

**PETITION TO:**

**UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

Chair-Rapporteur: Dr. Miriam Estrada-Castillo (Ecuador)  
Mr. Mumba Malila (Zambia)  
Ms. Priya Gopalan (Malaysia)  
Mr. Matthew Gillett (New Zealand)  
Dr. Ganna Yudkivska (Ukraine)

**HUMAN RIGHTS COUNCIL**  
**UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of:

**Mubarak Bala,**  
Citizen of the Federal Republic of Nigeria

v.

Government of the Federal Republic of Nigeria

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**Update to Petition for Opinion**

*Pursuant to Human Rights Council Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 2006/102, 6/4, and 24/7.*

April 28, 2023

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**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST  
OR DETENTION**

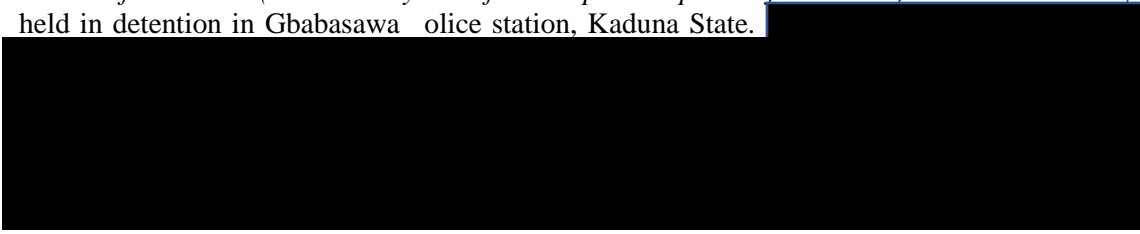
**I. IDENTITY**

1. *Family Name:* Bala
2. *First Name:* Mubarak
3. *Sex:* Male
4. *Age at the Time of Detention:* 35
5. *Nationality:* Nigerian
6. (a) *Identity document (if any):* Unknown  
(b) *Place of Issue:* N/A  
(c) *On (date):* N/A  
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Mubarak Bala is chemical engineer by trade and the President of the Humanist Association of Nigeria.
8. *Address of usual residence:*  
  
Unknown  
Kaduna State, Nigeria

**II. ARREST**

1. *Date of arrest:* April 28, 2020
2. *Place of arrest (as detailed as possible):* Mubarak Bala was arrested in his home in Kaduna State by plain-clothes detectives from the Kano State Police Command on April 28, 2020. He was then transferred to Kano State Command.
3. *Did they show a warrant or other decision by a public authority?:* Mr. Bala was not shown a warrant at the time of his arrest, and there is no evidence that a warrant was ever issued.
4. *Authority who issued the warrant or decision:* There is no evidence a warrant was issued by any public authority.
5. *Relevant legislation applied (if known):* Mr. Bala was arrested on suspicion of violations of section 26(1)(c) of the Cybercrimes Act, which makes it a crime to insult anyone online based on their status as part of a religious group, and section 210 of the Penal Code of Kano State, which criminalizes public religious insult and incitement to religious contempt.

### III. DATE OF DETENTION

1. *Date of detention:* April 28, 2020.
2. *Duration of detention (if not known, probable detention):* Mr. Bala was detained without charge until at least June 2021. Multiple bail applications were refused, and he was remanded in custody until April 5, 2022, when he pleaded guilty to updated charges and was sentenced to 24 years in prison. Mr. Bala spent 676 days in custody before being convicted. He remains in prison pending at the time of submission.
3. *Forces holding the detainee under custody:* Mr. Bala was arrested by the Kano State Police Command and held overnight at Gbasasawa police station in Kaduna, before being transferred to Kano State Police Command.
4. *Places of detention (indicate any transfer and present place of detention):* Bala was initially held in detention in Gbasasawa police station, Kaduna State. 
5. *Authorities that ordered the detention:* Kano State Police Command and subsequently the High Court of Kano Judicial Division Holden at Kano.
6. *Reasons for the detention imputed by the authorities:* Publishing posts on Facebook criticizing the religion of Islam with intent to or in a manner likely to cause a breach of the peace.
7. *Relevant legislation applied (if known):* Sections 210 and 114 of the Kano State Penal Code.

### IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

#### A Statement of Facts

Part 1 of this Statement of Facts describes how Nigeria and, in particular, Kano State presents a recurring pattern of religious oppression and human rights abuses. Part 2 describes the circumstances of Mr. Bala's arrest, detention and trial.

#### 1. Nigeria's Inconsistent Approach to Protecting Religious Freedom

Nigeria is a secular state, and a State Party to the International Covenant on Civil and Political Rights ("ICCPR").<sup>1</sup> Approximately 53.5% of the population identify as Muslim, 45.9% as Christian and the remaining 0.6% as other minority beliefs including atheism, Buddhism and Judaism.<sup>2</sup> Nigeria's constitution<sup>3</sup> protects freedom of religion, prohibits state-established religion, and bans discrimination on

<sup>1</sup> International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNT.S. 171, entered into force on March 23, 1976 (hereinafter "ICCPR").

<sup>2</sup> USCIRF, *Nigeria: USCIRF-Recommended For Countries of Particular Concern (CPC)*, <https://www.uscirf.gov/sites/default/files/2022-04/2022%20Nigeria.pdf>, accessed December 2022.

<sup>3</sup> Constitution of the Federal Republic of Nigeria 1999, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>, accessed December 2022 (hereinafter the "Constitution" or the "Nigerian Constitution").

the basis of religion. Despite this, the Working Group has found instances of arbitrary detention on religious grounds in Nigeria on 11 previous occasions,<sup>4</sup> most recently in 2021 in relation to Solomon Musa Tarfa, Mercy Solomon Tarfa and 16 minors.<sup>5</sup>

The Nigerian Criminal Code and some individual state criminal codes include vaguely worded offences which criminalize blasphemy and impose custodial penalties for insulting a person's religion. These laws are regularly used to interfere with people's religious freedoms in various contexts.<sup>6</sup> Kano State has demonstrated a pattern of deploying criminal law to interfere with religious freedoms and to promote or protect Islam over other religions.<sup>7</sup> The Working Group has not previously scrutinized sections 210 and 114 of the Kano State Penal Code. However, during a visit to Nigeria in 2005 the Special Rapporteur on freedom of religion or belief considered section 204 of the Criminal Code Act of Nigeria, which makes it an offence to commit any act which is intended to be perceived as a public insult to another person's religion. She concluded that the wording of section 204, which is similar in scope and application to the wording in section 210 of the Kano State Penal Code, gives the provision such a large scope of application that, if interpreted broadly, could lead to abuses of people's freedom of religion.<sup>8</sup>

## 2. The Case of Mubarak Bala

Mubarak Bala is a chemical engineer who was born in Kano State in 1984.<sup>9</sup> Mr. Bala is the son of a prominent Islamic scholar within Nigeria.<sup>10</sup> In 2014, after disclosing to his family that he was an atheist, he was detained in a psychiatric facility for 18 days,<sup>11</sup> and forcibly drugged.<sup>12</sup> Mr. Bala has stated that, in the years that followed, he was hunted by mobs and terrorists, and threatened by the leader of Boko Haram due to his professed beliefs.<sup>13</sup>

Prior to his detention, Mr. Bala was an active and vocal humanist, and at the time of his arrest, he was the President of the Humanist Association of Nigeria.<sup>14</sup> Since being detained, Mr. Bala was awarded Humanist Society Scotland's Gordon Ross Humanist of the Year Award on January 8, 2021.<sup>15</sup>

### a. *Arrest*

Section 114 of the Kano State Penal Code makes it an offence to do anything with intent to, or which is likely to, cause a breach of the peace. It is punishable by up to three years in prison and / or a

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<sup>4</sup> UN Working Group on Arbitrary Detention – Opinion Search; <https://wgad-opinions.ohchr.org/search/results/1>; accessed December 2022.

<sup>5</sup> UN Working Group on Arbitrary Detention, *Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, 3-12 May 2021*, A/HRC/WGAD/2021/16.

<sup>6</sup> USCIRF, *Nigeria: USCIRF-Recommended For Countries of Particular Concern (CPC)*, *supra* at note 2.

<sup>7</sup> USCIRF, *Religious Violations in Kano State, Nigeria*, October 2021, <https://www.uscirf.gov/sites/default/files/2021-10/2021%20Kano%20Policy%20Update.pdf>, accessed December 2022.

<sup>8</sup> UN Commission on Human Rights, *Civil and Political Rights, Including Religious Intolerance, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to Nigeria*, E/CN.4/2006/5/Add.2, 7 October 2005, at para. 32.

<sup>9</sup> Humanists International, *Humanist International General Assembly bestows 2021 Freedom of Thought Award on detained colleague Mubarak Bala*, August 17, 2021, <https://humanists.international/2021/08/mubarak-bala-2021-freedom-of-thought-award/>, accessed December 2022.

<sup>10</sup> The Guardian, *Fears for Nigerian humanist held for blasphemy in sharia state*, dated May 1, 2020,

<https://www.theguardian.com/world/2020/may/01/fears-for-nigerian-humanist-held-for-blasphemy-in-sharia-law-state>, accessed December 2022.

<sup>11</sup> BBC News, *Nigeria atheist Mubarak Bala jailed for blaspheming Islam*, dated April 5, 2022, <https://www.bbc.com/news/world-africa-60997606>, accessed December 2022.

<sup>12</sup> Scott Douglas Jacobsen Blog Post, Medium, *Interview with Muhammad Mubarak Bala— Nigerian Humanist*, 23 October 2018, <https://medium.com/humanist-voices/interview-with-muhammad-mubarak-bala-nigerian-humanist-38291f0d790>, accessed December 2022.

<sup>13</sup> Scott Douglas Jacobsen Blog Post, Medium, *Interview with Muhammad Mubarak Bala— Nigerian Humanist, Id.*, accessed December 2022

<sup>14</sup> Humanists UK, *Nigerian Humanist Association President Mubarak Bala sentenced to 24 years in prison for blasphemy*, April 5, 2022, <https://humanists.uk/2022/04/05/nigerian-humanist-association-president-mubarak-bala-sentenced-to-24-years-in-prison-for-blasphemy/>, accessed December 2022.

<sup>15</sup> Humanists International, *Mubarak Bala announced as recipient of Gordon Ross Humanist of the Year award*, January 8, 2021, <https://humanists.international/2021/01/mubarak-bala-announced-as-recipient-of-gordon-ross-humanist-of-the-year-award/>, accessed December 2022.

fine.<sup>16</sup> Section 210 of the Kano State Penal Code states that “whoever by any means publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to breach of the peace, shall be punished with imprisonment or a fine which may not extend to 2 years.”(sic.)<sup>17</sup> The offences do not require the prosecution to prove that the conduct amounts to incitement to discrimination, hostility or violence.

In April 2020, Mr. Bala posted the following statements on his Facebook page (the “**Facebook Posts**”):<sup>18</sup>

**Facebook Post #1:** *“There is no difference between the Prophet TB Joshua (PBUH) of Lagos and Muhammed (PBUH) of Saudi Arabia. Ours of Nigeria is not a transgressor”*<sup>19</sup>

**Facebook Post #2:** *“Religion of islam is also an unfaithfulness to our origin, worshiping tsumburbura of sawaba Alliya has guide, Kano people”*

**Facebook Post #3:** *“Muslims will start fasting to their lord who refused to remove poverty on them despite observing 17 prayers daily how I wish there is God”*

**Facebook Post #4:** *“There are no flying horses, there is no Allah, Islam is exactly as Boko Haram practices it. Whoever believes in religion has been duped”*

**Facebook Post #5:** *“If you can’t take the blasphemy against Islam, criticizism [sic.] of its doctrines, this page is not for you. I have not even started ooo.”*

**Facebook Post #6:** *“Allah imaginary we pray 2 u, please allow your ppl in Kano take CV-19 serious They’re now washing their hands & drinking the water”*

**Facebook Post #7:** *“Islam is so petty that if a droplet of your urine touches your trouser, you’d burn Also your prayer will not be accepted-Hadith”*

**Facebook Post #8:** *“I just received a revelation from the heavens Allah is seriously ill, this lack of daily worship by Muslims is making him so sick”*

**Facebook Post #9:** *“This page is for wrong doers if you can not endure exposing your religion and false Gods get out. We need only those tsumburbura.”*

The statements did not target individuals, they did not advocate violence and they did not encourage any person to criticize, persecute or otherwise discriminate against anyone, on religious or any other grounds.

After posting the Facebook Posts, Mr. Bala received numerous death threats, including from a serving police officer, who posted on Facebook that “if [Bala] ever set foot in Kano, he is dead already. And if he spend [sic.] more than 2 days in Kaduna, even the building that shield [sic.] him will turn to ashes. Just wait and see.”<sup>20</sup>

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<sup>16</sup> High Court of Justice of Kano State of Nigeria, Judicial Division Holden at Kano, *Record of Proceedings*, Suit No.K/89C/2021, dated April 5, 2022 (the “Record of Proceedings”), at page 14.

<sup>17</sup> The Record of proceedings, *supra* at note 16, at page 15

<sup>18</sup> Proposed Amended Charge, Application to Prefer a charge brought pursuant to section 121(1) & (2) of the Kano State Administration of Criminal Justice Law 2019, unsigned (the “Final Charge Sheet”).

<sup>19</sup> *Id.*; Some of the Facebook Posts can also still be viewed on Mr Bala’s Facebook page at: <https://www.facebook.com/mubarak.bala.568847/posts/140283127550771>.

<sup>20</sup> Sahara Reporters, *Activist Arrested In Kaduna For ‘Insulting Prophet Muhammad’ On Facebook Receives Death Threats From Imam, Police Officer*, dated April 29, 2020, <https://saharareporters.com/2020/04/29/activist-arrested-kaduna-%E2%80%98insulting-prophet-muhammad%E2%80%99-facebook-receives-death-threats>, accessed December 2022.

On April 27, 2020, a local lawyer filed a petition to the police commissioner of Kano calling for Mr. Bala’s arrest (the “**Petition**”).<sup>21</sup> The Petition was presented as a legal opinion, alleging that Mr. Bala had violated multiple offences under the Penal Code of Kano State. The Petition alleged that the Facebook Posts “*definitely incite Muslims and provoke them to take law into their own hands, which may ultimately result into public disturbance and breach of the peace...*” (*sic.*).<sup>22</sup>

On April 28, 2020, Mr. Bala was arrested by plain-clothes detectives from the Kano State Police Command and detained in Gbasasawa police station, Kaduna State.<sup>23</sup> The officers relied on the Petition as authority for making the arrest.<sup>24</sup> No warrant was presented to Mr. Bala on arrest and there is no evidence that a warrant was ever issued.<sup>25</sup> On April 29, 2020 Mr. Bala signed a statement confirming that he posted the Facebook Posts but making it very clear that his intention was to encourage intellectual debate and promote religious tolerance.<sup>26</sup> The statement did not confess to the charges, as alleged in the prosecution papers.<sup>27</sup> On April 30, 2020, the Police Commissioner for Kaduna State stated publicly that Mr. Bala had been transferred to the Kano State Police Command.<sup>28</sup> From the time of his arrest until October 2, 2020, a period of over five months, Mr. Bala was not granted access to his family or legal counsel, and the Government only granted Mr. Bala’s lawyers access after rumors began circulating that Mr. Bala had died.<sup>29</sup>

Formal charges were not signed until June 23, 2021 (the “Initial Charge Sheet”), and they were not served on Mr. Bala until August 3, 2021.<sup>30</sup> Mr. Bala was not brought before a court for the first time after his arrest until February 1, 2022, nearly two years after his initial detention.<sup>31</sup> There is no evidence that a court deemed it reasonable to delay the first appearance of Mr. Bala for approximately two years. It is believed that his detention was not formally sanctioned by a court until May 6, 2020, and Mr. Bala was not present at that hearing.<sup>32</sup>

b. *Trial and Conviction*

i Proceedings in the Kano State Courts

On June 24, 2020, the Kano Magistrates’ Court granted the application Mr. Bala’s legal team to meet with Mr. Bala.<sup>34</sup> The court order was signed by a magistrate on July 15, 2020 and served on the police the next day, who ignored it, initially claiming that the wording was too vague.<sup>35</sup> The police subsequently stated that Mr. Bala was being kept in isolation for his own protection.<sup>36</sup> When he was finally allowed to

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<sup>21</sup> S.S. Umar & Co., A Complaint against Mubarak Bala of Layin Masallacin Bilal, Karkasara Quarters, Kano for Publicly Insulting Prophet Muhammad (PBUH) on his Facebook Page Contrary to Section 210 of the Penal Code of Kano State and Section 26(1)(c) of the Cybercrimes (Prohibition, Prevention, etc) Act of 2015, April 27, 2020 (the “Petition”).

<sup>22</sup> *Id.*

<sup>23</sup> Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, Last Updated February 4, 2022, accessed via <https://humanists.international/2020/10/mubarak-bala-meets-with-lawyer/>, accessed on December 2022.

<sup>24</sup> Communication with confidential source J.I., on file with author.

<sup>25</sup> Communication with confidential source J.I., on file with author.

<sup>26</sup> Signed Statement of Mubarak Bala, dated April 29, 2020.

<sup>27</sup> Application to prefer a charge brought pursuant to Section 121(1) & (2) of the Kano State Administration of Criminal Justice Law, 2019 dated June 23, 2021 (the “Initial Charge Sheet”); and the Final Charge Sheet, *supra* at note 18.

<sup>28</sup> Humanists International, Cases of Concern, *Mubarak Bala*, <https://humanists.international/case-of-concern/mubarak-bala/>, accessed December 2022..

<sup>29</sup> Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, *supra* at note 23.

<sup>30</sup> The Initial Charge Sheet, *supra* at note 27.

<sup>31</sup> Communication with confidential source J.I., on file with author.

<sup>32</sup> Record of Proceedings, *supra* at note 16, at page 2; Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, *supra* at note 24.

<sup>33</sup> *Id.*

<sup>34</sup> Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, *supra* at note 24.

<sup>35</sup> *Id.*

<sup>36</sup> Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28 and *Action Paper: Mubarak Bala*, Updated October 15, 2021, <https://humanists.international/wp-content/uploads/2021/05/Action-Paper-Mubarak-Bala.pdf>, accessed December 2022; and *Mubarak Bala meets with lawyer*, October 7, 2020, <https://humanists.international/2020/10/mubarak-bala-meets-with-lawyer/>, accessed December 2022.

meet with his lawyers on October 2, 2020, Mr. Bala told them he feared for his life and the lives of his wife and son, stating that inmates had threatened to kill him if he did not make peace with God.<sup>37</sup>

The Initial Charge Sheet listed ten counts relating to Facebook Posts #1 to #5 – five counts pursuant to section 114 and five counts pursuant to section 210 of the Kano State Penal Code – effectively charging Mr. Bala with two offences in relation to each Facebook Post.<sup>38</sup> Mr. Bala’s case was initially listed for a hearing in the High Court of Kano Judicial Division Holden at Kano (the “Kano High Court”) on August 3, 2021, but Mr. Bala was not produced and the case was adjourned to October 13, 2021.<sup>39</sup> The case was further adjourned on two separate occasions, first because the judge in the case was ill and on the second occasion, because the judge was undergoing eye surgery.<sup>40</sup> On February 1, 2022, Mr. Bala was formally arraigned in court and he pleaded not guilty to the charges listed in the Initial Charge Sheet.<sup>41</sup> This was the first time Mr. Bala appeared in court following his arrest and detention, 644 days earlier.<sup>42</sup>

On April 4, 2022, the prosecution filed an updated charge sheet (the “Final Charge Sheet”) which added 8 additional counts pursuant to sections 114 and 210 of the Penal Code of Kano State relating to Facebook Posts #6 to #9, bringing the total number of charges to 18, with two counts for each Facebook Post (the “Updated Charges”).<sup>43</sup> Throughout the proceedings and up until his final appearance in court on April 5, 2022, Mr. Bala’s team made numerous applications for bail, all of which were denied without any clear or reasonable basis.<sup>44</sup>

## ii Concurrent Proceedings in the Abuja High Court

While Mr. Bala’s lawyers continued efforts to secure access to Mr. Bala through the Kano State courts, they also filed a separate fundamental rights petition with the Abuja High Court in May 2020 (the “Fundamental Rights Petition”). The Fundamental Rights Petition sought Mr. Bala’s release on grounds that his detention violated his rights under the Nigerian Constitution and international human rights law to liberty, freedom of movement, a fair trial, and freedom of thought and expression.<sup>45</sup> The Abuja High Court heard the Fundamental Rights Petition on October 19, 2020. No defense was entered by the Kano State authorities.<sup>46</sup> On December 21, 2020 the Abuja High Court ruled that the arrest and continued detention of Mr. Bala, as well as the continued refusal to grant him access to legal representation were unlawful infringements of his rights under the Nigerian Constitution and the African Charter on Human and Peoples’ Rights (“ACHPR”).<sup>47</sup> The Abuja High Court ordered the immediate release of Mr. Bala on bail and awarded damages in the amount of 250,000 Naira (roughly equivalent to USD 500).<sup>48</sup> Neither the Kano State police department, prosecutor nor Kano Magistrates’ Court complied with the order of the Abuja High Court, and the Kano state police subsequently denied that Mr. Bala was in their custody.<sup>49</sup>

On January 27, 2021, Mr. Bala’s legal team filed a second fundamental rights petition, seeking to transfer the location of Mr. Bala’s trial to Abuja on the grounds that that he would not receive a fair trial

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<sup>37</sup> Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, *supra* at note 23.

<sup>38</sup> The Initial Charge Sheet, *supra* at note 27.

<sup>39</sup> Record of Proceedings, *supra* at note 16, at page 1-2.

<sup>40</sup> Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28.

<sup>41</sup> Record of Proceedings, *supra* at note 16, at page 2-3.

<sup>42</sup> Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28.

<sup>43</sup> Record of Proceedings, *supra* at note 16, page 6-8; Final Charge Sheet, *supra* at note 18.

<sup>44</sup> Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> United Nations Press Release, *One year after: Authorities must comply with Federal High Court decision to release Mubarak Bala on bail*, dated April 28, 2021, <https://www.ohchr.org/en/press-releases/2021/04/one-year-after-authorities-must-comply-federal-high-court-decision-release>, accessed December 2022; Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*



in Kano State, and to ensure Mr. Bala's personal safety.<sup>50</sup> The High Court of Abuja did not hear the second petition before Mr. Bala pleaded guilty to the Updated Charges in April 2022.

### iii Final Charges, Guilty Plea and Sentence

Mr. Bala was arraigned again on April 5, 2022, and he pleaded guilty to all 18 counts on the Final Charge Sheet, contrary to legal advice and contrary to his previous instructions.<sup>51</sup> Mr. Bala's lawyer has stated that Mr. Bala changed his plea after becoming disillusioned when the prosecution added the additional eight charges to the Final Charge Sheet, and based on information he was given in custody that if he did not plead guilty his trial would be delayed and he would be denied bail.<sup>52</sup> Mr. Bala was sentenced on April 5, 2022 to two years in custody for each count under section 210 to run consecutively, and three years for each count under section 114 to run consecutively, with the custodial sentence for the section 114 counts to run concurrent to the custodial sentence for the section 210 counts.<sup>53</sup> The judge calculated that Mr. Bala's sentence therefore totaled 24 years.<sup>54</sup> It is not clear how the judge reached this calculation. Taking Mr. Bala's time in custody into consideration, the judge did not issue a separate fine, but the judge did not give any credit to Mr. Bala for pleading guilty, instead passing the maximum custodial sentences prescribed by law.<sup>55</sup>

## **B LEGAL ANALYSIS**

For the reasons set out above and below, the arrest and detention of Mubarak Bala is arbitrary under Categories I, II, III and V of the Working Group's Revised Methods of Work.<sup>56</sup>

### 1. Arbitrary Deprivation of Liberty under Category I

Detention is arbitrary under Category I if it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. The Working Group has found that a lack of legal basis exists when there is (i) a failure to provide a clear statement of the legal basis for arrest,<sup>57</sup> (ii) incommunicado detention,<sup>58</sup> and (iii) a reliance on overly vague legal provisions.<sup>59</sup>

In this case, Mr. Bala's detention was arbitrary under Category I because (a) Mr. Bala was detained in violation of Nigeria law, (b) Mr. Bala was detained incommunicado until October 2020 and (c) Sections 210 and 114 of the Kano Penal Code are too broad and vaguely worded to constitute an adequate legal basis for Mr. Bala's detention, and the court should not have accepted his guilty pleas.

#### a. *The Government Failed to Promptly Invoke a Legal Basis for Mr. Bala's Arrest*

The Working Group has consistently held that "in order for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law which may authorize the arrest. The authorities must invoke

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<sup>50</sup> Humanists International, Cases of Concern, *Mubarak Bala*, *supra* at note 28; Humanists International, *Legal team seek relocation of Mubarak Bala to neutral territory*, February 2, 2021, <https://humanists.international/2021/02/legal-team-seek-relocation-of-mubarak-bala-to-neutral-territory/>, accessed December 2022.

<sup>51</sup> Record of Proceedings, *supra* at note 16, page 9.

<sup>52</sup> Communication with confidential source J.I., on file with author.

<sup>53</sup> Record of proceedings, *supra* at note 16, page 11-15.

<sup>54</sup> *Id.*, at page 14-15.

<sup>55</sup> *Id.*, at page 15.

<sup>56</sup> U.N. Human Rights Council, *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66, ("Revised Methods of Work"), at para. 8b, July 12, 2016, [https://digitallibrary.un.org/record/848575/files/A\\_HRC\\_33\\_66-EN.pdf](https://digitallibrary.un.org/record/848575/files/A_HRC_33_66-EN.pdf).

<sup>57</sup> *See, e.g., Al Darawsheh v. Jordan*, UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2017/46, para. 19 (Aug. 22, 2017) available at [www.undocs.org/A/HRC/WGAD/2017/46](http://www.undocs.org/A/HRC/WGAD/2017/46).

<sup>58</sup> *Santawy v. Egypt*, UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2021/83, para. 66 (Nov. 19, 2021) available at [www.undocs.org/A/HRC/WGAD/2021/83](http://www.undocs.org/A/HRC/WGAD/2021/83).

<sup>59</sup> *See, e.g., Zhang v. China*, UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2021/54, para. 63 (Nov. 16, 2021) available at [www.undocs.org/A/HRC/WGAD/2021/54](http://www.undocs.org/A/HRC/WGAD/2021/54).

that legal basis and apply it to the circumstances of the case through an arrest warrant.”<sup>60</sup> Furthermore, Article 9 of the ICCPR provides that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. In Mr. Bala’s case, the Government not only failed to articulate the legal basis for Mr. Bala’s arrest in the form of a warrant, but the Government also refused to comply with the Abuja High Court decisions from December 21, 2020, ordering Bala’s release on bail.

Moreover, the Government has failed to provide the legal safeguards prescribed in the Nigeria Constitution, which demonstrates that Mr. Bala’s detention lacks an adequate legal basis under Nigeria’s laws. Under Article 35(3) of the Nigeria Constitution, individuals have the right to be informed of the grounds for their detention in writing within 24 hours of their arrest.<sup>61</sup> However, at the time of his arrest on April 28, 2020, Mr. Bala was not shown a warrant. Furthermore, formal charges were not signed until June 23, 2021, and they were not served on Mr. Bala until August 3, 2021.<sup>62</sup> Mr. Bala was not arrested *in flagrante delicto*, and accordingly the government lacks any justification for the failure to obtain a warrant. As a result, the detention of Mr. Bala between April 28, 2020 until August 3, 2021 is arbitrary under Category 1 because it violates Article 35(3) of the Constitution.

Additionally, the Constitution sets strict time limits for bringing individuals who have been arrested on suspicion of committing a criminal offence before a court. Under paragraphs 4 and 5 of Article 35 of the Constitution, in the case of an arrest in any place where there is a competent court with jurisdiction to hear the case within forty kilometers, the period is one day and in any other case, the period is two days or such longer time period as the court deems reasonable.<sup>63</sup> Mr. Bala was not brought before a court for the first time after his arrest until February 1, 2022, nearly two years after his initial detention.<sup>64</sup> It is inconceivable that any court would deem it reasonable to delay the first appearance of someone detained on suspicion of a criminal offence by nearly two years. It is believed that his detention was not formally sanctioned by a court until May 6, 2020, and Mr. Bala was not present at that hearing.<sup>65</sup> Accordingly, the detention of Mr. Bala between April 28, 2020 to February 1, 2022 is arbitrary under Category 1 because it violates article 35(4)-(5) of the Constitution.

Furthermore, Article 35(4) of the Nigerian Constitution states that if an individual who has been arrested and detained has not been tried within a period of two months from the date of his arrest, he shall be released on bail until his trial. Mr. Bala was arrested on April 28, 2020. Pursuant to Article 35(4) of the Constitution, he should have been released no later than June 28, 2020, until the date of his trial. Instead, Mr. Bala was detained incommunicado until at least October 2020. After that date, the court refused multiple bail applications in contravention of Article 35(4), keeping Mr. Bala in pre-trial detention for a period of almost two years. Therefore, from the period of April 28, 2020, to April 5, 2022, there was no legal basis for detaining Mr. Bala under domestic or international law. The situation is compounded by the fact that the Abuja High Court determined on December 21, 2020, that Mr. Bala’s arrest, continued detention and continued denial of access to legal counsel were unlawful infringements of his rights under the Nigerian Constitution and the African Charter. Consequently, the continued detention of Mr. Bala from June 28, 2020, to April 5, 2022 is arbitrary under Category I because it was a violation of Article 35(4) of the Nigerian Constitution, the order of the Abuja High Court and a violation of Article 9 of the ICCPR because there was no lawful basis for the detention.

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<sup>60</sup> *Santawy v. Egypt*, UN Working Group on Arbitrary Detention, UN Doc. A/HRC/WGAD/2021/83, para. 64 (Nov. 19, 2021) available at [www.undocs.org/A/HRC/WGAD/2021/83](http://www.undocs.org/A/HRC/WGAD/2021/83).

<sup>61</sup> Constitution of the Federal Republic of Nigeria 1999, <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>, accessed December 2022 (the “Constitution” or the “Nigerian Constitution”), article 35(3).

<sup>62</sup> The Initial Charge Sheet, *supra* at note 27; Communication with confidential source J.I., on file with author.

<sup>63</sup> Nigerian Constitution, *supra* at note 3, art. 35(4) and (5).

<sup>64</sup> Record of Proceedings, *supra* at note 16, at page 2; Humanists International, Individual Briefing, *Mubarak Bala, Nigeria*, *supra* at note 24.

<sup>65</sup> *Id.*

b. *Mr. Bala was Held Incommunicado*

Incommunicado detention occurs when an individual is “deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including *habeas corpus*.”<sup>66</sup> Article 9(3) of the ICCPR requires that when a person is arrested and detained on criminal charges, that individual must “be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”<sup>67</sup> The U.N. Human Rights Committee (“UNHRC”) has interpreted the term “promptly” to mean within approximately 48 hours, except in exceptional circumstances.<sup>68</sup> Article 9(4) ICCPR entitles such person to a court hearing, “in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>69</sup> These requirements apply before formal charges have been laid, so long as the person is arrested or detained on suspicion of criminal activity.<sup>70</sup>

The Government of Nigeria violated the ICCPR when it detained Mr. Bala incommunicado for a period of at least three months. Mr. Bala was denied access to his family and lawyers until at least October 2, 2020. During that time neither his family nor his lawyers knew where he was and believed he might have died in custody. Mr. Bala was not promptly brought before a judge or other judicial officer until February 1, 2022, also in contravention of articles 35(4) and (5) of the Nigerian Constitution, which require that any person detained must be brought before a court no later than two days after his arrest, or such longer time period as the court deems reasonable. It is inconceivable that any court would deem it reasonable to delay the first appearance of someone detained on suspicion of a criminal offence by nearly two years.

Mr. Bala’s detention therefore constitutes arbitrary detention under Category I, because the Government failed to grant Mr. Bala access to legal counsel or to his family and failed to bring him before a competent court within a reasonable time and held him incommunicado.

c. *Sections 210 and 114 of the Kano Penal Code Are Too Vague and Overly Broad to Constitute an Adequate Legal Basis for Mr. Bala’s Detention*

By using vague and overly broad laws as the legal basis for Mr. Bala’s detention, the Government violated his right to know the legal basis of his detention.

Article 15(1) ICCPR guarantees the individual right to know what the law is and what conduct violates the law.<sup>71</sup> There must be substantive grounds for arrest or detention that are prescribed by law and “defined with sufficient precision to avoid overly broad or arbitrary interpretation or application”.<sup>72</sup> The Working Group has recently reiterated that “the principle of legality requires that laws be formulated with sufficient precision so that individuals may have access to and understand the law and regulate their conduct accordingly. The Working Group further notes that laws which are vague and broadly worded may have a deterrent effect on the exercise of the rights to freedom of thought, conscience and religion, freedom of

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<sup>66</sup> U.N. Human Rights Council, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, page 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur’s report has been recognized by the Working Group as identifying the extent of human rights violations associated with incommunicado detention. See also, U.N. Human Rights Council, Report of the Working Group on Arbitrary Detention, UN Doc. A/HRC/22/44, fn. 27 (December 24, 2012), [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf).

<sup>67</sup> ICCPR, *supra* note 1, art. 9(4).

<sup>68</sup> Office of the High Commissioner for Human Rights, *CCPR General Comment No. 35: Article 9 (Liberty and Security of Person)*, 33, Human Rights Comm. U.N. Doc. CCPR/C/GC/35 (December 16, 2014) (“General Comment No. 35”), at para 33, [https://tbineternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en](https://tbineternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f35&Lang=en).

<sup>69</sup> ICCPR, *supra* note 1, art. 9(4).

<sup>70</sup> General Comment No. 35, *supra* note 68, para. 32.

<sup>71</sup> ICCPR, *supra* note 1, art. 15(1).

<sup>72</sup> General Comment No. 35, *supra* note 68, para. 22.

opinion and expression, freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.”<sup>73</sup> The United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, has specifically confirmed that terms such as insult and “ridicule” are overly broad and are generally precluded from restriction under international human rights law.<sup>74</sup> Similarly, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms has determined, when considering similar provisions under Kazakhstan criminal law, that “undefined terms such as... ‘insult to...religious feelings’” are not consistent with the international freedom of expression standards required by the ICCPR.<sup>75</sup>

Sections 210 and 114 are vaguely worded and inconsistently applied. The Government has systematically relied on an arbitrary interpretation of vaguely worded blasphemy laws to enforce Islamic law and doctrine while interfering with the rights and freedoms of religious minorities.<sup>76</sup> Mr Bala’s right to express his religious views in the Facebook Posts should have been protected but, instead, the Government used sections 210 and 114 to prosecute him for lawfully exercising that right. Consequently, the provisions are contrary to the principle of legality, so that (i) Mr Bala should not have been prosecuted under those provisions and (ii) the court should never have accepted Mr Bala’s guilty pleas to the charges. Further, the sentencing judge handed down the maximum sentence prescribed by law, making clear that the sentence was intended to deter Mr Bala “and others” from repeating conduct which fell well within the limits of the lawful exercise by Mr Bala of his rights to freedom of religion and freedom of expression.<sup>77</sup>

By charging Mr Bala with offences under sections 210 and 114, the Government has violated Mr Bala’s right to understand the basis of his imprisonment and deterred him (and others) from exercising his right to freedom of belief, conscience and religion as well as his right to freedom of expression, making his detention arbitrary under Category I.

## 2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when the detention results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of thought, conscience and religion and freedom of expression.<sup>78</sup> In the present case, the Government has violated Mr. Bala’s rights to freedom of thought, conscience and religion, expression, and his right to be treated without discrimination.

### a. *Mr Bala’s Detention Constitutes an Unlawful Infringement of his Right to Freedom of Thought, Conscience and Religion*

The right to freedom of thought, conscience and religion is protected by Article 18 ICCPR, Article 18 of the Universal Declaration of Human Rights (“UDHR”) and Article 38 of the Nigerian Constitution. The rights contained in Article 18 ICCPR include the freedom to manifest religion of belief “either individually or in community with others and in public or private...”<sup>79</sup> The UNHRC has explained that

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<sup>73</sup> U.N. Human Right Council, Opinions adopted by the Working Group on Arbitrary Detention at its ninetieth session, (3—12 May 2021, A/HRC/WGAD/2021/15 (23 June 2021), [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session90/A\\_HRC\\_WGAD\\_2021\\_15.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session90/A_HRC_WGAD_2021_15.pdf).

<sup>74</sup> UN General Assembly, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/74/486, at para. 17, (accessed online at [https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A\\_74\\_486.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A_74_486.pdf) in January 2023).

<sup>75</sup> Office of the High Commissioner for Human Rights, *Preliminary Findings of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on her visit to Kazakhstan*, May 22, 2019, (accessed online at <https://www.ohchr.org/en/press-releases/2019/05/preliminary-findings-special-rapporteur-promotion-and-protection-human>, January 2023).

<sup>76</sup> USCIRF, *Nigeria: USCIRF-Recommended For Countries of Particular Concern (CPC)*, *supra* at note 2.

<sup>77</sup> Record of Proceedings, *supra* at note 16, at page 14.

<sup>78</sup> Revised Methods of Work, *supra* at note 56, at para. 8b.

<sup>79</sup> ICCPR, *supra* at note 1, art. 18.

Article 18 “encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief...”<sup>80</sup> The UNHRC has further clarified that “Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms ‘belief’ and ‘religion’ are to be broadly construed.”<sup>81</sup> Whilst Article 18(3) permits restrictions on the freedom to manifest religion or belief on grounds of public order, such restrictions must be “prescribed by law”. Moreover, the UNHRC has clarified that 18(3) restrictions “may not be imposed for discriminatory purposes or applied in a discriminatory manner”.<sup>82</sup>

Mr. Bala’s Facebook Posts were a public manifestation of Mr. Bala’s atheist views and entirely consistent with his rights under Article 18. For this, he was prosecuted and sentenced to 24 years in prison, with the intention of deterring him and others from exercising those same rights and freedoms. As a result, the Government’s detention of Mr. Bala is a violation of his right to belief unless the Government can justify his detention under the terms of Article 18(3).

However, Article 18(3) does not apply to Mr. Bala’s detention. As argued in section IV(B)(1)(c), sections 210 and 114 are too broad and vague, such that these provisions cannot satisfy the “prescribed by law” condition in Article 18(3). Moreover, the way in which those provisions are disproportionately applied to advance and protect the Muslim faith over other beliefs and religions is entirely inconsistent with Article 18. Others who replied by insulting and threatening Mr Bala for expressing those views, were not prosecuted. Because of the vagueness and overbreadth of sections 210 and 114 and because of the discriminatory application of the law, the Government’s detention of Mr. Bala does not fall within the permissible restrictions enumerated in Article 18(3).

Accordingly, Mr. Bala’s detention amounts to an unlawful restriction of his right to freedom of thought, conscience and religion as protected under Article 18 and is arbitrary under Category II.

b. *Mr. Bala’s Detention Constitutes an Unlawful Interference with his Right to Freedom of Expression*

Article 19(2) ICCPR guarantees the “right to freedom of expression,” including the “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 media of [a person’s] choice.”<sup>83</sup> This right is also protected by Article 19 of the Universal Declaration of Human Rights. The UNHRC has clarified that article 19 extends to “all forms of audio-visual as well as electronic and internet-based modes of expression”.<sup>84</sup> Freedom of expression is also protected by Articles 9(1) and 9(2) of the ACHPR<sup>85</sup> and Article 39 of the Nigerian Constitution.<sup>86</sup>

The UNHRC has stated that “prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the [ICCPR], except in the specific circumstances envisaged in article 20, paragraph 2 of the [ICCPR].”<sup>87</sup> Article 20(2) ICCPR proscribes any advocacy of “national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence”.<sup>88</sup>

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<sup>80</sup> Office of the High Commissioner for Human Rights, *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, Adopted at the Forty-eighth Session of the Human Rights Committee, on July 30, 1993 CCPR/C/21/Rev.1/Add.4, (“General Comment No. 22”) (General Comments), para. 9.

<sup>81</sup> General Comment No. 22, *supra* at note 80, at 2.

<sup>82</sup> *Id.*, at para 8.

<sup>83</sup> ICCPR, *supra* at note 1, art. 19(1)-(2).

<sup>84</sup> Office of the High Commissioner for Human Rights, *CCPR General Comment No. 34, Article 19: Freedoms of opinion and expression*, U.N. Doc. CCPR/C/GC/34, September 12, 2011, (“General Comment No. 34”), para. 12.

<sup>85</sup> African Charter on Human and People’s Rights concluded at Nairobi on 27 June 1981, accessed online via <https://www.achpr.org/legalinstruments/detail?id=49>, (“ACHPR”) at art. 9(1)-(2).

<sup>86</sup> Nigerian Constitution, *supra* at note 3, art. 39(1).

<sup>87</sup> General Comment No. 34, *supra* note 84.

<sup>88</sup> ICCPR, *supra* at note 1, art. 20(2).

The Facebook Posts did not advocate violence, hatred or intolerance, nor did they target specific individuals or groups of people. They were expressions of Mr. Bala's personal opinions, and they did not fall within the scope of article 20(2) ICCPR. It therefore follows that, by publishing the Facebook Posts, Mr. Bala was exercising his rights under articles 19(1) and (2) ICCPR and the other provisions cited above. Mr. Bala should not have been prosecuted, and the court should not have accepted his guilty pleas.

Even if it could be said that the Facebook Posts did fall within the scope of Article 20(2), the Government would still have to demonstrate that Mr. Bala's continued detention satisfies the three conditions outlined by the UNHRC as necessary to justify any restriction on the right to freedom of expression, which are (i) that the restriction is prescribed by law; (ii) that it serves a legitimate purpose; and (iii) that the restriction is necessary to achieve and proportionate to the legitimate purpose.<sup>89</sup> The ACHPR sets a similar test for permissible restrictions of the right to freedom of expression<sup>90</sup> and association.<sup>91</sup> The Nigerian Constitution permits laws which restrict fundamental rights if those laws are "reasonably justifiable in a democratic society" and they further the interests of public order.<sup>92</sup> The UNHRC has emphasized that such restrictions must not "put in jeopardy the right itself."<sup>93</sup> It is not sufficient for a government to merely invoke one of the enumerated exceptions, but rather, the Government must "specify the precise nature of the threat" posed by the protected activity,<sup>94</sup> establish a "direct and immediate connection between the expression and the threat," and demonstrate why the limitation was necessary.<sup>95</sup>

Although sections 210 and 114 of the Penal Code of Kano State purport to protect public order, the wording of the provisions is too vague and broad to satisfy article 19(3). Further, it is unarguable that imposing a criminal sentence in excess of 20 years was a necessary or proportionate response to the Facebook Posts. The Facebook Posts clearly did not incite hatred or violence. They expressed abstract views and ideas which were critical of the Islamic faith, but they did not interfere with any person's right to respect and follow the religion of Islam. In fact, by imprisoning Mr. Bala when he himself was the victim of threats of violence the Government completely subverted the intention of articles 19(3) and 20(2) ICCPR. The Government cannot rely on article 19(3) to justify Mr. Bala's detention.

Consequently, by detaining Mr. Bala using sections 210 and 114, the Government has unlawfully infringed his rights under Articles 19(1) and (2) to freedom of opinion and expression and his detention amounts to Category II arbitrary detention.

c. *Nigeria Discriminated Against Mr. Bala on the Basis of his Atheistic Beliefs*

Article 26 ICCPR requires that "all people are equal before the law and are entitled without any discrimination to the equal protection of the law". It states that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as ... religion, political or other opinion".<sup>96</sup> Consequently, it follows that Article 26 protects Mr. Bala from discrimination on grounds of his atheistic views.

Nigeria and, in particular, Kano State have demonstrated a pattern of discriminating against individuals and organisations who express or pursue religious views and practices which are not consistent

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<sup>89</sup> UNHRC, *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994, 1999, para. 12.2.

<sup>90</sup> Principle 9, African Commission on Human and Peoples' Rights "Declaration of Principles on Freedom of Expression and Access to Information in Africa." 65<sup>th</sup> ordinary session of the African Commission on Human and Peoples' Rights, 21 October – 10 November, 2019, The Gambia; See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 114-15.

<sup>91</sup> See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 118.

<sup>92</sup> Nigerian Constitution, *supra* at note 3 art. 45(1).

<sup>93</sup> General Comment No. 34, *supra* note 84, para. 21.

<sup>94</sup> UNHRC, *Sohn v. Republic of Korea*, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

<sup>95</sup> General Comment No. 34, *supra* note 84, para. 35.

<sup>96</sup> ICCPR, *supra* at note 1, art. 26.

with Islam. In 2021, the Working Group on Arbitrary Detention found that the detention of Mr. Tarfa and 19 children in his care on the basis that Mr. Tarfa was running a Christian orphanage in a predominantly Muslim area (Kano State) was a breach of their rights under Article 26.<sup>97</sup> Nigeria also has a record of disproportionately targeting individuals from Christian, humanist and minority religious backgrounds using blasphemy laws.<sup>98</sup> The United State Commission on International Religious Freedoms (“USCIRF”) has noted that the Nigerian Government’s approach to enforcing the blasphemy provisions is inconsistent and possibly discriminatory.<sup>99</sup> It stated that, as of October 2022, there is no record of the courts pursuing charges against individuals who insult humanism or religions other than Islam, despite the fact that practitioners of these beliefs and religions are frequently denigrated in public discourse. It also noted that, in the northern states, comments criticizing Islam were more likely to lead to public disorder than comments considered insulting to religious or belief minorities, such as atheism, so provisions like sections 210 and 114 of the Kano Criminal Code were more likely to be used against religious and belief minorities than they were against Muslims. Finally, the USCIRF noted that there is little evidence that individuals who incite or commit violence against individuals who criticize Islam are prosecuted.

In the present case, the responses to the Facebook Posts included direct threats of violence and death threats against Mr. Bala. Yet Mr. Bala was the only individual arrested or prosecuted in connection with the Facebook Posts. When sentencing Mr. Bala, the judge stated, “there are a lot of people that may have the same ideology but not expose themselves like that”, reinforcing the inference that Mr. Bala was being prosecuted for expressing atheistic views, not for threatening public order.<sup>100</sup> The judge’s comments, and the harsh sentence he handed down also suggest that he harboured a personal bias against atheism which influenced their decision to (i) accept guilty pleas to inappropriate charges and (ii) pass the maximum sentence available.

The Government has failed to protect Mr. Bala from discrimination or ensure that he is treated equally under the law, unlawfully infringing his rights under Article 26 ICCPR. Consequently, his detention amounts to Category II arbitrary detention.

### 3. Arbitrary Deprivation of Liberty under Category III

Detention is arbitrary under Category IV where “the total or partial non-observance of the international norms relating to the right to a fair trial...is of such gravity as to give the deprivation of liberty an arbitrary character.”<sup>101</sup> The minimum international standards of due process are established in the ICCPR, the UDHR, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).<sup>102</sup> As stated above, Mr. Bala’s detention is arbitrary under Categories I and II and he should not have been prosecuted at all. It is therefore particularly concerning that the Government committed multiple, egregious violations of Mr. Bala’s right to due process during the prosecution. The violations set out below effectively coerced Mr. Bala into pleading guilty to the Updated Charges, against legal advice, through fear that he would not receive a fair trial. The court should not have accepted his pleas, and he should not have been convicted.

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<sup>97</sup> Working Group on Arbitrary Detention, Opinion No. 16/2021 concerning Solomon Musa Tarfa, Mercy Solomon Tarfa and 16 minors whose names are known to the Working Group (Nigeria), A/HRC/WGAD/2021/16, at paras. 74 and 82.

<sup>98</sup> See Section IV(A)(1) of this Petition for further examples.

<sup>99</sup> USCIRF *Policy Update: Blasphemy Laws in Nigeria*, October 2022, accessed online via <https://www.uscirf.gov/sites/default/files/2022-10/2022%20Nigeria%20Blasphemy%20Policy%20Update.pdf>, page 3.

<sup>100</sup> Record of Proceedings, *supra* at note 16, page 14.

<sup>101</sup> Revised Methods of Work, *supra* at note 56, at para. 8(c).

<sup>102</sup> ICCPR, art. 9(1); Universal Declaration of Human Rights, accessed online via <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (“UDHR”) art. 9; Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter “Body of Principles”); Standard Minimum Rules for the Treatment of Prisoners, G.A. Res. 70/175, U.N. Doc. A/RES/70/175, (December 17, 2015), <https://undocs.org/A/RES/70/175>.

a. *The Government Violated Mr. Bala’s Right to Appear Before A Court*

Article 9(3) states that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer ... and shall be entitled to trial within a reasonable time or to release.”<sup>103</sup> The UNHRC has explained that “incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3” of Article 9.<sup>104</sup>

A detained individual has the right to challenge the arbitrariness of his detention. Article 9(4) ICCPR provides that “anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>105</sup> The right to challenge the lawfulness of detention is also enshrined in Principle 1 of the Body of Principles.<sup>106</sup> Indeed, the Working Group has held that this right “is not derogable under international law.”<sup>107</sup> Incommunicado detention inherently violates the right to challenge the lawfulness of detention,<sup>108</sup> as well as Rules 58 and 61 of the Mandela Rules which require a State to permit a prisoner to have contact with family members and legal counsel, respectively.<sup>109</sup>

Mr. Bala was not brought before a court for the first time until February 1, 2022, and he was detained, incommunicado without access to family or legal counsel from April 28, 2020, to October 2, 2020, in violation of all the laws outlined above. Mr. Bala’s lawyer’s application to the Kano Magistrates’ Court to meet with Mr. Bala was granted on June 24, 2020, but Mr. Bala was not produced at that hearing and his lawyers were unable to gain access to him until October 2020 because the police ignored the court order. Formal charges were not laid until at least June 2021, over a year after Mr. Bala was arrested. Mr. Bala’s arraignment was subsequently adjourned on multiple occasions for reasons unrelated to his case. The situation is compounded by the fact that the Abuja High Court determined in December 2020 that the arrest and continued detention of Mr. Bala was unlawful and ordered his release. Following the findings of the Abuja High Court, the authorities should have immediately released Mr. Bala on bail, yet they kept Mr. Bala in arbitrary detention until April 5, 2022, when he finally pleaded guilty. It is therefore unsurprising that Mr. Bala pleaded guilty, contrary to legal advice. Having waited nearly two years in custody to be formally arraigned on the charges, Mr. Bala lost faith in the legal process and pleaded guilty out of desperation. Given the circumstances, the court should never have accepted Mr Bala’s plea to the charges.

b. *Mr. Bala was Denied his Right to Equal Treatment Before the Court*

Article 14(1) ICCPR states that “All persons shall be equal before the courts and tribunals...” and that “...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal”. The UNHRC has made clear that “judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbor preconceptions about a particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other.”<sup>110</sup> Article 14(2) states that “everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”.<sup>111</sup>

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<sup>103</sup> ICCPR, *supra* at note 1, art. 9(1).

<sup>104</sup> General Comment No. 35, *supra* at note 68, para 35.

<sup>105</sup> ICCPR, *supra* at note 1, art. 9(3).

<sup>106</sup> Body of Principles, *supra* at note 102, Principle 1, para. 19.

<sup>107</sup> Body of Principles, *supra* at note 102, Principle 4, para. 22.

<sup>108</sup> General Comment No. 35, *supra* at note 68, para 35.

<sup>109</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”), Rules 58 & 61, G.A. Res. 70/175, 70th Sess., U.N. Doc. A/RES/70/175 (January 8, 2016), <https://undocs.org/A/RES/70/175>.

<sup>110</sup> Office of the High Commissioner for Human Rights, *CCPR General Comment No. 32: Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, UN Doc. CCPR/C/GC/32, (August 23, 2007), available at <https://undocs.org/CCPR/C/GC/32> (“General Comment No. 32”) at para. 20.

<sup>111</sup> ICCPR, *supra* at note 1, art. 14(1) and art. 14(2).



When sentencing Mr. Bala, the judge commented that “the intent that he is thinking that he has to say whatever he wants to say or put anything is not absolute...there are a lot of people that may have the same ideology but not expose themselves like that” (*sic.*). The judge subsequently handed down the maximum sentence prescribed by law. Those comments, combined with the harsh sentence suggest that the judge harbored a personal prejudice against atheism which influenced his decision to (i) continue to arbitrarily detain Mr. Bala (ii) accept Mr. Bala’s guilty pleas when he should not have and (iii) hand down an unduly harsh sentence. His suggestion that Mr. Bala should not have expressed his views was not consistent with Mr. Bala’s rights under articles 18 and 19 of the ICCPR and this raises the inference that this was not an independent or impartial tribunal. His comments also imply that he had pre-determined Mr. Bala’s guilt, before he pleaded guilty, thus violating Mr. Bala’s right to the presumption of innocence.

Consequently, by permitting his judgement to be influenced by his personal prejudice against atheism, the judge violated Mr. Bala’s rights to a fair and independent trial and the presumption of innocence under articles 14(1) and (2) and his detention is arbitrary under Category III.

c. *Mr. Bala was Denied Access to a Lawyer for Over Five Months*

Article 14(3)(b)(d) of the ICCPR guarantees an individual accused of a crime the right to “communicate with the counsel of his own choosing”, and article 14(3)(d) states that a defendant has the right to “defend himself in person or through legal assistance of his own choosing”.<sup>112</sup> The UNHRC has clarified that article 14 “requires that the accused is granted prompt access to counsel”<sup>113</sup> and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”<sup>114</sup> Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel,” and that such right may not be suspended, or restricted, save in exceptional circumstances.”<sup>115</sup> Rule 119 of the Mandela Rules also provides for the right to access legal advice.<sup>116</sup>

Mr. Bala was held incommunicado, without access to a lawyer or his family from April 2020 until at least October 2020, in contravention of a Kano Magistrates Court order granting his lawyer permission to meet with him. The Kano State police department disregarded the Kano Magistrates Court’s order granting Mr. Bala access to his lawyer, alleging that the wording of the order was too vague but provided no other reasons. Accordingly, the Government has violated articles 14(3)(b) and (d) ICCPR, principles 18(1) and (3) of the Body of Principles and Rule 119 of the Mandela Rules, rendering his detention arbitrary under Category III.

d. *The Government Violated Mr. Bala’s Right to Release Pending Trial*

Article 9(3) ICCPR provides the right to an individual’s release pending trial.<sup>117</sup> The UNHRC has stated that any detention lasting longer than 48 hours “must remain absolutely exceptional and be justified under the circumstances.”<sup>118</sup> The UNHRC has also found that “detention pending trial must be based on an individualized determination that [the detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime...”<sup>119</sup> Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.<sup>120</sup> Further, the Nigerian Constitution requires that, if

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<sup>112</sup> ICCPR, *supra* at note 1, arts. 14(3)(b) and (d).

<sup>113</sup> General Comment No. 32, *supra* at note 110, at para. 32.

<sup>114</sup> General Comment No. 35, *supra* at note 68, para. 35.

<sup>115</sup> Body of Principles, *supra* at note 102, principle 18(1) and (3).

<sup>116</sup> The Nelson Mandela Rules, *supra* at note 109, rule 119.

<sup>117</sup> ICCPR, *supra* at note 1, art. 9(3).

<sup>118</sup> General Comment No. 35, *supra* at note 68, para 33.

<sup>119</sup> General Comment No. 35, *supra* at note 68, para 33.

<sup>120</sup> Body of Principles, *supra* at note 102, at principles 38 and 39.

a person has been held in pre-trial detention for a period of two months, he must be released on bail, either with or without conditions.<sup>121</sup>

Mr. Bala was detained for a period of nearly two years before he finally pleaded guilty to the Updated Charges in 2022. His lawyer made multiple bail applications, all of which were refused. It cannot possibly be said that his detention was reasonable or necessary in all of the circumstances. As such, by failing to release Mr. Bala within a reasonable timeframe, the Government has violated article 9(3) ICCPR, principles 38 and 39 of the Body of Principles and Article 35(4) of the Nigerian Constitution.

e. *The Government Violated Mr. Bala's Right to Be Tried Without Undue Delay*

Article 14(3)(c) ICCPR guarantees that each individual subject to arrest shall “be tried without undue delay.”<sup>122</sup> The UNHRC has explained that, “[a]n important aspect of the fairness of a hearing is its expeditiousness,”<sup>123</sup> and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”<sup>124</sup> The right to be tried without undue delay is reiterated by Principle 38 of the Body of Principles.<sup>125</sup>

Mr. Bala was first brought before a court nearly two years after he was initially arrested. Charges were not laid until June 2021, and the Final Charges were not signed until April 2022, approximately 10 months later. By the time Mr. Bala pleaded guilty in April 2022, he had been held in pre-trial detention for nearly two years, in violation of his rights under articles 9(3) and 14(3)(b) and (d) ICCPR, principles 18(1) and (3), 38 and 39 of the Body of Principles; and Rule 119 of the Mandela Rules. The situation was made worse by the fact that, for the initial five months of his detention, Mr. Bala was held incommunicado without access to a lawyer. The reasons for the delays in Mr. Bala's proceedings were inadequate and unjustified, and included on one occasion the case being adjourned because the judge was scheduled to have eye surgery. The delay could have been mitigated by releasing Mr. Bala on bail, but he was detained, in breach of domestic and international law, throughout the proceedings.

As such, the Government has violated Mr. Bala's right to be tried without undue delay, in violation of article 14(3)(d) ICCPR and principle 38 of the Body of Principles.

4. Arbitrary Deprivation of Liberty under Category V

Detention is arbitrary under Category V where “the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on... religion, ... political or other opinion, and which aims towards or can result in ignoring the equality of human beings.”<sup>126</sup> As explained in section IV.B.2.a above, articles 18 ICCPR and the UDHR protect an individual's right to freedom of thought, conscience and religion, including atheism. Article 38 of the Nigerian Constitution includes similar provisions. Mr. Bala's right to hold atheist views is therefore protected by both the ICCPR and Nigerian domestic law.

The UNHRC has confirmed that the right to non-discrimination is particularly crucial in criminal proceedings, as it is a matter of equal access and equality of arms to “[ensure] that the parties to the proceedings in question are treated without any discrimination.”<sup>127</sup> This right is reiterated by articles 2 and

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<sup>121</sup> Nigerian Constitution, *supra* at note 3, at art. 35(4).

<sup>122</sup> ICCPR, *supra* at note 1, art. 14(3)(c).

<sup>123</sup> General Comment No. 32, *supra* at note 110, at para. 27.

<sup>124</sup> *Id.*, at para. 35.

<sup>125</sup> Body of Principles, *supra* at note 102, Principle 38.

<sup>126</sup> Revised Methods of Work, *supra* at note 56, at para. 8(e).

<sup>127</sup> General Comment No. 32, *supra* at note 110, at para. 8.

7 of the UDHR, and principle 5(1) of the Body of Principles.<sup>128</sup> The right to equality is also protected by article 42(1) of the Nigerian Constitution.<sup>129</sup>

Nigeria has demonstrated a pattern of using blasphemy laws and laws criminalizing the criticism of another person's religion to arrest and prosecute non-Muslims. In this case, the Facebook Posts did not incite or encourage hatred, violence or intolerance, they were abstract expressions of Mr. Bala's personal opinions about the Muslim faith. The court nonetheless sentenced him to the maximum penalty prescribed by law. In contrast, individuals who responded to the Facebook Posts by criticizing Mr. Bala's views and encouraging and threatening violence against him, were not charged. Mr. Bala is the only person who was prosecuted in connection with the Facebook Posts.

Thus, the arrest, prosecution and imprisonment of Mr. Bala was discriminatory, and his detention is arbitrary under Category V.

**V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.**

Mr. Bala's legal team filed a Notice and Grounds of Appeal against conviction and sentence with the Kano State Court of Appeal on May 30, 2022, on Mr. Bala's instructions. The appeal challenges (i) the jurisdiction of the Kano State Authorities to prosecute Mr. Bala and (ii) the sentence.<sup>130</sup> The appeal has been delayed because of issues transferring the court file from the Kano High Court to the Court of Appeal, and Mr. Bala's legal team are currently preparing to file private records instead of relying on the official court file. Mr. Bala is still detained, and since his arrest has spent nearly three years in custody for posting comments which are entirely consistent with his rights under the Nigerian Constitution and international human rights law.

Mr. Bala also made the applications described in section IV.A.2.b.ii above to the Abuja High Court, which found that Mr. Bala's arrest and detention were unlawful under Nigerian law and order his immediate release and payment of compensation. To date, no steps have been taken to comply with the Abuja High Court order.

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<sup>128</sup> UDHR, *supra* at note 102, at arts. 2 and 7; Body of Principles, *supra* at note 102, at principle 5(1).

<sup>129</sup> Nigerian Constitution, *supra* at note 3 art. 42(1).

<sup>130</sup> Communication with confidential source J.I., on file with author.

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