



COMMUNITY COURT OF JUSTICE, ECOWAS  
COUR DE JUSTICE DE LA COMMUNAUTE, CEDEAO  
TRIBUNAL DE JUSTICA DA COMUNIDADE, CEDEAO

**IN THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY  
OF THE WEST AFRICAN STATES (ECOWAS)**

In the mater of

***INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA***

**v.**

***FEDERAL REPUBLIC OF NIGERIA***

Application No. ECW/CCJ/APP/70/21

Judgment No. ECW/CCJ/JUD/15/24

**JUDGMENT**

**ABUJA**

**On 30th May 2023**

**APPLICATION No. ECW/CCJ/APP/70/21**

**JUDGMENT No. ECW/CCJ/JUD/15/24**

**BETWEEN:**

**INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA  
..... APPLICANTS**

**And**

**FEDERAL REPUBLIC OF NIGERIA .....DEFENDANT**

**COMPOSITION OF THE COURT:**

Hon. Justice Gberi-BE **OUATTARA**

- Presiding

Hon. Justice Dupe **ATOKI**

- Member

Hon. Justice Ricardo Cláudio Monteiro **GONÇALVES** - Member/Judge  
Rapporteur

**ASSISTED BY:**

Dr. Yaouza **OURO-SAMA**

- Chief Registrar

**REPRESENTATION OF THE PARTIES**

Chioma Nwaodike, Esq.



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Augusta Aver Yaakugh, Esq

- Counsel for the Applicant

Maimuna Lami Shiru (Mrs)

- For the Defendant

### ***I. JUDGMENT***

“1. This is the Court’s Judgment read virtually in an open court, in accordance with Article 8 (1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

### ***II. DESCRIPTION OF THE PARTIES***

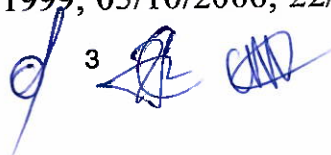
2. The Applicant is the Incorporated Trustees of Media Rights Agenda, located in Lagos, Nigeria, a non-governmental organization registered under Nigerian laws whose mandate includes promoting and defending the right to freedom of expression, media freedom, and access to information both online and offline and has observer status with the African Commission on Human and Peoples' Rights.

3. The Defendant is the Federal Republic of Nigeria, a Member State of the Economic Community of West African States, ECOWAS and a signatory to the African Charter on Human and Peoples’ Rights, hereafter the African Charter.

### ***III. INTRODUCTION***

4. In the instant case, the Applicant came to claim the violation of the human rights of Messrs. DELE GIWA, BOLADE FASISI, EDWARD OLALEKAN AYO-OJO, OMOLOLU FALOBI, GODWIN AGBROKO, ABAYOMI OGUNDEJI, EDO SULE-UGBAGWU, alleging that they were journalists and media professionals who were murdered, respectively, on 19/10/1986, 31/03/1998, 01/06/1999, 05/10/2006, 22/12/2006), 17/08/2008

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Yes

and 24/04/2010, in the exercise of their fundamental rights to freedom of expression and of the press and/or in circumstances believed to be linked to the exercise of those rights. That, however, despite the obligations imposed on the Defendant under various national, regional and international instruments, it has failed, refused, neglected and/or omitted to effectively investigate, prosecute and punish the perpetrators of the murders of these Nigerian journalists.

#### ***IV. PROCEEDINGS BEFORE THE COURT***

5. The Originating Application (doc. 1) accompanied by eight (8) Exhibits, was lodged at the Registry of this Court on 24th November 2021.

6. The Defendant State, the Federal Republic of Nigeria, duly served on November 25, 2021, filed an application on February 1, 2022, requesting an extension of time to file its defense (Doc. 2) and at the same time deposited its defense (Doc. 3), which was served on the Applicant on the same date and the latter said nothing.

7. October 16<sup>th</sup>, 2022 was appointed as the date for the virtual hearing but only the Defendant's representative appeared and therein made his oral submissions on the merits of the case.

8. The judgment of the case was adjourned to 30th May 2024.

#### ***V. APPLICANT'S CASE***

##### *a. Summary of Facts:*

9. The Applicant is a non-governmental organization registered under Nigerian law, whose mandate includes promoting and defending the right to

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freedom of expression, media freedom and access to both online and offline information.

10. The Applicant has observer status with the African Commission on Human and Peoples' Rights. The Applicant's registration certificate is attached as document 1.

### **ASSASSINATION OF DELE GIWA (19/10/1986)**

11. On Sunday, October 19, 1986, Dele Giwa was at home having a late breakfast with a colleague, Kayode Soyinka, when a letter carrier brought him a package addressed to him.

12. The package was delivered to his eldest son, Billy, then 19 years old. Billy handed it to his father, who looked at it and commented, "*this must be from the president*", because it bore the seal of the President of the Federal Republic of Nigeria.

13. Dele Giwa tried to open the package and it emitted a deafening and deadly explosion!

14. The package was a letter bomb designed to exterminate Dele Giwa. The bomb severely lacerated Dele Giwa's body, but he didn't die immediately. He was rushed to hospital and kept repeating "they've got me!". And he later died.

15. At the time of his death, Dele Giwa was editor-in-chief of Nigeria's Newswatch magazine, probably the most prestigious news magazine in Africa at the time.

16. One of these Guardian reports is available online at: <https://guardian.ng/features/media/34-years-after-murder-dele-giwas-family-seeks-justice-colleague-insists-on-govt-investigation/>. (hard copy of the online report under this title "34 years after murder, Dele Giwa's family

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*seeks justice, colleague insists on government investigation*” is attached as Exhibit 2).

### **BOLADE FASISI (31/03/1998)**

17. Bolade Fasisi, an active member of the National Association of Women Journalists and former treasurer of the National Union of Journalists (NUJ), was shot dead by three unidentified gunmen in Ibadan.

18. Despite widespread calls for a government inquiry, both the motive and the perpetrators remain unknown (see hard copy of an online publication about her death entitled “*Bolade Fasasi: National Association of Women Journalists | Killed in Ibadan, Nigeria | March 31, 1999*” available at <https://cpj.org/data/people/bolade-fasasi/> is attached as Exhibit 3).

### **EDWARD OLALEKAN AYO-OJO (01/06/1999)**

19. Edward Olalekan Ayo-Ojo was found dead beside his car along a Lagos road in the early hours of June 1, 1999.

20. Many people suspected that Ayo-Ojo, who worked for the Daily Times, might have been strangled by assailants. An autopsy, however, did not reveal the exact cause of his death (a printed copy of an online publication about his death entitled “*Journalists Killed*” available at <https://ifex.org/journalist-killed-24/> is attached as Exhibit 4).

### **ASSASSINATION OF OMOLOLU FALOBI - (05/10/2006)**

21. Omololu Falobi, 35, founder and director of the media advocacy group Journalists Against AIDS (JAIDS), was shot dead on October 5, 2006, as he left his office in Lagos.

22. Falobi, the former editor of the private daily, The Punch was found dead lying at the steering wheel of his car with his belongings intact (a printed copy of an online publication about his death entitled “*Government urged to*

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*go all-out in investigation into leading journalist's murder*" available at <https://rsf.org/en/news/government-urged-go-all-out-investigation-leading-journalists-murder> is attached as Exhibit 5).

#### **ASSASSINATION OF GODWIN AGBROKO - (22/12/2006)**

23. On Friday, December 22, 2006, the Chairman, Editorial Board of ThisDay Newspapers, Mr. Godwin Agbroko was assassinated by unknown gunmen at around 10:30 pm. He was driving home from his office after a day's work when he came across the bandits who killed him in his car.

24. Five police officers were killed together with him at the same place and it is still unknown why he was killed.

25. His killers have not been found either. A printed copy of an online report on this caption ("Agbroko, THISDAY Editorial Board Chair Shot Dead" available at <http://saharareporters.com/2006/12/22/agbroko-thisday-editorial-board-chair-shot-deadd> is attached as Exhibit 6).

#### **ASSASSINATION OF ABAYOMI OGUNDEJI - (17/08/2008)**

26. Mr. Paul Abayomi Ogundeji, a member of the editorial board of the Lagos-based private daily "ThisDay", was shot dead on August 17, 2008, at around 10:30 p.m. local time, in Dopemu, a suburb of the Lagos metropolis, by unidentified gunmen.

27. Mr. Ogundeji was ambushed by bandits on his way home. Nothing was taken from the Kia Sports Utility Vehicle (SUV) he was driving.

28. This incident occurred just two years after the murder of a former Chairman of the Editorial Board of the newspaper "ThisDay", Mr. Godwin Agbroko, on December 22, 2006, as he was returning home from the office.

29. His killers have still not been found (a printed copy of an online publication about the death subtitled "How Ogundeji was killed, by witness"

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available at <https://www.vanguardngr.com/2009/09/how-ogundeji-was-killed-by-witness/> is attached as Exhibit 7).

### **ASSASSINATION OF EDO SULE-UGBAGWU - (24/04/2010)**

30. Edo Sule-Ugbagwu, a 42-year-old judicial correspondent for the private daily newspaper, "The Nation", was murdered at his home in a suburb of Lagos by a gang of armed men at around 6.30 pm on April 24, 2010.

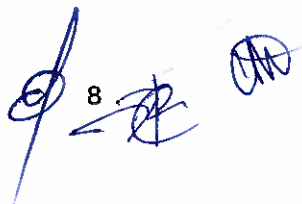
31. Sule-Ugbagwu's younger brother, Mr. Oklahoma Ugbagwu, gave an account of how his brother was killed. According to him, the assassins pretending to be thieves asked him where the money was and Oklahoma replied that there was no money. While they were arguing, Sule-Ugbagwu came out of the house and shouted at them to get out of the house, and they shot him in the head with the intention of killing him. Then they shot him, Oklahoma.

32. They did not intend to kill him because they did not fire directly at him and immediately fled (a printed copy of an online publication about his death entitled "The Nation journalist killed in Lagos" available at <https://www.vanguardngr.com/2010/04/the-nation-journalist-killed-in-lagos/> is attached as Exhibit 8).

33. Despite the obligations imposed on the Defendant under various national, regional and international instruments, it has failed, refused, neglected and/or omitted to effectively investigate, prosecute and punish the perpetrators of the murders of Nigerian journalists.

34. The journalists and media professionals identified were all murdered in the exercise of their fundamental right to freedom of expression and of the press and/or in circumstances believed to be linked to the exercise of those rights, but it seems that the competent authorities of the Defendant have ignored the tragic murders.

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*b. Pleas in Law*

35. To substantiate its claim, the Applicant relied on the following articles:

- i. Articles 33(1) and 39 (1) of the 1999 Constitution of the Federal Republic of Nigeria; ii. 66 (2) (c) of the ECOWAS Revised Treaty;
- iii. Articles 4 and 9 of the African Charter on Human and Peoples' Rights;
- iv. Articles 2(3), 6(1), 19(2) of the International Covenant on Civil and Political Rights (ICCPR);
- v. Articles 3 and 19 of the Universal Declaration of Human Rights, 1948 (UDHR);
- vi. Principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa.

36. The Applicant further relied on international jurisprudence.

*c. Reliefs Sought*

37. The Applicant sought from the Court the following:

i. A DECLARATION that the murder of the following Nigerian journalists: (1) DELE GIWA, (2) BOLADE FASISI, (3) EDWARD OLALEKAN AYO-OJO, (4) OMOLOLU FALOBI, (5) GODWIN AGBROKO, (6) ABAYOMI OGUNDEJI, and (7) EDO SULE-UGBAGWU, is a violation of Article 33 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 4 of the African Charter, Article 3 of the Universal Declaration of Human Rights and Article 6 (1) of the International Covenant on Civil and Political Rights.

ii. A DECLARATION that the murder of the following Nigerian journalists, namely: DELE GIWA, (2) BOLADE FASISI, (3) EDWARD OLALEKAN AYO-OJO, (4) OMOLOLU FALOBI, (5) GODWIN AGBROKO, (6)

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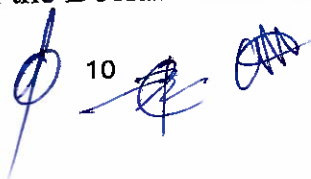
ABAYOMI OGUNDEJI, and (7) EDO SULE-UGBAGWU, in the performance of their journalistic duty, constitutes a violation of Article 39 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Article 9 of the African Charter, Article 19 of the Universal Declaration of Human Rights and Article 19(2) of the International Covenant on Civil and Political Rights.

iii. A DECLARATION that the failure of the Federal Government of Nigeria to take effective measures to protect and ensure the safety of DELE GIWA, (2) BOLADE FASISI, (3) EDWARD OLALEKAN AYO-OJO, (4) OMOLOLU FALOBI, (5) GODWIN AGBROKO, (6) ABAYOMI OGUNDEJI, and (7) EDO SULE-UGBAGWU who were journalists in Nigeria, pursuant to 66 (2) (c) of the Revised ECOWAS Treaty of 1993 and principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, constitutes a breach of the duty and obligation imposed on the Federal Government of Nigeria by the African Charter on Human and Peoples' Rights and the ECOWAS Revised Treaty.

iv. A DECLARATION that due to the Defendant's failure to take measures to sensitize and build the capacity of journalists and other media practitioners, policy makers and other stakeholders on laws and norms to ensure the safety of journalists and other media practitioners, in accordance with principle 20 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa, constitutes a breach of the duty and obligation imposed on the Federal Government of Nigeria by the Declaration and the African Charter on Human and Peoples' Rights.

v. A DECLARATION that the Defendant has an obligation (pursuant to Articles 33 and 39 of the 1999 Constitution of the Federal Republic of Nigeria [as amended], Articles 4 and 9 of the African Charter on Human and Peoples' Rights, Principle 20 of the Declaration of Principles on Freedom of

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Yes

Expression and Access to Information in Africa 2019, adopted by the African Commission, Article 2(3) of the International Covenant on Civil and Political Rights and Article 66(2)(c) of the ECOWAS Revised Treaty) to carry out an impartial and effective investigation, prosecute and punish the perpetrators of attacks on journalists in Nigeria.

vi. A DECLARATION that the Defendant's failure to take effective legal and other measures to properly investigate, prosecute and punish the perpetrators of attacks against Nigerian journalists (DELE GIWA, (2) BOLADE FASISI, (3) EDWARD OLALEKAN AYO-OJO, (4) OMOLOLU FALOBI, (5) GODWIN AGBROKO, (6) ABAYOMI OGUNDEJI, and (7) EDO SULE-UGBAGWU) and ensure that the families of the victims have access to effective legal remedies, is a breach of the duty and obligation imposed on the Federal Government of Nigeria under Article 66(2) of the ECOWAS revised Treaty, Article 2(3) of the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

vii. AN ORDER instructing the Federal Government of Nigeria to take measures to prevent attacks on journalists and other media professionals.

viii. AN ORDER instructing the Defendant to immediately carry out an effective, transparent and impartial investigation into the murders of the said journalists, who were killed while carrying out their journalistic work or in circumstances related to the performance of their duties as journalists.

ix. AN ORDER instructing the Defendant to identify, prosecute and punish the perpetrators of attacks against journalists and other media professionals, and to ensure that victims have access to effective remedies.

x. AN ORDER directing the Federal Government of Nigeria to take measures to sensitize and build the capacity of journalists and other media

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practitioners, policy makers and other stakeholders on laws and standards to ensure the safety of journalists and other media practitioners.

xi. AN ORDER instructing the Federal Government to pay the sum of Ten Million Naira (10,000,000) as compensation for each victim's family as reparation.

xii. ANY OTHER MEASURES that the Court deems appropriate to take under the circumstances of the case.

## ***VI - DEFENDANT'S CASE***

### *a. Summary of Facts:*

38. The Defendant State avers that, contrary to the facts presented by the Applicant in its application, it is the duty and obligation of the Federal Government of Nigeria to promote and protect the Rights of its citizens or nationals against the violation of Human Rights by any individual, Community, institution or official of the Community in the exercise of his or her official functions. The Defendant has never spared any effort in its daily work to protect the rights of its citizens.

39. The Defendant State avers that the Federal Government of Nigeria was constitutionally and statutorily empowered to, inter alia, ensure that the safety and well-being of its citizens are protected at all costs and, in an attempt to effectively carry out that duty, the Federal Government has established and appointed various agencies and organizations to assist in the carrying out of that function.

40. The Defendant declares that it has not violated any of the Applicant's rights or any of the provisions of the African Charter on Human and Peoples' Rights, as cited by the Applicant.

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Yes

41. The Defendant denies paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14 of the declaration of facts in support of the claim as false, within the scope of the Applicants' personal knowledge, evidence based on hearsay and not representing real facts.

42. The Defendant further avers that it cannot be said to have failed, refused or neglected to effectively investigate and prosecute the perpetrators of the deaths of the Nigerian journalists, since several investigations and press conferences were held and the Oputa panel in 2001 also dealt with the same issue.

43. The Defendant State asserts that the Federal Government has a duty to regulate the affairs of the nation as a whole and cannot be everywhere at all times and in everything and therefore, in an attempt to protect the fundamental human rights of its citizens, various measures, laws, bodies and authorities have been put in place to promote the security of the individual rights of both Journalists and the rest of the citizens.

44. The Defendant also avers that although the provision of the 1999 Constitution of the Federal Republic of Nigeria (as amended) protects the violation of one's fundamental rights, however, these provisions are not absolute, as there are certain cases in which human rights can be deprived.

45. With regard to the Applicant which brought this case, the Defendant, avers that it does not have the *locus standi* necessary to bring this case before this honorable Court.

46. The Federal Government of Nigeria has been constitutionally and statutorily empowered to, among other things, ensure that the safety and well-being of its citizens are protected at all costs.

47. In an attempt to fulfill this duty, the federal government has set up and appointed various agencies and organizations to help carry out this function,

since it cannot be everywhere at all times and in everything. Consequently, various measures, laws and organizations have been put in place to promote the security of individual rights, both for journalists and the rest of citizens.

48. The law establishes that the newspaper publication is attached or tendered and admitted as evidence only of the fact that said publication was made and not to prove the truth of the statement contained in it.

49. The law also establishes that statements contained in a journalistic publication are elements of evidence that have no probative value (see the case of *ABEGUNDE V. ONDO STATE HOUSE OF ASSEMBLY & ORS (2014) LPELR-23683(CA) Per UGO, J.C.A* (Pp. 113-114, paras. A-F) CA).

50. The evidence attached in support of the Applicant's case regarding the reports on the murders of these journalists is hearsay evidence that has no probative value. The law is well established that a court cannot attribute probative value to evidence based on hearsay (see the case of *KAKIH V. PDP & ORS (2014) LPELR-23277(SC) Per SULEIMAN GALADIMA, J.S.C* (Pp. 46-47, paras. C-B)).

51. Since the Applicant has failed to prove and link the deaths to the Defendant's actions/omissions, it follows that the Applicant cannot be entitled to the legal remedies sought.

52. It is the duty of an Applicant seeking the enforcement of fundamental rights to prove his entitlement to the legal remedies sought (see the cases of *BANGA & ORS C. AKPAN & ORS [2018 CA] I and WILLIAM & ANOR C. USEN & ORS (2018) LPELR-46163(CA)*).

53. It is established in the Defendant's legal system, without any authority to the contrary, that before a party brings an action before any court, that party must have *locus standi* (the legal capacity to bring such an action) which will

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Yes

guarantee it the protection of its civil rights and obligations which are wrongfully affected by the Defendant's act or omission.

54. Section 6 (6) (a) and (b) of the Constitution of the Federal Republic of Nigeria is apt and clear in this regard.

55. The two crucial tests to determine whether a person has *locus standi* to initiate an action are the following:

- a. The action must be litigable; and
- b. There must be a dispute between the litigating parties.

56. The Applicant has not sought this Honorable Court for determination of any issue affecting its civil rights and/or obligations (see the case of *BASINCO MOTORS LTD V. WOERMANN-LINE (2009)39 NSCQR 284*).

57. The Applicant's claim does not disclose a legal or litigable right, it does not demonstrate a sufficient or special interest that adversely affects it and or a litigable cause of action.

58. In all of the Applicant's evidence there is nothing to show that it has suffered any personal loss or damage which has given it the capacity to bring the instant case - (see also the cases of *UMAR C. W.G.G (NIG) LTD (2007) 7 NWLR (PT. 1032) 117 CA* and *BEWAJI C. OBASANJO (2008)9 NWLR (PT. 1093)CA 540*).

*b. Pleas in Law*

59. The Defendant based its submissions on section 6 (6) (a) and (b) of the Constitution of the Federal Republic of Nigeria.

60. The Defendant also took into account its national case law.

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*b. Reliefs Sought*

61. The Defendant concludes by stating that:

- i. There is no convincing evidence to support the Applicant's case;
- ii. It did not violate the Applicant's fundamental rights;

62. It also asked the Court to dismiss the Applicant's case in its entirety for lack of *locus standi*.

**VII. ON THE JURISDICTION**

63. In the instant case, it is up to the Court to recognize its own jurisdiction *ex officio*.

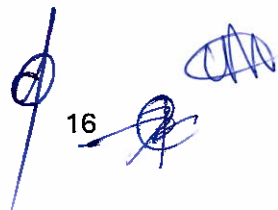
64. The jurisdiction of the Court results, above all, from the legal texts governing it and from the nature of the question that is put before it by the Applicant, based on the facts, as alleged by the Applicant.

65. Article 9 (4) of the Additional Protocol of 2005 established that the “*The Court has jurisdiction to determine the cases of human rights violations that occur in any Member State.*”

66. In terms of access to the Court, the Article 10 (d) of the same Protocol establishes that “*Can access the Court (...) d) Anyone who is a victim of human rights violations*”.

67. In the instant case, as we have seen, the facts claimed by the Applicant and which constitute the cause of action, allegedly occurred on **19/10/1986** in relation to the alleged murder of DELE GIWA; **31/03/1998** in relation to the alleged murder of BOLADE FASISI and **01/06/1999** in relation to the alleged murder of EDWARD OLALEKAN AYO-OJO.

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68. This means that it is up to the Court to find out if its jurisdiction may rule on facts that occurred before the date of entry into force of the aforementioned Additional Protocol of 2005.

69. It is recalled that jurisdiction in matters of human rights violations was conferred on this Court by Article 9 of Additional Protocol A/SP.1/05 of 2005, which amended Protocol A/P1/7/91 on the Court, and which entered into force provisionally on January 19, 2005 with the signature of the Signatory Heads of Member States (including the signature of the Head of State of the Federal Republic of Nigeria) and definitively into force after its ratification by at least nine (9) of the signatory States.

70. And as it results from article 28 of the VIENNA CONVENTION ON THE LAW OF TREATIES “*Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.*”

71. This norm of the aforementioned Convention enshrines the principle of non-retroactivity of the conventions, determining the *ratione temporis jurisdiction*.

72. And the relevant date for the purpose of establishing jurisdiction by reason of time is, in principle, that of the entry into force of the Convention and its Protocols, as far as the respective contracting party is concerned (see European Court of Human Rights (THDH) in the case of *SILIH V. SLOVENIA* (GC §164).

73. In fact, the Inter-American Court ruled in the same vein in the case of *GOMES LUND AND OTHERS (“GUERRILLA DO ARAGUAIA”) v. BRAZIL*, Judgment OF NOVEMBER 24, 2010, by establishing that “*In*

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*order to determine whether it entertains jurisdiction to hear a case or one of its aspects, in accordance with Article 62.1 of the American Convention, the Court must take into consideration the date of recognition of jurisdiction by the State, the terms in which this recognition was granted and the principle of non-retroactivity, provided for in article 28 of the 1969 Vienna Convention on the Law of Treaties.”*

74. This Court ruled that *“the Court would have jurisdiction for the acts subsequent to this recognition”*. It also pointed out that, *“Based on the foregoing and on the principle of non-retroactive effect, the Court cannot exercise its contentious jurisdiction to apply the Convention and declare a violation of its norms when the alleged facts or the conduct of the State, which could imply its international responsibility, are prior to this recognition of jurisdiction.”* (see §16)

75. In the same vein, the European Court (ECHR) concluded in the case *KOPECKY V. SLOVAKIA (GC)* that competence *ratione temporis* covers only the period after ratification of the Convention or its Protocols by the Defendant State, by reaffirming that *“(…) the Convention imposes no specific obligation on the Contracting States to provide a redress for wrongs or damage prior to their ratification of the Convention (see § 38).*

76. Likewise, it follows from the jurisprudence of the Inter-American Court contained in the aforementioned Judgment that *“acts of a continuous or permanent nature last for as long as the fact continues, thus maintaining its lack of compliance with the international obligation remains”* and *“the Court may examine and rule on other alleged violations, which are based on facts that occurred or persisted”* from the date of recognition of its jurisdiction by the State (see §18).

77. In a similar way, the jurisprudence of the European Court understands that *“the Court can even take into account facts prior to ratification,*

*provided that they can be considered as the origin of a continuous situation that lasted beyond that date, or that are relevant to understand facts that occurred after that date.”* (see *KURIC AND OTHERS V. SLOVENIA - GC §240 -241*).

78. Also according to the understanding of the European Court, “*the bodies of the Convention admit the extension of the scope of jurisdiction ratione temporis, to situations of continuous violations that began before the entry into force of the Convention, but which continue after that date.*” (see ECtHR in the case, *BECKER v. BELGIUM*, Application No. 214/5).

79. Also with the same understanding, the African Court on Human and Peoples' Rights in determining its temporal jurisdiction over cases of alleged human rights violations that occurred prior to the entry into force of the Protocol on the Court or the declaration by which Defendant States accept the jurisdiction of the Court and the admissibility of applications made under Article 34 (6) of the Protocol, in the case of *BENEFICIARIES OF NORBERT ZONGO AND OTHERS V. BURKINA FASO*, (see Application No. 013/2011, Ruling of June 21, 2013 in Law Report, Vol. I, 2006-2016, page 197), noted that: 63 “*(...) the relevant dates regarding its ratione temporis jurisdiction are those of the entry into force of the Charter (21 October 1986), the Protocol (25 January 2004) as well as that of the deposit at the Secretariat of the Organization of African Unity by Burkina Faso of the declaration accepting the jurisdiction of the Court to receive Applications from individuals, (28 July 1998).*” (See §62) and it made a clear distinction between “instantaneous” and “continuous” acts of violation and established that “*the Application of the principle of non-retroactivity of treaties contained in Article 281 of the Vienna Convention on the Law of Treaties of 23 May 1969 is not contested by the parties. The issue here is to know whether the different violations alleged by the Applicants would, if proven,*

*constitute instantaneous or continuous violations of the international obligations of Burkina Faso in the area of human rights.” (See §63)*

80. This Court's case law also includes decisions accepting the non-retroactive application of the 2005 Protocol and the assumption of its jurisdiction over facts which give rise to a situation of continuous and prevailing violation at the time of the entry into force of the said Supplementary Protocol (see *ALHAJ HAMMANI TIDJANI v. FEDERAL REPUBLIC OF NIGERIA & 4 OTHERS*, Judgment ECW/CCJ/JUD/04/07 (CCJLR 2004-2009) and *SIRIKU ALADE v. FEDERAL REPUBLIC OF NIGERIA*, Judgment No. ECW/CCJ/JUD/10/12; CCJ Law Report, 2012, p. 189).

81. More recently, the Court, in the case *EVARISTUS DENNIS EGBEBU V. FEDERAL REPUBLIC Of NIGERIA*, Judgment ECW/JUD/14/21 - (Unreported) ruled that “...its jurisdiction to examine human rights violation cases in ECOWAS Member States from the 2005 Supplementary Protocol A/SP.1/01 /05 of 19th January 2005, which came into force on the same date, as well as from its Rules adopted on 3rd June 2002.” (see §76).

82. Therefore, the 2005 Additional Protocol, while conferring jurisdiction on the Court of Justice in matters of human rights, did not establish anything as to the possibility of its retroactive application.

83. Thus, following the principle of non-retroactivity of the Treaties, arising from article 28 of the VIENNA CONVENTION ON THE LAW OF TREATIES mentioned above, the jurisdiction of this Court in matters of human rights is limited to facts that occurred after January 19, 2005, the date of its provisional entry into force.

84. On the other hand, the notion of “instantaneous” or “continuous” acts of violations is established in Article 14 of the United Nations International

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Law Commission Draft on the International Responsibility of States, adopted in 2001, which states that: *“(1) The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue. (2). The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation. (3). The breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with that obligation.”*

85. As the African Court found, in the case cited above, *“in its commentary on this Article, the Commission stated that an act does not have a continuing character merely because its effects or consequences extend in time. It must be wrongful act as such which continues.”* (See §66).

86. In view of these observations, in order to determine its jurisdiction *ratione temporis*, it is for the Court to examine the alleged violations of the right to life of journalists, who were allegedly murdered while carrying out their journalistic work or in circumstances related to the performance of their duties, and of the right to freedom of expression, claimed by the Applicant.

87. In setting out its cause of action, the applicant claims that on 19/10/1986 the alleged murder of DELE GIWA took place, on 31/03/1998 the alleged murder of BOLADE FASISI took place and on 01/06/1999 the alleged murder of EDWARD OLALEKAN AYO-OJO took place.

88. These facts, as invoked by the Applicant, show precisely in time when the alleged infringements on the human rights of the alleged victims mentioned above took place, and they do not result in any situation of “continuous” violation of the alleged human rights. They are therefore

“instantaneous” acts that were exhausted in their practice long before this Court was given jurisdiction to judge human rights violations perpetrated in Member States.

89. Accordingly, and for the foregoing reasons, the Court considers that it does not have jurisdiction *ratione temporis* to hear the instant case in relation to the alleged victims DELE GIWA, BOLADE FASISI, and EDWARD OLALEKAN AYO-OJO, and must therefore dismiss the application in relation to them.

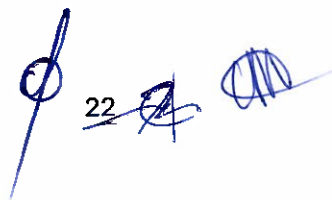
90. With regard to the other alleged victims, OMOLOLU FALOBI, GODWIN AGBROKO, ABAYOMI OGUNDEJI, and EDO SULE-UGBAGWU, whose alleged murders occurred, respectively, on 05/10/2006, 22/12/2006, 17/08/2008 and 24/04/2010, it should be noted that the Applicant's allegations are based on a violation of their human rights, contrary to the relevant provisions of the African Charter and other international instruments for the protection of human rights, in particular the ICCPR and the UDHR, as alleged.

91. Accordingly, the instant case falls within the scope of the jurisdiction conferred on this Court, under the terms of Article 9 (4) of the Protocol A/P1/7/91 on the ECOWAS, Court of Justice, as emended by the Supplementary Protocol A/SP.1/01/05, to entertain cases of human rights violations that occur in any Member State.

92. Accordingly, the Court finds that it has jurisdiction to hear the instant case with regard to the alleged victims, OMOLOLU FALOBI, GODWIN AGBROKO, ABAYOMI OGUNDEJI and EDO SULE-UGBAGWU, and the Court holds and declares so.

#### **VIII. ADMISSIBILITY**

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JOS

93. The Defendant in its defence (see §§ 45, 53 to 58 and 62) asks the Court to dismiss the instant case because the Applicant has no *locus standi* to bring the present action.




94. It is therefore necessary to know whether the Applicant has legal standing to bring this action, given the nature of the rights allegedly violated and the claims it has made.

95. The admissibility of the application initiating proceedings is governed by the provisions of Article 10 (d) of Protocol A/P1/7/91 on the Court as amended by Additional Protocol A/SP.1/01/05.

96. The aforementioned Article 10(d) provides that access to the Court is open to “*Individuals on application for relief for violation of their human rights; the submission of application for which shall: (i) Not be anonymous; nor (ii) Be made whilst the same matter has been instituted before another International Court for adjudication;*”

97. Article 10(d) contains three admissibility requirements: (i) the Applicant as a *prima facie* victim of the alleged violation (i.e. victim status or position); (ii) non-anonymity of the Applicant; (iii) the claim is not pending before another international Court (see the case between *AZIAGBEDE KOKOU & OTHERS AGAINST THE REPUBLIC OF TOGO* [2013] CCJELR 167, PARAGRAPH 18).

98. The first general rule in an action for violation of human rights is that the Applicant, who is an individual, must prove that he or she has a sufficient interest in the matter in question. Therefore, the essential criterion for a

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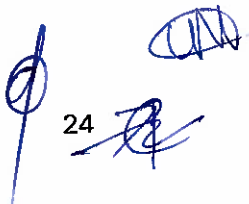
human rights complaint is that the Applicant is an alleged victim of the human rights violation and that the Applicant must prove his or her locus standi in the case (see the case between *TAHIROU DJIBO & 3 OTHERS AGAINST THE REPUBLIC OF NIGER*, JUDGMENT No. ECW/CCJ/JUD/13/2020, ON PAGE 25; In the case of *EBERE ANTHONIA AMADI & 3 OTHERS AGAINST THE FEDERAL GOVERNMENT OF NIGERIA*, JUDGMENT No. ECW/CCJ/JUD/22/19, PAGE 13).

99. In the instant case, the Applicant identified itself as a Non-Governmental Organization and indicated the victims on whose behalf the reliefs are sought. There is no evidence of a case pending before another international court in which it is seeking the same or similar remedies to those it has sought from this Court. Therefore, the application meets the requirements that the Applicant must not be anonymous and that the case must not be pending before another international court.

100. With regard to the requirement “to be a victim”, *prima facie*, of the alleged act constituting the violation of human rights, it is necessary to make a more careful analysis of the instant action.

101. In fact, the requirement of victim status (which is sometimes also referred to as “standing”) simply means that the Applicant must have a legal right or other protectable interest that the State's conduct has adversely affected or harmed (see the case of *INTERNATIONAL AMNESTY OF TOGO & OTHERS AGAINST THE TOGOLESE REPUBLIC*, JUDGMENT No. ECW/CCJ/JUD/09/20, PARAGRAPHS 31-33).

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102. In other words, the Applicant must demonstrate, *prima facie*, that it has been affected by a law, policy, practice or conduct of the Defendant State that is the cause of the alleged human rights violations.

103. The Court notes, however, that in international human rights law and in the practice of various human rights bodies, the requirement of victim status is interpreted liberally.

104. Thus, apart from the obvious case of persons who are personally and directly affected by the alleged human rights violation (“direct victims”), indirect victims may also be allowed to file complaints for human rights violations, especially when the direct victims are dead or cannot file the complaints for any other reason (see the case between the *INTERNATIONAL AMNESTY OF TOGO AND OTHERS AGAINST THE TOGOLESE REPUBLIC*, JUDGMENT No. ECW/CCJ/JUD/09/20, PARAGRAPHS 31-33; THE CASE BETWEEN *REV. FR. SOLOMON MFA & 11 OTHERS AGAINST THE FEDERAL REPUBLIC OF NIGERIA & 5 OTHERS*, JUDGMENT No. ECW/CCJ/JUD/06/19 PAGE 15).

105. These indirect victims may include “*the immediate family or dependents of the direct victim and persons who have suffered damage while intervening to help victims in danger or to prevent victimisation*” (see also the case between *THE BENEFICIARIES OF THE DECEASED NORBERT ZONGO, ABDOULAYE NIKIEMA ALIAS ABLASSE, ERNEST ZONGO, BLAISE ILBOUDO AND MOUVEMENT BURKINABE DES DROITS DE L'HOMME ET DES PEUPLES (BURKINABE MOVEMENT FOR HUMAN AND PEOPLE'S RIGHTS) AGAINST BURKINA FASO (REPARATIONS)* (2015) 1 AFCLR 258, paras 45-49); *MAHAWA CHAM AND SARJO CHAM*

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Yes

v. *THE REPUBLIC OF GAMBIA*, JUDGMENT No. ECW/CCJ/APP/26/23 §§ 97 and 98 (UNREPORTED).

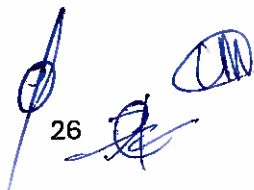
106. To meet this admissibility requirement, the Applicant must provide evidence of being family or having another close relationship with the direct victim, thus establishing his/her status as an indirect victim. Thus, in the case of *REV SOLOMON MFA & OTHERS v. THE FEDERAL REPUBLIC OF NIGERIA*, JUDGMENT No. ECW/CCJ/JUD/06/19, para. 51, the Court held that in a “*situation where the victim is deceased, any person bringing an action as an indirect victim must be able to establish and convince the Court of his/her direct relationship with the victim*” (see also the case of *MAHAWA CHAM AND SARJO CHAM v. THE REPUBLIC OF GAMBIA*, Judgment No. ECW/CCJ/APP/26/23 § 98 (unreported).

107. Therefore, when a Applicant is not a direct victim of the alleged human rights violation, s/he must at least show that s/he is an indirect victim for the case to be admissible.

108. In the instant case, the Applicant is an NGO and can only have brought the present action on the basis of an *actio popularis*, since it did not qualify neither as a direct victim nor as an indirect victim.

109. The crucial question when an NGO presents a human rights case to the Court, this considers first the admissibility before any analysis of the merits. For such cases, admissibility is examined on the basis of two essential criteria: i) **the legal existence of the NGO**, ii) **the nature of the action**: highlighting (a) representative action or (b) *actio popularis*.

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Yes

110. Let's analyze these criteria

***i) Legal existence of the NGO***

111. With regard to prior legal existence, which also confers legal personality on the NGO, it is necessary for the NGO to have legal existence and related recognition by the competent national authorities. In this regard, it is settled case law that a legal person, including an NGO, may bring an action before the Court if it is duly registered in an ECOWAS Member State.

112. Registration is a condition for the legal existence, recognition by the State and public authorities and capacity of the legal person (NGO) concerned to act on the territory of the Member State.

113. Proof of registration is established by a certificate or receipt of registration issued by the State's competent authority. In addition, the legal entity's statutes specify its corporate purpose and, by extension, its scope of action or intervention. It is in the public interest that a legal entity (NGO) cannot act outside its corporate purpose, as declared to the competent national authorities.

**ii) Nature of the action**

***a) Representation of special interests***

114. A duly registered NGO can bring a case before the Court to represent certain interests. To this end, it must present a mandate in good and due form [in this regard, see the case between *DÉLÉGUÉS DÉPARTEMENTAUX DE LA FILIÈRE CAFÉ CACAO (CNDD) V. RÉPUBLIQUE DE CÔTE D'IVOIRE* (ECW/CCJ/JUD/03/13 of February 22, 2013)].

***b) Actio Popularis - action with public interest***

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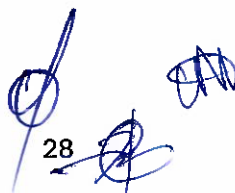
Yes

115. The Court permits “NGOs, volunteers such as lawyers, and citizen petitioners to bring actions on behalf of a group of victims, usually a community or a class of people, on the basis of a common public interest, in order to denounce the violation of their fundamental rights” (see the case between *TRUSTEES OF THE CENTRE FOR PEACE AND CONFLICT MANAGEMENT IN AFRICA AND THE RETHINK AFRICA FOUNDATION AND 3 OTHERS AGAINST THE FEDERAL REPUBLIC OF NIGERIA*, ECW/CCJ/JUD/20/22 of March 29, 2022, page 41), no mandate to act being required (above-mentioned Judgment, pages 42 and 43).

116. To be accepted, the *actio popularis* presupposes the defense of a “public right” (judgment cited, page 40), or the defense of the fundamental rights of a community or a class of people on the basis of a common public interest. As this Court has highlighted, it is necessary that “*there is a public interest worthy of protection which has allegedly been infringed and that the matter is justiciable*” and, furthermore, that “*the action is not brought for the personal benefit of the applicant, that is to say, the advantages claimed must not exclusively benefit the applicant*” (see the case of *LA LIGUE SÉNÉGALAISE DES DROITS HUMAINS AGAINST SENEGAL*, Ruling No. ECW/CCJ/JUD/39/22 of July 14, 2022, para. 146).

117. Consequently, when, in the context of *actio popularis*, the Applicant seeks pecuniary compensation for his own benefit, the Court rejects the claim in its entirety because it does not constitute *an actio popularis* (see Judgment cited above, paragraphs 175-161).

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Yes

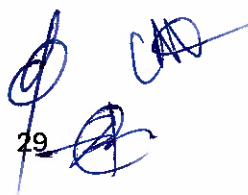
118. In a recent judgment (In the case of *PATRICK EHOLOR (PRESIDENT OF ONE LOVE FOUNDATION) AGAINST THE FEDERAL REPUBLIC OF NIGERIA*, DECISION No. ECW/CCJ/JUD/51/23 of December 7, 2023, § 52) which sought to clarify the conditions to be met by a natural person in order to bring an application for *actio popularis*, the Court stated: “Thus, in granting an individual the capacity to bring an *actio popularis* application, the following conditions must be met: 1) the rights allegedly infringed must be regarded as capable of being held by the public and not as a private right. 2) The reliefs sought must be exclusively for the benefit of the public, excluding the personal interest of the Applicant. An exception must be made when the Applicant is a member of the community or group concerned. 3) Victims, although indeterminable, must, for the purposes of awarding reparation, be capable of being foreseen or considered by the Court” (see the case of *THE INCORPORATED TRUSTEES OF LAWS AND RIGHTS AWARENESS INITIATIVE v. THE FEDERAL REPUBLIC OF NIGERIA* ECW/CCJ/JUD/16/20 at p. 19).

119. In the instant case, since the Applicant brought the action on the basis of *actio popularis*, we have to know whether the defense of the right to life and the right to freedom of expression imply the defense of an individual right or the defense of rights violated to the detriment of a broad category of people.

120. In other words, it is necessary to know whether the rights in question can be defended on the basis of an *actio popularis*.

121. With regard to the right to life

Applicant's Submissions

Handwritten signature and initials in blue ink, including the number 29.

Handwritten signature in blue ink, appearing to read 'Yes'.

122. The Applicant alleged, in summary, that Omololu Falobi, founder and director of the media advocacy group, Journalists Against AIDS (JAIDS), was shot dead on October 5, 2006, while leaving his office in Lagos, and that he was found dead lying at the steering wheel of his car with his belongings intact.

123. That on December 22, 2006, the Chairman, Editorial Board of ThisDay Newspapers, Mr. Godwin Agbroko was murdered by unknown gunmen at around 10:30 pm. He was driving home from his office after a day's work when he came across the bandits who killed him in his car. That his killers have not been found either.

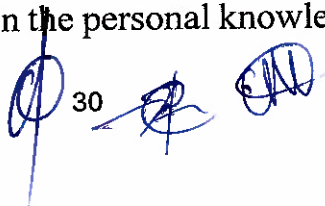
124. That Mr. Paul Abayomi Ogundeji, a member of the Editorial Board of the Lagos-based private daily "Thisday", was shot dead on August 17, 2008, at around 10:30 p.m. local time, in Dopemu, a suburb of the Lagos metropolis, by unidentified gunmen; that he was ambushed by the bandits as he was returning home, that it has not yet been found who killed him.

125. That Edo Sule-Ugbagwu, a 42-year-old judicial correspondent for the private daily newspaper, "The Nation", was murdered in his home in a suburb of Lagos by a gang of armed men at around 6.30 p.m. on April 24, 2010.

126. That despite the obligations imposed on the Defendant under various national, regional and international instruments, it has failed, refused, neglected and/or omitted to effectively investigate, prosecute and punish the perpetrators of the murders of Nigerian journalists.

### **Defendant's Submissions**

127. For its part, the Defendant, in summary, argued that it denies paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and 14 of the Declaration of Facts in support of the claim as being false, within the personal knowledge of the Applicants,

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evidence based on hearsay or not representing the true facts; that it cannot be said that the Defendant has failed, refused or neglected to effectively investigate and prosecute the perpetrators of the deaths of Nigerian journalists, since several investigations and press conferences were held and the Oputa panel in 2001 also dealt with the same issue.

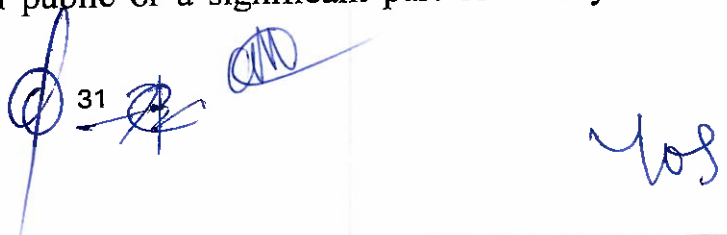
### The Court's Analysis

128. In the instant case, although the Applicant is an NGO registered under the laws of the Defendant and seeking redress for the violation of the right to life of three journalists, the question to be determined when considering admissibility is whether the murder of these journalists is a matter of public interest for which the NGO can access the Court to obtain redress.

129. The Court, in its analysis of the two rights whose violation is invoked by the Applicant, will follow its understanding as set out in the recent case of *INCORPORATED TRUSTEES OF MEDIA RIGHTS AGENDA v. FEDERAL REPUBLIC OF NIGERIA*, CASE No. ECW/CCJ/APP/48/21 JUDGMENT No. ECW/CCJ/JUD/.../2023, §§ 78 to 105.

130. Therefore, it is first important to establish the concept of public interest relevant to the case, in order to know whether we are dealing with a dispute centered on the public. In the Court's view, when considering the meaning of "public interest" in the context of Public Interest Litigation, it refers to issues that affect the wider welfare or common good of society. This can include issues related to social justice, human rights, environmental protection, public health, consumer rights, transparency in governance, etc. Essentially, the public interest encompasses concerns that affect the well-being and rights of the general public or a significant part of society. In

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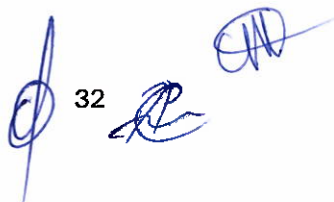
Public Interest Litigation, the emphasis is on defending and protecting these broader social interests through legal action, often in cases where marginalized or disadvantaged groups are affected and may not have the means to defend themselves. Public interest litigation therefore serves as a mechanism to defend and promote the collective well-being and fundamental rights of the public.

131. Having clarified the concept of public interest litigation, it is important to know whether the murder of three journalists is a matter of public interest for which a NGO can go to court to seek redress, which requires an analysis of the application in the light of the aforementioned requirements.

132. A matter is of public interest when it affects the wider well-being or common good of society, encompassing the general population or society as a whole. It covers all members of a community or the general public and not specific individuals or groups. In the light of this concept, it is apodictic that the invocation of the violation of Article 4 of the African Charter in relation to the murder of four journalists cannot be equated with a matter affecting the general public, in order to confer admissibility of the application by the Court.

133. The Court recalls that there are few collective human rights recognized by the community of States, and that the right of peoples to self-determination, guaranteed by international conventions and international custom, is indisputable. Alongside this right, other rights take on the nature of collective rights, although this is not uncontroversial, namely the right to sustainable development, the right to a healthy environment, the right to humanitarian assistance in disaster situations and the right to peace.

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134. The murder of four journalists is therefore not a matter of public interest, *hoc sensu*, so the Applicant had to be authorized by the family of the deceased in order to bring the instant action.

135. No such authorization was presented to the Court. Therefore, the Applicant, who acts on behalf of the victims in a matter that is not in the public interest and without authorization to do so, does not have the status of a victim and lacks the standing to bring the present action. Consequently, the application does not comply with Article 10(d) of the 2005 Additional Protocol and cannot therefore be admitted.

136. With regard to the right to freedom of expression

137. As for the alleged violation of this right, the facts of the Applicant and the Defendant are identical to those listed in §§ 122 to 127 above, wherefore the contents of which are as if hereby reproduced in seriatim.

#### The Court's Analysis

138. The question that arises here is whether the right to freedom of expression is such a public-centered right that it can be defended in the context of an *actio popularis*.

139. In order to do this, we need to know whether the requirements of an *actio popularis* set out above have been met:

*"1) the rights allegedly violated must be established as a public right and not a private right. 2) The reliefs sought must be exclusively for the benefit of the public, to the exclusion of the applicant's personal interest. An*

*exception should be made where the Applicant is a member of the community or group concerned. 3) Victims, although not determinable, must, for the purposes of awarding reparation, be able to be foreseen or taken into account by the Court."*

140. The right to freedom of expression is fundamental and essential for human fulfillment. Without the right to freedom of expression, the most basic of our freedoms would be denied, such as the right to think and share our opinions with others, the right to freedom of association, assembly, conscience and participation in public affairs, education or health, etc., and is therefore a fundamental condition for democracy.

141. A democratic system could not be consolidated without the full and effective participation of citizens in the context of a free and democratic society. In order to participate, it is essential to have access to means of expression, as well as access to information that allows people to make decisions about the society in which they want to live.

142. We are clearly dealing with a right with a clearly collective nature, aimed at a generality of people, which can be defended on the basis of the principle of *actio popularis*, since it is a right inherent to the democratic rule of law itself, and it is not possible for such a State to exist without freedom of expression.

143. The Court recalls that the fact that the right can be enjoyed by all is a public right which therefore meets the requirement that the right can be held by the public (see the case between *PATRICK EHOLOR (PRESIDENT OF ONE LOVE FOUNDATION) AGAINST THE FEDERAL REPUBLIC OF NIGERIA (SUPRA)*).

144. It should be noted that, in the instant case, all the remedies sought by the Applicant are in favor of the alleged victims and not for their benefit and

are also aimed at ensuring that murders and other forms of intimidation of journalists are not repeated, guaranteeing them safety in the exercise of their profession. Furthermore, the Applicant did not seek any compensation for itself.

145. Thus, the second criterion above is also met.

146. With regard to the third criterion, which is that the victims, although indeterminable, must be able to be imagined or considered by the Court, it should be noted that in the case at hand, the victims were all duly identified by their names. The Court notes that, based on the facts of the Application, the alleged victims have been duly identified by name, and it is worth highlighting only those for whom the Court considers itself competent to examine their cases, namely OMOLOLU FALOBI, GODWIN AGBROKO, ABAYOMI OGUNDEJI and EDO SULE-UGBAGWU.

147. We are therefore talking about specific, well-identified people who have allegedly had their rights violated. The persons concerned, although they lived in different parts of Nigeria, cannot be considered a community or group of persons in an indeterminate number on whose behalf the Applicant brought the action.

148. As they are well-identified people who lived in different parts of the Defendant State, the criterion in question is not met.

149. Therefore, the present action, also with regard to the violation of the right to freedom of expression, could only be brought in a representative capacity, but the Applicant has no power of attorney for this purpose.

150. In order for the Applicant to be able to bring the present action, both in respect of the alleged violation of the right to life and the alleged violation of the right to freedom of expression, it had to obtain authorization from all the family members of the alleged victims, who may be their wives,

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Yes

husbands, fathers, sons or brothers, all of whom fall within the category of indirect victims, before submitting its application to this Court (see the case of *MAHAWA CHAM AND SARJO CHAM v. THE REPUBLIC OF GAMBIA*, Judgment No. ECW/CCJ/APP/26/23 §§ 108 et seq. (unreported) where it is true that the Applicant seeking from the Court to set compensation in the amount of ten million naira in favor of each of the families of the deceased.

151. It is the understanding of this Court that with an authorization to maintain the action, indirect victims have access to the Court and to compensation. In the absence of authorization, the Court cannot be sure that the compensation awarded will reach the victims, who have not authorized the presentation of this case.

152. Since the Applicant has brought this action to defend a public right that can be held by an indeterminate number of people but has been brought on behalf of a specific number of people, it is not covered by the principle of *actio popularis*.

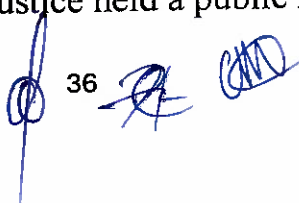
153. Furthermore, since the Applicant acted without the authorization of the victims' relatives, it does not have the capacity to bring this action, which means that its case does not comply with Article 10(d) of the 2005 Additional Protocol and is inadmissible with regard to freedom of expression.

154. For all the above reasons, the Court has no option but to dismiss the present action as the Applicant does not have the *locus standi* to bring it before the Court.

#### ***IX. OPERATIVE CLAUSE***

For these reasons, the Court of Justice held a public hearing:

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yes

**On the Jurisdiction**

i). **Declares that it has** jurisdiction to hear the case in respect of the victims identified as OMOLOLU FALOBI, GODWIN AGBROKO, ABAYOMI OGUNDEJI and EDO SULE-UGBAGWU and that it has no jurisdiction to hear the case in respect of the alleged victims identified as DELE GIWA, BOLADE FASISI and EDWARD OLALEKAN AYO-OJO.

**On the Admissibility:**

ii). The case is dismissed as inadmissible.

Signed by:

Hon. Justice Gberi-BE OUATTARA - Presiding

Hon. Justice Dupe ATOKI - Member

Hon. Justice Ricardo Cláudio Monteiro GONÇALVES - Member/Judge

Rapporteur

Dr. Yaouza OURO-SAMA - Chief Registrar

Done in Abuja, on 30th May 2024, in Portuguese and translated into French and English.

