

WHAT THIS APPEAL IS ALL ABOUT

3. This is an appeal to enable you correct a long-standing travesty: the continued detention by the Nigerian Government, of **Mr. Nnamdi Kanu, the leader of Indigenous People of Biafra (IPOB)** under cruel, inhuman and degrading conditions. Mr. Kanu is currently being tried at the Federal High Court for sundry offences, in the course of which he was granted bail. He dutifully observed the terms and conditions of the bail until he was brutally attacked by men of the Nigerian Army on **Sunday 10th and Thursday 14th, September, 2017**. As a direct consequence of that unprovoked assault, 28 innocent Nigerians were brutally mauled down. Kanu barely managed to escape out of Nigeria by the whiskers through the skin of his teeth. It was apparently a state-sponsored assassination attempt on his life. As if that was not bad enough sir, Kanu's subsequent sojourn in exile to seek refuge in London, from where he travelled to Kenya, was brutally aborted, on **26th June, 2021**, when he was savagely abducted, blind-folded, tortured, kept in solitary confinement for 8 days in a secret location, and forcibly renditioned back to Nigeria. This was carried out arbitrarily without due process and without recourse to the judicial systems of Kenya, the UK and Nigeria. Indeed, in Kenya, Kanu had simply been tortured and made to disappear, and kept out of circulation and public view in a secret facility for eight (8) good days, by the Kenya authorities and at the behest of Nigerian authorities. It was an illegal collaboration between the Kenyan and Nigerian secret agents.

THE PURPOSE OF THIS HUMBLE PETITION

4. The purpose of this humble petition is to invite your Excellency to calmly consider the following grounds on why the continued detention of Kanu violates all known laws and norms of both international and domestic laws - including Nigeria's obligations under binding international treaties. Your Excellency, of particular concern is the **July 20, 2022** Ruling of the United Nations (UN) Working group on Arbitrary Detention which was adopted on **4th April, 2022**, at its **93rd session** held on **March 30 - April 8, 2022**. The report was issued after the Nigerian Government had filed her



reply to the UN body's communication on 25th January, 2022. Kenya did not reply. The **16-page report** indicted both the Nigerian and Kenyan governments for Kanu's arrest and extraordinary rendition, torture and continued detention. The UN Council therefore urged the Nigerian government to **ensure "immediate release (of) Kanu unconditionally. It is also ordered that he be paid adequate compensation for the arbitrary violation of his fundamental human rights"**. The point must be emphasized sir, that Kanu had travelled to Kenya using a British Passport. He has thus presented himself to the Kenyan authorities as a British citizen, and not as a Nigerian citizen, or one with **dual citizenship** of Nigeria and the UK. Consequently, Kanu could only have been expelled to the UK (and not to Nigeria, as happened), if the need had arisen, and in a situation where due extradition process had been properly followed. Your Excellency, the **State Security Service (SSS)** that conspired to forcefully rendition Kanu back to Nigeria after he was tortured, blind-folded and subjected to cruel, inhuman and degrading treatment, is the same investigator, detaining authority and the prosecutor. The SSS had therefore become a judge in its own case; Lord and master unto itself. The UN Council found that Kanu's continued detention is inconsistent with relevant provisions of the **International Covenant on Civil and Political Rights**, which Nigeria has duly ratified as a signatory; as well as of those of the **Universal Declaration of Human Rights, 1948**. This is one reason your Excellency must release Nnamdi Kanu immediately.

5. Your Excellency, we earnestly believe that a dispassionate consideration of the Report of the UN body (which we shall hereafter quote copiously from), will bear eloquent testimony to a **litany of grave errors** which Kanu's abduction, and his continued detention and shabby treatment since then by officers and men of the Nigerian SSS, constitute. All these cumulatively constitute, not only gross violation of our client's fundamental rights under international and Nigerian laws, but, even more worrisome, cast an altogether avoidable pall on Nigeria's image in the international community. **To refuse releasing Kanu unconditionally and immediately is to court international displeasure and multi-**



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faceted backlash. It will hurt Nigeria badly as it will also insinuate that your Excellency does not subscribe to the Rule of law and respect for citizens' fundamental rights, and your postulations of the just ended United Nations General Assembly (UNGA) which took place between 20th and 23rd September, 2022. Your Excellency must avoid these unhealthy reactions **by ensuring that Kanu is RELEASED IMMEDIATELY AND UNCONDITIONALLY NOW.** The moral burden of insisting on keeping Kanu in detention is too expensive and too offensive to embrace, especially with his fragile and deteriorating health condition which his custodians (the SSS) have not been able to manage properly. Do not let Kanu die in detention sir.

HOW THE UN WORKING GROUP REPORT ORDERED YOUR GOVERNMENT TO RELEASE KANU IMMEDIATELY AND UNCONDITIONALLY

6. Your Excellency, the directive issued by a powerful agency of the United Nations – its Working Group on Arbitrary Detention – for the immediate and unconditional release by your government of Nnamdi Kanu, and payment to him of damages is a sure sign that the world has finally woken up and taken due cognizance of your government's flagrant violation of Kanu's rights, which has been condemned globally; that is, his extraordinary rendition from Kenya to Nigeria about **16 months ago** is a great travesty which ought not to stand at all. Your Excellency, that directive by the UN body (technically called an 'opinion') was issued on **20th July 2022**, and was transmitted to your government and that of Kenya – two days later, on **22nd July, 2022.**

DETAILS OF THE REPORT OF THE UN WORKING GROUP

7. Your Excellency, to provide a composite picture of the said decision of the Working Group, it is important to refer to its Report in some detail. Kindly therefore indulge me in this regard.

KANU AS A VICTIM OF STATE PERSECUTION

8. The report starts by asserting that Kanu was a victim of State persecution, as Nigeria failed to provide convincing explanations with proof that he was guilty of treason and other criminal allegations leveled against him. In the words of the Group's Report:

"Noting the failure of the government to explain what actions of 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 Kanu is in fact being persecuted for the peaceful exercise of his rights, most notably his freedom of opinion and expression . . . 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 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 Kanu. In these circumstances, the Working Group concludes that Mr. Kanu's detention is thus arbitrary".

INTERNATIONAL LAWS WERE BREACHED IN ARRESTING KANU

9. The Working Group also held that there was no evidence that international laws were observed in the arrest and rendition of Kanu from Kenya. According to its Report:

"In the present case, 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

International Covenant on Civil and Political Rights, and Principles 2, 4, and 10 of the Body of Principles and constitutes arbitrary detention under Category I (of the Covenant)".

10. Turning to the uncontested allegations that following his rendition to Nigeria, 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. Put differently, liberty is recognised under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.

"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. Such determination was not carried out in the present case, in violation of Mr. Kanu's rights under article 9 (3) of the Covenant. Further, in accordance with Article 9 (3) of the Covenant, an arrested person is to be brought before a judge within 48 hours. 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".

11. The group held that, "(a)ny form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary, which was also denied to Kanu, thus, violating his right under Article 9 (4) of the Covenant".
12. 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



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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. 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."

NIGERIA DID NOT ADDRESS SUBSTANCE OF ALLEGATIONS

13. The Working Group berated Nigeria for arresting and detaining Kanu in Kenya due to the peaceful exercise of his rights and notes that the Government of Nigeria chose not to address the substance of these allegations.

TREASONABLE FELONY NOT PROVED

14. The Working Group made startling findings of fact against the Nigerian State and held:

"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 broadcast 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. Kanu was in fact advocating for a peaceful referendum for the establishment of a Biafran sovereignty, in conformity with international and other relevant laws".



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KANU'S FREEDOM OF EXPRESSION AND OPINION WERE BREACHED

15. 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. 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. All these, it held, were wantonly breached in Kanu's case.

NO EFFECTIVE LEGAL REPRESENTATION AND ADEQUATE FACILITIES FOR KANU'S DEFENCE

16. Says the UN Working Group:

"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".

17. The UN group notes that the Nigerian government could not disprove claims by Kanu that he has been denied effective legal representation, a core ingredient of a fair trial. The Group expatiated:

"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. Mr. President Sir, these rights have been denied Kanu in a most brazen manner. The undersigned as the lead counsel and others have been severally either out rightly denied access, or refused private interaction with Kanu, using files and documents".

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, 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".

ILL TREATMENT OF KANU'S LAWYERS

18. Hear the UN Working Group on the ill-treatment of Kanu's lawyers, including my humble self:
"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".

"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, 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. The Working Group finds a breach of Article 14(2) of the Covenant”.

“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’s 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.”

“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 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



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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".

KANU - A VICTIM OF POLITICAL PERSECUTION

19. The UN Working Group said Nigeria also failed to disprove that Kanu was a victim of political persecution: "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."

20. The UN Working Group continues:

"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".

CONCLUDING REMARKS BY THE UN WORKING GROUP

21. In its concluding remarks, the UN Working Group opines thus:



"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 29th 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".

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



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outside world under rules 43 (3) and 58 (1) of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles”.

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

COLLUSION BETWEEN THE GOVERNMENT OF NIGERIA AND KENYA

23. The Working Group held that it “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. The present Opinion concerns solely the treatment and rights of Mr. Kanu and his disposition”.

KANU’S DEPRIVATION OF LIBERTY ARBITRARY

24. Says the Working Group: “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”.

KENYA AND NIGERIAN GOVERNMENTS MUST MAKE RESTITUTION

25. The UN Working Group emphasised the need for restitution for Kanu, thus: “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.”

UN WORKING GROUP ORDERS REMEDIES FOR KANU

26. The UN Working Group emphasised the need for restitution for Kanu’s case thus:

“The Immediate and unconditional Release Kanu 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.

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.”

REFERENCE TO SPECIAL RAPPORTEUR

27. Hear the UN Working Group:

“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... The Working Group requests the Governments



to disseminate the present opinion through all available means and as widely as possible."

RECOMMENDED FOLLOW-UP PROCEDURE:

28. The UN Working Group recommended follow-up procedure as follows:

"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.

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.

The Working Group requests the source and the Government to provide the abovementioned 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.

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."

**THE CURIOUS AND UNACCEPTABLE POSITION LATER TAKEN
BY AGF ABUBAKAR MALAMI, SAN**

29. Your Excellency, in the Forward to a book titled "Cases and Materials on Extradition in Nigeria" published in 2006, Nigeria's Attorney-General, Abubakar Malami, SAN, had admitted that "unlawful or irregular forms of returning persons wanted for trial or punishment include abduction and the so-called extraordinary rendition". He added that "Extraordinary rendition is a government-sponsored arrest, kidnap and abduction of persons wanted, accused or convicted of a criminal offence either to the state who sponsored the arrest, kidnap or abduction or to a willing 3rd party state. Extraordinary rendition denies a person of the right to challenge his transfer to the requesting or receiving state. It involves the violation of the principles of international law especially where the persons transferred are subjected to torture or shame criminal charges or trials". Citing 'the Dikko Affair' of 1984, as an example of an attempt at unlawful rendition, he recalled that it involved the abduction of Dr. Umaru Dikko, a former Minister in the recently deposed civilian government in



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Nigeria, wanted by the military government headed by your Excellency for alleged corrupt practices. Your Excellency will vividly recall that the attempt was foiled by British security agents and Mr. Dikko's abductors were subsequently tried and jailed in the UK. According to Malami, the failed abduction "was an attempt by Nigeria to go against the international norms in expressing its political will".

30. Your Excellency, given this publicly expressed opinion, the question that is begging for an answer is: What has made your Attorney-General suddenly change his mind on extraordinary rendition? Why does he now endorse that practice in relation to Nnamdi Kanu? Is it not more honourable for him to defend his previous position? Is it not now unethical to abandon it and make a sudden volte face solely for some political expediency? Is it not a gross case of abdicating his responsibility to 'uphold the rule of law' as enjoined in Rule 1 of the Legal Practitioners Rules of Professional Conduct, 2007, which he had also futilely tried to amend before it was struck down by a recent judgment of a Federal High Court?
31. We believe that his legal advice – flawed as it is – appears to be the needed fuel which your Excellency's Government required to continue to defy its obligations under international law vide binding treaties which have been duly ratified under Nigerian law, by firmly holding onto Kanu. This is unnecessary.
32. Your Excellency, there is absolutely no room for the kind of impunity, illegality and contumacy which your government, with the greatest respect, has so far exhibited in relation to the decision of the UN Working Group's advice to release Nnamdi Kanu immediately and unconditionally. Your Excellency, it is simply a grave travesty and miscarriage of justice which must be abhorred by all men and women of goodwill and conscience; and who believe in the Rule of Law, constitutional order and respect for citizens' fundamental rights.

SOME LEGITIMATE QUESTIONS ON THE EFFECT OF THE UN WORKING GROUP'S REPORT AND ITS STATUS

33. The UN Working Group's Report under discourse, we concede, may prompt some legitimate questions about the status of the UN's said Working Group and the effect of its rulings. These questions are: Are its reports binding on Member-Nations of the world body, such as Nigeria? What are the consequences, if any, of disobeying or failing to comply with its directives? The answers to these and related posers shall form the basis of the following discourse regarding the legitimacy and legality or otherwise of your Government's continued detention of Kanu, in obvious defiance of world opinion as expressed through the said directives of the UN body.

STATUS OF THE UN WORKING GROUP ON ARBITRARY DETENTION

34. Your Excellency, according to the Office of the United Nations' High Commissioner for Human Rights, the Working Group on Arbitrary Detention is an organ of that Office of the United Nations, which itself - as its name implies - is an agency of the United Nations, an international organization of virtually every country in the world. It is based in New York, the United States of America, and was formed in the aftermath of the horrific Second World War that raged between **1st September, 1939** and **2nd September, 1945**, leading to a world in ruins and the gruesome destruction of the twin cities of Hiroshima and Nagasaki. Nigeria became a member of the United Nations at independence in 1960. The world body itself formally came into being courtesy of a Charter signed by 50 countries that met in San Francisco, on **24th October, 1945**.

THE UN CHARTER

35. The UN Charter is one of the basis of the Working Group on Arbitrary Detention ("WGAD"), along with a number of UN Convention's and treaties, which we shall treat in greater detail shortly. For now, it suffices to state that, as a source of the jurisprudence of the WGAD, the Preamble to the UN Charter provides inter alia, that:



"We, the peoples of the United Nation are determined:-

- (i) To reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, ally large and small, and**
- (ii) To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained".**

36. The Working Group was established in 1991 by the United Nations Commission on Human Rights, joining the existing procedures set up by the Commission to guarantee protection of the right to life and physical integrity, religious tolerance and other rights. The Fact Sheet further states that:

"The Working Group has the mandate to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights, or the international legal instruments accepted by the States concerned. The Working Group investigates alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify or bring their attention to these cases. The Working Group also considers individual complaints under its regular communications procedure, leading to the adoption of opinions as to the arbitrariness of the detention. The Working Group is composed of five independent experts of balanced geographical representation. Together, they investigate individual cases and produce reports and opinions in order to fulfill the mandate".



**YOUR GOVERNMENT'S SERIAL VIOLATION OF THE
PROVISIONS OF UDHR AND ICCP**

37. Your Excellency, with particular reference to Nnamdi Kanu's extraordinary rendition by your government, there is no doubt that the act violates **Article 9 of both the Universal Declaration of Human Rights of the United Nations (UDHR) as well the International Covenant on Civil and Political Rights (ICCPR)**, both of which the UN WGAD is empowered to apply. They provide as follows, respectively:

UDHR - "No one shall be subjected to arbitrary arrest, detention or exile"; and

ICCPR - "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

38. Your Excellency, according to the International Justice Resource Centre:

"As a UN Member State, Nigeria is subject to the oversight of various UN human rights bodies, including the Human Rights Council and its thematic procedures, one of which is the Working Group on Arbitrary Detention ("WGAD"). As a party to specific universal human rights treaties Nigeria's policies and practices are monitored by UN treaty bodies. One such body is the Human Rights Committee (which) oversees implementation of the International Covenant on Civil and Political Rights. (The WGAD) may receive individual communications relating to States parties to the First Optional Protocol in the ICCPR".

39. Crucially, for our purpose, your Excellency, Nigeria acceded to the International Covenant on Civil and Political Rights, the ICCPR, on the 29th of July, 1993. Even though the country's status vis-à-vis



the First Optional Protocol of the Covenant is unclear, the question to be asked is what "accession" to the ICCPR means in the context of the extraordinary rendition of Nnamdi Kanu. Is it synonymous with ratification as recognized under the law of treaties? This is our next focus, your Excellency.

EFFECT OF RATIFICATION OF INTERNATIONAL TREATIES UNDER NIGERIAN LAW

40. By virtue of Section 12(1) of the 1999 Constitution, "No treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly". This provision has been interpreted to mean 'ratification' of the particular treaty concerned in any given case. In this regard, in **ABACHA VS. FAWEHINMI (2000) 1PELR-14(SC)**, the Supreme Court held that "an international treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly".
41. Your Excellency, the value of this precedent is, however, limited in the case of Nnamdi Kanu's extraordinary rendition, because what is in issue is not so much the enforceability by Nigerian courts of the International Covenant on Civil and Political Rights, as the bindingness of the ruling of the UN's WGAD that his torture and extraordinary rendition from Kenya to Nigeria violate Nigeria's obligations under the said Covenant which it has acceded to (which has the same effect as ratification). It is therefore, clear, your Excellency, that the failure of your government to adhere to **Article 9** thereof in relation to Nnamdi Kanu is egregious and condemnable as an abdication of her obligations under international laws.
42. This was frowned upon by the Supreme Court in **ABACHA VS. FAWEHINMI (supra)**, when it held - in relation to the African Charter (an international treaty which Nigeria had ratified) - that the legislature does not intend to breach an international obligation. I humbly submit that this also applies to the Executive, i.e., your government. In other words, in relation to Nnamdi Kanu's



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extraordinary rendition from Kenya to Nigeria, it must be presumed that your Excellency's government does not intend to violate its obligations not to subject him to arbitrary arrest and detention under the **Article 9 of the ICCPR**. However, to the extent that that is the reality, your Excellency, it is clear that the breach of this provision has already occurred.

43. From our discussion above, your Excellency, there is no question that the UN's WGAD is legally competent to make that judgment. This is all the more so, your Excellency, because the said directive is supported by the following judicial and statutory authorities:

JUDICIAL AND STATUTORY AUTHORITIES

THE DOCTRINE OF SPECIALTY

44. The 'Doctrine of Specialty' which pertains to extraditions, states that an extradited fugitive (whether renditioned or otherwise), is subjected to prosecution **ONLY** for those offences for which he or she was surrendered, extradited or renditioned. Nigeria recognizes this doctrine under **section 15 of the Extradition Act, CAP E25, LFN, 2004**, which provides thus:

"Where, in accordance with the law of any county within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another Country (whether within the Commonwealth or not), any person accused of or unlawfully at large after conviction of an offence committed within the jurisdiction of Nigeria is surrendered to Nigeria by the country in question, then, so long as he has not had a reasonable opportunity to returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than-



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(a) The offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender was granted; or

(b) Any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered:

Provided that a person falling within this section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him”.

45. We humbly submit that the foregoing provisions were brazenly violated in the case of Kanu. As at the 19th of June, 2021, when he was arrested, tortured, blind-folded and forcibly abducted in Kenya, and extraordinarily renditioned to Nigeria, he was already on trial in Nigeria on a 5-count Charge, none of which included Terrorism. Your Excellency, these counts were later increased to 15 (fifteen) counts, before eight were struck out by the Federal High Court, Abuja, leaving seven counts still extant. This decision of the Federal High Court to retain 7 counts has already been challenged by my humble self and my team of lawyers before the Court of Appeal, Abuja. Your releasing Kanu immediately and unconditionally will halt these long-drawn hurtful proceedings which the State has gloatfully utilized to keep Kanu perpetually incarcerated in an SSS dungeon, under cruel, solitary, inhuman and degrading conditions.

SOME JUDICIAL INTERVENTIONS

46. The thorny question of implementation of the Views adopted by the UN Human Rights Committee (HRC) under the Optional Protocol (OP) to the International Covenant on Civil and Political Rights (ICCPR) was again thrust into the limelight by the French government's comments on a report published in 2015 by the Council of Europe Commissioner for Human Rights. The comments made clear that France was not about to give effect to three Views issued by the UN Human Rights Committee in 2011

and 2013 finding violations of the Sikh authors' freedom of religion for being legally obliged to denounce wearing a turban on their identity or residence permit photographs, or in order to attend an upper high school (*lycée*). This is apparently the erroneous step being taken by your government, sir.

47. However, the first major argument put forward by the French government was that these questions were settled in 2006 by the French Supreme Administrative Court (*Conseil d'Etat*) in *Association United Sikhs*, where this kind of restrictions were found lawful.
48. The second major argument presented by France was that in 2005 and 2008, the European Court of Human Rights (ECtHR) had also considered the above restrictive measures as being compatible with the European Convention on Human Rights (ECHR).
49. In its **General Comment No 33 (2008)**, however, the UN Human Rights Committee noted that even though it is not a judicial body, its Views "exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members". It added that the Views are "an authoritative determination by a quasi-judicial organ established by ICCPR tasked with the interpretation of this treaty".
50. As a consequence, every state party to ICCPR and its OP is bound by their provisions and the findings of the HRC, in accordance with the fundamental principle of *pacta sunt servanda*. Article 26 of the Vienna Convention on the Law of Treaties (VCLT) exemplifies this principle as follows: "Every treaty in force is binding upon the parties to it and must be performed in good faith".
51. A vital, concomitant rule of customary international law is that no state party to a treaty may invoke the provisions of its internal law as justification for its failure to perform a treaty (Article 27 VCLT). Under Article 27 VCLT domestic courts are actually bound to give effect to a ratified treaty. This is even more so where the



Constitution of that state, like France (Article 55), provides that ratified treaties prevail over domestic statutes. In view of the above, France's first argument was found not to be watertight.

52. See Nikolaos Sitaropoulos, "States are bound to consider the UN Human Rights Committees views in good faith", <https://ohrh.law.ox.ac.uk>.

53. Our next poser is:

WHETHER BY THE OPERATION OF SECTION 15 OF THE EXTRADITION ACT, CAP E25, LAWS OF THE FEDERATION OF NIGERIA 2004, NNAMDI KANU CAN BE COMPETENTLY OR LEGALLY DETAINED AND/OR TRIED FOR OFFENCES STATED IN THE REMAINING 7-COUNT AMENDED CHARGE, WHICH ARE NOT THE OFFENCES FOR WHICH HE WAS SURRENDERED OR EXTRAORDINARILY RENDITIONED FROM KENYA TO NIGERIA.

54. Put differently, your Excellency, one of the questions is:

WHETHER THE MANNER IN WHICH KANU WAS FORCIBLY ABDUCTED AND EXTRAORDINARILY RENDITIONED TO NIGERIA IS CONSISTENT WITH EXTANT LAWS, PARTICULARLY, THE PROVISIONS OF ARTICLE 12(4) OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS (RATIFICATION AND ENFORCEMENT) ACT, CAP A9, LAWS OF THE FEDERATION OF NIGERIA, 2004, AND ARTICLE/PART 5 (A) OF THE AFRICAN CHARTER'S PRINCIPLES AND GUIDELINES ON HUMAN AND PEOPLES' RIGHTS WHILE COUNTERING TERRORISM IN AFRICA; AND ARTICLE 13 OF UDHR, 1948.

55. Article 12(4) of African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, CAP A9, Laws of the Federation of Nigeria, 2004, provides as follows:

"A non-national legally admitted in territory of a State Party to the present Charter, may only be expelled from



it by virtue of a decision taken in accordance with the law".

56. ARTICLE 13(2) OF THE UDHR, 1948, provides:

"You have the right to leave or move within your own country and you should be able to return.

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country".

57. Nnamdi Kanu, a non-national of Kenya, was legally admitted to Kenya, as a British citizen. He was subsequently arrested, blind-folded, tortured and forcibly expelled from Kenya to Nigeria by your government without being subjected to any extradition proceedings and without any decision taken in accordance with extant laws. Yet, Kenya is a State party to the UDHR Charter of 1948.

58. The said procedure for extradition under Kenyan law is contained in the Extradition (Commonwealth Countries) Act, Laws of Kenya, CAP 77, Article 6 thereof provides as follows:

"(1) A fugitive shall not be surrendered, or committed to or kept in custody for the purposes of surrender, if it appears to the Court of committal, or to the High Court on an application for habeas corpus, or to the Attorney-General, that-

- a) The offence of which the fugitive is accused or was convicted is an offence of a political character; or
- b) The request for his surrender (though purporting to be made on account of an extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, if surrendered, be prejudiced at his trial or punished, detained or restricted in his



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personal liberty by reason of his race, religion, nationality or political opinions”.

c) That he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions”.

59. Further, your Excellency sir, germane to this very point are the **Principles and Guidelines on Human and Peoples’ Right while Countering Terrorism in Africa**, adopted by the African Commission on Human and Peoples’ Rights, during its 56th Ordinary Session in Banjul, Gambia (21 April to 7 May 2015). The Principles and Guidelines were developed on the basis of **Article 45(1)(b) of the African Charter on Human and Peoples Rights**, which mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation. Under **Part 5 (Transfer of Individuals)** of the said Principles and Guidelines, the act of transferring or expulsion of Kanu from Kenya to Nigeria without due process of law fits the definition of an act of Extraordinary Rendition, which is expressly prohibited under the said Principles and Guidelines. They provide as follows;

“A. Transfers: A State may not “transfer” (e.g Deport, expel, remove, extradite) an individual to the custody of another State unless it is proscribed by law and in accordance with due process and other international human rights obligations. All transfers are subject to the principles of non-refoulement. Transfer shall not be a justification for loss or revocation of nationality or to make an individual stateless. Deportation, expulsion and removal cannot be used to circumvent criminal justice processes, including extradition procedures. Extraordinary rendition, or any other transfer, without due process is prohibited”.

60. In addition to the extradition procedures contained in the Kenyan Extradition Act, Nigeria has a similar Extradition Act, which



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contains rigorous procedures that must be complied with before anybody is extradited from Nigeria to another country. I respectfully submit that it is inequitable and unlawful for your government to prevent Kanu from taking advantage of similar fair hearing safeguards provided for him in the Kenyan Extradition Act. Furthermore, it is apt to mention that, in Nigeria, matters of extradition lie within the exclusive jurisdictional competence of the Federal High Court. The effect is that your government is obliged to utilize the institutional mechanism of the court before any fugitive (including a Nigerian) is extradited from Nigeria to another country. Accordingly, the question that arises is whether your government is permitted to apply double standards of complying with one law and breaching the other. The answer, most humbly, is no, sir.

61. It must be noted that your government personnel or agents are familiar with the proper extradition procedures. This fact is shown in the recent case of the suspended DCP Abba Kyari, where, following an application made for his extradition, the Honourable Attorney-General insisted that extradition proceedings must first be conducted before Kyari could be extradited to the United States to answer to crimes alleged against him there. Curiously, the same AGF and SSS in the instant case, have denied Nnamdi Kanu the benefit of enjoying the same right.

MUTUAL ASSISTANCE IN CRIMINAL MATTERS WITHIN THE COMMONWEALTH

62. The **Mutual Assistance in Criminal Matters within the Commonwealth (Enactment and Enforcement) Act**, clearly specifies in sections 4 to 6 the procedures to be followed in situations, such as in the instant case, where your government is requesting assistance in a criminal matter, or on a fugitive from a Commonwealth country such as Kenya. Those procedures strictly require the consent of the State of refuge (i.e. Kenya, in the instant case), where the "fugitive", such as Kanu, was found. In particular, Section 6(5) of the said Act states clearly that:

"The provisions of Sections 4, 5, and 6 of this Act shall apply mutatis mutandis to any case in which Nigeria is either the requesting or requested Country, as the case may require".

63. In the instant case, Nigeria is the **requesting country** and Kenya is the **requested country**. Kenya has publicly, on oath, vehemently denied that Kanu ever underwent any extradition (or even deportation) proceedings in Kenya; and that Kenya is not complicit in the extraordinary rendition of Kanu back to Nigeria. Kenya pleads innocence.
64. Your government has not till date contradicted Kenya with any evidence to the contrary, beyond bland claims by the AGF, that Kanu was "**intercepted**". Beyond this, the AGF has never disclosed the location, circumstances and the manner and other material details regarding the so-called interception, which remotely will suggest that it was conducted lawfully.

THE OAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM

65. In addition, your Excellency, the African Charter (which Nigeria has since ratified), and the **OAU Convention on the Prevention and Combating of Terrorism**, are instructive legal instruments in this respect. The relevant parts of the latter anti-terrorism Convention provide as follows:

Article 7:

1. "Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or

alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution.

3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:
 - a. communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled, to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;
 - b. be visited by a representative of that State;
 - c. be assisted by a lawyer of his or her choice;
 - d. be informed of his or her rights under sub-paragraphs (a), (b) and (c).
4. The rights referred to in paragraph 3 shall be exercised in conformity with the national law of the State in whose territory the offender or alleged offender is present; subject to the provision that the said laws must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended"

Article 8:

1. "Subject to the provision of paragraphs 2 and 3 of this article, the States Parties shall undertake to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the States Parties in conformity with the rules and conditions provided for in this Convention or under extradition agreements between the States Parties and within the limits of their national laws.
2. Any State Party may, at the time of the deposit of its instrument of ratification or accession, transmit to the



Secretary General of the OAU the grounds on which extradition may not be granted and shall at the same time indicate the legal basis in its national legislation or international conventions to which it is a party which excludes such extradition. The Secretary General shall forward these grounds to the State Parties.

3. Extradition shall not be granted if final judgement has been passed by a component authority of the requested State upon the person in respect of the terrorist act or acts for which extradition is requested. Extradition may also be refused if the competent authority of the requested State has decided either not to institute or terminate proceedings in respect of the same act or acts.
4. A State Party in whose territory an alleged offender is present shall be obliged, whether or not the offence was committed in its territory, to submit the case without undue delay to its component authorities for the purpose of prosecution if it does not extradite that person."

Article 11:

Extradition requests shall be in writing, and shall be accompanied in particular by the following:

- a. an original or authenticated copy of the sentence, warrant of arrest or any order or other judicial decision made, in accordance with the procedures laid down in the laws of the requesting State;
- b. a statement describing the offences for which extradition is being requested, indicating the date and place of its commission, the offence committed, any convictions made and a copy of the provisions of the applicable law; and



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- c. as comprehensive a description as possible of the wanted person together with any other information which may assist in establishing the person's identity and nationality".
66. Your excellency, none of the foregoing protocols was ever followed, or observed before Kanu was unlawfully and extraordinarily forcibly rendered to Nigeria. The AGF and SSS arbitrarily and unlawfully rendered Kanu back to Nigeria without following due process or any of the procedures stipulated in the **OAU Convention on the Prevention and Combating of Terrorism**, to which Nigeria is a signatory. This was done in flagrant violation of Nnamdi Kanu's rights.
67. Your Excellency, permit me to humbly submit that, not only did your government thereby violate the provisions of the **OAU Convention**, it also publicly admitted the absolute lack of due process in the arrest, detention, and forcible extradition or expulsion of Kanu, when the AGF, in the press release he made never mentioned extradition, but instead, mentioned 'interception'. This process is unknown to law as a means of transferring a fugitive from one country to the other; e.g. from Kenya to Nigeria.

THE UN OFFICE ON DRUGS AND CRIMES' PUBLICATION

68. In 2016, the **United Nations Office on Drugs and Crime Country Office in Nigeria** published a **691 page Treatise**, titled, **Cases and Materials on Extradition in Nigeria**. The foreword (at pages i-ii) to this Treatise was written by the AGF in his capacity as the Chief Law Officer of the Federation. It is instructive to state that the said Treatise, with the evident approval of the AGF, critically condemned **extraordinary rendition**, when it stated at **Pages 4-5** as follows:

"It is easy to confuse extradition with rendition. Rendition is a general term for all procedures, including extradition, for returning wanted persons or aliens generally, from a state. Unlawful or irregular forms of



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returning persons wanted for trial or punishment include abduction and the so called "extraordinary rendition". Extraordinary rendition is a government sponsored arrest, kidnap and abductions of persons wanted, accused or convicted of a criminal offence either to the state who sponsored the arrest, kidnap or abduction or to a willing third-party state. Extraordinary rendition denies a person of the right to challenge his transfer to the requesting or receiving state. It involves the violation of the principles of international law especially where the persons transferred are subjected to torture or sham criminal charges or trials. The 'Dikko Affair' of 1984 is an example of an attempt at unlawful rendition. After a coup d'etat in 1983, the Federal Military Government of Nigeria requested the British government to surrender Umaru Dikko, a former Minister alleged to have been involved in corrupt practices. Before the British government responded to the request, an intelligence officer from the Nigerian Security Forces with three Israeli nationals abducted Mr. Dikko and attempted to cargo him to Nigeria in a crate. This attempt was foiled by the British Security apparatus, the abductors were jailed and the relationship between Nigeria and Britain became strained. Even though not successful, it was an attempt by Nigeria to go against the International norms in expressing its political will".

69. Your Excellency, it is my humble view that Nigeria, being a State party to all the treaties above cited, is consequently bound by same. This is in tune with the Supreme Court decision in the celebrated case of **ABACHA & ORS V. FAWEHINMI (2000) LPELR-14(SC)**, where the apex court held as follows:

"...Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap.



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10 Laws of the Federation of Nigeria 1990 (hereinafter is referred to simply as Cap. 10) it becomes binding and our Courts must give effect to it like all other laws falling within the judicial powers of the Courts. By Cap. 10 the African Charter is now part of the laws of Nigeria and like all other laws the Courts must uphold it. The Charter gives to citizens of member States of the Organisation of African Unity rights and obligations, which rights and obligations are to be enforced by our Courts, if they must have any meaning. It is interesting to note that the rights and obligations contained in the Charter are not new to Nigeria as most of these rights and obligations are already enshrined in our Constitution. See Chapter IV of the 1979 and 1999 Constitutions." Per OGUNDARE, J.S.C (Pp. 13-14 paras. C).

70. I therefore humbly urge your Excellency to note that the manner in which Kanu was expelled from Kenya and consequently extraordinarily renditioned to Nigeria is in gross violation of all extant laws on extradition, including Article 12(4) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, LFN 2004; Article/Part 5 (A) of the African Charter's Principles and Guidelines On Human and Peoples' Rights while Countering Terrorism in Africa; and Article 13 of the UDHR, 1984.
71. My second poser here which I want to humbly draw your Excellency's kind attention to, is:

WHETHER BY THE OPERATION OF SECTION 15 OF THE EXTRADITION ACT CAP E25, LAWS OF THE FEDERATION OF NIGERIA 2004, NNAMDI KANU CAN BE COMPETENTLY AND LEGALLY DETAINED OR TRIED FOR THE REMAINING SEVEN (7) COUNTS, WHICH DO NOT CONSTITUTE THE VERY OFFENCES FOR WHICH HE WAS SURRENDERED OR EXTRAORDINARILY RENDITIONED TO NIGERIA.

THE DOCTRINE OF SPECIALTY AGAIN



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72. Under the universally-recognized doctrine, known as the 'Doctrine of Specialty', which pertains to extraditions, an extradited fugitive (whether renditioned or otherwise), is subjected to prosecution **ONLY** for those offences for which he or she was surrendered, extradited or renditioned. Nigeria recognized this doctrine under **Section 15 of the Extradition Act Cap E25 LFN, 2004**, which provides as follows;

"Where, in accordance with the law of any county within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another Country (whether within the Commonwealth or not), any person accused of or unlawfully at large after conviction of an offence committed within the jurisdiction of Nigeria is surrendered to Nigeria by the country in question, then, so long as he has not had a reasonable opportunity to returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than-

(a) The offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender was granted; or

(b) Any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered:

Provided that a person falling within this section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him".

73. All the foregoing provisions were, in Kanu's case, breached in all material particular. In the instant case of Kanu, the "surrendering



country" is Kenya and there is no evidence that her consent was obtained before this new 15-count Amended charge was brought.

74. Indeed, the same **Doctrine of Specialty** is also fully recognized in the **Kenyan Extradition Act**, which at Section 6(3) states that:

"A fugitive shall not be surrendered, or committed to or kept in custody for the purposes of surrender, unless provision is made by the law of the requesting country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Kenya, be dealt with in that country for or in respect of any offence committed before his surrender, other than (a) the offence in respect of which his surrender is requested; or (b) any lesser offence proved by the facts proved before the Court of committal; or (c) any other extradition offence in respect of which the Attorney-General may consent to his being so dealt with".

75. As earlier stated, it must be noted that Nigeria also strictly requires the self-same **Doctrine of Specialty** to be respected when it comes to fugitives extradited from Nigeria to other countries. **Section 3(7)** of the **Nigerian Extradition Act** provides that:

"A fugitive criminal shall not be surrendered to any country unless the Attorney-General is satisfied that provision is made by the law of that country, or that special arrangements have been made, such that, so long as the fugitive has not had a reasonable opportunity of returning to Nigeria, he will not be detained or tried in that Country for any offence committed before his surrender other than any extradition offence which may be proved by the facts on which his surrender is granted".

76. Although there is no direct decision by Nigerian courts dealing on extraordinary and/or unlawful rendition, however, in **ALIU BELLO & ORS v. ATTORNEY GENERAL OF OYO STATE (1986) LPELR-**



764(SC), Oputa, JSC (of blessed memory), quoting Holt, C.J in the famous case of **ASHBY V WHITE** (1703), postulated the principle that:

"If a Plaintiff has a right he must of necessity have the means to vindicate it, and a remedy, if he is injured in the enjoyment or exercise of it; and indeed, it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal'. The maxim 'Ubi jus ibi remedium is simply the latin rendition of the above principle. The maxim is so fundamental to the administration of justice that where there is no remedy provided by common law or statute, the courts have been urged to create one. The courts cannot therefore be deterred by the novelty of an action".

HOW SOME FOREIGN JURISDICTIONS DEALT WITH THIS MATTER

77. Consequent upon the paucity of local authorities in this area of the law, I humbly urge your Excellency to kindly consider the following decisions by foreign courts to guide you in promptly releasing Kanu unconditionally:

UNITED STATES

78. In the case of **UNITED STATES V. TOSCANINO**, 500 F. 2d 267, 275 (2nd Cir. 1974), the defendant, an Italian citizen, who had been convicted in the New York District Court of a drug conspiracy, had alleged that the court had "acquired jurisdiction over him unlawfully through the conduct of American agents who had kidnapped him in Uruguay, tortured him and abducted him to the United States for the purpose of prosecuting him there. This is just like in the Kanu case. The lower court held that these allegations were immaterial to the exercise of its jurisdiction to try him, provided he was physically present at the time of trial. Dissatisfied with this decision, he appealed to the United States Court of Appeals Second Circuit, which held as follows:



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"Federal district court's criminal process would be abused or degraded if it was executed against defendant Italian citizen, who alleged that he was brought into the United States from Uruguay after being kidnapped, and such abuse could not be tolerated without debasing the process of justice, so that the defendant was entitled to a hearing of his allegations...

[W]e must be guided by the underlying principle that the government should be denied the right to exploit its own illegal conduct and when an accused is kidnapped and forcibly brought within the jurisdiction, the court's acquisition of power over his person represents the fruits of the government's exploitation of its own misconduct."

NEW ZEALAND

79. In *REG. V HARTLEY* (1978) 2 N.Z.L.R. 199, 216-217, the Court of Appeal New Zealand, per Woodhouse, held as follows:

"There are explicit statutory directions that surround the extradition procedure. The procedure is widely known. It is frequently used by the police in the performance of their duty. For the protection of the public the statute rightly demands the sanction of recognized court processes before any person who is thought to be a fugitive offender can properly be surrendered from one country to another, and in our opinion there can be no possible question here of the court turning a blind eye to the action of the New Zealand police which has deliberately ignored those imperative requirements of the statute. Some may say that in the present case a New Zealand citizen attempted to avoid a criminal responsibility by leaving the country: that his subsequent conviction has demonstrated the utility of the short cut adopted by the police to have him brought back. But this must never become an area where it will be sufficient to consider that the end has



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justified the means. The issues raised by this affair are basic to the whole concept of freedom in society. On the basis of reciprocity for similar favours earlier received are police officers here in New Zealand to feel free, or even obliged, at the request of their counterparts overseas to spirit New Zealand or other citizens out of the country on the basis of mere suspicion, conveyed perhaps by telephone, that some crime has been committed elsewhere? In the High Court of Australia Griffith C.J. referred to extradition as a 'great prerogative power, supposed to be an incident of sovereignty' and then rejected any suggestion that 'it could be put in motion by any constable who thought he knew the law of a foreign country, and thought it desirable that a person whom he suspected of having offended against the law should be surrendered to that country to be punished' *Brown V. Lizars* (1905) 2 C.L.R. 837, 852. The reasons are obvious.

We have said that if the issue in the present case is to be considered merely in terms of jurisdiction then Bennett, being in New Zealand, could certainly be brought to trial and dealt with by the courts of this country. But we are equally satisfied that the means which were adopted to make that trial possible are so much at variance with the statute, and so much in conflict with one of the most important principles of the rule of law, that if application had been made at the trial on this ground, after the facts had been established by the evidence on the voir dire, the judge would probably have been justified in exercising his discretion under section 347(3) or under the inherent jurisdiction to direct that the accused be discharged".

UNITED KINGDOM

80. In *R. V HORSEFERRY ROAD MAGISTRATES COURT, EX PARTE BENNETT* [1994] AC 42 [1993] UKHL 10 [1994] 1 AC 42 [1993] 3 WLR 90, the House of Lords illuminated on this point as follows:



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"That where a defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and in breach of international law and the laws of the state where the defendant had been found, the courts in the United Kingdom should take cognisance of those circumstances and refuse to try the defendant; and that, accordingly, the High Court, in the exercise of its supervisory jurisdiction, had power to inquire into the circumstances by which a person had been brought within the jurisdiction and, if satisfied that there had been a disregard of extradition procedures, it might stay the prosecution as an abuse of process and order the release of the defendant".

SOUTH AFRICA

81. In *S. V. EBRAHIM*, 1991 (2) S.A. 553 (*Ebrahim v Minister of Justice* 2000 (2) SACR 173, WLD), the South African Court of Appeal considered the case of an Appellant a member of the military wing of the African National Congress who had fled South Africa while under a restriction order, had been abducted from his home in Mbanebe, Swaziland, by State Agents, and taken back to South Africa, where he was handed over to the police and detained in terms of security legislation. He was subsequently charged with treason in a Circuit Local Division, which convicted and sentenced him to 20 years' imprisonment. The appellant had prior to pleading, filed an application for an order that the court lacked jurisdiction to try the case in so far as his abduction was in breach of international law and thus, unlawful. The application was dismissed and the trial continued. The court, on appeal against the dismissal of the above application, held as follows:

"After a thorough investigation of the relevant South African and common law, that the issue as to the effect of the abduction on the jurisdiction of the trial court was still governed by the Roman and Roman-Dutch common law which regarded the removal of a person from an



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area of jurisdiction in which he had been illegally arrested to another area as tantamount to abduction and thus constituted a serious injustice. A court before which such a person was brought also lacked jurisdiction to try him, even where such a person had been abducted by agents of the authority governing the area of jurisdiction of the said court. The court further held that the above rules embodied several fundamental legal principles, viz. those that maintained and promoted human rights, good relations between states and the sound administration of justice: the individual had to be protected against unlawful detention and against abduction, the limits of territorial jurisdiction and the sovereignty of states had to be respected, the fairness of the legal process guaranteed and the abuse thereof prevented so as to protect and promote the dignity and integrity of the judicial system. The state was bound by these rules and had to come to court with clean hands, as it were, when it was itself a party to proceedings and this requirement was clearly not satisfied when the state was involved in the abduction of persons across the country's borders. "It was accordingly held that the court a quo had lacked jurisdiction to try the appellant and his application should therefore have succeeded. As the appellant should never have been tried by the court a quo, the consequences of the trial had to be undone and the appeal disposed of as one against conviction and sentence. Both the conviction and sentence were accordingly set aside."

82. Your Excellency, the above cases are to humbly urge you to note that Kanu cannot still be detained or tried on the remaining 7-count in view of his unlawful expulsion from Kenya, and particularly, since the said counts are contrary to the explicit provisions of section 15 of the Extradition Act, LFN, 2004. To do so will amount to allowing your government benefit from its own illegality or wrongdoing. See the case of **THE ADMIN. & EXEC. OF**



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THE ESTATE OF ABACHA V. EKE-SPIFF & ORS (2009) LPELR-3152(SC).

83. In **EMMANUEL MEKAOWULU v. UKWA WEST LOCAL GOVERNMENT COUNCIL** (2018) LPELR-43807(CA), the Court of Appeal held as follows:

"A party is barred from profiting from his own wrongs. See **PDP VS Ezeonwuka & Anor** (2017) LPELR - 42563 SC, where my Lord, Eko JSC, said:

"Equity, acting in personam, would not allow a party to benefit from his own iniquity. It insists that whoever comes to it or justice must do justice, and must not come to temple of justice with dirty hands."

See also **Teriba Vs Adeyemo** (2010) LPELR - 3143 SC; (2010) 13 NWLR (Pt.1211) 242, where the Supreme Court held:

"...the applicable equitable principle being that a person cannot benefit from his own wrong. It is adjudicatory functions, the Court has a duty to prevent injustice in any given circumstance and avoid rendering a decision which enables a party to escape from his obligation under contract by his own wrongful act... **Ekanem Vs Akpan** (1991) 8 NWLR (Pt.211) 616; **Adedeji Vs National Bank Nig. Ltd** (1989) 1 NWLR (Pt.96) 212; **Ibekwe Vs Maduka** (1995) 4 NWLR (Pt.392) 716." Per MBABA, J.C.A (Pp. 14-15 paras. E)

84. See also **FIRST CITY MONUMENT BANK LIMITED v. VALUELINE INVESTMENTS AND SECURITIES LIMITED & ORS** (2020) LPELR-49875(CA); **MR. P. T. ADEDEJI v. DR. MOSES OBAJIMI** (2018) LPELR-44360(SC).
85. Let me also humbly commend to your Excellency the case of **MR. GIDEON OGUNPEHIN v. NUCLEUS VENTURE** (2019) LPELR-48772(SC), where the Supreme Court held as follows:



"Equity acting in personam will not allow a party to come to the temple of Justice with dirty hands and unclean conscience. It also does not allow a party to benefit from his iniquity." Per EKO, J.S.C (Pp. 24 paras. D)

MY HUMBLE CONCLUSION AND PRAYERS

86. Your Excellency, the whole world has spoken through the UN Human Rights Committee. The message is quite clear: **Nnamdi Kanu must be released forthwith - unconditionally.** To insist on detaining him in defiance of the world would be at a great price which is better avoided. Suffice it to say, your Excellency that, just like in the earlier case of Umaru Dikko, your government risks turning Nigeria, once again, into a Pariah State, simply on account of this avoidable conundrum.
87. Your Excellency, if the case of Mr. Dikko was understandable - because it was carried out by a military regime - that of Nnamdi Kanu is inexplicable and unjustifiable under a democratic government headed by your goodself and which operates under a written Constitution that guarantees fundamental rights, the rule of law and the enforcement of duly-ratified international treaties. The foregoing narrative clearly shows that this is the case with the relevant treaties under which the United Nations Working Group on Arbitrary Detention issued its binding directive for the immediate and unconditional release of Nnamdi Kanu. Your Excellency, I am not aware of any State which has defied or disobeyed such a directive without paying a national heavy price. Nigeria should not be the first member of that "Hall of Infamy" reserved only for pariah nations. That would be another blot on Nigeria's image. The situation is however not irredeemable, as your Excellency can yet redeem it; and write your name in gold by ordering the **immediate and unconditional release of Nnamdi Kanu** from his present excruciating detention as ordered by the United Nations, through its Working Group on Arbitrary Detention.
88. Kindly accept, Your Excellency, the sincerest and highest assurances of my most esteemed regards and respects.

89. Thank you sir, as you attend to this lengthy petition promptly and right the current wrongs against Nnamdi Kanu by ordering his immediate and unconditional release.



Yours faithfully,

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