

**Ref: Intersociety/NG/12/015/002/NJC/AGF/FGN**

**1. Hon Justice Mahmud Mohammed, Chairman of the National Judicial Council**

**The NJC Headquarters, Supreme Court Complex**

**Three-Arms-Zone, FCT, Abuja, Nigeria**

**2. Mallam Abubakar Malami, SAN**

**Attorney General of the Federation & Minister for Justice**

**The Federal Ministry of Justice, Federal Secretariat Complex**

**Shehu Shagari Way, Central Area, FCT, Abuja, Nigeria**

**Your Lordship/Dear AGF,**

**Unconstitutional Laws & Court Orders On Rampage In Nigeria: A Case Against Hon Justice Adeniyi Ademola Of The Federal High Court (Abuja Division) & Section 27 (1) Of The Terrorism Prevention Act Of 2011(as amended)**

(Onitsha Nigeria, 13<sup>th</sup> December 2015)-The International Society for Civil Liberties & the Rule of Law (**Intersociety**) respectfully write the **National Judicial Council( NJC)** under the chairmanship of **Your Lordship** and the **Attorney General of the Federation & Minister for Justice**. The reason for this all-important letter of ours is underlined above.

To refresh the minds of **Your Lordship** and **the AGF, Intersociety** is an incorporated *rights based* Civil Society Organization located in Onitsha, Southeast Nigeria and headquartered at **41, Miss Elems Street, Fegge, Onitsha**. We thematically work on: **promotion and advancement of rule of law and civil liberties; democracy & good governance; and public security & safety**. Joined in support of this all-important letter of ours are the leaderships of ten other *pro democracy, good governance and human rights organizations* based in the Southeast; comprising the **Anambra State Branch of the Civil Liberties Organization (CLO), the Center for Human Rights & Peace Advocacy (CHSPA), Human Rights Club(HRC) (a project of LRRDC), Southeast Good Governance Forum (SGGF), Forum for Equity, Justice & Defense of Human Rights (FEJDHR), Society Advocacy Watch Project (SPAW), Anambra Human Rights Forum (AHRF), the International Solidarity for Peace & Human Rights Initiative (INTERSOLIDARITY), the Street Law Africa (LawAfrica) and the Igbo Ekunie Initiative (IEI) (a pan Igbo rights campaigner)**.

We (**Intersociety**) had on 2<sup>nd</sup> of November 2015 written **Your Lordship** and the **PCA** on the urgent need to **save the Nigerian Judiciary & Democracy from the hands of the dictatorial Executive Arm of Government under the Buhari's Presidency**. On 10<sup>th</sup> of November 2015, we sent **Your Lordship** and the **PCA** an **updated copy**, in which we added some vital facts omitted in the first letter. Despite receiving *proof-of-delivery* from the contracted courier company; till date, neither **Your Lordship's NJC** nor office of the **PCA** had acknowledged and responded to same in writing.

That notwithstanding **Your Lordship**, our writing **Your Lordship** is in line with constitutional powers bestowed upon **Your Lordship's NJC** and **the AGF**. As **Your Lordship** is aware, the National Judicial Council (**NJC**) is one of the Federal Executive Bodies created by virtue of Section 153 of the 1999 Constitution of the Federal Republic of Nigeria; in order to insulate the Judiciary from the whims and caprices of the Executive; hence guarantee the independence of Judicial Arm of Government, which is a sine qua non for any democratic Government. The powers and functions of **the NJC** are contained in **Paragraph 21 of Part 1 of the Third Schedule** of the Constitution of the Federal Republic of Nigeria 1999 as amended. Such powers include **defense and protection of the Constitution; and protection and advancement of the Fundamental Human Rights of all citizens of Nigeria**.

On the other hand, our writing the **AGF** is also in recognition of powers bestowed on him and his office by the Constitution, which are contained in Sections 150 (1) (2) and 174 (1) (2) (3) of the 1999 Constitution. The **AGF** is constitutionally recognized as **the Chief Law Officer of the Federation (of Nigeria)**. By the **spirit and letters** of Section 6 (1) of the 1999 Constitution, **Your Lordship's NJC/Supreme Court** and **the AGF** are **the parliamentary president and prime minister** of the Judiciary of the Federation of Nigeria. **Your Lordship and the AGF** are further aware that Section 13 of the Constitution of the Federal Republic of Nigeria 1999 as amended; clearly stated that **"it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judiciary powers, to conform to, observe and apply the provisions of this Constitution"**.

The 1999 Constitution further stated clearly in Section 1 (1) that **"this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria"**. Its Section 1 (3) also directed that **"if any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void"**. In Section 4 (5) of the same Constitution, **"if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of the inconsistency be void"**. The Supreme Court of Nigeria's landmark judgment in **Abacha and Others v Fawehinmi (2001) AHRLR 172 (NgSC 2000)**; ruled that **"the African Charter on Human & Peoples Rights (ACHPR) is domestically enforceable, with its status higher than any ordinary legislation in Nigeria, but lower than the Constitution**.

The simple meaning of the citations above is that **the 1999 Constitution is above and superior to all other laws of the land; followed by the African Charter on Human & Peoples Rights (in dealing with the citizens' rights in the course of execution or enforcement of State policies and actions)"**. The laws (Acts) enacted or deemed to have been enacted by the National Assembly of Nigeria as well as the laws made by the Houses of Assembly of States are all inferior to the Constitution and the African Charter on Human & Peoples Rights. In other words, in the event of conflict between the Constitution and any Act of the National Assembly or any of its provisions; the Constitution prevails; and in the event of any conflict between the African Charter on Human Rights & Peoples Rights (signed, ratified and domesticated by Nigeria in 1983) and any Act of the National Assembly; the African Charter prevails. Also in the event of any conflict between any Act of the National Assembly and a Law of a State, the Act of the National Assembly prevails.

**Your Lordship** and the **AGF** are further reminded respectfully that for a citizen to be appointed or to serve as a Judge of a State or Federal High Court in Nigeria, he or she must have practiced law in Nigeria for ten years and above. This is contained in Sections 250 (3) and 270 (3) of the 1999 Constitution. That is to say that he or she must have attended and completed university law degree program; gone to the Nigerian Law School and graduated; called to Bar and admitted as a member of the Nigerian Bar Association; and licensed to practice as a legal practitioner leading to his or her admission into the Bench as a judge.

**Your Lordship** and the **AGF** are also reminded that every **Judge** in Nigeria is mandatorily kitted with *three bibles of fundamental legal knowledge* of: (a) *rule of law* and its two cardinal pillars of *audi altarem partem* (listen to or hear the other side) and *nemo judex in causa sua* (refrain from being a judge in your own case); (b) *the 1999 Constitution*; and (c) *the Fundamental Human Rights Chapter in the Constitution and the African Charter on Human & Peoples Rights*. These *three bibles of fundamental legal knowledge* or *three weapons of a Bencher* also defy *mental senility*. The *three weapons of a Bencher* serve as his or her daily *chewing stick or tooth brush*; to be used and applied at all times and in all adjudicative circumstances. A Judge of the Federal or State High Court is also mandatorily under *the judicial oath and the oath of constitutional allegiance*; as contained in *the Seventh Schedule* of the 1999 Constitution.

It is on the basis of the foregoing that we respectfully wish to inform **Your Lordship** and the **AGF** that *unconstitutional court orders and laws are on rampage in Nigeria*. As **Your Lordship** and the **AGF** are aware, it is *an unconstitutional court order* when a Judge issues an order that is brazenly inconsistent with the provisions of the 1999 Constitution; likewise *unconstitutional law*, which is a Federal or State Act or Law, enacted in total disregard and violation of the provisions of the 1999 Constitution. It is therefore our information that Hon Justice Adeniyi Ademola is a serving Judge in Nigeria and Presiding Judge of the Court Six of the Federal High Court, Abuja Division. He had on 10<sup>th</sup> November 2015 issued a brazen and unconstitutional *order exparte*; authorizing the DSS to detain Citizen Nnamdi Kanu for ninety days and above under the guise of *investigating him for terrorism and terrorism financing*. The unconstitutional and phantom order was issued pursuant to an application brought before him by the Federal Government through the DSS in *Suit No FHC/ABJ/CS/873/2015*.

Citizen Nnamdi Kanu; director of the *Radio Biafra London (RBL)* and leader of a self determination pressure group called *Indigenous People of Biafra (IPOB)*, was arrested by DSS in Lagos State, Southwest Nigeria on 14<sup>th</sup> October 2015 and detained for five days in Abuja before being arraigned at the Wuse Zone 2 Senior Magistrate Court on a *three-count charge of Criminal Conspiracy, Managing & Belonging to Unlawful Society and Criminal Intimidation* said to be *contrary to Sections 97, 97b and 397 of the Penal Code (applicable in Northern Nigeria)*. He pleaded not guilty as charged and was granted bail by the Presiding Magistrate, Hon Shaibu Usman on 19<sup>th</sup> October and his bail conditions were met on 22<sup>nd</sup> October 2015, but the DSS refused to release him on bail till date. Citizen Kanu was brought before the Magistrate Court on 18<sup>th</sup> of November 2015 where upon the Magistrate Court was informed by the DSS that it had secured "a Federal High Court Order dated 10<sup>th</sup> November 2015" to detain him for ninety days for purpose of investigating him for *terrorism and terrorism financing*; quoting 27 (1) of the *Terrorism Prevention Act of 2011 as amended*.

The DSS further informed the same Magistrate Court of its intention to withdraw the charges and discontinue with same so as to prefer higher charges against Citizen Kanu at a superior Court after its "investigation". The DSS had earlier flouted three consequential orders issued by the Senior Magistrate Court relating to *release on bail, transfer to prison and production before the Court*. Citizen Nnamdi Kanu has been held behind bars *for sixty days or two months* since 14<sup>th</sup> October 2015. He has not been released on bail till date.

It is very important to remind **Your Lordship** and the **AGF** that involvement in *acts of terrorism and terrorism financing* are punishable with death penalty and life imprisonment according to the *Terrorism Prevention Act of 2011 as amended*; likewise *conspiracy, aiding and abetting* the offense of *terrorism*, which are punishable with life imprisonment. What still surprises us is how the DSS came about its allegation of *terrorism and terrorism financing* against a group and individual(s) expressing *political thoughts* peacefully and non-violently. The same *Terrorism Prevention Act of 2011 as amended* clearly stated that *activities of political parties and expression of political thoughts* do not amount to *acts of terrorism*.

**Acts of Terrorism** are clearly insurrectionist in nature and involve armed rebellion and use of widespread violence against a Government and its population. According to Section 1 of **Terrorism Prevention Act of 2011 as amended**; acts of terrorism include (i) **an attack upon a person's life which may cause serious bodily harm or death**; (ii) **kidnapping of a person**; (iii) **destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss**; and (iv) **the seizure of an aircraft, ship or other means of public or goods transport and diversion or the use of such means of transportation for any of the purposes**.

Also, to be properly accused and investigated of **involvement in acts of terrorism**, Section 2 of the Act clearly stated that for a group to be accused as **a terrorist group** and individual (s) to be accused **as terrorist (s)**, such group (s) and individual (s) must be **presidentially and judicially proscribed**; provided their violent activities are clearly in line with the definition of acts of terrorism in Section 1 of the Terrorism Act of 2011 as amended. In the instant case, nothing of such nature was done till date.

**Unconstitutional Laws & Court Orders On Rampage:** The **order exparte** issued on 10<sup>th</sup> November 2015 by Hon Justice Adeniyi Ademola of the Federal High Court Six, Abuja Division for ninety days and above detention of Citizen Nnamdi Kanu on phantom allegation and investigation of **his involvement in terrorism and terrorism financing** is not only a height of miscarriage of justice and brazen affront to the sanctity of the judiciary, but also threats to rule of law and the fundamental human rights of the detained citizen. It is also a coup against the supremacy of the 1999 Constitution and grave disrespect to the Fundamental Human Rights Chapter of the 1999 Constitution and the African Charter on Human & Peoples Rights.

It is also surprising and shocking that **the order exparte**, which, by convention, has short lifespan and ought to have elapsed by **effusion of time** after seven or fourteen days is still made by Hon Justice Ademola Adeniyi to subsist till date; with high possibility of its renewal ad infinitum. That the Judge could issue or grant such order, which has the capacity to terminate the life of the accused/detainee and have gravely undermined his fundamental human rights particularly his constitutional rights to **fair hearing and personal liberty**; without bordering to **hear the other side or the accused/detainee**, is inexcusably sanction-able. That the same Judge pretentiously ignored the grave inconsistency of Section 27 (1) of the Terrorism Prevention Act of 2011 as amended with Section 35 (4) (a) (b) of the 1999 Constitution in the course of consideration and issuance of his gravely flawed order; makes him **an oppressor and saboteur** of the 1999 Constitution, the Judiciary and the Rule of Law. We ask: **where lies the Judge's sense of judgment and discretionary powers in the instant case?**

**Unconstitutionality of Section 27 (1) of the Terrorism Prevention Act of 2011 as amended:** The grave inconsistency of the said Section and Section 35 (4) (a) (b) of the 1999 Constitution is highlighted as follows: **Section 27 (1) of the Terrorism Prevention Act** contradictorily provides: **"the court may, pursuant to an exparte application, grant an order for the detention of a suspect under this Act for a period not exceeding 90 days subject to renewal for a similar period until the conclusion of the investigation and prosecution of the matter that led to the arrest and detention is dispensed with."**

Section 35 (4) (a) (b) of the 1999 Constitution under **right to personal liberty**; directs as follows: **"any person who is arrested or detained in accordance with sub section 1 (c) (suspicion of having committed a criminal offense carrying capital punishment) of this section shall be brought before a court within a reasonable time, and if he is not tried within a period of: (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any other further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date".**

The **black-and-white** meaning of Section 35 (4) (a) (b) of the 1999 Constitution above is that (a) ***no detained citizen accused of committing capital offense in Nigeria, who has not been released on bail*** or charged to appropriate court; should be detained more than two months without being released unconditionally or released and charged to the appropriate court; and (b) ***if such detained citizen has been released on bail, but was not charged to court within three months; he or she should be released unconditionally (discharged) or be made to face a fair trial and maximally accorded with all judicial rights of fair hearing, access to his or her lawyers for the purpose of adequate legal representation, etc.*** Contradictorily, Section 27 (1) of the Terrorism Act of 2011 as amended, on its part, says that ***a citizen detained over investigation of involvement in acts of terrorism should be detained for ninety days subject to renewal or further detention in perpetuity until the investigation is concluded.*** In other words, such citizen can be detained ***investigatively*** for 90 days, 180 days, and 240 days and above. This is a clear return of Decree No 2 of 1984.

**Call on AGF:** To as a matter of uttermost immediacy and; inexcusably prepare and send an executive bill to the National Assembly for repealing of the unconstitutional Section 27 (1) of the Terrorism Prevention Act of 2011 as amended in 2013; highlighted above, owing to its grave inconsistency with Section 35 (4) (a) (b) of the 1999 Constitution and the African Charter on Human & Peoples Rights. The **AGF** should critically study other provisions of the Terrorism Prevention Act of 2011 as amended and ensure that all of such provisions are brought in tandem or made to be consistent with the 1999 Constitution.

**Call on NJC:** To thoroughly investigate the roles of Hon Justice Ademola Adeniyi of the Federal High Court Six, Abuja Division in the consideration and issuance of the highly controversial and unconstitutional order; on the grounds of its grave inconsistency with the 1999 Constitution and gross failure of the Judge to consider the natural justice dictum of ***audi altarem partem (listen to or hear the other side)*** in consideration and issuance of the order. The Judge's possible ***defense of ignorance*** of these two ***ground premises*** will be inexcusably impeachable. The Judge ought to know the difference between ***ratio decidendi*** and ***orbiter dictum***; and that ***it is not every issue that goes through the court process that comes out in the same shape and content.***

**We demand that Hon Justice Adeniyi Ademola should be appropriately sanctioned at the end; to serve as deterrent to others.**

We, again, call for immediate and unconditional release from unconstitutional captivity of Citizen Nnamdi Kanu. We also call for an end to the return of indiscriminate use of trumped-up criminal charges or accusations by State security agencies under the ***executive midwifery*** of the Buhari's Presidency to arrest and detain citizens in perpetuity and grossly deprive them of their constitutional and fundamental human rights to ***human dignity, personal liberty, freedom of movement, association and peaceful assembly; expression and fair hearing.*** We urge **Your Lordship** and the **AGF** to ensure that the public offices under the constitutional responsibilities of **Your Lordship** and the **AGF** resist at all times every attempt to take the country and its citizens back to the dark era of ***Decrees Nos. 2 and 4 of 1984.***

**Yours Faithfully,**

**For: International Society for Civil Liberties & the Rule of Law**

**Emeka Umeagbalasi, Board Chairman**

**+2348174090052**

[emekaumeagbalasi@yahoo.co.uk](mailto:emekaumeagbalasi@yahoo.co.uk), [info@intersociety-ng.org](mailto:info@intersociety-ng.org)

[www.intersociety-ng.org](http://www.intersociety-ng.org)

**Obianuju Igboeli, Esq., Head, Civil Liberties & Rule of Law Program**

**Chinwe Umeche, Esq., Head, Democracy & Good Governance Program**

**Supported By:**

**Southeast Based Coalition of Human Rights Organizations (SBCHROs):**

- 1. Comrade Aloysius Attah (+2348035090548)  
For: Anambra State Branch of the Civil Liberties Organization (CLO)**
- 2. Comrade Peter Onyegiri (+2347036892777)  
For: Center for Human Rights & Peace Advocacy (CHSPA)**
- 3. Comrade Samuel Njoku (+2348039444628)  
For: Human Rights Club (a project of LRRDC)(HRC)**
- 4. Justus Uche Ijeoma, Esq.(+2348037114869)  
For: Forum for Justice, Equity & Defense of Human Rights (FJEDHR)**
- 5. Comrade Chike Umeh ( +2348064869601)  
For: Society Advocacy Watch Project (SPAW)**
- 6. Obianuju Joy Igboeli, Esq. (+2348034186332)  
For: Anambra Human Rights Forum (AHRF)**
- 7. Comrade Alex Olisa(+2348034090410)  
For: Southeast Good Governance Forum (SGGF)**
- 8. Jerry Chukwuokolo, PhD (+2348035372962)  
For: International Solidarity for Peace & Human Rights Initiative (ITERSOLIDARITY)**
- 9. Evlyn Chinwe Eze, Esq. (+2347019646494)  
For: Street Law Africa (LawAfrica)**
- 10. Tochukwu Ezeoke(+447748612933)  
For: Igbo Ekunie Initiative (a pan Igbo rights campaigner)**

