

**SUBMISSION OF BRUCE FEIN
INTERNATIONAL LAWYER AND SPOKESMAN FOR NNAMDI KANU**

CHARGING ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF NIGERIA
ABUBAKAR MALAMI AND JUSTICE BINTA NYAKO WITH CONSPIRACY AND
CRIMES AGAINST HUMANITY ABAINST BIAFRANS AND THEIR LEADER NNAMDI
KANU BY PROTRACTED AND SYSTYEMATIC RESORT TO MURDER,
EXTERMINATION, IMPRISONMENT, TORTURE, RAPE, PERSECUTION BASED ON
POLITICAL, RELIGIOUS, AND ETHNIC GROUNDS, AND INDUSTRIAL-SCALE THEFT
OF PROPERTY INCLUDING AN ONGOING ATTEMPTED JUDICIAL MURDER OF
NNAMDI KANU

TO: KARIM KHAN
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Dear Chief Prosecutor Khan and the Information and Evidence Unit of the Prosecutor:

JURISDICTION AND SUMMARY

The Federal Government of Nigeria ratified the Rome Statute of the International Criminal Court (ICC) on September 27, 2001. The Federal Government of Nigeria has initiated no investigation of the crimes alleged herein under Article 17 of the Rome Statute.

The ICC possesses jurisdiction over crimes against humanity as defined by Article 7 of the Rome Statute.

The accused, Nigerian Attorney General Abubakar Malami and Justice Binta Nyako are engaged in an ongoing conspiracy, including co-conspirators Nigerian President Muhammadu Buhari and Kenyan President Uhuru Kenyatta, to commit crimes against humanity against Biafran leader Nnamdi Kanu, as part of a widespread and systematic attack by the Fulani-controlled Federal Government of Nigeria, against the Biafran civilian population in the southeast. Attorney General Malami and Justice Binta Nyako have acted with knowledge of the ongoing systematic Fulani attacks on Biafrans when they conspired with co-conspirators President Buhari and President Kenyatta in Nnamdi Kanu's kidnapping, torture, extraordinary rendition, arbitrary detention, and persecution because of political views, ethnicity, or religion.

The Fulani atrocities against Biafrans are of such a magnitude that shocks the conscience. Malami and Nyako are central players in the government that has perpetrated such crimes against humanity. Are we to believe that no whisper reached the ears of these Fulani government officials who are highly concerned? They watch television. They listen to the radio. They read newspapers and follow social media. This Tribunal should not be so gullible as to believe these

Fulani officials so stupid that they did not know what is going on. One man may keep a secret, two men may, but thousands never.

As part of their crimes against humanity against Biafrans, Abubakar Malami and Binta Nyako have conspired with co-conspirator President Buhari to arbitrarily detain Nnamdi Kanu in solitary confinement in cruel conditions amounting to torture for more than nine months without a trial after his kidnapping, torture, and extraordinary rendition from Kenya implicating Kenyan President Uhuru Kenyatta and his agents

Co-conspirator Abubakar Malami confessed his contempt for the law in boasting that he flouts court orders which he decrees wrongfully elevate individual rights over his idiosyncratic conception of the public interest instead of seeking to correct error through due process of law. In other words, co-conspirator Malami concedes his belief that he is above the law.

BACKGROUND

According to Nigeria's Orwellian legal regime, Nnamdi Kanu is guilty of terrorism and treason through exercising his rights to free speech and association protected by the Nigerian Constitution and multiple international human rights covenants in seeking a Biafran independence referendum by peaceful, Gandhi-like means. The Federal Government of Nigeria, after more than nine months of arbitrary detention, has yet to proffer a crumb of evidence implicating Nnamdi Kanu in terrorism or violence. In October 2020, five human rights experts of the United Nations Human Rights Council asked President Buhari within 60 days to submit evidence of Mr. Kanu's terrorism. Mr. Buhari sneered at the overture, probably reflecting, "Being a tyrant means you never need to obey the law."

Mr. Kanu's seeking a Biafran sovereignty a referendum is not special pleading. South Sudan voted independence from Sudan in a 2011 referendum. The United Kingdom recently

afforded Scotland a secession vote and may do so again. Ditto for Canada and Quebec. The United States periodically permits Puerto Rico to vote between statehood, independence, or commonwealth status.

The legal and moral case for Biafran independence is overwhelming. A few pages of history are worth volumes of logic.

From 1884-1885, European powers assembled in Berlin to formalize ground rules for vivisectioning the African continent. One point elicited instantaneous unanimity. *No African would have any voice in the boundaries drawn by European colonial powers according to a cynical divide-and-conquer strategy pitting disparate indigenous communities against one another.* All the colonial powers marched to the morally and legally repugnant British ditty: “Whatever happens we have got, the Maxim gun and they have not.”

Approximately a century ago in 1913, Great Britain herded multiple separate and distinct ethnic communities under one, artificial Nigerian colonial roof, including Biafrans, Yoruba, Fulani, and Hausa. They shared none of the homogeneity customarily required to hold a nation together and avoid civil war or intramural oppression: culture, religion, politics, law, history, language, personality, or education. During its long colonial years before independence in 1960, Nigeria remained unified by a combination of British guns and inter-tribal conflicts exacerbated by the British colonial regime.

Under international law, British decolonization of Nigeria should have been informed by the right of self-determination belonging to each distinct colonial community, including Biafrans. See United Nations General Assembly Resolution 1514 (XV) on the granting of independence to colonial countries and peoples (“All Peoples have the right to self-determination....”). Britain knew first-hand the imperative of such a principal. It insisted on a

self-determination vote of predominantly Protestant Northern Ireland in the Anglo-Irish Treaty of 1921 to prevent their oppression or civil war if it was involuntarily incorporated into predominantly Catholic Ireland. Contemporaneously, the British and Irish fought a bloody civil war ending in Irish independence fueled by unbridgeable religious and cultural differences comparable to the divisions between Nigeria's ethnic communities. Oil and water cannot be made to mix.

But the United Kingdom ignored the self-determination principle in departing Nigeria. It handed over power in 1960 to its favorites. Neither at that time nor thereafter have Biafrans been given a choice between independence or remaining part of Nigeria.

Nigeria was born to explode like nitroglycerin. Soon after Nigeria's birth came the predictable grisly Biafran civil war (1967-1970) featuring atrocities and skeletons reminiscent of Nazi death camps. Millions of children died like flies from starvation alone. The war solved nothing, and Biafrans continued to suffer under the oppression of a Fulani yolk culminating in a current and ongoing genocide perpetrated by Nigeria's Fulani security forces and malevolent Fulani herdsman. The Irish under British rule lived in paradise compared with the horrors daily experienced by Biafrans under Fulani terrorism.

According to Genocide Watch, Fulani Jihadists are now the world's deadliest terrorist organization, massacring five Nigerian Christians daily. <https://www.genocidewatch.com/single-post/2020/04/13/nigeria-is-a-killing-field-of-defenseless-christians>.

Documentation of the ongoing genocide and crimes against humanity perpetrated by the Fulani-controlled Federal Government of Nigeria against Biafrans can be found at <https://intersociety-ng.org/massacre-in-eastern-nigeria-a-special-investigative-report/>. According to the Executive Summary:

1. Security Operatives, Jihadists Killed 1,400 Defenseless Citizens In 14 Months

The Nigerian security forces, at present structured along Northern Muslim lines and deployed in Eastern Nigeria had in fourteen months or between late October 2020 and Dec 2021 killed not less than 1,150 defenseless citizens of Eastern Nigeria. All the victims are members of Judeo-Christian Faith and mostly ethnic Igbo citizens. Their killings represent monthly average of 85 deaths and daily average of three and could be monthly average of 155 and daily average of 5.5 deaths if the presumed dead 1000 missing citizens are added. The security forces also abducted and disappeared till date in the same past 14 months at least 1000 unarmed civilians; arrested alive and unarmed and taken into security custodies outside the knowledge of their families or lawyers, from where they have gone missing till date. Soldiers of the Nigerian Army are found to be responsible for at least 70% of their abduction and disappearances while DSS, NPF, Nigerian Navy and Nigerian Air Force are separately and jointly responsible for the remaining 30%.

In the area of ‘perpetrator ratio’, soldiers of the Nigerian Army and various ‘special squads’ of the Nigeria Police Force are the lead-killers or perpetrators. The trio of Governors Hope Uzodimma of Imo State, Nyesom Wike of Rivers State and Dave Umahi of Ebonyi State are the most vicariously culpable Governors that aided and abetted the killings and property destruction including burning of civilian homes and sanctuaries. On the other hand, the widely believed Nigerian State protected Jihadists especially the Jihadist Fulani Herdsmen are responsible for hacking to death in 2021 alone of at least 270 Igbo Christians. Their death had majorly occurred in Ebonyi, Enugu, Anambra, Imo, Abia and Igbo parts of Delta, Edo (Obiaruku and Igbo-Akiri), Benue and Kogi States. The killings by Jihadist Fulani Herdsmen have brought the total number of defenseless citizens traceably killed in Eastern Nigeria in the past 14 months to at least 1,400. This is when added to 1,150 defenseless civilian deaths perpetrated by security forces.

The Death Toll Could Be 2,400 If 1000 Missing/Presumed Dead Citizens Are Added

It is therefore likely correct to say that in all, not less than 2,400 unarmed civilians lost

their lives to Nigerian security forces and the Jihadists in Eastern Nigeria in the past 14

months-covering October 2020 to December 2021. This is on account of the fact that the not

less than 1000 missing persons are likely to have been killed in custodies and most unlikely to be returned alive to their families again. This is more so when strong evidence abounds showing no traces of location and securing the release of citizens abducted by soldiers of the Nigerian Army in Eastern Nigeria since January 2021. They also hardly handover or transfer those arrested or abducted to the Police. From our investigation, most, if not all those abducted by them since January 2021 have never been located by families or seen alive till date.

Same was the case during and after the Army's war grade attack on Obigbo in late October-early November 2020. It is shocking that while dozens died in different secret military custodies within and outside Eastern Nigeria, not less than 550 of the abductees were later independently located, out of the number, 418 were freed through courts and 95-100 others were discovered in late November 2021 to have been dumped in Kaduna Prisons and Lock Centers. Over 40 of the abductees were also found to have been killed in custody through torture and infliction of injuries as well as starvation and lack of medical treatment. Estimated number of 200 Obigbo abductees is still unaccounted for and their whereabouts are unknown till date. **Intersociety** has continued to receive enquiry messages from dozens of families of those searching for their loved ones. The Nigerian Army is further acting roguishly by holding their abductees for over a year through intra and inter-agency detention transfers-whereby the abductees are secretly held without trial in several military and security agencies' detention facilities leading to scores of custodial deaths.

2. 4800 Arrested, 2000 Still Held, 700 Freed, Others Killed Or Disappeared

Analytically, estimated *4800 unarmed citizens of Eastern Nigeria have been arrested or abducted by security forces in the past 14 months (since late October 2020), out of the number, 660 were traceably killed in security custodies, about 500 were killed in open shootings mainly carried out by soldiers of the Nigerian Army and personnel of other branches of the Armed Forces-with a clear case in point being dumping of over 100 dead victims of Army's open shooting of civilians at the Owerri Federal Medical Center. Not less than 1000 mainly abducted civilians have disappeared or presumed dead mainly in military custodies. No fewer than 2000 unarmed civilians are still detained without trial and only 700 of the arrested 4800 citizens have regained their freedom in the past 14 months. The freed 700 citizens had included 418 Obigbo abductees and some 300 other civilian citizens arrested by security forces in the East since January 2021. Most of them got freed after being forced to offer average of N1m per freed detainee. This was majorly the case in the hands of the Nigeria Police Force especially its "IRT", "STS", "CTU", "Anti Kidnapping", "SWAT/SARS" and "the Special Forces" comprising the operatives of the Army, Police, DSS, Navy, Air Force, NSCDC, etc.*

3. This **Special Investigative Report** also found that not less than 400 leaders/members of the African Instituted Churches, derogatorily called "White Garment Churches" including Sabbath sects and their likes have been abducted or killed in security custodies. Through religious profiling and persecution and fueled by false labeling and without concrete and indictable pieces of evidence, the Nigerian security forces have designated them as 'terrorist religious group' and hatefully accused them of membership and sponsorship of "ESN/IPOB". Many, if not most of their sacred sanctuaries and symbols of worship and dwelling houses have also been burnt down or destroyed by security forces. Traditional herbalists across Eastern

Nigeria have also become endangered species in the hands of security forces. From the camps of about five designated categories of “Unknown Gunmen” operating in Igbo parts of Eastern Nigeria, not less than 100 civilian deaths have been recorded in the Region since July 2021 with Imo, Anambra, Enugu and Abia as the worst hit. From the angle of international law’s recognized “legitimate deaths” or deaths arising from battlefields’ combats between security forces and armed opposition groups (i.e. ESN/’Unknown Gunmen’), a total of 300 security operatives and 100 opposition armed men have lost their lives in the past 14 months.

It was our further investigative discovery that no fewer than 100 Igbo communities have been invaded by security forces in the past 14 months and caused not less than 1000 homes or dwelling houses to be raided and razed during which properties such as the land housing each of the buildings, the building structure, electronics and electrical appliances, chairs and house utensils, food items, economic trees, domestic animals, automobiles and other valuable items were destroyed or burnt to ashes or looted. From our conservative estimates, each house, its land and properties is worth not less than N35m, translating to N35billion for the estimated 1000 dwelling houses destroyed or burnt down. The remaining N5b arises from other outside-the-house properties destroyed or burnt down including market stores and their wares-totaling N40billion as total properties’ value lost in the hands of the Nigerian security forces particularly soldiers of the Nigerian Army and other branches of the Armed Forces.

4. Igbo Nation Target Of The Killings

The killings by Nigerian security forces had occurred mostly in Igbo-Christian parts of Eastern Nigeria including Imo, Rivers, Abia, Ebonyi, Anambra, Enugu and Akwa Ibom States as well as Delta and Cross River States which recorded the lowest number of deaths. Further breakdown indicates that the Nigerian security forces were specifically responsible for killing of at least

1000 defenseless citizens in the East in 2021 while Jihadist Fulani Herdsmen killed not less than 270 in the same 2021. The Nigerian Army had also between October and November 2020 killed not less 150 defenseless civilians in Obigbo (Oyigbo Local Government Area) and its environs in Rivers State and abducted over 700 civilians; and out of the number, 418 have been independently located and freed. While no fewer than 110 defenseless citizens were killed in Obigbo and its environs, the remaining 40 deaths occurred in different secret Army custodies where the Obigbo abductees were secretly detained amidst torture and starvation. Another 100 abducted defenseless citizens were recently (in late November 2021) traced and discovered to have been dumped at Kaduna Prisons and Lock Centers, out of the number, five died. Over 40 of the over 700 abductees were also found to have been killed in various secret Army custodies.

**ATTORNEY GENERAL MALAMI'S AND JUSTICE NYAKO'S CRIMES
AGAINST HUMANITY-KIDNAPPING, TORTURE, EXTRAORDINARY RENDITION,
AND INDEFINITE ARBITRARY DETENTION OF NNAMDI KANU IN AN ONGOING
ATTEMPTED JUDICIAL MURDER**

As an integral part of the ongoing crimes against humanity described above, on or around June 2021, Attorney General Malami conspired with Nigerian President Muhammadu Buhari, Nigerian Federal High Court Justice Binta Nyako, and Kenyan President Uhuru Kenyatta, among others, to kidnap and torture Biafran leader Nnamdi Kanu in Nairobi, Kenya, for several days, and then subject him to illegal extraordinary rendition to Abuja, Nigeria. There, for more than nine months, Nnamdi Kanu has been detained in solitary confinement in extremely confined quarters and denied necessary medical care and legal counsel without a trial with the illegal imprimatur of co-conspirator Justice Binta Nyako. The conditions under which Nnamdi Kanu is subsisting satisfies the definition of torture under the Convention Against Torture, Article 1 paragraph 1.

Attorney General Malami has conceded that Nigeria's security agencies were involved in Nnamdi Kanu's abduction, torture, and extraordinary rendition but has attempted to whitewash the crimes with the falsehood that the International Police Organization (INTERPOL) was a collaborator. The extraordinary rendition in violation of Kenya's extradition provisions, which was effectuated by use of a private aircraft, could not have been accomplished without the knowledge and consent of co-conspirator President Kenyatta, who himself has been previously accused of crimes against humanity by the International Criminal Court.

Judges, like co-conspirator Justice Binta Nyako, are not shielded from criminal prosecution for crimes against humanity based on participation in patently illegal show trials. Neither are prosecutors like arch-conspirator Attorney General Malami. The precedent was set in the "Justice Case" of the post-World War II Nuremberg trials, *United States v. Joseph Altstetter, et al.* There both Nazi prosecutors and judges were tried and convicted of crimes against humanity by judicial murder through the destruction of law and justice and utilizing the empty forms of legal process to persecute or exterminate on a wide scale based in race, religion, or political opinion.

A 15-count amended charge against Nnamdi Kanu was filed by co-conspirator Attorney General Malami before co-conspirator Justice Binta Nyako at the eleventh hour of a scheduled January 18, 2022, hearing to entertain a challenge to a predecessor, bogus, 7-count amended charge. The new charges represent a destruction of law and justice with the aim of judicial murder of Nnamdi Kanu. The patently defective charges carry the death penalty.

Under Section 36 (1) of the Nigerian Constitution, an accused is entitled to a "fair hearing within a reasonable time by a court or other tribunal...*constituted in such manner as to secure its independence and impartiality.*" It is notorious that Nigeria's executive branch routinely flouts

court orders with impunity and judges take orders from conspirator Attorney General Malami and co-conspirator President Buhari. Judges like co-conspirator Justice Nyako are complicit by refusing to punish government officials for contempt of court. Conspirator Attorney General Malami shamelessly proclaimed during his July 26, 2019, hearing before the National Assembly that constitutional rights were subservient to his warped, idiosyncratic conception of the public good. To Malami's lawless way of thinking, the Nigerian Constitution is nothing but a scrap of paper to be shredded at will by the executive branch, and judges are its puppets contrary to the judicial independence injunction of Section 36 (1).

Nnamdi Kanu has also been denied his right to a fair hearing within a reasonable time. More than nine months have elapsed since his illegal extraordinary rendition from Nairobi, Kenya to Abuja, Nigeria, and there has yet to be a trial or opportunity for Nnamdi Kanu to confront his accusers before an impartial judge un beholden to the executive branch. Attorney General Malami and Justice Nyako have conspired in this attempted judicial murder of Nnamdi Kanu through indefinite detention under cruel conditions constituting torture.

Section 36 (3) ordains that court proceedings "be held in public" to deter injustice. Sunshine is said to be the best of disinfectants; the electric light the most efficient policeman. Under no circumstances may the parties or their legal representatives be excluded; others may be under Section 36 (4) (a) if publicity would defeat justice or impair legitimate government interests. Malami and Justice Nyako have conspired to illegally exclude one or more of Nnamdi Kanu's lawyers from the court and the media.

Section 36 (5) establishes a presumption of innocence. In contrast, Nnamdi Kanu has been presumed guilty by co-conspirators Malami and Nyako and punished since his illegal extraordinary rendition last June 2021, including torture.

Section 36 (6) (a) establishes a right to be informed in detail of the nature of any alleged offenses. The amended charges against Nnamdi Kanu, the handiwork of co-conspirators Malami and Nyako, are written a level of stupefying generality that flouts the due process requirement of fair warning.

Section 36 (6) (b) requires an accused be afforded adequate time and facilities for the preparation of a defense. Co-conspirators Malami and Nyako have denied Nnamdi Kanu adequate access to counsel and reading and writing materials indispensable to assembling a defense.

Co-conspirators Malami and Nyako have denied Nnamdi Kanu's right under Section 36 (6) (c) to defend himself by legal practitioners "of his own choice." They have denied one or more of Nnamdi Kanu's lawyers to attend court proceedings or visit him in his dungeon cell in the custody of the Department of Security Services.

Section 36 (9) prohibits prosecuting an accused twice for the same offense. Counts Six and Seven of the amended charges allege the same offense. The former alleges that Nnamdi Kanu, at some unspecified time between 2018-2021, incited Nigerians to attack Nigerian police officers. The latter repeats the allegation but alleges the incitement was to "kill" rather than "attack" Nigerian police officers. In substance, the twin counts are identical and violate section 39 (9), and its companion prohibition in Article 12 (7) of the International Covenant on Civil and Political Rights. Co-conspirators Malami and Nyako have endorsed the violations of domestic and international law.

Amended Charge, Counts 1-14, allege offenses by broadcasts that occurred and were completed outside of Nigerian in London, UK, which are beyond the jurisdiction of the Nigerian

Criminal Code under Section 12. Co-conspirators Malami and Nyako have permitted the facially deficient charges to proceed nonetheless in attempting the judicial murder of Nnamdi Kanu.

Count One alleges that at some unknown time in 2021, Nnamdi Kanu made a broadcast heard in Nigeria with the intent to intimidate the population and threatened that people will die and “the whole world will stand still” in violation of Section 1 (2) (b) of the Terrorism Prevention Amendment Act, 2013. Count One is obviously deficient because it fails to allege the broadcast caused death or serious bodily injury—a requirement under the Act’s definition of terrorism. It is further deficient for failing to allege the time and words used in the broadcast necessary to enable a fair opportunity to defend, including the defense that the broadcast constituted protected free speech under Section 39 of the Nigerian Constitution. Co-conspirators Malami and Nyako have refused to dismiss Count One in their attempted judicial murder of Nnamdi Kanu.

Count Two alleges that at some unknown time in 2021, Nnamdi Kanu made a broadcast into Nigeria with intent to intimidate the population and stating that persons who neglected his sit-at-home order should “write his/her Will” which caused businesses to close and vehicular movements in Eastern Nigeria to be grounded, in violation of Section 1 (2) (b) of the Terrorism Prevention Amendment Act, 2013. Count Two is facially deficient because it fails to allege the broadcast caused death or serious bodily injury—a requirement under the Act’s definition of terrorism. It is further deficient for failing to allege the time and words used in the broadcast necessary to enable a fair opportunity to defend, including the defense that the broadcast and ensuing boycott constituted protected freedom of association under Section 40 of the Nigerian Constitution. Co-conspirators Malami and Nyako have refused to dismiss Count Two in their attempted judicial murder of Nnamdi Kanu.

Count Three alleges that at some unknown time between 2018 and 2021, Nnamdi Kanu professed membership and leadership of Indigenous People of Biafra in violation of Section 16 of the Terrorism Prevention Act, 213. The Count is defective because IPOB was listed as a terrorist organization by a court at the direction of co-conspirator President Buhari in an illegal ex parte proceeding making a mockery of due process. The IPOB listing has been denounced by five human rights experts of the United Nations Human Rights Council in a letter to co-conspirator Buhari on October 1, 2020: Fionnuala Ni Aolain, Special Rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism; Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions; Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceable assembly and of association; and, Fernand de Varennes, Special Rapporteur on minority issues.

Among other things, the five human rights experts respectfully urged co-conspirator Buhari “to reconsider the proscription of IPOB as a terrorist group and address the legal concerns on regulation of assembly, freedom of expression, and due process outlined in this communication.” The experts reminded co-conspirator Buhari that, “[p]ursuing minority rights protection or the recognition of the existence of a minority...or even calls for self-determination do not on their own amount to terrorist activities.” Indeed, United Nations General Assembly Resolution 49/151 reaffirmed “the importance of the universal realization of the right of peoples to self-determination....”

The experts asked that within 60 days co-conspirator Buhari “provide detailed information about the rationale and justification for the decision [made by you alone] to

designate IPOB as a terrorist group and its activities as unlawful, and how this is compliant with international obligations of Nigeria, particularly in relation to the rights of freedom of religion or belief, expression, freedom of peaceful assembly and association, non-discrimination and the rights of minorities.” Nearly 19 months have elapsed since that request and co-conspirator Buhari has *yet to reference any law or facts justifying IPOB’s proscription as a terrorist group.* Co-conspirators Malami and Nyako have refused to dismiss Count Three in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal infirmity. Nnamdi Kanu’s leadership and membership in IPOB is protected speech and association under Sections 39 and 40 of the Nigerian Constitution.

Count Four alleges that Nnamdi Kanu on various unknown dates between 2018 and 2021 made broadcasts into Nigeria which incited members of the public to “hunt and kill Nigerian security personnel.” Count Four fails to allege the words that constituted the alleged incitement, any witnesses to the broadcasts, the names of any Nigerian security personnel that were allegedly hunted and killed, or the names of any public members who acted on the alleged incitement. The infinite vagueness of Count Four violates due process and a right to a fair hearing by compromising the ability of Nnamdi Kanu to mount a defense. Moreover, freedom of speech protected by Section 39 of Nigeria’s constitution and the Universal Declaration of Human Rights, Article 19, covers exhortations that fall short of intending to incite imminent lawless violence coupled with a likelihood that the incitement will be immediately acted upon. Count Four omits the latter allegation. Co-conspirators Malami and Nyako have refused to dismiss Count Four in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal infirmity

Count Five is identical to Count Four but for alleging Nnamdi Kanu's broadcast incitements targeted the *families* of Nigeria's security personnel. Count Five suffers from the same obvious legal infirmities as Count Four. Co-conspirators Malami and Nyako have refused to dismiss Count Five in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal infirmity

Counts Six and Seven of the amended charge allege the same offense. The former alleges that Nnamdi Kanu, at some unknown time between 2018-2021, incited Nigerians to attack Nigerian police officers. The latter repeats the allegation but alleges the incitement was to "kill" rather than "attack" Nigerian police officers. In substance, the twin counts are identical and violate section 39 (9) of the Nigerian Constitution and its companion prohibition in Article 12 (7) of the International Covenant on Civil and Political Rights prohibiting double prosecutions for the same offense.

Further, Count Six and Count Seven are infinitely vague in violation of due process and the right to a fair hearing. Both Counts fail to allege the words that constituted the incitement, any witnesses to the broadcasts, the names of any Nigerian police force personnel that were allegedly attacked or killed, or the names of any persons who acted on the alleged incitement. The infinite vagueness of the Counts compromises the ability of Nnamdi Kanu to mount a defense in violation of his fair hearing guarantee under the Nigerian Constitution. Moreover, freedom of speech protected by Section 39 of Nigeria's constitution and Article 19 of the Universal Declaration of Human Rights covers exhortations that fall short of intending to incite imminent lawless violence coupled with a likelihood that the incitement will be immediately acted upon. Counts Six and Seven fail to allege the latter. Co-conspirators Malami and Nyako

have refused to dismiss both Counts in their attempted judicial murder of Nnamdi Kanu notwithstanding their obvious legal infirmities.

Count Eight alleges Nnamdi Kanu on unknown dates between 2018 to 2021 directed members of IPOB by broadcasts to manufacture bombs in violation of Section 1 (2) (f) of the Terrorism Prevention Amendment Act, 2013. There is no allegation that the bombs were intended for terrorism or any unlawful purpose. Count Eight omits allegations necessary for a violation of subsection (f), which makes no reference to manufacturing bombs.

Count Eight also fails to allege the words that constituted the alleged direction, any witnesses to the broadcasts, or the names of IPOB members who manufactured bombs. The infinite vagueness of Count Eight violates due process and a right to a fair hearing by compromising the ability of Nnamdi Kanu to mount a defense. Co-conspirators Malami and Nyako have refused to dismiss Count Eight in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Nine alleges that Nnamdi Kanu on unknown dates between 2018 to 2021 made a broadcast into Nigeria with an intent to destabilize Nigeria's economy and politics and to stop the Anambra State Elections in violation of Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013. Count Nine is deficient because the allegations do not constitute a violation of subsection (h). It is further deficient for infinite vagueness as to the date of the alleged broadcast, the words used, witnesses to the broadcast, the dates of the relevant Anambra State Elections, or any activities that stopped the elections from occurring (which did not happen). Additionally, freedom of speech and association protected by Articles 39 and 40 of Nigeria's Constitution and Articles 19 and 20 of the Universal Declaration of Human Rights cover peaceful boycotting of elections or criticism of prevailing economic or political structures.

A function of free speech is to invite dispute. It best serves its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. Co-conspirators Malami and Nyako have refused to dismiss Count Nine in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Ten is identical to Count Nine with an added allegation that Nnamdi Kanu through a broadcast incited members of the public “to destroy public facilities” on unknown dates between 2018 and 2021 in violation of Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013. Count Ten is deficient for lacking allegations that constitute a violation of subsection (h), which makes no reference to public facilities. Count Ten is also void for infinite vagueness as to the date of the offending broadcast, the words used, witnesses to the broadcast, the nature of the public facilities to be destroyed, or otherwise. Moreover, criticism of existing economic and political arrangements is protected speech under Article 39 of the Nigerian Constitution and Article 19 of the Universal Declaration of Human Rights. Co-conspirators Malami and Nyako have refused to dismiss Count Ten in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Eleven alleges Nnamdi Kanu on some unknown date between 2018 and 2021 threatened and intimidated Nigerians to refrain from leaving their homes on May 31, 2021, in violation of Section 1 (2) (h) of the Prevention of Terrorism Amendment Act, 2013. Count Eleven is deficient for lacking allegations that constitute a violation of subsection (h), which makes no reference to sitting at home. Count Eleven is also void for infinite vagueness as to the date of the offending broadcast, the words used, witnesses to the broadcast, the nature of the

threats or intimidation, or otherwise. Moreover, urging the public to stay at home to protest government lawlessness or policies is protected speech and political association under Articles 39 and 40 of the Nigerian Constitution and Articles 19 and 20 of the Universal Declaration of Human Rights. Co-conspirators Malami and Nyako have refused to dismiss Count Eleven in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Twelve alleges Nnamdi Kanu on some unknown date between 2018 and 2021 made a broadcast that incited Nigerians to a violent revolution in violation of Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013. Count Twelve is void for infinite vagueness as to the date of the broadcast, the words spoken, witnesses to the broadcast, or otherwise. Such specificity is necessary for Nnamdi Kanu to have a fair opportunity to present a defense and secure a fair hearing guaranteed by the Nigerian Constitution. Further, incitements are protected speech under the Nigerian Constitution and Universal Declaration of Human Rights absent proof of a probability of precipitating imminent lawless action, which Count Twelve fails to allege. Indeed, the Count fails to allege any violence erupted. Co-conspirators Malami and Nyako have refused to dismiss Count Twelve in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Thirteen alleges Nnamdi Kanu on some unknown date between 2018 and 2021 by broadcast directed Nigerians to burn every federal facility in Lagos causing major economic loss to the Federal Government in violation of Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013. Count Thirteen is void for infinite vagueness as to the date of the broadcast, the words spoken, witnesses to the broadcast, or otherwise. Such specificity is necessary for Nnamdi Kanu to have a fair opportunity to present a defense and secure a fair hearing guaranteed by the Nigerian Constitution. Further, incitements are protected speech under

the Nigerian Constitution and Universal Declaration of Human Rights absent proof of a probability of precipitating imminent lawless action, which Count Twelve fails to allege. Indeed, the Count fails to allege any violence erupted. Co-conspirators Malami and Nyako have refused to dismiss Count Thirteen in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Fourteen alleges Nnamdi Kanu on some unknown date between 2018 and 2021 broadcast a directive to Nigerians to destroy the public transport system of Lagos causing major economic loss in violation of Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013. Count Fourteen is void for infinite vagueness as to the date of the broadcast, the words spoken, witnesses to the broadcast, or otherwise. Such specificity is necessary for Nnamdi Kanu to have a fair opportunity to present a defense and secure a fair hearing guaranteed by the Nigerian Constitution. Further, incitements are protected speech under the Nigerian Constitution and Universal Declaration of Human Rights absent proof of a probability of precipitating imminent lawless action, which Count Fourteen fails to allege. Indeed, the Count fails to allege any violence erupted. Co-conspirators Malami and Nyako have refused to dismiss Count Fourteen in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

Count Fifteen alleges that Nnamdi Kanu on diverse dates between March and April 2015—approximately seven years ago—imported into Nigeria a radio transmitter wrongfully declared as household goods in violation of Section 47 (a) (2) of the Customs and Excise Management Act Cap 45, Law of the Federation of Nigeria. Count Fifteen is void because Nnamdi Kanu has been singled out for prosecution because of free speech in support of a Biafran referendum and because of his Biafran heritage in violation of Articles 39 and 42 (1) (a) and (2)

of the Nigerian Constitution. Co-conspirators Malami and Nyako have refused to dismiss Count Fifteen in their attempted judicial murder of Nnamdi Kanu notwithstanding the obvious legal defects.

CONCLUSION

The foregoing establishes the following:

1. There is a reasonable basis to conclude that co-conspirators Attorney General Abubakar Malami and Justice Binta Nyako are guilty of crimes against humanity as defined in Article 7 of the Rome Statute including the ongoing attempted judicial murder of Nnamdi Kanu.
2. Multiple witnesses are eager, willing, and able to provide oral testimony with appropriate confidentiality and protection as stipulated in Chapter 2, Section II, Subsection 2 of the Rules of Procedure and Evidence.
3. The Chief Prosecutor has a reasonable basis to proceed with an investigation of co-conspirators Malami and Nyako for crimes against humanity, including the ongoing judicial murder of Nnamdi Kanu. Accordingly, the Chief Prosecutor should submit to the Pre-Trial Chamber a request for such authorization under Article 15, paragraph 3 of the Rome Statute.

Respectfully submitted,

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