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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March – 8 April 2022

Opinion No. 25/2022 concerning Mr. Nwannekaenyi Nnamdi Kenny Okwu-Kanu (Nigeria and Kenya)*

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work,¹ on 30 December 2021 the Working Group transmitted to the Government of Nigeria and Kenya a communication concerning Mr. Nwannekaenyi Nnamdi Kenny Okwu-Kanu. The Government of Nigeria replied to the communication on 25 January 2022 while the Government of Kenya did not reply. Both States are parties to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty 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,

* In accordance with paragraph 5 of the Working Group's methods of work, Elina Steinerte did not participate in the discussion of the present case.

¹ A/HRC/36/38.

or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Nwannekaenyi Nnamdi Kenny Okwu-Kanu is a citizen of the United Kingdom, born in 1967. At the time of his arrest, he resided in Nairobi, Kenya. Mr. Kanu is an activist and the leader of the Indigenous People of Biafra, which he founded in 2012. The source explains that the Indigenous People of Biafra is an organization aimed at securing a referendum for a Biafran sovereignty, independent from Nigeria.

a. Arrest and detention

5. The source reports that on 19 June 2021, Mr. Kanu, who was lawfully present in Kenya, was arrested at the Jomo Kenyatta International Airport, in Nairobi, Kenya, by Kenyan Security Forces. According to the source, Mr. Kanu was swiftly taken to an undisclosed and unknown location, which was not a police station or any of the conventional Kenyan security detention facilities. The Kenyan Special Forces reportedly subjected Mr. Kanu to eight days of severe torture and ill-treatment, which caused him physical injuries and mental anguish.

6. According to the source, on or about 29 June 2021, Mr. Kanu was extraordinarily renditioned to Abuja, Nigeria, with no prior hearing before a judicial or administrative body. The source emphasizes that Mr. Kanu was not given access to counsel and was denied extradition proceedings in Kenya. The source notes that, according to Nigeria's Attorney General, Mr. Kanu was apprehended and transported to Abuja with the cooperation of Nigerian intelligence officials and Interpol. Mr. Kanu was then reportedly detained within the headquarters of the Department of State Security Services (the "Department") in Abuja, Nigeria.

7. Reportedly, the Federal Government of Nigeria initially charged Mr. Kanu with four offenses: conspiracy to commit treasonable felony in 2014 and 2015, treasonable felony in 2014 and 2015, defamation in 2015, and improper importation of goods in 2015. The source alleges that these offenses are manufactured and all relate to old events. Further, the Federal Government of Nigeria allegedly amended the charges against Mr. Kanu to include accusations of levying war against Nigeria in 2015, through a radio broadcast from London, which the source alleges scrupulously refrained from inciting or encouraging violence or illegality. The amended charges reportedly charge Mr. Kanu with seven offenses.

8. The source reports that a hearing of Mr. Kanu's case was scheduled to take place on 26 July 2021, but Department operatives failed to produce Mr. Kanu in court without giving any reason, causing the case to be adjourned to 21 October 2021.

9. According to the source, on 21 October 2021, a hearing was held to address Mr. Kanu's motion to dismiss. Reportedly, the Department blocked all traffic to the courthouse, which forced Mr. Kanu's legal team to walk more than one mile to be able to attend the proceedings. The source also notes that the Department surrounded the court complex with an array of armed forces, creating an atmosphere of intimidation and danger. During the hearing, the court allegedly sharply reprimanded the Department for repeatedly blocking the access of Mr. Kanu's lawyers to their client, and unambiguously ordered them to permit Mr. Kanu to meet any three persons he wished on Mondays and Thursdays, for two hours each day.

10. The source reports that, the following Monday, on 25 October 2021, Mr. Kanu's lawyers visited the Department headquarters, pursuant to the court's order of 21 October 2021. While Mr. Kanu's lawyer confirmed his identity and was cleared for visitation, the Department required all lawyers to wait for over 90 minutes. Thereafter, they reportedly announced that Mr. Kanu's international lawyer would never be permitted to visit his client because he was a foreigner, and that the key to the locked visitation room could not be retrieved and thus, no person would be able to visit Mr. Kanu on that day. As a result, Mr. Kanu's attorneys were unable to meet with their client.

11. Reportedly, an Affidavit of Facts was submitted to the Federal High Court of Nigeria on 21 October 2021, demonstrating the Department's contempt of court and denial of access to Mr. Kanu's lawyers to their client on four occasions. According to the source, the Affidavit of Facts requested the dismissal of the seven-count amended charge based on the court's lack of jurisdiction. It also reportedly argued that the Federal Government of Nigeria failed to plead offenses cognizable under Nigerian law and violated international laws when it ordered Mr. Kanu's extraordinary rendition and denied him access to counsel of his choice.

12. The source reports that, on 10 November 2021, a hearing took place before the Federal High Court of Nigeria to address Mr. Kanu's motion to dismiss the amended charges. Reportedly, the Department singled out Mr. Kanu's international lawyer from other attorneys present and denied him entry into the courtroom for the fifth time, without explanation. According to the source, Mr. Kanu's attorneys had agreed to boycott the court proceedings if the international lawyer was denied entry into the courtroom and therefore decided to move forward with the boycott. A video press conference was allegedly held outside the courtroom to explain the reasons for the boycott. The source reports that, without communicating with any of Mr. Kanu's lawyers, including his local lead counsel, the judge of the Federal High Court consulted privately with the prosecutors, in Mr. Kanu's presence but without his legal representation. The source explains that the judge subsequently adjourned the case until 19 January 2022, with no explanation.

13. According to the source, since his extraordinary rendition, Mr. Kanu has been detained in solitary confinement within the headquarters of the Department in Abuja. Reportedly, Mr. Kanu is being held in a very small cell where he is exposed to daily psychological and mental torture without access to other inmates or any other person except for the Department officers. Mr. Kanu is also allegedly denied access to reading or writing materials and has been refused access to professional medical care despite a serious heart ailment. The source reports that Mr. Kanu's life is in jeopardy and that he suffers from a medical condition occasioned by gradual depletion of potassium in his system, which has defied any medical solution given to him within the Department facilities.

14. The source notes that medical examinations reveal a dangerous plunge in his potassium levels. The source alleges that the facilities' medical personnel have collected 21 blood samples from him, without permission, in search of the cause of this drastic depletion. The source adds that Nigerian authorities were feeding Mr. Kanu poorly prepared food and subjecting him to food deprivation, with the intent of slowly killing him, until an action was filed on his behalf. It is noted that there have been some recent improvements in Mr. Kanu's provision of meals.

15. The source reports that during his detention in Abuja, Mr. Kanu has been permitted access to two persons on Mondays and Thursdays, for two hours each session. The source notes that such time limitation is inadequate for Mr. Kanu to be able to prepare a full and professional defence. Further, the source explains that his lawyers cannot take any notes during their meetings with Mr. Kanu as they are denied pencils and paper. The source adds that on 2 and 6 September 2021, the Department of Security Services in Abuja denied access to one of Mr. Kanu's counsels during a meeting aimed at advising him on international law issues.

b. Legal Analysis

16. The source first submits that the detention of Mr. Kanu in solitary confinement is arbitrary and violates article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant. The source notes that, as a result of the judge adjourning the case until 19 January 2022, Mr. Kanu has been deprived of liberty for over six months, since June 2021, and held in solitary confinement without a hearing on the merits of the government's allegations and without access to needed medical care. The source submits that this constitutes the very definition of arbitrary detention and violates preemptory norms of international law.

17. Further, the source contends that Mr. Kanu's detention is void of legal basis. The source submits that the Federal Government of Nigeria alleges that Mr. Kanu committed the crime of conspiracy to commit a treasonable felony through an agreement with others to be

broadcasted from London, in view of the establishment of a Biafran sovereignty. The source notes that, while Nigerian law defines treason as “levying war” against Nigeria, the Federal Government of Nigeria does not allege any action implicating Mr. Kanu in the contemplation, planification, or incitement of war against Nigeria. The source argues that Mr. Kanu was in fact advocating for a peaceful referendum for the establishment of a Biafran sovereignty, in conformity with international and other relevant laws.

18. Additionally, the source reports that the Federal Government of Nigeria charged Mr. Kanu with committing treasonable felony years ago, through the broadcast on Radio Biafra of announcements of the preparation for secession of states in the South-East and South-South zones of Nigeria. The source notes that this charge similarly does not allege that the broadcast contemplated, incited, urged, or encouraged warfare or violence of any type against Nigeria.

19. The source also notes that Mr. Kanu is accused of defamation for an old broadcast critical of the Major General. The source argues that this falls under Mr. Kanu’s free speech and protected opinion guaranteed under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.

20. The source also observes that Mr. Kanu was accused of illegally importing a radio transmitter wrongly characterized as a used household item, over six years before he was charged. The source submits that such a trivial charge cannot, by any measure, warrant Mr. Kanu’s placement in solitary pre-trial detention, without access to necessary medical care for his cardiac condition or access to counsel to prepare his defence.

21. According to the source, Mr. Kanu’s detention is also arbitrary in so far as he was not afforded a hearing and was denied his due process rights when he was arrested in Kenya and subjected to extraordinary rendition by the Federal Government of Nigeria, in violation of articles 9 and 14 of the Covenant. The source also argues that where an accused is kidnapped and forcibly brought within a country’s jurisdiction, the courts derive their jurisdiction from the Government’s own misconduct, and that governments should not benefit from their own wrongdoing.²

22. Further, the source submits that Mr. Kanu was denied the right to properly prepare a defence. The source argues that Mr. Kanu’s counsels were denied access to their client and to materials necessary to memorialize meetings, and were not afforded the time and facilities necessary to prepare Mr. Kanu’s defence, contrary to article 14(2)(b) of the Covenant. Moreover, the source contends that the refusal to allow Mr. Kanu’s international counsel into the courtroom on 10 November 2021 violated his right to be represented by counsel of his choosing, as guaranteed under the Constitution of Nigeria and various treaties to which Nigeria is a signatory. The source further submits that the fact that the judge consulted privately with the prosecutors during the 10 November 2021 hearing, while Mr. Kanu’s counsels were denied entry into the courtroom, constitutes a prosecutorial bias.

23. The source also contends that, by placing Mr. Kanu in solitary confinement and denying him necessary medical care to treat his heart condition, the Federal Government of Nigeria subjected him to torture, in violation of the Convention Against Torture. The source concludes that such violation makes Mr. Kanu’s detention arbitrary under article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

24. According to the source, the Federal Government of Nigeria detained Mr. Kanu in retaliation for his political opinions, contrary to article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Based on the fourth count of the amended charges, the source alleges that Mr. Kanu is being detained for professing his membership to the Indigenous People of Biafra.

25. In this regard, it is alleged that the Federal Government of Nigeria arrested Mr. Kanu on terrorism-related offenses in 2015 and attempted to assassinate him on 10 September 2017, in an army-led attack that killed five individuals and wounded 30 others. Further, on 21 September 2017, the Federal Government of Nigeria reportedly listed the Indigenous

² The source refers to United States Court of Appeals, *United States v. Toscanino*, 500 F. 2d 267, 275 (2nd Cir. 1974).

People of Biafra as a terrorist organization during *ex parte* proceedings lacking elements of due process, including notice and the opportunity to be heard, and based on the President's assertions alone. The organization's challenge to the listing is reportedly pending on appeal. The source also reports that the African Commission on Human and Peoples' Rights and United Nations experts have raised concerns as to the justification and legality of the organization's listing on the terrorist list.

26. Finally, the source alleges that there exists hostility towards Biafrans in Nigeria and that Mr. Kanu's detention is based substantially on his ethnicity as a Biafran.

Responses from the Governments

27. On 30 December 2021, the Working Group transmitted the allegations from the source to the Governments of Nigeria and Kenya under its regular communications procedure. The Working Group requested the Governments to provide, by 28 February 2022, detailed information about the current situation of Mr. Kanu and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Nigeria and Kenya under international human rights law, and in particular with regard to the treaties ratified by the two States. Moreover, the Working Group called upon the Government of Nigeria to ensure Mr. Kanu's physical and mental integrity.

28. On 25 January 2022, the Government of Nigeria submitted a reply in which it stated that, given that the case is on-going in national courts, "any reaction by the Federal Government of Nigeria will be unconscionable". Nothing further was submitted by the Government of Nigeria.

29. The Working Group regrets that it received no reply from the Government of Kenya and that it also did not seek an extension in accordance with paragraph 16 of Working Group's methods of work.

Discussion

30. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.³ Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations.⁴ In the present case, the Government of Kenya has opted not to challenge the *prima facie* credible allegations made by the source while the Government of Nigeria has only stated that since the case is on-going in national courts, "any reaction by the Federal Government of Nigeria will be unconscionable".

31. Noting that the allegations submitted by the source concern two Governments, the Working Group shall proceed to examine these separately.

a. Allegations in relation to Kenya

32. In the absence of a response from the Government of Kenya, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

33. The Working Group shall consider whether the arrest and detention of Mr. Kanu by the Government of Kenya amounted to arbitrary detention within any of the categories recognised in the working methods of the Working Group.

i. Category I

34. The source has submitted, and the Government has chosen not to contest, that when Mr. Kanu was arrested at the Nairobi Airport by Kenyan Security Forces, on 19 June 2021, he was swiftly taken to an undisclosed and unknown location, which was not a police station

³ A/HRC/19/57, para. 68.

⁴ A/HRC/19/57, para. 68.

or any of the conventional Kenyan security detention facilities, and was subjected to eight days of severe torture and ill-treatment, before he was extraordinarily renditioned to Abuja, Nigeria, on or about 29 June 2021.

35. The source submitted that Mr. Kanu is a British citizen, who was lawfully present in Kenya. What is clear from the source's narration is that no arrest warrant was produced to Mr. Kanu at the time of his arrest, and Kenyan authorities did not explain to him the reasons for his arrest. The Working Group is mindful that the Government has chosen not to contest any of these allegations although it had the opportunity to do so.

36. The Working Group has consistently stated that for a deprivation of liberty to have a legal basis, the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. Stated differently, international law on detention includes the right to be presented with an arrest warrant in cases that do not involve arrests made in flagrante delicto, to ensure the objectivity of the arrest process. It is also required that the decision on whether the arrest is warranted be taken by an outside authority, i.e., a competent, independent and impartial judicial authority. This is procedurally inherent in the right to personal liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the "Body of Principles").⁵

37. The Working Group is mindful that article 9 (2) of the Covenant requires that anyone who is arrested is not only informed of the reasons for the arrest but also promptly informed of any charges against them. As explained by the Human Rights Committee in its general comment No. 35, the obligation encapsulated in article 9 (2) has two elements: information about the reasons for the arrest must be provided immediately upon arrest⁶ and there must be prompt information about the charges provided thereafter. Failure to do so violates article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principle 10 of the Body of Principles, and renders the person's arrest devoid of any legal basis.

38. Consequently, Mr. Kanu's arrest without an arrest warrant and with no explanation as to the reasons for his arrest violated his rights under article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principles 2, 4, 10, and 36 (2) of the Body of Principles.

39. Furthermore, following his arrest, Mr. Kanu was reportedly taken to an undisclosed and unknown location, which was not a police station or any of the conventional security detention facilities of Kenya, where he remained for eight days before he was transferred to Nigeria. No family members or lawyers knew about his location nor could they access him. While so detained, he was allegedly tortured and ill-treated. The Working Group once again notes the failure of the Government of Kenya to address these allegations.

40. The Working Group considers that following his arrest on 19 June 2021, Mr. Kanu was subjected to enforced disappearance as he was taken to and held at an undisclosed location and his whereabouts were unknown. He remained forcibly disappeared throughout his extraordinary rendition to Nigeria, in violation of Mr. Kanu's rights under article 9 (1) of the Covenant. The Working Group recalls that enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.⁷

41. Moreover, recalling the uncontested allegations that Mr. Kanu was taken to a secret location, the Working Group reiterates that holding persons at secret, undisclosed locations and in circumstances undisclosed to the person's family and lawyers, as was the case with Mr. Kanu, violates their right to contest the legality of their detention before a court or tribunal under article 9 (4) of the Covenant. It entails a wilful refusal to disclose the fate or

⁵ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6-7; and No. 44/1993, paras. 6-7. For more recent jurisprudence, see Opinions No. 21/2017, para. 46; No. 68/2018, para.39; and No. 34/2020, para. 46.

⁶ CCPR/C/GC/35 at para 27.

⁷ See Opinions No. 5/2020; No. 6/2020; No. 11/2020; No. 13/2020; No. 77/2020 and No. 38/2021. See also Human Rights Committee, general comment No. 35, para. 17.

whereabouts of the persons concerned or to acknowledge their detention. This lacks any valid legal basis under any circumstance. Judicial oversight of any detention is a central safeguard for personal liberty and is critical in ensuring that detention has a legitimate basis. In the circumstances attending the detention of Mr. Kanu at an unknown location, the Working Group finds that his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were violated. He was also placed outside the protection of the law, in violation of his right to be recognised as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

42. The Working Group also considers that Mr. Kanu's time in detention following his arrest constitutes pre-trial detention, which violated the prescriptions of article 9 (3) of the Covenant in so far as Mr. Kanu was not presented before a judicial authority within 48 hours and no individual assessment of the appropriateness of his pre-trial detention took place.

43. The source asserts and the Government does not contest that on or about 29 June 2021, Mr. Kanu was subjected to extraordinary rendition to Abuja, Nigeria, with no prior judicial hearing before a judicial or administrative body. The source emphasizes that Mr. Kanu was not given access to counsel and was denied any judicial proceedings all together whilst in Kenya. The source notes that, according to Nigeria's Attorney General, Mr. Kanu was apprehended and transported to Abuja with the cooperation of Nigerian intelligence officials and Interpol.

44. The source claims that, in the present case, there was no fair and public hearing concerning Mr. Kanu's removal from Kenya to Nigeria. The source stresses that involuntary expulsion to a foreign State without a hearing by judicial authorities does not conform with due process considerations.⁸

45. It is clear from the facts as narrated by the source and not contested by the Government that Mr. Kanu was never presented to a court before leaving Nairobi. Instead, he was unwillingly taken, outside any legal process and without any legal protection. He was forcibly conveyed from Nairobi to Abuja under an arrangement between the Kenyan and Nigerian Governments, and with the cooperation of the Nigerian Intelligence officials and Interpol, as confirmed by Nigeria's Attorney General.

46. As the Working Group has previously observed⁹ international law regarding extradition provides procedures that must be observed by countries in arresting, detaining and returning individuals to face criminal proceedings in another country and in ensuring that their right to a fair trial is protected. This is also an explicating obligation arising from article 13 of the Covenant which requires that the person who is to be expelled "be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority". The Working Group finds that all these requirements were ignored in the present case and the removal of Mr. Kanu from Kenya amounted to extraordinary rendition.

47. As the Working Group has explained, the practice of so-called "renditions", because it is aimed at avoiding all procedural safeguards, is not compatible with international law.¹⁰ The Working Group has previously found a violation of article 9 of the Covenant and the detention to be arbitrary where individuals were transferred to another country outside the confines of any legal procedure, such as extradition, were not allowed access to counsel or to any judicial body to contest the transfers.¹¹ This is precisely what happened to Mr. Kanu in the present case. The Working Group therefore finds that Mr. Kanu's arrest and transfer to Nigeria lacked a legal basis and due process of law, in violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant.

48. Further, the Working Group notes that this was preceded by the secret detention of Mr. Kanu. As the Working Group and other experts have stated regarding State responsibility

⁸ Opinion No. 42/2020, para 64.

⁹ A/HRC/48/55 paras 51-60. See also, e.g., opinions No. 23/2020; No. 11/2018; No. 2/2015 and No. 57/2013.

¹⁰ A/HRC/4/40, para. 2.

¹¹ Opinion No. 47/2005, para. 19.

in the joint study on global practices in relation to secret detention in the context of countering terrorism:

Secret detention, involving the denial or concealment of a person's detention, whereabouts or fate has the inherent consequence of placing the person outside the protection of the law. The practice of "proxy detention", where persons are transferred from one State to another outside the realm of any international or national legal procedure ("rendition" or "extraordinary rendition") for the specific purpose of secretly detaining them, or to exclude the possibility of review by the domestic courts of the State having custody of the detainee, or otherwise in violation of the well-entrenched principle of non-refoulement, entails exactly the same consequence. The practice of "proxy detention" involves the responsibility of both the State that is detaining the victim and the State on whose behalf or at whose behest the detention takes place.¹²

49. Moreover, in its resolution 37/3, the Human Rights Council stressed that no one should be held in secret detention and urged States to ensure that all persons held in detention under their authority were provided with access to the courts and to investigate all alleged cases of secret detention, including under the pretext of counterterrorism.¹³

50. For the reasons articulated, the Working Group finds that the Government of Kenya failed to establish a legal basis for Mr. Kanu's detention. His detention and extraordinary rendition to Nigeria was thus arbitrary under category I.

ii. Category II

51. The source submits and the Government has chosen not to contest that at the time of his arrest, Mr. Kanu, a citizen of the United Kingdom, was a resident of Nairobi, Kenya. He was an activist and the leader of the Indigenous People of Biafra, an organisation founded in 2012 with the objective of securing a referendum for a Biafran sovereignty, independent from Nigeria. Mr. Kanu became a political opponent in the diaspora, opposed to the Nigerian Government's repression of political dissent and freedom as it relates to the issue of Biafra.

52. Noting that the Kenyan Government failed to provide any reason for Mr. Kanu's arrest and detention, the Working Group concludes that his deprivation of liberty resulted from the exercise of universally recognized human rights, in particular the right to freedom of opinion and expression. Given that Mr. Kanu was critical of the Nigerian Government's position on the issue of Biafra, his arrest and detention by the Kenyan Government can be interpreted as a calculated move in cooperation with the Government of Nigeria to curb his dissent.

53. Freedom of opinion and expression are fundamental human rights enshrined in article 19 of the Universal Declaration of Human Rights and articles 19 of the Covenant.¹⁴ The Governments of Kenya and Nigeria have a duty to respect, protect and fulfil the right to hold and express opinions, including those that are not in accordance with their official policy, and to think and manifest personal convictions at odds with the Governments' official ideology, under the peremptory norms of customary international law¹⁵.

54. The Working Group considers that Mr. Kanu's criticism of the Government of Nigeria's position on the Biafra question is protected under his right to freedom of opinion and expression and cannot be the basis for the deprivation of liberty. The Working Group recalls that detention purely due to the peaceful exercise of rights protected by the Covenant may be arbitrary.¹⁶ It also recalls that the freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and that this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.¹⁷

¹² A/HRC/13/42, para. 36.

¹³ See A/HRC/37/L.11/Rev.1, paras. 8–9.

¹⁴ See Human Rights Committee, CCPR/C/78/D/878/1999, para. 7.2.

¹⁵ See Opinions No. 94/2017, para. 59; No. 88/2017, para. 32; No. 83/2017, para. 80; and No. 76/2017, para. 62.

¹⁶ General comment No. 35, paras 17 and 53.

¹⁷ *Ibid.*, para. 11.

55. Similarly, Resolution 12/16 called on States to refrain from imposing restrictions which are not consistent with article 19 (3), including on the discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and the expression of opinion and dissent, religion or belief.¹⁸

56. In the present case, the Government of Kenya has presented no exceptions permitted under article 19 (3) of the Covenant nor is there any evidence to suggest that Mr. Kanu's exercise of his freedom of opinion and expression was anything but peaceful. The Working Group therefore concludes that Mr. Kanu's detention was arbitrary under category II.

iii. Category III

57. Given the findings of the Working Group under category II, no arrest, detention or trial of Mr. Kanu should have taken place. However, Mr. Kanu was arrested, subjected to extraordinary rendition and trial proceedings against him are ongoing in Nigeria. The source has made numerous submissions concerning Mr. Kanu's fair trial rights violations in both Kenya and Nigeria.

58. The source has alleged that Mr. Kanu was denied access to counsel throughout his detention in Kenya and especially during his removal to Nigeria. The Government of Kenya has not contested these submissions.

59. The Working Group considers legal representation a core facet of the right to a fair trial and an essential guarantee against arbitrary detention. Legal assistance must be available at all stages of criminal proceedings, namely during pre-trial, trial, and appellate stages, to ensure compliance with fair trial guarantees.¹⁹ Denial of access to lawyers substantially undermines and compromises the ability of accused individuals to defend themselves in any judicial proceedings. Principle 18 (3) of the Body of Principles and rule 61 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), stipulate that defendants must have access to legal counsel without delay.

60. This was clearly denied to Mr. Kanu and the Working Group therefore finds a violation of article 14 (3) (b) of the Covenant. The Working Group views this violation as particularly grave given its findings of extraordinary rendition of Mr. Kanu to Nigeria and the subsequent violations of his rights there (see below).

61. Further, the Working Group recalls that in terms of article 36 of the 1963 Vienna Convention on Consular Relations, to which both Kenya and Nigeria are parties, consular assistance ought to be provided for those detained in a foreign country. Additionally, Principle 16 (2) of the Body of Principles recognizes the right of a detained foreign national to "communicate by appropriate means with a consular post of the diplomatic mission of the State of which he [or she] is a national." The Nelson Mandela Rules also provide that "[p]risoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong."

62. Although Mr. Kanu is a British citizen, Kenyan authorities failed to inform British authorities of his detention in Kenya or provide Mr. Kanu an opportunity to communicate with British authorities. They did not inform him of his right to communicate with a British consular officer either or facilitate such communication. The Working Group considers that the Government of Kenya's failure to respect Mr. Kanu's right to consular protection under customary international law, as codified in article 36 of the Vienna Convention on Consular Relations, during his initial arrest and detention, violates article 9 of the Universal Declaration of Human Rights, article 9 of the Covenant and principle 16 (2) of the Body of Principles.

¹⁸ See also General comment No. 34.

¹⁹ A/HRC/45/16, paras 51-53; see also the UN Basic Principles and Guidelines, principle 9 and guideline 8.

63. Furthermore, the Working Group notes with grave concern the uncontested allegations regarding the treatment to which Mr. Kanu was subjected during his enforced disappearance in Kenya following his arrest.

64. The Working Group's mandate extends to alleged ill-treatment that negatively affects the ability of detainees to prepare their defence as well as their chances of a fair trial,²⁰ and the burden is on the Government to prove that any statement made by Mr. Kanu was given freely.²¹ Although it is not clear what, if any, statements Mr. Kanu gave as a result of the deplorable treatment he was subjected to, the Working Group considers this irrelevant. Following such treatment, any proceedings against Mr. Kanu became tainted, unfair and unjust and incompatible with the fundamental requirements of article 14 (1) and (3) of the Covenant. The Working Group makes this finding particularly noting the extraordinary rendition to which Mr. Kanu was subjected to.

65. The Working Group thus concludes that the arrest and detention of Mr. Kanu in Kenya violated his fair trial rights and was therefore arbitrary under category III.

66. Finally, the Working Group must address the collusion between the Governments of Kenya and Nigeria that resulted in Mr. Kanu's rendition to Nigeria. Indeed, it has already been affirmed by Nigeria's Attorney General that Kenyan authorities colluded with the Nigerian authorities, which resulted in Mr. Kanu's rendition to Nigeria and the Working Group has established such collusion in the present Opinion too. The Working Group therefore finds that the Government of Kenya is jointly responsible with the Government of Nigeria for the arrest, detention, and extraordinary rendition of Mr. Kanu to Nigeria as well as for any violations of his rights that took place in Nigeria and Kenya.

b. Allegations in relation to Nigeria

67. The Working Group thanks the Government for its reply albeit short and only stating that since the proceedings against Mr. Kanu are on-going in national courts, "any reaction by the Federal Government of Nigeria will be unconscionable".

68. In this regard, as a preliminary issue, the Working Group wishes to clarify that the procedural rules applicable to communications from sources and responses of Governments are contained in its methods of work²² and in no other international instrument that the parties might consider applicable. Its methods of work contain no applicable rule impeding the consideration of communications due to the lack of exhaustion of domestic remedies in the country concerned. Sources have no obligation therefore to exhaust domestic remedies before sending a communication to the Working Group²³ and equally nothing prevents the Working Group from engaging with the allegations of arbitrary detention in cases when the national proceedings are still on-going.

69. Turning to the substance of the allegations, the source reports that following his rendition to Nigeria, Mr. Kanu was reportedly detained in solitary confinement within the headquarters of the Department of State Security Services (the "Department") in Abuja, Nigeria, before the Federal Government of Nigeria. He was initially charged with four offenses: conspiracy to commit treasonable felony in 2014 and 2015, treasonable felony in 2014 and 2015, defamation in 2015, and improper importation of goods in 2015 all of which the source claims related to old events. These charges were later amended to include accusations of levying war against Nigeria in 2015, through a radio broadcast from London.

70. According to the source, a hearing scheduled to take place on 26 July 2021 was adjourned to 21 October 2021 as the authorities failed to produce Mr. Kanu in court and did not give any reason for such failure. On 21 October 2021, the Department reportedly blocked all traffic to the courthouse where the hearing on Mr. Kanu's motion to dismiss was to take place. As a result, Mr. Kanu's legal team was forced to walk more than one mile to be able

²⁰ See e.g. Opinion No. 47/2017, para. 28 and No. 29/2017, para. 63. See also E/CN.4/2004/3/Add.3, para. 33.

²¹ Opinions No. 45/2018 and No. 86/2020; See also general comment No. 32, para 41.

²² A/HRC/36/38.

²³ See Opinions No. 19/2013; No. 41/2017; No. 78/2018 and No. 51/2020.

to attend the proceedings. An array of armed forces allegedly surrounded the courthouse creating an atmosphere of intimidation and danger.

71. The source narrates that even after the court ordered access to Mr. Kanu to his lawyers, his legal team was ill-treated and made to wait for over an hour while his international lawyer was not allowed to visit his client because he was a foreigner. The authorities also reportedly informed the legal team that the key to the locked visitation room could not be retrieved and thus, no person would be able to visit Mr. Kanu on a day directed by the court. As a result, Mr. Kanu's attorneys were unable to meet with their client.

72. On 10 November 2021, a hearing reportedly took place before the Federal High Court of Nigeria in Abuja to address Mr. Kanu's motion to dismiss the amended charges. The Department singled out Mr. Kanu's international lawyer from other attorneys present and denied him entry into the courtroom for the fifth time, without any explanation. As a result, Mr. Kanu's attorneys boycotted the hearing. Without communicating with any of Mr. Kanu's lawyers, the judge of the Federal High Court of Nigeria consulted privately with the prosecutors and adjourned the case until 19 January 2022.

73. All these very serious allegations were put to the Government which chose not to address the substance of any of them.

i. Category I

74. According to the source, following the rendition of Mr. Kanu from Kenya to Nigeria on or about 29 June 2021, Nigerian authorities took custody of Mr. Kanu without producing any warrant.

75. The Working Group has already stated (see para. 36 above) that a detention in the absence of an arrest warrant as well as in the absence of any explanation for the reasons for arrest violates articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principles 2, 4 and 10 of the Body of Principles. Since this also took place in Nigeria following the forcible transfer of Mr. Kanu there, the Working Group finds a further violation of these rights by the Government of Nigeria.

76. Similarly, the Working Group reiterates its discussion (paras 37-38) concerning the requirement under article 9 (2) of the Covenant that anyone who is arrested is not only informed of the reasons for arrest but also promptly informed of any charges against them. These rights were further violated by the Nigerian authorities, in violation of article 9 (2) of the Covenant.

77. In the present case, Mr. Kanu was not furnished with an arrest warrant by Nigerian authorities nor was he promptly informed of the grounds for his arrest in Nigeria. Consequently, the Working Group finds that Mr. Kanu's continued deprivation of liberty violates his rights under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 of the Covenant, and principles 2, 4, and 10 of the Body of Principles and constitutes arbitrary detention under category I.

78. Turning to the uncontested allegations that following his rendition to Nigeria, Mr. Kanu remained in pre-trial detention with his trial having been scheduled to commence in January 2022, the Working Group recalls that it is a well-established norm of international law that pre-trial detention should be the exception rather than the rule, and should be ordered for the shortest time possible.²⁴ Put differently, liberty is recognised under article 9 (3) of the Covenant as the core consideration with detention merely as an exception.²⁵ Therefore, detention pending trial must be based on an individualised determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.²⁶ Such determination was not carried out in the present case, in violation of Mr. Kanu's rights under article 9 (3) of the Covenant.

²⁴ Opinions No. 49/2014, para. 23; No. 1/2020, para. 53; No. 8/2020, para. 54; and No. 5/2021, para. 43. See also Human Rights Committee, general comment No. 35, para. 38; and A/HRC/19/57, paras. 48–58.

²⁵ A/HRC/19/57, para. 54.

²⁶ General comment No. 35, para. 38.

79. Further, in accordance with article 9 (3) of the Covenant, an arrested person is to be brought before a judge within 48 hours.²⁷ This was not satisfied in the case of Mr. Kanu and the Working Group therefore finds a violation of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant and principles 11, 37 and 38 of the Body of Principles.

80. Furthermore, in order to establish that a detention is indeed legal, anyone detained has the right to challenge the legality of his or her detention before a court, as guaranteed by article 9 (4) of the Covenant. The Working Group wishes to recall that according to the UN Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of their Liberty to Bring Proceedings before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.²⁸ This right, which is in fact a peremptory norm of international law, applies to all forms of deprivation of liberty,²⁹ to “all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law, including military detention, security detention, detention under counter-terrorism measures”.³⁰ Moreover, it also applies “irrespective of the place of detention or the legal terminology used in the legislation. Any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary”.³¹ This was also denied to Mr. Kanu, thus violating his right under article 9 (4) of the Covenant.

81. Finally, turning to Mr. Kanu’s pre-trial detention in Nigeria, the Working Group recalls that according to international human rights law, in particular article 9 (3) of the Covenant, any person detained while awaiting trial is entitled to trial within a reasonable time, or otherwise shall be released. Article 14 (3) (c) of the Covenant also guarantees the right of anyone charged with a criminal offence to be tried without undue delay. In the absence of a substantive response from the Government of Nigeria, the Working Group finds no legitimate grounds for the delays in the trials against Mr. Kanu.³²

82. Consequently, the Working Group finds that the Government of Nigeria failed to establish a legal basis for the detention of Mr. Kanu. His detention is thus arbitrary under category I. The Working Group wishes once again to underscore the collusion between the Governments of Kenya and Nigeria in the rendition of Mr. Kanu and reiterates that both Governments bear joint responsibility for any violations of Mr. Kanu’s rights in Kenya and Nigeria.

ii. Category II

83. The Working Group has already established in its discussion of the detention of Mr. Kanu in Kenya that he was arrested and detained due to the peaceful exercise of his rights (see paras 52-54 above). The Working Group notes that the source has argued the same in relation to Mr. Kanu’s arrest, detention and trial proceedings in Nigeria. Notably, the Government of Nigeria has chosen not to address the substance of these allegations.

84. The Working Group notes that it is not contested that Mr. Kanu is accused of the crime of conspiracy to commit a treasonable felony through an agreement with others to be broadcasted from London, in view of the establishment of a Biafran sovereignty. The source notes that, while treason consists of “levying war” against Nigeria under Nigerian law, the Federal Government of Nigeria does not allege any action implicating Mr. Kanu in the contemplation, planning, or incitement of war against Nigeria. The source argues that Mr. Kanu was in fact advocating for a peaceful referendum for the establishment of a Biafran sovereignty, in conformity with international and other relevant laws.

²⁷ Ibid., paras. 32-33.

²⁸ A/HRC/30/37 at paras 2 and 3.

²⁹ A/HRC/30/37 at para 11.

³⁰ A/HRC/30/37 at para 47 (a).

³¹ A/HRC/30/37 at para 47 (b).

³² See Opinions Nos. 16/2020 and 10/2021.

85. Noting the failure of the Government to explain what actions of Mr. Kanu amounted to such criminal acts and how, and observing the lack of any evidence that any of his actions may in fact amount to such crimes, the Working Group concludes that Mr. Kanu is in fact being persecuted for the peaceful exercise of his rights, most notably his freedom of opinion and expression.

86. Similarly to what the Working Group noted in relation to the Government of Kenya, it reiterates that detention purely due to the peaceful exercise of rights protected by the Covenant may be arbitrary.³³ The Working Group recalls that freedom of opinion and expression, as expressed in article 19 of the Covenant, is an indispensable condition for the full development of the person. It is essential for any society and constitutes the foundation stone for every free and democratic society.³⁴ It also recalls that freedom of expression includes the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, and that this right includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others, including political opinions.³⁵

87. Similarly, in Resolution 12/16, the Human Rights Council called on States to refrain from imposing restrictions which are not consistent with article 19 (3), including on the discussion of government policies and political debate; reporting on human rights; engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief.³⁶

88. In the present case, the Government of Nigeria has presented no exceptions permitted under article 19 (3) of the Covenant nor is there any evidence to suggest that Mr. Kanu's exercise of his right to freedom of opinion and expression was anything but peaceful. In fact, the Government has chosen not to provide any explanation for the arrest, detention and subsequent proceedings against Mr. Kanu. In these circumstances, the Working Group concludes that Mr. Kanu's detention is thus arbitrary under category II.

iii. Category III

89. The source has submitted, and the Government did not address, that Mr. Kanu was denied effective legal representation. The Working Group considers legal representation as being a core facet of the right to a fair trial. Legal assistance should be available at all stages of criminal proceedings, namely, pre-trial, trial, and appellate stages, to ensure compliance with fair trial guarantees.³⁷ Any denial of access to lawyers substantially undermines and compromises an accused individual's capacity to defend him or herself in any judicial proceedings.

90. As the Working Group has stated in principle 9 and guideline 8 of its Basic Principles, persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension. Access to legal counsel should not be unlawfully or unreasonably restricted.³⁸

91. Article 14 (3) (b) of the Covenant entitles defendants to adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing. Defendants must have access to documents and other evidence, including "all materials that the prosecution plans to offer in court against the accused or that could assist the defence." It further requires that defendants "be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."³⁹

³³ General comment No. 35, paras 17 and 53.

³⁴ General comment No. 34, para. 2.

³⁵ *Ibid.*, para. 11.

³⁶ See also general comment No. 34.

³⁷ A/HRC/45/16, paras 51-53; see also the UN Basic Principles and Guidelines, principle 9 and guideline 8.

³⁸ A/HRC/30/37, annex, paras 12-15 and 67-71. See also general comment no. 32, para. 34.

³⁹ General comment No. 32, paras 33-34.

92. Recalling general comment No. 32, a detainee has the right to have “prompt access” to legal counsel, meaning that a lawyer must be able to have private communications and meetings with the detainee and be able to attend all the investigations without interference or restrictions. A detainee also ought to have access to “effective counsel.” The effectiveness of the legal counsel is fundamentally related to the principle of equality of arms, as enshrined in article 11 of the Universal Declaration of Human Rights, which draws on the right of detainees to be afforded the time and facilities necessary to prepare and present their defence with the counsel of their own choosing.

93. All of this was denied to Mr. Kanu. In the Working Group’s view, by failing to allow Mr. Kanu to be represented by lawyers of his choice, including an international counsel,⁴⁰ the Government denied Mr. Kanu’s right to legal assistance at all times, which is inherent in the right to liberty and security of the person as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, article 14 of the Covenant, articles 37 (b) and (d) and 40 (2) (b) (ii) and principles 15, 17 and 18 of the Body of Principles and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers.

94. The Working Group is also disturbed by the source’s report of the treatment of Mr. Kanu’s lawyers and recalls its jurisprudence highlighting that such treatment of lawyers is entirely unacceptable and violates articles 10 and 11 of the Universal Declaration of Human Rights as well as article 14 (3) (b) of the Covenant.⁴¹ It is the legal and positive duty of the State to protect everyone on its territory or under its jurisdiction against any human rights violation and to provide remedy whenever a violation still occurs.⁴² The Working Group recalls that principle 9 of 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 states that legal counsels are to be able to carry out their functions effectively and independently, free from fear of reprisal, interference, intimidation, hindrance or harassment.⁴³

95. The Working Group also considers that Mr. Kanu’s presumption of innocence was violated as the Department surrounded the court complex with an array of armed forces, creating an atmosphere of intimidation and danger (see para. 9), a submission which the Government has chosen not to contest. The Working Group recalls that defendants should not be presented to the court in a manner indicating that they may be dangerous criminals, as this also undermines the presumption of innocence.⁴⁴ The Working Group finds a breach of article 14 (2) of the Covenant.

96. Further, according to the source and uncontested by the Government, following his rendition to Nigeria, Mr. Kanu was detained in solitary confinement within the headquarters of the Department in Abuja, Nigeria. He is reportedly currently still held in a very small cell where he is exposed to daily psychological and mental torture without access to other inmates or any other person except for the Department officers. Mr. Kanu is also allegedly denied access to reading or writing materials and has been refused access to professional medical care despite a serious heart ailment. The source reports that Mr. Kanu’s life is in jeopardy and that he suffers from a medical condition occasioned by gradual depletion of potassium in his system, which has defied any medical solution given to him within the Department facilities.

97. The Working Group is seriously concerned about the treatment to which Mr. Kanu has been subjected. Especially noting its finding that Mr. Kanu was subjected to extraordinary rendition as well as his treatment prior to that, the Working Group considers it unlikely that Mr. Kanu would have been able to effectively assist with and participate in his own defence during the proceedings against him, and that such treatment tainted the

⁴⁰ See Opinion No. 55/2020, para 78.

⁴¹ Opinions No. 14/2017; No. 29/2017; No. 32/2017; No. 34/2017; No. 36/2017; No. 70/2017; No. 28/2018; No. 66/2019 and No. 42/2020. See also A/HRC/45/16 at para 54.

⁴² See deliberation No. 10.

⁴³ See also the Basic Principles on the Role of Lawyers, paras 16–22.

⁴⁴ Opinion No. 59/2020, para. 81.

proceedings against him, rendering them inherently unfair and unjust, in violation of article 14 of the Covenant. For all the reasons above, the Working Group finds that the fair trial rights and procedural guarantees of Mr. Kanu under the Universal Declaration of Human Rights, the Covenant and other relevant human rights standards, were not observed and that such violations are of such gravity as to render Mr. Kanu's detention arbitrary under category III.

iv. Category V

98. Mr. Kanu is an activist and the leader of the organisation Indigenous People of Biafra, which he founded in 2012. The source alleges that the Government of Nigeria is targeting Mr. Kanu due to his political expression, in particular, due to his membership in a group politically opposed to the Nigerian Government on the question of Biafra, his widely published criticism of the Government, and his work with and advocacy for the Indigenous People of Biafra. The Government has chosen not to address these allegations.

99. The Working Group finds that Mr. Kanu has indeed been targeted by the Government as a human rights defender on account of his freedom of opinion and expression as well as his position regarding the sovereignty of Biafra. As Mr. Kanu has been targeted on account of his activism in galvanising momentum for a referendum on the sovereignty of Biafra, the Working Group considers that his detention violates articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant, and is arbitrary under category V.

c. Concluding remarks

100. The Working Group wishes to record its very serious concern for the well-being of Mr. Kanu, who, according to the source and uncontested by the Government of Nigeria, remains in solitary confinement since his arbitrary detention in Nigeria on 29 June 2021. He has been denied medical treatment and medication for his heart condition. The Working Group recalls that prolonged solitary confinement in excess of 15 consecutive days is prohibited under rules 43(1)(b) and 44 of the Mandela Rules. The Working Group is also obliged to remind the Government of Nigeria that in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect to the inherent dignity of the human person and that denial of medical assistance constitutes a violation of the Nelson Mandela Rules, rules 24, 25, 27 and 30 in particular.

101. According to the source, throughout Mr. Kanu's detention in Kenya and transfer to Nigeria, no family members knew about his location or could access him, and Mr. Kanu was not permitted to contact his family during this detention. These allegations have not been contested by either Governments. The Working Group stresses that, under international human rights law, all detained and imprisoned individuals have the right to communicate and be visited by their families. The right to receive visits applies to all detainees, "regardless of the offence of which they are suspected or accused." Under Principle 19 of the Body of Principles, this right could be subject only to conditions and restrictions that are appropriate to a legitimate aim. Neither Governments have argued that the restrictions placed on Mr. Kanu's contact with his family conformed with this requirement. As a result, the Working Group finds that the restrictions placed on Mr. Kanu's contact with his family violated his right to contact with the outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles.

102. Noting the treatment to which Mr. Kanu has been subjected at the hands of both Kenyan and Nigerian authorities as well as his continued solitary confinement, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

103. The Working Group also wishes to reemphasize its very serious concern over the apparent collusion between the Governments of Kenya and Nigeria in this case and reiterates its findings that both Governments are jointly responsible for the violations of Mr. Kanu's rights in both jurisdictions.

104. The present Opinion concerns solely the treatment and rights of Mr. Kanu and is adopted without any prejudice to the status of Biafra.

Disposition

105. In the light of the foregoing, the Working Group renders the following opinion:

In relation to Kenya and Nigeria

The deprivation of liberty of Nwannekaenyi Nnamdi Kenny Okwu-Kanu, being in contravention of articles 2, 3, 6, 7, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 13, 14, 16, 19 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within Categories I, II, III and V.

106. The Working Group requests the Governments of Kenya and Nigeria to take the steps necessary to remedy the situation of Mr. Kanu without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

107. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be for the Government of Nigeria to release Mr. Kanu immediately and for both Governments to accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government of Nigeria to take urgent action to ensure the immediate unconditional release of Mr. Kanu.

108. The Working Group urges the two Governments to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Kanu and to take appropriate measures against those responsible for the violation of his rights.

109. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

110. The Working Group requests the Governments to disseminate the present opinion through all available means and as widely as possible.

Follow-up procedure

111. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Governments to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Kanu has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Kanu;
- (c) Whether an investigation has been conducted into the violation of Mr. Kanu rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Kenya and Nigeria with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

112. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

113. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

114. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴⁵

[Adopted on 4 April 2022]

⁴⁵ See Human Rights Council resolution 42/22 paras. 3 and 7.