able to visit him several times whereas his wife and his child could only visit him once. Otherwise, the couple stay in touch by phone.

On 21 December 2020, the Abuja Division of the Federal High Court of Nigeria delivered its decision on the fundamental rights petition filed by Mubarak Bala's lawyer described above. The Court ruled that the continuous detention and arrest of Mr. Bala by the Inspector General of Police and the Nigeria Police Force based on his opinions about religion expressed on Facebook as well as the denial of his legal representation of his choice constituted gross infringement of his rights according to the 1999 Constitution and the African Charter. The Court also ordered for the release of Mr. Bala on bail and an award of general/exemplary damages be granted to the sum of two hundred fifty thousand Naira. However, the Federal High Court order was never complied with by these respondents, and Mr. Bala was never released. He remains in detention in Kano State. The police in Kano allegedly claimed that Mr. Bala was not in their custody and that the Courts were in charge of the case.

On 27 January 2021, Mr Bala's lawyer filed another petition to the Federal High Court in Abuja against the Attorney General and Commissioner for Justice of Kano State, the Controller General of Nigeria Correctional Service and the Nigeria Police Force under Section 36 of the 1999 Constitution and Section 158 of the Administration of Criminal Justice Act to summon for Mr. Bala's bail pending trial (if any) and for the respondents to file criminal charge for any wrongdoing (if any) alleged against Mr. Bala in the Federal Capital Territory, Abuja and not in any other State of Nigeria. A hearing was scheduled for 20 April 2021. However, the hearing did not take place as the Courts are on strike.

While we do not wish to prejudge the accuracy of these allegations, we express our most serious concerns over the allegations that Mr. Bala has been arbitrarily arrested and detained for almost a year without any formal charges. In our view, this may amount to the violation 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; his right to a fair trial, which are all internationally protected under articles 9, 10, 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Nigeria in 1993. In this context, we would like to highlight that arrest or detention is considered arbitrary when it constitutes a punishment for the peaceful exercise of human rights, and it may also be arbitrary when it is imposed without guaranteeing access to legal assistance and contact with the family (A/HRC/36/38, par. 8 and CCPR/C/GC/35, par. 17).

We are also concerned about Mr. Bala's alleged arbitrary arrest and detention in the context of the continuing Covid-19 pandemic, during which detention should be considered a last resort in light of the elevated risks of the spread of the virus within prisons, and in particular for individuals with underlying health conditions, such as Mr. Bala. A succession of UN individual experts, treaty bodies and agencies have warned against the disproportionate impact of COVID-19 on all persons deprived of their liberty and on the serious risks to their life. The UN Inter-Agency Standing Committee (WHO and OHCHR); the Working Group on Arbitrary Detention, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings have pointed to the specific vulnerabilities of people deprived of their liberty, including their underlying health status and the risks of mass contamination and have called on the authorities to effectively implement their obligations to respect and protect the right to life of detainees, without discrimination. They have specifically requested that States should undertake the immediate, unconditional release of all prisoners whose incarceration is illegal or arbitrary under international law. In this context, in its Deliberation 11, the Working Group on Arbitrary Detention recently called upon all States to pay particular attention to the requirements of necessity and proportionality of deprivation of liberty in the context of public health emergencies and urged to review existing cases of deprivation of liberty in all detention settings to determine whether the detention is still justified in the prevailing context of the COVID-19, while considering the possible alternatives to detention (A/HRC/45/16).

We are also concerned that the alleged prolonged arbitrary detention, death threats and intimidation of Mr. Bala may violate 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 1, 2 and 16 of the Convention against Torture (CAT) also ratified by Nigeria in 2001. Furthermore, such prolonged detention may have severe impact on his mental and physical health in consequence, violating his right to health protected under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) acceded to by Nigeria 1993.

We also express concern about allegations that he might be lacking access to treatment for his high blood pressure condition. We recall Nigeria's obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, General Comment 14, para. 34). Further, the UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"),

adopted unanimously by the UN General Assembly (A/RES/70/175), establish States' responsibility to provide equivalence of care to prisoners i.e. the same standards of health care that are available in the community (Rules 24(1)).

Additionally, in the light of the continuous death threats that Mr. Bala reportedly receives, his safety in detention remains highly concerning. We refer in this regard to article 6 of the ICCPR, which guarantees the right to life and highlight that States parties also have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State (Human Rights Committee, General Comment 36). We also wish to recall the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular, principle 4, which requires States to ensure effective protection to those who receive death threats and are in danger of extra-legal, arbitrary or summary executions.

We are further concerned by the non-compliance of the Federal High Court order by the aforementioned respondents. This is undermining the competence of the judicial system and disrespecting the due process, while it may constitute a violation the rights guarantee by articles 9 and 14 of the ICCPR.

Moreover, we are gravely concerned that Mr. Bala might be persecuted on the account of the expression of his opinions and beliefs as protected under Article 18 and 19 of the ICCPR. 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.

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 as well as his right not to follow any particular religion or belief, to replace his current religion or belief with another or to adopt atheistic views, as provided by Article 18(1) of the ICCPR. The 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.

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]".

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 (General Comment 36). We are concerned that Mr. Bala's alleged offence which carries a sentence of death does not reach this threshold.

We would like to bring to your Excellency's Government's attention the international standards regarding the protection of the rights of persons belonging to minorities, including members of religious or belief minorities which also include non-believers, atheists, or agnostics. In particular, we would like to refer to article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt the 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 and in full equality before the law (article 4).

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](http://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 we call for his immediate unconditional release as no one can be prosecuted for the mere 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 in addition to questions 2, 4, 5, 6 and 7 of UA NGA 3/2020:

1. Please provide additional information or comments you may have about the above-mentioned allegations.
2. Following our appeal through communication NGA 3/2020 on 4 May 2020 and a press release on 24 July 2020, please provide information of any efforts made by the authorities to ensure the unconditional release of Mr. Bala.
3. Please provide information about the steps that your Excellency's Government has taken to ensure that the respondents of the fundamental rights petition in the Federal High Court comply with the ruling and the order of the Court.
4. Please provide information on the next hearing date of the petition of 27 January 2020, summoning for Mr. Bala's bail.

5. Please provide information on the specific steps or efforts taken to ensure the physical and psychological integrity of Mr. Bala throughout this process and to protect his right to life, and to ensure effective access to all necessary medical assistance, including medication, while in detention.
6. Please provide information on the available policies and legislations or the efforts taken to protect the rights of religious or belief minorities, including atheists, in Nigeria.

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 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 prolonged arbitrary arrest and detention 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.

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Special Rapporteur on freedom of religion or belief

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

Morris Tidball-Binz  
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