

**INTHE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

Suit No

IN THE MATTER OF AN APPLICATION BY THE INCORPORATED TRUSTEES
OF ACCESS TO JUSTICE AND EIGHT (8) OTHERS FOR JUDICIAL REVIEW FOR
THE GRANT OF AN ORDER OF MANDAMUS

BETWEEN:

- 1. THE INCORPORATED TRUSTEES
OF ACCESS TO JUSTICE**
- 2. THE INCORPORATED TRUSTEES
OF ONE VOICE COALITION FOR
SUSTAINABLE DEVELOPMENT IN NIGERIA**
- 3. WOMEN ADVOCATES RESEARCH AND
DOCUMENTATION CENTRE Ltd/Gte.**
- 4. THE INCORPORATED TRUSTEES OF
HUMAN RIGHTS LAW SERVICES.**
- 5. THE INCORPORATED TRUSTEES OF
SOCIAL ECONOMIC RIGHTS AND
ACCOUNTABILITY
PROJECT.**
- 6. THE INCORPORATED TRUSTEES OF
NETWORK ON POLICE REFORM IN
NIGERIA FOUNDATION.**
- 7. THE INCORPORATED TRUSTEES OF
NIGERIAN AUTOMOBILE TECHNICIANS
ASSOCIATION.**
- 8. THE INCORPORATED TRUSTEES OF
CENTRE FOR CONSTITUTIONAL GOVERNANCE.**
- 9. THE INCORPORATED TRUSTEES OF
CENTRE FOR CONSTITUTIONALISM AND**

PLAINTIFFS/
APPLICANTS

DEMILITARIZATION

AND

**1. THE PRESIDENT OF
THE FEDERAL REPUBLIC OF NIGERIA**

**2. THE ATTORNEY GENERAL OF
THE FEDERATION**

**DEFENDANTS/
RESPONDENTS**

**MOTION EX-PARTE FOR LEAVE TO APPLY FOR AN ORDER OF
MANDAMUS**

*Brought pursuant to Order 34 Rule 3(1) and (2) of the Federal High Court (Civil
Procedure) Rules 2009 and under the Inherent Jurisdiction of this Court.*

TAKE NOTICE that this Honourable Court will be moved on the _____ day of _____ 201_ at the hour of 9.00 o'clock in the forenoon, and so from day to day until this application is heard, as Counsel may be heard on behalf of the Plaintiffs/Applicants praying the Court for the following reliefs.

AN ORDER for leave to apply for an order of Mandamus compelling the Defendants/Respondents to exercise the legal duty to conduct a thorough, prompt, independent and impartial investigation into allegations or reports of extrajudicial, summary or arbitrary executions made by an international human rights body named Amnesty International whose report issued with an accompanying video footage dated August 5th 2014, depicted horrendous acts of extrajudicial killings and torture of suspected members of the Boko Haram sect carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF).

AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may
deem fit to make in the circumstances

DATED THE 13TH DAY OF NOVEMBER, 2014

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DEMILITARIZATION**

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RESPONDENTS**

**STATEMENT PURSUANT TO ORDER 34 RULE 3(2) a, FEDERAL HIGH COURT
(CIVIL PROCEDURE) RULES 2009**

1. NAMES AND DESCRIPTON OF PLAINTIFFS/APPLICANTS

The Plaintiffs/Applicants include Access to Justice (AJ), One Voice Coalition for Sustainable Development in Nigeria (OneVOICE), Women Advocates Research and Documentation Centre (WARDC), Human Rights Law Services (HURILAWS), Social Economic Rights and Accountability Project (SERAP), Network on Police Reform in Nigeria Foundation (NOPRIN), Nigerian Automobile Technicians Association (NATA), Centre for Constitutional Governance (CCG) and Centre for Constitutionalism and Demilitarization (CENCOD). The Nine (9) Plaintiffs/Applicants are all duly incorporated bodies registered under the Companies and Allied Matters Act 2004 who have the mandate to address issues related to rule of law, human rights and justice in Nigeria and have been active in defending the rule of law, democracy and good governance.

2. RELIEF SOUGHT

An order for leave to apply for an order of Mandamus compelling the Defendants/Respondents to exercise the legal duty to conduct a thorough, prompt,

independent and impartial investigation into allegations or reports of extrajudicial, summary or arbitrary executions made by an international human rights body named Amnesty International whose report issued with an accompanying video footage dated August 5th 2014, depicted horrendous acts of extrajudicial killings and torture of suspected members of the Boko Haram sect carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF).

3. GROUNDINGS UPON WHICH THE RELIEF IS SOUGHT

- a. There is a legal duty upon the 1st and 2nd Respondents to, conduct a thorough, prompt, independent and impartial investigation into allegations or reports of extrajudicial, summary or arbitrary executions in order to protect the right to life, fair hearing, and dignity of human persons that are protected under Sections 33, 34 and 36 respectively of the 1999 Constitution of the Federal Republic of Nigeria, Articles 4, 7 and 5 respectively of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 2004 and under Articles 6,14 and 7 respectively of the International Convention on Civil and Political Rights (ICCPR).
- b. The duty of the 1st and 2nd Respondent to investigate the allegations levied in the report can also be deduced from Section 14(1) and (2) b and Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria.
- c. The alleged extrajudicial killing and torture of these suspected Boko Haram members constitutes a breach of their fundamental right to life, fair hearing and dignity under sections 33, 34 and 36 respectively of the Constitution of the Federal Republic of Nigeria 1999, articles 4, 7 and 5 respectively of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 2004 and under Articles 6,14 and 7 respectively of the International Convention on Civil and Political Rights (ICCPR).
- d. By the Respondents failure/refusal to carry out a thorough and independent investigation into the Amnesty International report, the Nigerian government is in violation of Chapter 1 Article 1 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act which imposes a duty on the government to take all steps necessary for the protection of the rights that are contained therein.

- e. Part II Article 2 (3) of the International Convention on Civil and Political Rights (ICCPR) places a duty upon state parties to the convention to protect and address any breach of the rights protected by the convention.
- f. If the facts as alleged in Amnesty International report and the accompanying video footage are accurate, they constitute war crimes and crimes against humanity. Nigeria is under an obligation to punish war crimes and those who perpetrate them in situations of armed conflict. Article 3(1) of the Geneva Conventions Act, Laws of the Federation of Nigeria 2004 (formerly Cap 162 Laws of the Federation of Nigeria 1990) confers a duty on the government to punish war crimes and those who perpetrate them in situations of armed conflict.
- g. The alleged extrajudicial killing and torture of these suspected Boko Haram members is of grave concern to the Applicants as it relates to issues of adherence to the rule of law, social justice and the protection of human rights that both Nigeria's local and ratified international legal instruments protect.

Dated the _____ day of _____ 2014

CHUMAH OTTEH Esq

COUNSEL TO THE PLAINTIFFS/APPLICANTS

Access to Justice

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Kado Bimko, Gwarimpa Estate,

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PLAINTIFFS/
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**CENTRE FOR CONSTITUTIONALISM AND
DEMILITARIZATION**

AND

**1. THE PRESIDENT OF
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**2. THE ATTORNEY GENERAL OF
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**DEFENDANTS/
RESPONDENTS**

VERIFYING AFFIDAVIT IN SUPPORT OF PLAINTIFFS/APPLICANTS MOTION

EXPARTE FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS

DATED _____ DAY OF _____ 2014

I, **Imuekemhe Emike Jessica**, Female, Adult, Christian, Legal Practitioner of Plot 1K, 2nd Avenue, Kado Bimko, Gwarimpa Estate, FCT, Abuja, do hereby solemnly state and declare as follows:

1. That I am a legal practitioner engaged in the practice of my profession with the Justice Advocacy Group known as **Access to Justice**, who represents the Plaintiffs/Applicants in this suit.
2. That I have the consent of the Applicants to depose to the facts contained herein.
3. That the facts to which I herein depose have come to my knowledge in the course of the discharge of my professional responsibilities after a review of the official case file in this proceedings and from information supplied to me by Mr Joseph Otteh Esq, who is authorised to handle the conduct of this proceedings, at about the hours of 12:21pm on Tuesday, 21st October, 2014 at our offices.
4. I am aware that on the 5th of August 2014, the international human rights organisation Amnesty International (AI) published a report titled “**Nigeria’s military implicated in war crimes**” hereafter referred to as “the report” which alleged that extrajudicial killings were carried out by members of the Nigerian Military and the Civilian Joint Task Force (CJTF) in the course of their campaign and fight against the Boko Haram sect.

5. The full Amnesty International report and footage is available at <http://www.amnesty.org/en/news/nigeria-gruesome-footage-implicates-military-war-crimes-2014-08-05> and is herein attached and marked as Exhibit 'A'.
6. The footage referred to above includes horrific images of detainees ostensibly in the custody of the Nigerian military having their throats slit one after the other and their bodies dumped in mass graves by men who appear to be members of the Nigerian military and the Civilian Joint Task Force (JTF).
7. The video footage also shows 16 young men and boys seated in a line. One by one, they are called forward and told to lie down in front of a pit that served as a grave. Five of them are killed in this way. Amnesty International reports that the fate of the remaining detainees is not shown on video, but that eyewitness accounts confirmed that nine of them had their throats cut while the others were shot to death.
8. Many Nigerians, including the civil rights and rule-of-law groups who are plaintiffs in this action were extremely dismayed and horrified by these allegations. There were also strong international condemnations of the alleged acts of summary, arbitrary and extra-judicial killings and calls for a thorough investigation of the allegations.
9. That given the respectable status of Amnesty International, the Applicants are certain that the allegations levied in the report could likely be true, and therefore deserve thorough investigation.
10. I am aware that as a result of the grievous allegations levied in the report and the accompanying video footage, the Plaintiffs/Applicants, wrote a letter dated 18th August 2014 to the 1st Respondent through the 2nd Respondent, requesting that an impartial, independent and thorough investigation be carried out on the allegations levied in the Amnesty International report.
11. The letter dated 18th August 2014 is attached and marked as Exhibit 'B'.
12. That on the 27th of August 2014, the 1st Applicant received a letter from one O.T Olatigbe, writing on behalf of the 2nd Respondent acknowledging the receipt of the Applicants' letter to the President of the Federal Republic of Nigeria, through the office of the Hon. Attorney General dated 18th August 2014. He stated in the letter that the Federal Government, headed by the 1st Respondent had set up a "facts finding committee" to investigate the Amnesty International report.
13. The letter dated 27th August 2014 is attached and marked as Exhibit 'C'.

14. That upon receipt of this letter dated 27th August 2014, the Applicants sent a second letter to the 2nd Respondent explaining that as critical stakeholders, they were interested in the proceedings of this facts-finding committee, and wanted to explore ways in which they could make relevant representations to this Committee in order to contribute to the goal of ending extrajudicial executions and strengthening accountability for human rights abuses in warfare situations.
15. The letter dated 2nd September is attached and marked as Exhibit 'D'
16. That till the date of bringing this application, the 2nd Respondent did not reply the Applicants' letter. Thus raising the question of the credibility of the claim that a facts-finding committee was set up by the government to investigate the Amnesty International report as claimed by the 2nd Respondent.
17. Furthermore, up till this time, there is no known report or findings of the so-called fact-finding Committee set up by the government.
18. That consequently, the Applicants are seeking an order for leave to apply for an order of Mandamus compelling the Defendants/Respondents to exercise the legal duty to conduct a thorough, prompt, independent and impartial investigation into allegations or reports of extrajudicial, summary or arbitrary executions made by an international human rights body named Amnesty International whose report issued with an accompanying video footage dated August 5th 2014, depicted horrendous acts of extrajudicial killings and torture of suspected members of the Boko Haram sect carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF).
19. That I know it is in the interest of justice for leave to be granted in favour of the Applicants.
20. I depose to this affidavit in good faith, conscientiously believing the contents to be true and in accordance with the ***Federal High Court (Civil Procedure) Rules, 2004*** and the ***Oaths Act, Cap. O1 Laws of the Federation of Nigeria, 2004.***

DEPONENT

SWORN to at the Registry of the Federal High Court, Abuja

This _____ day of _____, 2014

Before Me

Commissioner for Oaths

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**DEFENDANTS/
RESPONDENTS**

**WRITTEN ADDRESS IN SUPPORT OF PLAINTIFFS/APPLICANTS
MOTION EXPARTE FOR LEAVE TO APPLY FOR AN ORDER OF
MANDAMUS**

1. INTRODUCTION

1.1 This written address is delivered in support of the Applicants Motion *Exparte* dated the 21st day of October, 2014 brought pursuant to Order 34 Rule 3(1) and (2) of the Federal High Court (Civil Procedure) Rules 2009 and under the Inherent Jurisdiction of this Court, wherein the Applicants prayed this Honourable Court for the following reliefs namely:

AN ORDER for leave to apply for an order of Mandamus compelling the Defendants/Respondents to exercise the legal duty to conduct a thorough, prompt, independent and impartial investigation into allegations or reports of extrajudicial, summary or arbitrary executions made by an international human rights body named Amnesty International whose report issued with an accompanying video footage dated August 5th 2014, depicted horrendous acts of extrajudicial killings and torture of suspected members of the Boko Haram

sect carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF).

AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

1.2 The Motion *Ex-parte* is supported by an Eighteen (18) paragraph Verifying Affidavit deposed to by **Imuekemhe Emike Jessica**, Counsel with the organisation **Access to Justice** and two (2) Exhibits. The Plaintiffs/Applicants shall rely on the paragraphs of the said Verifying Affidavit as well as the attached Exhibits in support of the Motion *Ex-parte* in arguing the present application.

2. FACTS RELEVANT TO THE RELIEFS SOUGHT

2.1 On the 5th of August 2014, the international human rights organization Amnesty International (AI) published a report titled “Nigeria’s military implicated in war crimes” which alleged that extrajudicial killings were carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF) in the course of their campaign and fight against the Boko Haram sect.

2.2 The full Amnesty International report and footage is available at <http://www.amnesty.org/en/news/nigeria-gruesome-footage-implicates-military-war-crimes-2014-08-05>.

2.3 The footage referred to above includes horrific images of detainees ostensibly in the custody of the Nigerian military having their throats slit one after the other and their bodies dumped in mass graves by men who appear to be members of the Nigerian military and the Civilian Joint Task Force (JTF).

2.4 The video footage also shows 16 young men and boys seated in a line. One by one, they are called forward and told to lie down in front of a pit that served as a grave. Five of them are killed in this way. Amnesty International reports that the fate of the remaining detainees is not shown on video, but that eyewitness accounts confirmed that nine of them had their throats cut while the others were shot to death.

2.5 Many Nigerians, including the civil rights and rule-of-law groups who are plaintiffs in this action were extremely dismayed and horrified by these allegations. There were also strong international condemnations of the alleged acts of summary,

arbitrary and extra-judicial killings and calls for a thorough investigation of the allegations.

2.6 Given the respectable status of Amnesty International, the Applicants are certain that the allegations levied in the report could likely be true, and therefore deserve thorough investigation.

2.7 As a result of the grievous allegations levied in the report and the accompanying video footage, the Plaintiffs/Applicants, wrote a letter dated 18th August 2014 to the 1st Respondent through the 2nd Respondent, requesting that an impartial, independent and thorough investigation be carried out on the allegations levied in the Amnesty International report.

2.8 On the 27th of August 2014, the Plaintiffs/Applicants received a letter from one O.T Olatigbe, writing on behalf of the 2nd Respondent acknowledging the receipt of the Applicants' letter to the President of the Federal Republic of Nigeria, through the office of the Hon. Attorney General dated 18th August 2014. He stated in the letter that the Federal Government, headed by the 1st Respondent had set up a "facts finding committee" to investigate the Amnesty International report.

2.9 Upon receipt of this letter dated 27th August 2014, the Applicants sent a second letter to the 2nd Respondent explaining that as critical stakeholders, they were interested in the proceedings of this facts-finding committee, and wanted to explore ways in which they could make relevant representations to this Committee in order to contribute to the goal of ending extrajudicial executions and strengthening accountability for human rights abuses in warfare situations.

2.10 Till the date of bringing this application, the 2nd Respondent did not reply the Applicants' letter. Thus raising the question of the credibility of the claim that a facts-finding committee was set up by the government to investigate the Amnesty International report as claimed by the 2nd Respondent.

2.11 Furthermore, up till this time, there is no known report or findings of the so-called fact-finding Committee set up by the government.

3. ISSUES FOR DETERMINATION

3.1 The Applicants respectfully submit that the sole issue arising for determination of this Honourable Court in respect of the instant application is as follows:

Whether having regard to the Verifying Affidavit evidence before this Honourable Court including the Statement, this Court ought to grant leave to the Applicant to apply for an order of mandamus.

4. ARGUMENT

4.1 This application for leave is brought in compliance with rules of court as well as established case law that prescribe the practice and procedure for seeking an order of mandamus. Order 34(1) and (2) of the **Federal High Court (Civil Procedure) Rules 2009** states as follows:

3. (1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule. (2) An application for leave shall be made ex parte to the judge and shall be supported by: (a) a statement setting out the name and description of the applicant, the reliefs sought and the grounds on which they are sought; (b) an affidavit verifying the facts relied on; and (c) a written address in support of application for leave.

4.2 The Supreme Court in *FAWEHINMI v. AKILU (1987) NWLR (Pt. 67) 797, Pp. 46-48, paras (F-B)* held as follows:

"The 1st stage is to apply ex parte for leave to apply for the order. The Rules of Court and the Law prescribe this. Thus, it is first necessary to obtain leave to apply for the order of mandamus".

See also *DANMUSA v. INUWA (2007) 17 NWLR (Pt. 1063) 391 C.A., OHAKIM v. AGBASO (2010) 19 NWLR (Pt. 1226) 172 S.C*

4.3 In canvassing arguments on this issue, we contend that the facts deposed to in the verifying affidavit in support of the present application are sufficiently cogent to sustain a grant of leave to apply for an order of mandamus. The Verifying Affidavit and accompanying Statement discloses the facts upon which this application is made. In *DANMUSA v. INUWA (2007) 17 NWLR (Pt. 1063) 391 C.A, Pp. 411-412, paras (H-F)* the Court of Appeal in considering the factors to be taken into

consideration where an application for leave to apply for judicial review is made, held that:

“What a trial court needs consider in application for leave... are the statement setting out the name and description of the applicant, the relief sought; and the affidavit evidence filed to verify the facts relied on by the applicant...the application is granted or refused mainly on the process filed with the application. And leave to apply for judicial review is almost always granted by the court automatically once the court is satisfied with the process filed.”

4.4 The superior courts of law are in agreement on the purpose of seeking the leave of court before an application for an order of mandamus can be made. It is not the duty of the court at the stage of seeking for leave to determine the substantive application for an order of mandamus. See *DANMUSA v. INUWA* (2007) 17 NWLR (Pt. 1063) 391 C.A Pp. 412 paras G., *WEMABOD ESTATE LTD v. JOYLAND LTD* (2001) 18 NWLR (Pt. 744) 22 C.A

4.5 The factors which the court will consider in granting or refusing an application for leave to apply for an order of mandamus can be deduced from the purpose of the requirement for leave. In *FAWEHINMI v. AKILU* (1987) NWLR (Pt. 67) 797 Pp. 46-48, paras F-B, Obaseki, J.S.C. in delivering the leading judgment stated that the purpose of seeking leave is to satisfy:

“...the requirement of the Rules of Court. It is also to ascertain the locus standi of the applicant. Above all, it is to prevent the time of the court from being wasted by busybodies with misguided trivial complaints of administrative error...”

See also *AMAH V. NWAKWO* 2007 12 (NWLR) 1049 (552) C.A., *ADESANYA v. PRESIDENT OF NIGERIA* (1981) 5 SC 112, *UZOHO V. N.C.P* (2007) 10 NWLR (Pt. 1042) 320 C.A.

Locus Standi

4.6 We respectfully state that we have locus to bring this application before the court. The Applicants are duly incorporated bodies registered under the Companies and Allied Matters Act 2004 who have the mandate to address issues related to rule of law, human rights and justice in Nigeria and have been active in defending the rule of law, democracy and good governance. Similarly, **Section 24 (b) and (d) of the 1999 Constitution of the Federal Republic of Nigeria** recognizes the right of citizens to take steps towards advancing our community. Section 24 (d) and (e) states as follows:

It shall be the duty of every citizen to –

(d) make positive and useful contribution to the advancement, progress and well-being of the community where he resides.

(e) render assistance to appropriate and lawful agencies in the maintenance of law and order;

4.7 The right guaranteed under **Section 24** of the **1999 constitution** was recognised and upheld in ***DODODO v. E.F.C.C. (2013) I NWLR (Pt. 1336) 46, In Pp. 524, paras. D-H.*** Eko J.C.A noted that:

“ The citizen, Alhaji Sani Dododo... has some duty under section 24 of the constitution 1999 to abide by the constitution and respect its ideal. He also has a duty by virtue of section 24(e) of this same constitution to render assistance to appropriate and lawful agencies in the maintenance of law and order. It is in the spirit of section 24 of the constitution read together with section 15(5) of the same constitution that enjoins the states agencies ‘to abolish all corrupt practices and abuse of power’ that the appellant made his complaint of corrupt practices against the 4th respondent and the 1st and 2nd respondents who are no doubt lawful agencies of the federal government charged with police powers to investigate allegations of corrupt practices...”

4.8 Even though the Applicants are not personally harmed by the incidents shown in the Amnesty International report, we contend that we have a right, indeed an obligation as well, given the mandate of our respective Constitutions to safeguard fundamental rights guaranteed by the 1999 Constitution of the Federal Republic

of Nigeria and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 2004 and ensure that they are respected and upheld by the government. If the Applicants turn a blind eye to grave and massive violations of human rights and refuse or neglect to take action to defend, safeguard, achieve or fulfil them or refuse/neglect to take action to remedy, redress or assuage them when violated, then the Applicants would not be fulfilling the purpose for which the Federal Republic of Nigeria has incorporated them, and for which they have been conferred a special incorporation status with peculiar rights and duties; therefore, the reason for and basis of, their incorporation having failed or been defeated, the government may, following this failure, request their winding up.

4.9 Nigerian courts, as well as courts in Commonwealth countries have taken a more liberal view of, and approach to locus standi. In ***SHELL PETROLEUM DEVELOPMENT v. NAWKA (2001) 10 NWLR (PT 720) 64 C.A, @ Pp 83 Paras A-D*** Justice Pats-Acholonu J.C.A opined that:

“...in our society we are each our brothers keeper and we cannot hide under the Hydra headed cocoon of locus standi to demolish a case which discloses a justiciable cause of action...”

He went on to state @ ***Pp. 84 paras (H-A)*** that:

time has come for the appellate court to take a bold view of the law in locus standi and strive not to shut out a litigant from agitating for a special interest or right... we are in an under developed society and we want to catch up with the rest of the international community. I fail to see how we can do this if we leave certain alleged glaring irregularities and illegalities... to be committed. I believe that it is the right of any citizen to see that law is enforced where there is an infraction of that right or a threat of its being violated in matters affecting the public law and in some cases of private law...”

See also ***FAWEHINMI v. PRESIDENT, F.R.N. (2007) 14 NWLR (Pt.1054) 275 C.A, FAWEHINMI v. AKILU (1987) 4 NWLR (Pt.67) page 797, UKEGBU v. N.B.C (2007) 14 NWLR (Pt. 1055) 551 C.A***

4.10 In *WILLIAMS v. DAWODU* (1988) 4 NWLR (Pt. 87) Pp. 189 at 218, Justice Akpata, JCA (of blessed memory), stated that:

"... [T]he Courts have become increasingly willing to extend the ambit of locus standi for public good. The Courts have broken new grounds. The significance of this judicial revolution is that whereas in the past the court showed little or no reluctance in any given case in construing the import of "sufficient interest" against the individual and tended to be more executive than the Executive, now the term "sufficient interest" is construed more favourably in order to give an applicant a hearing."

4.11 It is submitted that the Applicant has sufficient interest in the subject matter to establish its locus standi before the court as it relates to the protection of the rights of Nigerian citizens and the maintenance of the rule of law in Nigeria, which is a public and constitutional right. In *DODODO v. E.F.C.C* (2013) 1 NWLR (Pt. 1336) 46, In Pp. 520 (paras D-F) and Pp. 522, (paras C-E), it was held as follows:

"...When the issue is on public right, it is sufficient that the petitioner is a citizen and has an interest in rights and obligation if he shows that right in his pleadings...any member of the public with sufficient interest can seek judicial redress for enforcement of public duty"

See also *NWANKWO v. ONONEZE-MADU* (2009) 1 NWLR Pt. (1123) 671 C.A

4.12 The courts have upheld the significance of suits of this nature where a suit is brought to enforce a public right in cases where direct harm has not befallen the Applicant. In *FAWEHINMI v. AKILU supra*, page 47 (paras. F-B) OBASEKI, J.S.C. stated as follows:

"The peace of the society is the responsibility of all persons in the country and as far as protection against crime is concerned, every person in the society is each other's keeper... If consanguinity or blood relationship is allowed to be the only qualification for locus standi,

then crimes...will go unpunished, may become the order of the day and destabilize society.”

4.13 We submit that the report and video footage published by the international human rights organization Amnesty International on the 5th of August 2014, which alleges that brutal and barbarous extrajudicial killings were carried out by members of the Nigerian military and the Civilian Joint Task Force (CJTF) in the course of their campaign and fight against the Boko Haram sect, raises serious issues of mass murder, systematic and massive violations of human rights and war crimes and requires a timely response of the Nigerian government by way of a thorough and independent investigation. It is important that the rights of “every” member of the community be protected whether in peacetime or in situations of armed conflict and the duty to do so falls on the state.

Public Duty

4.14 It is submitted that there is a duty imposed on Nigeria, under the government of 1st Respondent, under national and international law to investigate reports of extrajudicial, summary and arbitrary executions in order to bring to justice, any persons who may have perpetrated them. Both **sections 33, 34 and 36** respectively of the **1999 Constitution of the Federal Republic of Nigeria** and **articles 4, 7 and 5** respectively of the **African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 2004** protect every citizen's right to life, dignity and fair hearing, all of which the report alleges that the Nigerian military and the Civilian Joint Task Force (CJTF) have grievously and wantonly infringed upon.

4.15 We respectfully submit that **Chapter 1 Article 1** of the **African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act** imposes a duty on the government to take all steps necessary for the protection of the rights that are contained therein. **Article 1** states that:

The Member States of the Organisation of African Unity parties to the present Charter shall recognise the rights, duties and freedom enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

4.16 **Part II Article 2 (3)** of the **International Convention on Civil and Political Rights (ICCPR)** which Nigeria has ratified, articulates the duty upon state parties to the convention to protect and address any breach of the rights protected by the convention. It states that:

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

4.17 The duty of the 1st and 2nd Respondent to investigate the allegations levied in the report can also be deduced from **Section 14(1) and (2) b and Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria**. Section 14(1) (2) b and Section 33(1) states as follows:

14. (1) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

(2) It is hereby, accordingly, declared that: (b) the security and welfare of the people shall be the primary purpose of government

33. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

4.18 We respectfully submit that Section 33(1), which guarantees the fundamental right to life to everyone imputes a corresponding duty upon the state to take all steps to ensure that this right is indeed “guaranteed” and not infringed upon in any way except on grounds explicated under Section 33(2). This submission is consistent with established jurisprudence in many jurisdictions as well as regional and international human rights bodies.

4.19 In the case of *SERAC and Anor V FEDERAL REPUBLIC OF NIGERIA, Cases on Human Rights, Vol. 2, 2002* The African Commission on Human and Peoples' Rights held that:

“Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetuated by private parties... This duty calls for positive action on the part of governments in fulfilling their obligations under human rights instruments.

4.20 Other international human rights tribunals such as the European Court of Human rights, the Inter-American Court of Human Rights and the Economic Community of West African States Community Court of Justice have also upheld the duty on state governments to investigate and address complaints of impunity within their states in line with their local legislations and international treaty obligations. In *VELÁSQUEZ RODRIGUEZ v. HONDURAS, Inter-Am. Ct. H.R. (Ser. C) (IACrtHR) No 4 (1988) paras 176*, the Inter-American Court of Human Rights in upholding this duty under the American Convention on Human Rights (ACHR) held that:

“...The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished... the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.

See also *X and Y v. NETHERLANDS 91 ECHR (1985) (Ser. A) 32, LOAYZA-TAMAYO v. PERU (IACtrHR) Series C No 33 1997, ANGUELOVA v. BULGARIA (38361/97) (2002) 1 Pol LR 173.*

4.21 In *FINUCANE V. THE UNITED KINGDOM (Application no. 29178/95) Judgment, Strasbourg, 1 July 2003, @ paras 67*, the European Court of Human

rights found that the obligation to protect the right to life, includes, when an individual is killed by the use of force, the duty to ensure an effective investigation culminating in appropriate prosecutions and punishment. The court held that:

The obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force... The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

4.22 Similarly, in a recent decision of The Economic Community of West African States (ECOWAS) Community Court of Justice, the court held in ***DEYDA HYDARA & ANOR v. REPUBLIC OF THE GAMBIA (2014) (UNREPORTED)*** as follows:

“the right to life imposes an obligation on states to investigate all acts of crime and bring perpetrators to book. A state will be neglecting its obligation under international law and treaty if it does not carry out effective investigations into crimes committed on its territory. In the situation where attacks by state operatives...are not investigated, let alone to prosecute the suspects, the state will be in breach of its obligation under...the ACHPR”.

See also ***AMNESTY INTERNATIONAL AND OTHERS v. SUDAN (2000) AHRLR 296 (ACHPR)***, ***COMMISSION NATIONALE DES DROITS DE L'HOMME ET DES LIBERTES V CHAD (2000) AHRLR 66 (ACHPR) Para 22.***

4.23 We respectfully submit that if the facts as alleged in Amnesty International report and the accompanying video footage are accurate, they constitute war crimes

and crimes against humanity. Nigeria is under an obligation to punish war crimes and those who perpetrate them in situations of armed conflict. **Article 3(1) of the Geneva Conventions Act, Laws of the Federation of Nigeria 2004 (formerly Cap 162 Laws of the Federation of Nigeria 1990)** confers this duty on the government. Article 3(1) states as follows:

(1) If, whether in or outside the Federal Republic of Nigeria, any person, whatever his nationality, commits, or aids, abets or procures any other person to commit any such grave breach of any of the Conventions as is referred to in the articles of the Conventions set out in the First Schedule of this Act, that is to say-

- (a) Article 50 of the First Geneva Convention, 1949;
- (b) Article 51 of the Second Geneva Convention, 1949;
- (c) Article 130 of the Third Geneva Convention, 1949;
- (d) Article 147 of the Fourth Geneva Convention, 1949,

[First Schedule.]

He shall on conviction thereof- (i) in the case of such a grave breach as aforesaid involving the willful killing of a person protected by the Convention in question, be sentenced to death.

4.24 In addition to the above statutes and case law, support for the duty upon states to investigate allegations of extra-judicial killings is evidenced by the fact that the United Nations has developed extensive detailed standards for the investigation of extrajudicial killing, including the **UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (the “UN Investigation Principles”)** and the **Model Protocol for a Legal Investigation of Extra-Legal, Arbitrary and Summary Executions (the “Minnesota Protocol”)**.

4.25 The applicant submits that by virtue of the position and power held by the 1st and 2nd respondent and the functions that their office imposes, it is their duty and responsibility to ensure that the serious allegations of grave and grievous breaches of the fundamental rights of citizens, as well as the impunity with which these violations are alleged also to occur, as made by Amnesty International are investigated. In **DODODO v. E.F.C.C. (supra) Pp.525, paras A-C**, the court held that:

“By virtue of section 318 of the 1999 Constitution, function includes power and duty... the right of the citizen to make complaints to the 1st and 2nd respondent is conterminous with the corresponding duty of the 1st and 2nd respondents to receive the complaints, investigate them and act on them. They cannot shut him out by mere or sheer inaction..., he can seek review of the administrative action”

4.26 From the facts deposed to in the Verifying Affidavit and Statement, it is clear that steps have been taken by the Applicant through the only means available to get the 1st and 2nd Respondents to fulfil their duty to investigate these allegations, all to no avail. The correspondence written by the Applicants to the 1st and 2nd Respondents requesting that a committee be set-up to investigate the allegations levied in the Amnesty report discharges the Applicants duty to first lay the significant request for action before the public body or authority. It is for this reason that the applicant is seeking recourse to an order of mandamus. In ***FAWENHINMI v. I.G.P (2002) 7NWLR (Pt767) SC 606 page 674 para. D***, the Supreme Court describing the function of a mandamus order, stated as follows:

“Mandamus is a high prerogative writ which lies to secure the performance of a public duty...it gives command that a duty or function of a public nature which normally, though not necessarily is imposed by statute but is neglected or refused to be done after due demand, be done. If there is a discretion to perform the duty, the court has the power to examine whether the discretion to refuse to act has been properly exercised”.

See also ***ATTA v. C.O.P. [2003] 17 NWLR, (Pt.849) 250, Pp. 25-26, R v. CANTERBURY (ARCHBISHOP)(18 12) 15 East 117, 136. OHAKIM v. AGBASO (2010) 19 NWLR (Pt. 1226) 172 S.C***

4.27 We contend that that the failure of the Respondents to investigate the allegations levied in the Amnesty International report constitutes a grave violation of the duty placed on the Nigerian government to protect, defend, safeguard and fulfil its national and international obligations to protect the right to life of its citizens and symbolizes its tolerance for acts of impunity and war crimes committed by its agents

and that it is in the interest of justice that the court grants this application to protect fundamental rights of Nigerians, and reduce the scope of the incidence of impunity in Nigeria.

5. CONCLUSION

5.1 The Applicants rely on the arguments set out in the preceding paragraphs of this written submission and respectfully submit and urge this Honourable Court to grant this application. Further, we have demonstrated, based on established principles of law, binding judicial precedents and the Rules of this Honourable Court, that the Plaintiffs/Applicants have satisfied the conditions for the grant of leave to apply for an order of mandamus.

5.2 We therefore humbly urge Your Lordship to grant the application as prayed.

DATED THE 13TH DAY OF NOVEMBER, 2014

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