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1. **Hon Justice Mahmud Mohammed**
Chairman of the National Judicial Council & Chief Justice of Nigeria (CJN)
The NJC/Supreme Court Headquarters
Three-Arms-Zone, FCT, Abuja, Nigeria
2. **Hon Justice Zainab Adamu Bulkachuwa, President of the Court of Appeal (PCA)**
The Court of Appeal Headquarters
First Avenue, Off Shehu Shagari Way, Central Business District
FCT, Abuja, Nigeria

Your Lordships,

Saving Nigerian Judiciary And Democracy From The Hands Of Dictatorial Executive Arm: A Case Against Executive Recklessness & Excesses In Rivers & Akwa Ibom Governorship Judicial Reviews & Extra-Judicial Detention Of Citizen Nnamdi Kanu Of IPOB

(Onitsha, 2nd November 2015)-International Society for Civil Liberties & the Rule of Law is a leading nongovernmental rights organization in Nigeria advocating for the advancement of civil liberties & rule of law, democracy & good governance and public security & safety. *Intersociety* was incorporated in 2008 with Onitsha, Southeast Nigeria as its operational base.

Our writing your Hallowed Judicial Offices is in furtherance of our social and societal responsibility of ensuring protection at all times of the integrity and sanctity of the Nigerian Judiciary as ***the bastion of democracy and last hope of the common person (man)***. We had in 2011 intervened popularly during a major *crisis of integrity* that hit the country's highest judicial echelon. The *crisis of integrity* was scornfully called ***Salami/Alu Gate or Scandal***. Our intervention then came through our letter to then Deputy Chairman of NJC, Hon Justice Dahiru Musdapher, CFR (as he then was), dated 24th February 2011, which was replied via the NJC letter to us, dated 2nd March 2011 and referenced: ***NJC/F2/CA-1/1/139***.

It still gladdens our heart to recall that of all petitions received by the NJC then, ours was chosen and adopted as ***a working petition*** in its investigation into the scandals so called, owing to neutrality and impeccability so attached. The NJC went further to announce publicly at the end of its marathon meeting the adoption of our petition, which was also published, aired and reported in major national print and electronic news media. The ***Alugate*** involved allegations that then Chief Justice of Nigeria (CJN), Hon Justice Aloysius Katsina Alu got compromised over then Sokoto State Governorship judicial review, while then President of the Court of Appeal (PCA), Hon Justice Ayo Isa Salami was also accused of dirty and immoral involvement in Osun and Ekiti State Governorships judicial reviews(***Salamigate***). The Peoples Democratic Party (PDP) and then Action Congress of Nigeria-ACN (now APC) were at the center of the storm with Hon Justice Salami accused of being sympathetic to ACN and Hon Justice Aloysius Katsina Alu accused of being a PDP sympathizer.

Today, the integrity of the Nigerian Judicial is again under a serious threat particularly over the roles of some judges in 2015 elections judicial reviews with specific reference to Rivers and Akwa Ibom States Governorship judicial petitions. There is also a serious threat to the independence of the judiciary occasioned by rapacious and reckless executive meddlesomeness via its coercive agencies in electoral judicial proceedings with clear intent to arrest, corrupt and influence their judgments to favour their paymasters.

For example, Your Lordships, for the first time in the history of democracy in Nigeria, top officials of the Independent National Electoral Commission (INEC) including State Resident Electoral Commissioners (REC) have been arrested, detained, tortured and possibly coerced into recanting their original signatures appended on sensitive election result documents. The said arrest, detention, torture and forced recanting was solely carried out by the country's Department of Security Services or DSS during the proceedings of concerned electoral matters in the electoral tribunals (i.e. Rivers and Akwa Ibom States). Some members of electoral tribunals have also spoken out and disclosed publicly their ordeals in the hands of the DSS in the course of their membership or chairmanship of election petitions tribunals.

Further to the foregoing is a steady manifestation of dictatorial tendencies in the conducts of the executive arm of government since 29th May 2015 when the present federal executive arm was brought to power. The judiciary as ***the bastion of democracy*** is steadily threatened and intimidated. The dictatorial tendencies of the executive are openly exhibited using the same DSS. We are forced by these unfolding circumstances to believe that the present federal executive has jettisoned the rule of law and the 1999 Constitution and dusted up the moribund and obnoxious Decrees 2 and 4 of 1984.

Our conclusion was arrived at considering the fact that none of the 320 sections of the 1999 Constitution empowers the President or any head of his coercive establishments particularly the DSS to detain citizens *extra judicially* or after being granted judicial bails upon fulfillment of judicially imposed bail conditions. The last time citizens including media practitioners and rights activists were detained for weeks or months or years without judicial trials or bails, upon the orders of the Military Head of State was during the inglorious military era of Major Gen Muhammadu Buhari (as he then was) using infamous Decrees of 2 and 4 of 1984.

As Your Lordships are aware, the statutory duties and powers of the DSS are unambiguously spelt out in Section 2 (3)(a)(b)(c) of the National Security Agencies Act Cap 74, Laws of the Federation 2004, to include: ***prevention and detection within Nigeria of any crime against internal security of Nigeria, the protection and preservation of all non-military classified matters concerning the internal security of Nigeria; and such other responsibilities affecting the internal security within Nigeria as the National Assembly or the President, as case may be, may deem necessary.*** As Your Lordships are further aware, both the spirit and letters of the National Security Agencies Act of 2004 are subject to the provisions of the 1999 Constitution and principles of the rule of law.

Further, Your Lordships, the DSS (SSS), statutorily, is directly responsible to the President or is directly controlled by the President through his National Coordinator on Security (NSA). This is according to Section 3 (2) (a) of the National Security Agencies Act Cap 74 of 2004.

Consequently, Your Lordships, the DSS acted ultra vires and unconstitutional by interfering or meddling into judicial affairs under complaint (harassment and threatening of electoral tribunal judges and arrest, harassment, detention and torture of senior INEC officials including Resident Electoral Commissioners). As Your Lordships are aware, issues of election petitions cases and their handling are purely judicial affair involving the plaintiffs, respondents and INEC officials who are constitutionally and statutorily protected from coercive harassment and threats of any kind by security agencies including the DSS. The DSS has no moral and legal justifications to involve in such matters even if invited by a desperate ruling or opposition party. It is morally, legally and constitutionally abominable!

Facts:

Recall Your Lordships that the Akwa Ibom and Rivers States' Governorship Petitions Tribunals had on 22nd and 24th October 2015 respectively, annulled the two governorship election petitions under circumstances considered by many as controversial and federal executive influenced. While the entire Governorship election of Rivers State was annulled, that of Akwa Ibom State affected 18, out of the State's 31 Local Government Areas. Events leading to the two nullifications were far from being devoid of controversy and executive brigandage. The basis upon which the nullifications was premised has also raised serious controversies with formidable and independent legal pundits pointing out gross incoherence or inconsistencies of the two verdicts with the relevant provisions of the Electoral Act of 2010 and most recent decided cases such as legality of the electoral card readers and their basis for nullification of election by an electoral tribunal.

Be that as it may, there are enough safeguards yet to be exploited to factually, validly and finally lay the two matters to final judicial rest. In respect of Governorship election petitions decided at the election tribunals, they are appealable at the Court of Appeal in accordance with Section 246 (1)(c) of the 1999 Constitution and in regard to those decided at the appellate courts, they are further appealable at the Supreme Court in accordance with Section 233 (2) (e) of the same Constitution. It is hoped that these two safeguards will correct real or perceived anomalies inherent in the lower court judgments provided rapacious federal executive interferences are effectively checkmated by Your Lordships' hallowed offices.

Hon Justice Muazu Pindigi's Ordeal In The Hands Of DSS: Hon Justice Muazu Pindigi was the second sacked Chairman of the Rivers State Governorship Tribunal. He was widely quoted in the media recently to have said the following statement, which has not been denied or recanted by him or by the DSS till date. *"Two weeks before I was removed as chairman of the Tribunal, I got a call from an unknown number, asking for an appointment for us to meet in Kaduna.*

And I asked, what for? And the caller said, it's on a need to know basis that the details of the meeting would be made known to me in Kaduna. And I declined. The next was a call from the DSS, saying they were all expecting me at meeting in Kaduna and demanded why I turned down the appointment". "And I said, I'm a chairman of a Tribunal, and do not have the luxury to attend meetings especially one without an agenda. And the caller from DSS said there was a petition of fraud against me, in a case I handled in Kaduna in 2009. And I asked him to charge me accordingly, in line with the extant laws. I was called again by another caller; who apologized to me, on behalf of the DSS and offered to compensate me for the harassment I received from the DSS, and rescheduled another meeting, in Kaduna. And I declined again. And the next was a letter removing me as the Chairman of the Rivers State governorship petitions tribunal, and replacing me with Justice Ambrosa".

"As is the practice, I offered to brief Justice Ambrosa, on the proceedings so far, but he said that won't be necessary that he has been following the case. Now, on the judgment delivered by Justice Ambrosa; it will be unethical and unprofessional to denigrate, or condemn the judgment of a contemporary colleague. However, the Supreme Court has said, that for an election to be annulled, the petitioner has to prove that elections didn't hold at the polling units, where the winner was returned elected. And I'm not sure that the Ambrosa's judgment arrived through that route."(See <http://www.elombah.com/index.php/special-reports/breaking-news/1976-i-was-offered-bribe-threatened-removed-as-chairman-of-rivers-tribunal-justice-pindigi>).

Arrest & Detention Of INEC RECs & Ors By DSS: Mr. Austin Okojie, Resident Electoral Commissioner (REC) for Akwa Ibom State and his Head of Legal Department, Mr. Uche Okorie were arrested by the DSS on July 16, 2015, detained and tortured (according to the REC) for 13 days (till 29th July) at the peak of performance of their statutory functions at the State Governorship Election Petition. They were conditionally released amidst further threats and intimidation and directed to report daily at the DSS office (See <http://www.thebreakingtimes.com/akwa-ibom-inec-rec-tortured-for-13-days-in-dss-custody/>)

On July 22, 2015, the Rivers State Resident Electoral Commissioner, Mrs. Gesila Khan and other top officers of the Commission in the State honoured an oral invitation given to them on July 21st by the DSS from Abuja and they were clamped into detention till about 10pm of July 23, 2015, when they were conditionally released and instructed to report daily at the DSS office. The DSS later said during its DG's appearance before the Senate Committee on Ethics & Public Petitions that ***it acted based on APC petitions complaining of denial of access to electoral materials used in the two polls and attempts to destroy same.*** Till date, no ***prosecutorial charges*** known to the 1999 Constitution and its subsidiary laws have been preferred against them in a lawful court.

Extra-Judicial Detention Of Citizen Nnamdi Kanu Of IPOB: Citizen Nnamdi Kanu lives in UK. He is also a dual citizen of Nigeria and United Kingdom and director of the *Indigenous People of Biafra* –a self determination movement *as* well as director of *Radio Biafra*. Arrested on October 17, 2015 and charged at the Abuja Municipal Magistrate Court in Wuse, Zone 2, on 19th October 2015 with criminal allegations of *Criminal Conspiracy, Managing & Belonging to Unlawful Society and Criminal Intimidation contrary to Sections 97, 97b and 397 of the Penal Code (applicable in Northern Nigeria)*.

He was granted bail same date with a civil servant of Grade Level 16 with a landed property within Abuja metropolis and a sum of N10 million as bail sureties. The bail conditions were fully met on October 22nd, but the DSS refused to release him even till date. No reasons have been given for refusal to release him from DSS custody. Three more orders (production order, transfer order and release order) have been made by the Abuja Municipal Magistrate Court between 23rd and 28th October 2015 and duly served on the DSS, yet they were flouted with reckless abandon. There are also no traces of another court order under which Citizen Kanu has remained detained by the DSS and as we write, he has been extra-judicially detained by the DSS for eleven days since 22nd October 2015 when he fulfilled all his bail conditions. No formal statements or clarifications have also been made by the DSS over the issue till date.

Open Questions To President Of The Court Of Appeal (PCA): The questions to the PCA (Hon Justice Zainab Adamu Bulkachuwa) below are in her constitutional capacity as the *appointing authority* of the chairmen and members of the Elections Petitions Tribunals (Governorship, National and State Assemblies) in Nigeria in accordance with Paragraph 1 (3) of the Sixth Schedule to the 1999 Constitution, pursuant to Section 285 of the same Constitution.

The questions are: **Were there partiality, favoritism and nepotism involving President Muhammadu Buhari's wife (Aisha) and Governor Rochas Okorocha in the appointments of Justice Mrs. Anwukah (of Imo State Customary Court of Appeal) and Justice Suleiman Ambrosa of the Kaduna State High Court, as heads of the Rivers State Governorship/Assembly Election Petitions Tribunals? Is it true that Justice Mrs. Anwukah was Gov Okorocha's nominee for Election Petitions Tribunals for 2015? If it is true, is it part of *judiciary independence and protection of its integrity* for a State Governor to nominate a judge to seat in post electoral judicial reviews in which he or his party is an interested party? Is it true that Justice Mrs. Anwukah is Governor Okorocha's Mother-in-law to his daughter (Uju)? Is it true that she sat in the Lagos State Governorship Tribunal from where she was ferried to Rivers State Governorship/Assembly Tribunal to continue "her good job" leading to her recent incredible nullification of 20 State Assembly seats? Is it true that the same Justice Mrs. Anwukah's husband (Prof Anwukah) was recently nominated and cleared as a minister of the Federal Republic of Nigeria? Is it also true that Justice Suleiman Ambrosa that chaired and controversially annulled the Rivers State Governorship poll is the husband of the younger sister of the wife (Aisha) of President Muhammadu Buhari?**

Your Lordships, we are compelled to say that ominous signs are steadily hanging around the neck of the country's constitutional and pluralistic democracy. There are sustained attempts from the federal executive arm to destroy the country's judiciary so as to pave way for democratic dictatorship. To the point that the executive arm now recklessly uses its coercive institutions particularly the DSS to lampoon and threaten the independence of the judiciary is not only a height of executive dictatorial disposition but also brazen commencement of a journey to dictatorial democratic wilderness. That citizens can be held in perpetuity under circumstances unknown to the 1999 Constitution and the principles of the rule of law is a further attestation to impending dictatorship and State terrorism.

Our writing Your Lordships is not only on account of Your Lordships' responsibilities as they concern electoral superior court matters superintendence, but most importantly as the **general overseers** of the Nigerian Judiciary, which is the **bastion of democracy and last hope of common person (man)**. Your Lordships must ensure at all moral and legal costs and times that the Judiciary, particularly its independence and integrity are not further denigrated and rubbished by the executive arm. The statement credited to Hon Justice Muazu Pindigi over his ordeal in the hands of the DSS is too weighty to be ignored or swept under the carpet. It should be looked into unreservedly. The lives, liberties and reputations of the judges particularly those who refused to be bought over or soiled, must be protected by Your Lordships at all times. At the same time, **the long throated judicial officers** who have chosen to soil the image of the Judiciary by conniving with conscienceless mortals in political kaftans must be identified, exposed, condemned, shamed and punished.

We also pray Your Lordships to carefully watch over the appellate and apex proceedings of 2015 elections petitions particularly those of the Rivers and Akwa Ibom State Governorship Petitions and ensure that they are handled impartially and credibly. We also demand from and call upon Your Lordships to cause a firm and stern **inter-arms** protest letter to be openly or administratively addressed to the head of the federal executive arm, President Muhammadu Buhari, advising him to call his coercive establishments particularly the DSS to order and desist from meddling into the independence and affairs of the Judiciary particularly as they affect the judicial handling of election petitions in Nigeria or any part thereof.

The letter should also contain a call on the executive arm to desist from involving in conducts capable of plunging the country and its democracy into anarchy. The executive arm must be told in unmistakable terms to obey the order of the Abuja Municipal Magistrate Court, in Wuse Zone 2, by releasing Citizen Nnamdi Kanu immediately and desist from further detaining citizens under conditions and circumstances clearly incoherent and inconsistent with the 1999 Constitution and principles of the rule of law.

Yours Faithfully,

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

Emeka Umeagbalasi, Board Chairman

+2348174090052 (office)

info@intersociety-ng.org, emekaumeagbalasi@yahoo.co.uk

www.intersociety-ng.org

Uzochukwu Oguejiofor-Nwonu, Esq., Head, Campaign & Publicity Department

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

CC:

- 1. Retired Major Gen Muhammadu Buhari
President & Commander-in-Chief, Federal Republic of Nigeria**
- 2. Senator Bukola Saraki, Senate President, Federal Republic of Nigeria**
- 3. Hon Yakubu Dogara, Speaker, House of Reps, Federal Republic of Nigeria**
- 4. Retired Major Gen Babagana Monguno, National Security Adviser to the President**
- 5. Chairman, Independent National Electoral Commission (INEC), Federal Republic of Nigeria**