

Mandates of the Special Rapporteur in the field of cultural rights; 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

Ref.: AL NGA 1/2024
(Please use this reference in your reply)

29 April 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; 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 46/9, 53/4, 52/9, 53/12 and 49/5.

We would like to follow-up on our engagement with your Excellency's Government regarding the situation of Mr. **Yahaya Sharif-Aminu**, who was convicted of blasphemy for writing a song and sharing it on WhatsApp, and was sentenced to the death penalty.

We previously brought the attention of your Excellency's Government to information we had received concerning this case, through the urgent appeal NGA 4/2020 of 18 September 2020. We regret that, to date, we have not received any response from your Excellency's Government.

In the previous communication, we expressed our concern at the arrest, detention and trial of Mr. Yahaya Sharif-Aminu in violation of several human rights norms under international law, including 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); 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 10 of the UDHR and 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); and the right to freedom of thought, conscience and religion or belief and the right to freedom of expression as protected under articles 18 and 19 of both the UDHR and the ICCPR.

We also expressed grave concern that the death penalty had been imposed against Mr. Sharif-Aminu for the crime of blasphemy, which does not meet the threshold of the "most serious crimes" as required by article 6(2) of the International Covenant on Civil and Political Rights (ICCPR). In addition, we are concerned that Mr. Sharif-Aminu has been prosecuted on account of the expression of his opinions and beliefs and his right to artistic expression as protected under articles 18 and 19 of the ICCPR and article 15 of ICESCR.

In our communication of 18 September 2020, we appealed 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 and expression, to religion or belief, and his right not to be persecuted for exercising these rights.

We requested 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 called for his immediate, unconditional release as no one can be prosecuted simply for peaceful artistic expression; for the quashing of the death sentence which was imposed in violation of international human rights law; for a stay of any execution order which may be signed until this matter was 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.

According to the information received:

In March 2020 Mr. Sharif-Aminu shared a song which he had written and performed on WhatsApp. He was subsequently subjected to mob violence, arbitrarily detained incommunicado and tried without legal representation in a four-month trial. He was sentenced to death for blasphemy on 10 August 2020 by the Upper Sharia Court sitting at Filin Hockey Hausawa, Kano.

In January 2021, a first court of appeal, the Kano State High Court (Appellate Division), Kano State, overturned the death sentence pronounced against Mr. Yahaya Sharif-Aminu by the Upper Sharia Court and ordered his case to be retried under the Kano State Sharia Penal Code Law.

In August 2022, a second court of appeal, the Court of Appeal, Kano Division, upheld the legality of the Sharia Penal Code and the Kano State High Court's decision for retrial.

In November 2022, this decision was appealed to the Supreme Court of Nigeria by Mr. Sharif-Aminu.

Since then, Mr. Sharif-Aminu has been in prison awaiting the Supreme Court's decision.

There are further reports of other individuals sentenced to death under blasphemy laws in Nigeria, whose situations also appear to be in violation of international human rights obligations under the ICCPR, UNCAT, and the ICESCR.

While we do not wish to prejudge the accuracy of these allegations, we reiterate the concerns we have expressed in our previous communication and insist that the crime of blasphemy is incompatible with the State obligations under the International Covenant on Civil and Political Rights (ICCPR), and where applicable would obviously not amount to the "most serious crimes" under international law. We are further concerned that the decision for retrial under the Kano State Sharia Penal Code Law may lead to the same outcome, meaning confirmation of the death penalty for the crime of blasphemy, in violation of the obligations of Nigeria under international human rights law. We would like to remind your Excellency's Government that the imposition of the death penalty in the case of Mr. Sharif-Aminu will lead to State engagement in arbitrary deprivation of life.

Key benchmarks that are necessary pre-requisites to ensure that the Government's actions comply with its international legal obligations are:

- to abolish the imposition of the death penalty for the crime of blasphemy and ensure that it is only imposed for the "most serious crimes";
- to guarantee the right to take part in cultural life and to creative activity as guaranteed by the ICESCR, as well as right to freedom of expression of opinions and beliefs under the ICCPR; and
- to repeal the law criminalizing blasphemy, and any other policy or regulation that aim to restrict the fundamental rights to freedom of opinion and expression, and to freedom of thought, conscience, religion or belief.

Urgently, with respect to Mr. Sharif-Aminu, we reiterate our previous appeals to your Excellency's Government to:

- Promptly review his situation and ensure the protection of all his internationally guaranteed human rights, specifically his rights to life, to liberty, to personal security, to due process of law, and to a fair trial; his rights to take part in cultural life and to artistic freedom, to opinion and expression, religion or belief, and his right not to be subjected to any reprisal for exercising these rights;
- Ensure his physical and psychological integrity as well as that of anyone seeking to assist him in defense of his human rights;
- Immediately and unconditionally release Mr. Sharif-Aminu, whose arrest, detention and sentencing to death are in violation of international human rights law;
- Should the death sentence be re-confirmed by a court, ensure a stay of execution order until there is compliance of Nigeria laws with international human rights obligations in matters of death penalty.

We also request that this letter, together with our urgent appeal NGA 4/2020 of 18 September 2020 be brought to the attention of the Supreme Court, highlighting Nigeria's obligation to urgently comply with its international human rights obligations.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites 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 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 information on the steps taken to implement the recommendations and standards mentioned above.
3. Please provide detailed information on the imposition of the death penalty under the national legislative framework and explain how this complies with the State legal obligations, notably under article 6 of the ICCPR.

We would appreciate receiving a response within 60 days. Past 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.

We may consider expressing our concerns publicly given that the imprisonment, prosecution and imposition of the death penalty for the writing and 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.

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

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

Morris Tidball-Binz
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

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would first like stress that **the right to life**, as set forth in Article 3 of the Universal Declaration of Human Rights and in Article 6 of the ICCPR ratified by your Excellency's Government in 1993, guarantees the right to life for all human beings, without distinction of any kind.

Article 6(2) of the ICCPR provides that in countries which have not abolished the death penalty, the sentence of death may be imposed only for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee to mean that the death sentence may only be imposed in respect of offences that result in the loss of life. Similarly, the mandate on extrajudicial, summary or arbitrary executions reiterated that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53).

Additionally, the Human Rights Committee established that "States parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes which do not qualify as the most serious crimes. They should also revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to re-sentence those convicted for such crimes" (CCPR/C/GC/36, para. 35). We reiterate therefore that the death penalty can never be applied as a sanction against artistic expressions, including expressions of religious beliefs. 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 9 of the ICCPR enshrines **the right to liberty and security** of the person and establishes that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law as well as the right to legal assistance from the moment of detention. Article 9(4) also entitles everyone detained to challenge the legality of such detention before a judicial authority.

The United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court state that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation. Furthermore, Article 14 of the ICCPR upholds **the right to a fair trial** and equality of all persons before the courts and tribunals, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as well as the right to legal assistance.

Article 26 of the ICCPR further stresses that all persons are **equal before the law** and are entitled without any discrimination to the equal protection of the law. In

this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as [...] religion or other status [...]. The Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

Article 19 of the ICCPR guarantee **the right to freedom of opinion and expression**. It protects the right to hold opinions of any kind, including religious opinions, as well as 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.” The Human Rights Committee has affirmed that “no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions. All forms of opinion are protected, including opinions of a ...religious nature. It is incompatible with paragraph 1 to criminalize the holding of an opinion” (General Comment no. 34, para. 9). Furthermore, this obligation also requires the State “to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities” (Ibid., para. 7).

We would like to stress that the protection of religion itself does not and therefore cannot be used to limit the right to freedom of expression, including through art. International human rights law protects individuals from intolerance and violence based on their religion or belief, but it does not protect the religion or belief itself. Criminalization of blasphemy is incompatible with the ICCPR. As the Human Rights Committee has stated, “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26 of the ICCPR. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.”

We would also like to refer to the ICESCR ratified by your Excellency’s Government in 1993. Under article 15 of the ICESCR, everyone has the **right to participate in cultural life**. States must ensure the full implementation of artistic freedoms and resort to limitations only when absolutely necessary (A/HRC/23/34, paras. 3 and 32).

Regarding the imposition of sanctions, including criminal sanctions, deprivation of liberty and the closing of public space, we would like to recall the recommendations made by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur in the field of cultural rights to distinguish between a) expression that constitutes a criminal offence; (b) expression that is not

criminally punishable but may justify a civil suit or administrative sanctions; and (c) expression that does not give rise to criminal, civil or administrative sanctions but still raises a concern in terms of tolerance, civility and respect for the rights of others (A/66/290, para. 18; A/HRC/23/34, para. 31). What may be morally objectionable (from one point of view) may not necessarily be legally inadmissible or condemnable. Criminal sanctions should be the very last resort measures only, to be applied in strictly justifiable situations. In this regard, we would like to draw your Excellency's Government attention to a particularly useful suggestion in the **Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence** (A/HRC/22/17/Add.4), to use a six-part threshold test for those expressions that are criminally prohibited, implying an analysis of the context, speaker, content or form (which implicitly also refers to "the form of art"), extent of the speech, and likelihood, including imminence (A/HRC/22/17/Add.4).

Article 18 of the ICCPR states that that "Everyone shall have **the right to freedom of thought, conscience and religion**. These rights shall include freedom [...] either individual or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

The Human Rights Committee has noted in General Comment No. 22, paragraph 3 that article 18 of the ICCPR "Does not permit any limitations whatsoever on the freedom of thought and conscience [...]". Thus, peaceful expression of one's thought and conscience cannot be restricted unless it has fulfilled stringent tests of legality, proportionality and necessity.

We also recall Human Rights Council resolution 6/37, in which the Council urges States "to take all necessary and appropriate action, in conformity with international standards of human rights, to combat hatred, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as incitement to hostility and violence, with particular regard to religious minorities". Further, we recall the that General Assembly, in its resolution 64/164, has urged States "to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, inter alia, by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, or the right to practice freely one's religion, including the right to change one's religion or belief, is violated". In this resolution, the General Assembly urges States "to ensure that no one within their jurisdiction is deprived of the right to life, liberty or security of person because of religion or belief [...] and to bring to justice all perpetrators of violations of these rights."

We also refer to General Assembly resolution 76/157 and Human Rights Council Resolution 49/31 on combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against persons based on religion or belief, urging States to foster a domestic environment of religious tolerance, peace and respect.

We also recall article 2 (1) of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) which states that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other

belief." In article 4 (1), the General Assembly further states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer your Government to article 4 (2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

We also recall that the Rabat Plan of Action mentioned above contains a call upon States that still have anti-blasphemy or anti-apostasy laws in force to repeal them, stressing that such laws stifle the freedom of thought, conscience, and religion or belief, as well as a healthy dialogue and debate about religious issues. The repeal of blasphemy laws has been called for by the Special Rapporteurs on freedom of religion or belief and freedom of opinion and expression, and is a recommendation of the Rabat Plan of Action and Human Rights Committee's General Comment No. 34.

We would further like to bring to your Excellency's Government attention the international standards regarding the protection of **the rights of persons belonging to religious minorities**, in particular to article 27 of the ICCPR that guarantees minorities, inter alia, the right to profess and practice their own religion. Moreover, article 1 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end, while article 2 recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination and article 4 requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law.