

Nigeria's Criminal Persecution Of Nnamdi Kanu Must End

By Bruce Fein

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The government itself should be in the dock for its serial crimes against Mr. Kanu because of his Biafran heritage, free speech, and association in flagrant violation of international law and the Nigerian Constitution. A motion should be filed before Justice Binta Nyako, a notorious pliable puppet of President Muhammadu Buhari, to dismiss the prosecution with prejudice forthwith on multiple legal grounds.

For starters, begin with President Buhari's attempted assassination of Mr. Kanu by military invasion at his residence in Abia State on September 10, 2017. On January 19, 2022, Justice Benson C. Anya of the High Court of Abia State of Nigeria awarded Mr. Kanu 1 billion naira in damages for the government's attempted murder.

The Justice explained, "[t]he military invasion of [Kanu's] residential abode...is so notorious and common knowledge that this Honorable Court cannot turn a blind eye to it." The Justice added, "[Nnamdi Kanu] has by credible evidence proved to this Honorable Court that his fundamental rights to dignity of human person, personal liberty were wantonly or brazenly violated and his fundamental right to life threatened brazenly by [the Federal Government of Nigeria]...It is the view of this Honorable Court that the Agent of the [Federal Government of Nigeria] set out as pythons to terminate the life of [Nnamdi Kanu]," and none of the attempted murderers were prosecuted, rebuked, or disciplined.

Under sections 316 and 320 of Nigeria's criminal code, the FGN and its agents are guilty of attempted murder of Nnamdi Kanu. Yet there have been no prosecutions in what would be an open and shut case. Indeed, no Fulani has ever been convicted of killing a Biafran in the history of Nigeria. This circumstantial evidence is overwhelming proof that the FGN is selectively prosecuting Nnamdi Kanu because of his Biafran heritage in violation of Article 42 (1) (a) and (b) of the Nigerian Constitution. As the United States Supreme Court explained in a comparable case of selective enforcement against Chinese Americans, "Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

The FGN's attempted murder of Nnamdi Kanu with impunity is only the tip of the iceberg. Last June, it conspired with Kenya's President Uhuru Kenyatta to kidnap and torture Mr. Kanu in Nairobi, Kenya, both condemned as crimes everywhere in the world. Conclusive proof is not available at present because both miscreant nation's have concealed what transpired. A fundamental rule of evidence permits a negative inference of guilt to be drawn against a party for refusing to produce what is claimed to be exculpatory. A motion should be filed before Justice Binta demanding depositions of Nigerian and Kenyan officials to ascertain Nnamdi Kanu's treatment in Nairobi before his illegal extraordinary rendition to Abuja without circumventing extradition prescribed by law.

Nnamdi Kanu's extraordinary rendition was a continuation of his kidnapping by Kenya and Nigeria. Attorney General Abubakar Malami acknowledged on June 29, 2021, that Mr. Kanu had been brought back to Nigeria by the collaboration of the FGN's intelligence and security services.

A universal principle of international law prohibits a government from benefitting from its own crimes, like a parricide demanding an inheritance. The presumed extraordinary rendition of Mr. Kanu (there seems no other rational explanation for his sudden appearance in Abuja without an extradition hearing) voids his criminal prosecution. A motion should be filed before Justice Binta demanding a dismissal of the prosecution with prejudice unless Nigeria and Kenya submit to full discovery as to what transpired in capturing and transporting Mr. Kanu from Nairobi to Abuja.

Article 15 (2) of the International Declaration of Human Rights guarantees to every person "the right to change his nationality." Nnamdi Kanu renounced his Nigerian citizenship years ago. Yet the FGN persists in claiming he remains a citizen under a malignant provision of the Nigerian Constitution, Article 29 (3), because President Buhari, Nnamdi Kanu's would-be assassin, has said "NO." A purported law that stoops to that level of wickedness is not "law." It is persecution.

Another motion should be filed before Justice Binta demanding Nnamdi Kanu's immediate release on bail considering Justice Anya's finding the FGN guilty of Kanu's attempted murder. To permit him to remain in the custody of DSS is like entrusting a rapist with custody of his victim. If bail is denied, an immediate appeal should be filed.

Nnamdi Kanu has been detained in solitary confinement without trial for more than nine months. The FGN has articulated no excuse for such protracted delay notwithstanding more than ample prosecutorial and investigative resources. By any civilized yardstick, such prolonged detention with no end in sight violates Article 36 (1) of Nigeria's Constitution which guarantees "a fair hearing within a reasonable time." The FGN has twice filed amended charges against Mr. Kanu to postpone the day of reckoning. The latest adjournment is until April 8, 2022.

A motion should be filed immediately before Justice Binta demanding entry of an order automatically terminating Nnamdi Kanu's prosecution with prejudice if the FGN is not ready for trial on April 8. Powerful circumstantial evidence suggests the FGN will seek to continue to postpone the trial until a new President is elected in 2023. If the motion is denied, an immediate appeal or mandamus petition should be filed.

Justice Binta's conspicuous complacency with the FGN's serial lawlessness in the prosecution of Nnamdi Kanu is credible circumstantial evidence that she is acting at the direction of President Buhari or Attorney General Malami. Both have expressed a policy of flouting court orders at will. A motion should be made that Justice Binta recuse herself and for discovery to unearth her ex parte communications with the President or Attorney General. If the motion is denied, an immediate appeal or mandamus petition should follow.

It should be obvious that Nnamdi Kanu, like South Africa's Nelson Mandela before him, will not receive justice in Nigerian courts without external outrage and sanctions. His defense before Justice Binta should proceed accordingly. It should build a record of lawlessness in violation of universally recognized human rights implicating both the Justice and the FGN of which judicial notice may be taken in all foreign or international tribunals.