

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
UA NGA 5/2021

26 August 2021

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/20, 42/22, 45/3, 42/16, 43/8 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of enforced disappearance, arbitrary detention, torture and ill-treatment of Mr. Nnamdi Kanu, by Kenyan security officials, as well as his illegal rendition to Nigeria, to face trial for terrorism related charges, which are believed to be linked to his leadership of the "Indigenous People of Biafra (IPOB)" group**. Since his rendition to Nigeria, Mr. Kanu has been allegedly detained by the Department of State Services (DSS), and denied family visits, confidential access to a lawyer, and necessary medical treatment for his underlying health condition.

Special Procedures mandate holders have previously raised concerns about the proscription of the IPOB as a terrorist organization, in accordance with the Terrorism Act as amended in 2013, in their communication referenced AL NGA 5/2020. Furthermore, concerns regarding discrimination and violence against members of the Igbo minority were also expressed in their communication referenced UA NGA 4/2017. We regret the lack of responses from your Excellency's Government to either communication. The case of Mr. Kanu was previously transmitted by the Working Group on enforced or involuntary disappearances to the Government of Nigeria and clarified in 2017.

According to the information received:

Mr. Nwannekaenyi Nnamdi Ngozichukwu Okwu-Kanu (Nnamdi Kanu), born on 25 September 1967, is a dual Nigerian and British national, residing in London. He is the founder and leader of the Indigenous People of Biafra (IPOB) group, an organization established in 2012, with the objective to secede the five states in South-East Nigeria from the Federal Republic of Nigeria (Nigeria) where the Igbo minority are a numerical majority through a

regional referendum and to re-establish an independent sovereign state of “Biafra”.

Between 2015 and 2017, Mr. Kanu has been detained on charges including treasonable felony, conspiracy to commit treasonable felony, illegal importation of radio transmitter, and defamation of the President of Nigeria. During his detention, he was allegedly subjected to torture and ill-treatment by officials from the Department of State Services (DSS) in Nigeria. After being granted bail on health grounds, Mr. Kanu fled the country fearing for his life and the life of his family, amid a military raid of his house, on 14 September 2017, which killed and injured dozens of people.

In May 2021, Mr. Kanu travelled to Nairobi, Kenya. On 19 June 2021, he went to pick up a friend from Jomo Kenyatta International Airport and was allegedly abducted. For the next ten days, Mr. Kanu’s fate and whereabouts were unknown.

It was later reported that during his enforced disappearance, Mr. Kanu had been arrested at the airport’s parking lot, by a group of armed men in uniform believed to be Kenyan officials, without warrant or judicial order, who handcuffed and blindfolded him and pushed him into a vehicle. He was then taken to a private house, where he was detained for 8 days and allegedly subjected to torture and ill-treatment. During this period, Mr. Kanu was chained to the floor at all times, regularly beaten with a cloth over his mouth to prevent him from screaming, taunted and called a “terrorist Jew Biafran”, denied access to bath and toilet facilities, requiring him to urinate and defecate where he was chained, and was fed bread and water once a day.

After 8 days of arbitrary detention in Kenya, Mr. Kanu was driven to the tarmac of the Jomo Kenyatta International Airport, handed over to Nigerian security officials, without any form of extradition or judicial process, and taken aboard a private jet to Abuja, Nigeria. On 29 June 2021, Mr. Kanu appeared before the Nigerian Federal High Court, in Abuja, in handcuffs and leg restraints, and was arraigned, without access to legal representation, based on previous charges brought against him in 2015.

According to a public statement by the Nigerian Attorney General, on the same day, the Nigerian authorities intercepted Mr. Kanu, on 27 June 2021, through collaborative efforts of Nigerian intelligence and security services to face trial for 11 count charges, dating from 2017, including charges of terrorism, treasonable felony, managing unlawful society, publication of defamatory matters, illegal possession of firearms and improper importation of goods. To these, other charges of subversive activities, notably incitement to violence through television, radio and online broadcasts against Nigeria, Nigerian State and institutions, were added as a result of his escape.

Since his arrival to Nigeria, Mr. Kanu has been detained in solitary confinement at the DSS detention facility in Abuja, and denied visits from his family. On 1 July 2021, the British High Commissioner in Nigeria requested

information from the Attorney General regarding the circumstances of Mr. Kanu's arrest and transfer from Kenya to Nigeria, and consular access. Both requests were rejected or left unanswered.

Mr. Kanu's lawyers were allowed to visit him for the first time on 9 July 2021, under security supervision. Consequently, on 14 July 2021, Mr. Kanu was able to provide to his lawyers an account of acts of torture and ill-treatment perpetrated against him, during his detention in Kenya, as described above.

Several concerns have been raised about Mr. Kanu's conditions of detention as well as his health condition. At the DSS detention facility, Mr. Kanu is compelled to sleep on the floor with bright light bulbs turned on all night preventing him from sleeping and causing extreme heat. Furthermore, Mr. Kanu, who suffers from hypertension and a heart condition for which he requires medication, has been denied access to his medications and to adequate medical treatment, which is putting his life and health at immediate risk.

On 14 July 2021, Mr. Kanu requested to be transferred to the Nigerian Correctional Service Centre in Kuje, seeking adequate conditions of detention and access to medical treatment, which was rejected by the Federal High Court, on 26 July 2021.

On 26 July 2021, Mr. Kanu was due to be presented before the Federal High Court of Nigeria in Abuja for re-arraignment. However, he was not produced before the Court. At the hearing, his lawyers raised concerns for his life and the need for medical attention, as well as their limited access to their client, having to apply to the DSS for permission to visit Mr. Kanu on each occasion and wait for approval. The Court adjourned the hearing until 21 October 2021, and ordered the DSS to allow the legal representatives to visit Mr. Kanu in detention twice a week. Family visits continue to be banned, without justification.

While we do not wish to prejudge the accuracy of these allegations, we would like express our concern in relation to the enforced disappearance of Mr. Kanu from 19 June 2021, until his reappearance at Nigerian Federal High Court in Abuja on 29 June 2021, and his reported illegal rendition from Nairobi to Abuja without judicial process. We are further alarmed by the alleged torture and ill-treatment Mr. Kanu has been subjected during his detention by the DSS in Nigeria. If confirmed, these allegations would constitute prima facie violations of fundamental human rights, including the right not to be arbitrarily deprived of liberty, and the absolute and non-derogable prohibition of torture and other ill-treatment under the International Covenant on Political and Civil Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Nigeria on 29 July 1993, and 28 June 2001 respectively. Moreover, The Committee against Torture and the UN Human Rights Committee have repeatedly concluded that enforced disappearances may amount to torture and other forms of ill-treatment both with regard to the disappeared and with regard to their family members, due to the anguish and uncertainty concerning the fate and whereabouts of loved-ones.

We are also deeply concerned about the alleged denial of fundamental safeguards including regular and confidential access to legal counsel, contact with his family and with British consular services. In this connection, we would like to remind your Excellency's Government of Mr. Kanu's right to a fair trial respecting the principles of due process and procedural safeguards, as codified in articles 9, 10 and 14 of the ICCPR. These concerns are compounded by Mr. Kanu's health condition and the alleged lack of access to adequate medical treatment while he is being detained under dire detention conditions at the DSS detention facility. These allegations if confirmed would constitute a violation of the right to health established in article 12 of the International Covenant on Economic, Social and Cultural Rights, and of the UN Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles for the Treatment of Prisoners, which foresee that prisoners who have underlying health issues have the right to immediate and unrestricted access to necessary medications. Including in cases of urgent medical emergencies, and should have access to health services available in the country without discrimination.

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes in its article 2, the prohibition to practice, permit or tolerate enforced disappearances, while article 7 stipulates that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. The Declaration also establishes the obligation to promptly conduct investigation into allegation of enforced disappearances and to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal (art. 13).

We would 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).

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 4 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).

Lastly, we would like to remind your Excellency's Government of the right of foreign nationals to access consular services, communicate with them immediately and confidentially, as codified in article 36 of the Vienna Convention on Consular Relations, and further explained in the Body of principles for the protection of all persons under any form of detention or imprisonment, (principle 16.2.).

We are sending this appeal in order to safeguard the rights of Mr. Nnamdi Kanu from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.

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 initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person in compliance with international instruments.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the current state of health of Mr. Kanu and the measures undertaken, or foreseen, to prevent any irreparable damage to his life and personal integrity and to ensure that he has access to the medications and medical treatment required by his health conditions.
3. Please provide detailed information on the circumstances under which Mr. Kanu was arrested, forcibly disappeared before being handed over to Nigerian authorities and transferred from Nairobi to Abuja. Please also clarify any international cooperation measures that may have taken place to arrest and transfer Mr. Kanu and provide any international arrest warrant that may have been issued against him, prior to his arrest.
4. Please provide detailed information on the factual and legal grounds of the arrest and detention of Mr. Kanu, as well as formal charges against him, and the legal provisions used to charge him.
5. Please provide full information on the period between 19 - 29 June 2021, during which Mr. Kanu was subjected to enforced disappearance, including his whereabouts and the conditions in which he was held, on the informal detention facilities during this period and explain how this is compatible with the international human rights obligations of Nigeria. Please provide information on whether an investigation was carried out into the alleged enforced disappearance of Mr. Kanu during this period of time, and whether those responsible have been held accountable.
6. Please provide information on the measures taken to investigate the above-mentioned allegations of torture and ill-treatment perpetrated against Mr. Kanu during his detention in Nigeria and to hold those

responsible accountable.

7. Please provide full information on measures which have been taken, or which are foreseen, to guarantee the conduct of criminal proceedings by independent and impartial judicial authorities, in full compliance with the norms of due process recognised by international law, and the observance of fundamental safeguards, including unrestrained and confidential access a lawyer, to consular assistance, and to an independent medical doctor, as well as regular contact with his family.
8. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein.

We would like to inform your Excellency's Government that after having transmitted this joint communication 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. This letter of allegations in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the letter of allegations procedure and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken prevent any irreparable damage to the life or personal integrity of Mr. Kanu, 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.

The allegations in the case of Mr. Kanu raise serious violations of international human rights law and may cause irreparable damage to his life or personal integrity, which we believe warrants prompt attention. In this regard, we are considering to publicly express our concerns in this case in the near future, believing that the wider public should be informed about the implications of these allegations for the enjoyment and exercise of human rights in Kenya and Nigeria. Any public expression of concern in this regard, will indicate that we have been in contact with your Excellency's Government 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 note that a letter expressing similar concerns is being sent to the Governments of Kenya and the United Kingdom.

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

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

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