COMMUNITY COURT OF JUSTICE,
ECOWAS
COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO
TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO



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

In the Matter of

1. INCORPORATED TRUSTEES OF PRINCE & PRINCESS CHARLES OFFOKAJA FOUNDATION, NIGERIA
2. PRINCE & PRINCESS CHARLES OFFOKOJA FOUNDATION, SWITZERLAND

(APPLICANTS)

v

FEDERAL REPUBLIC OF NIGERIA

(RESPONDENT)

Application No. **ECW/CCJ/APP/32/23;** *Judg't No.* **ECW/CCJ/JUD/14/25**

JUDGMENT

ABUJA

17 MARCH 2025

THE COMMUNITY COURT OF JUSTICE OF THE
ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, NIGERIA

Application No: **ECW/CCJ/APP/32/23**; *Judg't No*. **ECW/CCJ/JUD/14/25**

BETWEEN

1.INCORPORATED TRUSTEES OF PRINCE & PRINCESS CHARLES OFFOKAJA FOUNDATION, NIGERIA
2.PRINCE & PRINCESS CHARLES OFFOKOJA FOUNDATION, SWITZERLAND **-APPLICANTS**

AND

FEDERAL REPUBLIC OF NIGERIA - **RESPONDENT**

COMPOSITION OF THE COURT:

Hon. Justice Dupe **ATOKI** - Presiding Judge
Hon. Justice Gberi-Be **OUATTARA** - Member
Hon. Justice Edward Amoako **ASANTE** - Judge Rapporteur

ASSISTED BY:

Dr. Yaouza **OURO-SAMA** - Chief Registrar

REPRESENTATION OF PARTIES:

Charles Offokaja - Agent of APPLICANTS

Maimuna Lami Shiru, Esq -Counsel for RESPONDENT

I. JUDGMENT

1. This is a judgment of the Court read virtually in open court pursuant to Article 8(1) of the Practice Directions on Electronic Case Management and Virtual Court Sessions, 2020.

II. DESCRIPTION OF THE PARTIES

2. First Applicant, Incorporated Trustees of Prince & Princess Charles Offokaja Foundation, Nigeria, is a Non-Governmental Organisation (NGO) registered under the laws of Nigeria.

3. Second Applicant, Prince & Princess Charles Offokaja Foundation, Switzerland, is an NGO domiciled in Switzerland and registered under Swiss law.

4. Respondent, the Federal Republic of Nigeria, is an ECOWAS Member State.

III. INTRODUCTION

Subject Matter of the Proceedings

5. The Application alleges that despite calls for the creation of a sixth state in the South East geopolitical zone of Nigeria, the Respondent has failed to do so, although there have been five amendments to the Constitution of Nigeria since 1999. The Respondent's failure has allegedly resulted in the South East zone having fewer representatives in the Senate and the Federal Executive Council of Nigeria, as well as an unfair allocation of development funds compared to other

geopolitical zones. The Applicants therefore contend that the Respondent's failure to create a sixth state in the South East zone violates the rights of the people to equality and development under the African Charter.

IV. PROCEDURE BEFORE THE COURT

6. Applicants initiated this proceeding by an Application dated 28 July 2023 which was filed at the Registry of the Court on 9 August 2023. The Application was electronically served on the Respondent on 4 September 2023.

7. On 11 December 2023, Applicants filed an Application for Default Judgment which was served on the Respondent the next day on 12 December 2023.

8. On 5 February 2024, the Respondent filed an Application for extension of time within which to file its defence together with its prepared Statement of Defence. Both processes were served the same day on the Applicants.

9. On 4 March 2024, Applicants filed a reply to Respondent's Statement of Defence. It was served on the Respondent on 8 March 2024.

10. At a virtual session of the Court held on 25 September 2024, during which all parties were represented, the Court granted Respondent's motion for extension of time and deemed its Defence properly filed and served. The Court then heard the Applicants and Respondent on

the merits of the Application and adjourned for deliberation and judgment.

V. APPLICANT'S CASE

a. Summary of Facts

11. Applicants state that Nigeria is divided into six geopolitical zones: North West, North East, North Central, South West, South-South, and South East. The North West comprises seven federated states, while each of the other geopolitical zones consists of six federated states, except for the South East, which has only five states.

12. Applicants allege that the number of states in each geopolitical zone is a key benchmark for allocating development funds. It also determines the number of Senate seats assigned to each zone and the number of representatives of the zone on the Federal Executive Council (FEC).

13. Applicants say that because the South East has the least number of states, it also has the fewest Senators and representatives on the Federal Executive Council. This has resulted in the underrepresentation of the South East in the governance of Nigeria and a low level of development.

14. According to Applicants, there has been calls for the creation of an additional state in the South East. For instance, the National Conferences of 2005 and 2014 recommended that a sixth state be created in the South East. Despite calls from the National Conferences

and ordinary Nigerians through the media, the Respondent has failed to create a sixth state for the South East zone, although it has made several constitutional amendments on other matters since 1999.

15. Applicants contend that the Respondent's failure to create a sixth state for the South East zone, to ensure equal representation in government and a fair allocation of development funds, violates the right of the people of the South East to equality and non-discrimination under Article 19 of the African Charter and Article 26 of the ICCPR. That the failure also infringes on their right to development under Article 22 of the African Charter.

b. Pleas in Law

16. For their case, Applicants submit the following pleas in law:

(i) That the Respondent has violated the rights of the people of the South East geopolitical zone of Nigeria to equality and non-discrimination under Article 19 of the African Charter and Article 26 of the ICCPR by failing to create a six state for the South East zone.

(ii) That by failing to create a sixth state for the South East zone, Respondent has violated the rights of the people of that zone to development contrary to Article 22 of the African Charter.

c. *Reliefs sought*

17. Applicants request the Court for the following reliefs:

(a) A declaration that by not creating a sixth state in the South East to bring it up to par with the other geopolitical zones the [Respondent] has violated the right of the people of South East to equality and non-discrimination under Article 19 of the African Charter, and Article 26 of the ICCPR.

(b) A declaration that by not creating a sixth state in the South East to bring it up to par with the other geopolitical zones the [Respondent] has violated the right of the people of the South East to development under Article 22 of the African Charter.

(c) An order compelling the [Respondent] to create a sixth state in the South East within 1 year.

(d) An order compelling the [Respondent] to present a report to the honorable Court on its implementation of the judgement 15 months after judgement is given in the instant case.

(e) Any other reliefs the honorable Court may deem fit to grant.

VI. RESPONDENT'S CASE

a. Summary of Facts

18. In response to the case of the Applicants, the Respondent admits that Nigeria has six geopolitical zones. Respondent further admits that the North West zone has seven states, while the rest of the zones has six state each except the South East zone that has five states.

19. Respondent admits that the National Conference of 2005 and 2014 recommended the creation of a sixth state in the South East zone of the country. However, Respondent asserts that the resolutions of the National Conference are only advisory, and therefore not binding on the Respondent.

20. Respondent further admits that the Constitution of Nigeria has been amended five times since 1999. However, it denies the Applicants' claim that ordinary Nigerians have called for the creation of a sixth state in the South East zone through the media and that the Respondent has ignored such calls.

21. In response to Applicants' claim that the Respondent's failure to create a sixth state in the South East zone has led to an unfair allocation of funds, the Respondent states that, in addition to the regular allocation of revenue from the Federation Account for development, the South East states also receive 13% of the oil revenues.

22. Respondent further denies the Applicants' claims that the South East Zone is under-represented in the Senate and on the Federal Executive Council and that this has led to violations of the rights of the people of the South East zone to equality and development. Respondent contends that contrary to the Applicants' claims, there has not been any reported cases of marginalisation of the South East Zone.

23. Finally, the Respondent says that it is not opposed to the creation of an additional state for the South East zone so long as the processes and procedures outlined in its laws are followed.

b. Pleas in Law

24. Regarding pleas in law, Respondent submits the following:

(a) That Applicants have no standing to maintain the action on behalf of the people of the South East zone.

(b) That the Applicants have not established that they have invoked and complied with the constitutional processes for the creation of an additional state in the South East and that the Respondent has in any way frustrated that process.

(c) That the Respondent has not violated any rights of the people of the South East zone under the African Charter or any other human rights instrument as alleged by the Applicants.

c. Reliefs Sought

25. Respondent requests for the following relief:

(a) That the Honourable Court dismiss the suit in its entirety because (i) Applicants have no standing, (ii) the suit aims to waste the precious time of the Court, (ii) the suit is based mainly on speculations; (iv) Applicant's have failed to prove that they have followed/met the constitutional requirement for the creation of an additional state for the South East zone of the country, and (v) in any event, the political will and state machinery is already in place to create an additional state in the South East zone of the country.

VII. JURISDICTION OF THE COURT

26. Article 9(4) of the Protocol of the Court vests the Court with 'jurisdiction to determine cases of violation of human rights that occur in any Member State.' This jurisdiction is properly invoked if the Application alleges that violations of human rights have taken place in the territory of the Respondent state and that the Respondent is responsible for those violations, but without prejudice to the determination of the claims on the merits after hearing both parties. (See *Registered Trustees of Gan Allah Fulani Development Association v Federal Republic of Nigeria* [ECW/CCJ/JUD/06/23], para 38).

27. In this case, the Applicants allege that the failure of the Respondent to create an additional state for the South East geopolitical zone of Nigeria is discriminatory and contrary to Article 19 of the African Charter and Article 26 of the ICCPR. They also contend that the said failure violates the rights of the people in the area to development under Article 22 of the African Charter. Because these are alleged human rights violations said to be occurring in the Respondent state and implicate its obligations under the African Charter and other human rights instruments, the Court holds that it has material jurisdiction consistent with Article 9(4) of the Protocol of the Court.

28. That said, the Court notes that its power or competence to adjudicate is exercised not only "(i) with respect to a particular subject matter, [but also] (ii) over particular entities/persons who may appear as parties (applicants, respondents, or interveners), (iii) within certain territorial limits, and (iv) prospectively from a certain cut-off date." (*Incorporated Trustees of Prince and Princess Charles Offokaja Foundation, Nigeria and Another v Federal Republic of Nigeria* [ECW/CCJ/JUD/09/24], para 66; see also *Isaac Mensah v Republic of Ghana* [ECW/CCJ/JUD/30/24], para 46). As the judicial organ of ECOWAS, the Court's human rights jurisdiction extends to, and may be exercised over, Member States, as well as individuals or entities within their territories or subject to their jurisdiction.

29. Thus, in *Incorporated Trustees of Prince & Princess Charles Offokaja Foundation and Prince Princess Charles Offokaja Foundation, Switzerland v Federal Republic of Nigeria* [ECW/CCJ/JUD/06/25], a

case in which the present Applicants were parties, the Court held "that only NGOs registered and possessing a legal personality accrued in an ECOWAS Member State can bring an action before the Court on behalf of persons who have suffered from a violation of human rights." (para 47).

30. Because the Second Applicant, Prince & Princess Charles Offokaja Foundation, is an entity registered and domiciled in Switzerland and subject to Swiss jurisdiction rather than that of any ECOWAS Member State, the Court lacks personal jurisdiction (*jurisdiction ratione personae*) over the Second Applicant. Consequently, the Second Applicant is struck off as a party to the suit. The Application stands in the name of only the first Applicant hereinafter.

VIII. ADMISSIBILITY OF THE CASE

(a) Respondent's Objections to Admissibility

31. Regarding admissibility of the case, Respondent raises the objection that Applicant has no standing to bring the present suit because it has not demonstrated that it has the authority to institute the action on behalf of the people of the South East zone. Respondent relies on the Court's decision in *Mrs Risqat Badmus and 3 Others v Federal Republic of Nigeria* [ECW/CCJ/JUD/XX/23] where the Court held that, in a representative action, individuals purporting to act on behalf of a group "need the mandate upon which they act and when

questioned must establish consent of the people or justification for acting without such consent".

32. Respondent therefore urges the Court to dismiss the action due to the Applicant's lack of authorization from the people of the South East zone, without which it has no standing to maintain the case.

(b) Applicant's Response to the Respondent's Objections

33. In response to these arguments, Applicant submits that it has filed this action as public interest litigant. Relying on previous decisions of the Court including *Incorporated Trustees of Fiscal and Civic Right Enlightenment Foundation v Nigeria* [ECW/CCJ/JUD/18/16] and *Socioeconomic Rights and Accountability Project (SERAP) v Nigeria* [2010] CCJELR 196, Applicant contends that in a public interest action (*actio popularis*) there is no requirement to show any authorisation to sue. Therefore, Applicant urges the Court to dismiss the Respondent's objection.

(c) *Analysis of the Court*

34. Article 10(d) of the Court's Protocol requires that an application alleging human rights violations must satisfy three main admissibility criteria: (a) the applicant's victim status or standing, (b) the non-anonymity of the application; and (c) the non-pendency of the matter

before another international court or tribunal. (*Aziagbede Kokou & Others v Republic of Togo* [2013] CCJELR 167, para 18).

35. Regarding standing as an admissibility requirement under Article 10(d) of the Court's Protocol, the general position as confirmed by the Court's precedents is that Applicants must demonstrate that they are, *prima facie*, victims of human rights violations attributable to the Respondent. In other words, they have been injured by the conduct of the Respondent (be it an act, omission, practice, or law) and therefore have a personal interest or stake in the matter. (See *Amnesty International Togo and Others v The Togolese Republic* [ECW/CCJ/JUD/09/20], paras 31-33).

36. That said, the Court has recognised three broad exceptions to the above general rule on standing to allow persons who are not direct victims of human rights violations to bring cases before the Court. These are:

    (a) actions brought by indirect victims, that is, persons closely related to the direct victim and who potentially suffer indirect consequences of the human rights violation (see *Kehinde Enagameh v The Gambia* [ECW/CCJ/JUD/34/23], para 30; and *Attipoe Kuaku v Republic of Sierra Leone* [ECW/CCJ/JUD/07/23], paras 42-45);

    (b) a representative action brought by an individual or NGO on behalf of an individual victim or a group with the

authorisation of such individual or group (see *Bakary Sarre and 28 Others v Mali* [2011] CCJELR 57, para 37); and

(c) public interest actions (*actio popularis*) brought by NGOs or public-spirited individuals (see *Patrick Eholor v Federal Republic of Nigeria* [ECW/CC/JUD/51/23], paras 51-52 and *Isaac Mensah v Republic of Ghana* [ECW/CCJ/JUD/30/24], paras 76-77).

37. If the Applicant were suing in a representative capacity, as claimed by the Respondent, it would indeed need to demonstrate its authority to do so, as confirmed by the jurisprudence of the Court. However, the Applicant has clearly indicated in the Application that this action has been brought in the public interest. (See *Initiating Application*, paras 26, 31-34, and *Applicant's Reply*, paras 18-23). There exists in the Court's jurisprudence a distinction between a representative action and a public interest action (*actio popularis*), which the Applicant asserts this suit to be. Accordingly, the Court must assess the Applicant's standing based on the ground expressly pleaded by it, rather than what the Respondent supposes it to be.

38. In the *Isaac Mensah* case, the Court, (relying on *Patrick Eholor v Federal Republic of Nigeria* [ECW/CC/JUD/51/23], paras 51-52 and *Incorporated Trustees of Media Rights Agenda v Federal Republic of Nigeria* [ECW/CCJ/JUD/07/24], paras 88-96), noted that "a public

interest action (*actio popularis*) is generally characterised by the following:

a) The applicant (an individual or NGO) presents a claim for the protection or enforcement of a collective or public right, or in some cases, an individual right the alleged breach of which has injured a large and indeterminate section of the public.

b) The applicant may, but need not, be personally affected by the alleged violation.

c) The remedies or reliefs sought, including any pecuniary relief, is intended for the benefit of the public generally, not the applicant or a small identifiable group or section of the public.

d) The applicant does not need authorisation as it would be impossible or impractical to obtain the consent of the whole public, or a large, indeterminate section of the public." (*Isaac Mensah* case, para 76).

39. It follows that for the purposes of a public interest action, an Applicant need not obtain any mandate or authorization, as doing so would be impractical or impossible. What matters is that: (i) the claim is brought to protect or enforce a collective or public right, or, in some cases, an individual right whose alleged breach has harmed the public or a large and indeterminate section of the public; and (ii) the reliefs sought are intended for the benefit of the public as a whole.

40. In this case, the Applicant's complaint is that the failure of the Respondent to create a sixth state in the South East zone of Nigeria, which currently comprises 5 federated states and several millions of people, has violated the rights of those people to equality under Article 19 of the African Charter, as well as their right to development under Article 22 of the Charter. The rights to equality under Article 19 of the African Charter and to development under Article 22, are collective or people's rights. As such, they may be the subject of a public interest action, as their alleged violation affects the general public in the South East zone of Nigeria or at least an indeterminate section of the public in that area.

41. Regarding the reliefs sought, the Court observes that the Applicant seeks a declaration that the Respondent has violated the rights of the people of the South East zone to equality and development under Articles 19 and 22 of the African Charter, respectively. It also seeks a consequential order directing the Respondent to create a sixth state in the South East zone. By their nature and scope, the reliefs sought are intended for the benefit of the general public in the South East zone rather than for the Applicant or specific individuals.

42. For these reasons, the Court holds that the present action qualifies as a public interest action (*actio popularis*) within the meaning of the Court's jurisprudence, and the Applicant has standing to maintain it as a public interest litigant. Consequently, the Court considers that the Respondent's objection to admissibility on grounds of the Applicant's standing has no merit and dismisses it.

43. The Court also observes that there are no other challenges to the admissibility of the case in terms of Article 10(d) of the Protocol of the Court. The case has not been presented anonymously, nor is there evidence that the claims are pending before another international court or tribunal, contrary to the admissibility requirements of Article 10(d). For these reasons, the Court concludes that the case submitted by the Applicant is admissible.

IX. MERITS

44. Having regard to the pleadings of the Applicant including the reliefs sought, the Court is invited to make two substantive legal determinations: (a) that the Respondent has discriminated against the people of the South East zone of Nigeria within the meaning of Article 19 of the African Charter and Article 26 of the ICCPR by failing to create a sixth state in the South East; and (b) that Respondent's failure to create a sixth state in the South East zone has violated the right of the people to development contrary to Article 22 of the African Charter.

(a) Alleged discrimination by the Respondent against the people of the South East geopolitical zone of Nigeria for failing to create a sixth state in the area

(i) Submission of the Applicant

45. On this issue, the Applicant submits that, apart from the North West zone, which has seven federated states, all other zones have six states,

except for the South East, which has only five. According to the Applicant, the number of states in a geopolitical zone determines its representation in the federal government, including the number of Senate seats and representatives on the Federal Executive Council. It also influences the proportion of funding the zone receives from the Federation Account for development. Because the South East has the fewest states (only five), it has been disadvantaged compared to other zones in terms of both political representation and funding for development.

46. According to the Applicant, there have been calls from ordinary Nigerians and from the 2005 and 2014 National Conferences of Nigeria for the creation of a sixth state in the South East zone. Yet, the Respondent has failed to do so, although it has amended the Constitution of Nigeria five times since 1999 to address other issues. The Applicant therefore contends that this failure violates Article 19 of the African Charter, which states that "all peoples shall be equal" and "shall enjoy the same respect and shall have the same rights." The Applicant also argues that the Respondent's failure to create a sixth state in the South East violates Article 26 of the ICCPR, which guarantees the equality of all persons and requires the Respondent to ensure that all persons are protected against any form of discrimination.

(ii) Submissions of the Respondent

47. On this issue, the Respondent concedes that the National Conferences of 2005 and 2014 recommended the creation of a sixth state in the

South East zone. However, it argues that the resolutions of the National Conference are merely advisory and not binding on the Respondent. In any event, the Respondent is not opposed to the creation of a sixth state in the South East and is, in fact, already taking steps in accordance with its laws to achieve this.

48. The Respondent also contends that although a sixth state has not yet been created in the South East zone, this has not resulted in any discrimination or marginalization of its people. It argues that the states in the South East receive 13% of Nigeria's oil revenues in addition to their regular allocation from the Federation Account. Therefore, the South East has not been disadvantaged in terms of development funding despite having the fewest states in the country.

(iii) Analysis of the Court

49. The Court begins by noting that two of the fundamental human rights principles underpinning the African Charter are non-discrimination and equal protection of the law. Article 2 of the Charter establishes the general principle of non-discrimination, while Article 3 supplements it by guaranteeing equality and the non-discriminatory application of the law to all persons. Like Articles 2 and 3 of the African Charter, Article 26 of the ICCPR, which the Applicant cited on this issue, also guarantees the fundamental right of equality and non-discrimination for all individuals.

50. Articles 2 and 3 of the African Charter provide a strong guarantee of equality and non-discrimination. However, given the Charter's focus on both individual and collective (or peoples') rights, it reinforces the

idea that equality and non-discrimination are not only individual rights but also collective rights. For this reason, Article 19 of the African Charter clearly states that "[a]ll peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another."

51. Therefore, like Articles 2 and 3 of the African Charter and Article 26 of the ICCPR, Article 19 of the African Charter embodies the same norm of equality and non-discrimination but with a focus on peoples rather than individuals. In this regard, the African Commission has noted that Article 19(1) of the African Charter aims to ensure that the different sections of the national population including ethnic groups, Indigenous peoples, and various religious, cultural, or linguistic communities "enjoy internal legal equality vis-à-vis other peoples and communities within the same state." (*Front for the Liberation of the State of Cabinda v Angola* [African Commission, Comm No. 328/06, 5 Nov. 2013], para 114).

52. In this case, the Applicant's complaint is that the Respondent's failure to create a sixth state in the South East zone violates the principle of equality and non-discrimination of peoples enshrined in Article 19 of the African Charter. The Applicant argues that this failure perpetuates inequalities between the South East and other geopolitical zones in the country. For the Court to be able to conclude that the Respondent has violated Article 19, it must first determine whether the creation of an additional state in the South East is required by Article 19 based on the facts and circumstances presented in this case.

53. The Court considers that the creation of a subnational territory, such as a federal unit or any other administrative division within a country, is a matter that pertains to the internal constitutional organization and administration of a State. It is an essential component of self-determination, as recognized under Article 20 of the African Charter and Article 1 of the ICCPR. Admittedly, the creation of such territories or administrative divisions may have international legal implications, particularly where there is the presence of certain groups, such as Indigenous peoples or other minorities, whose representation in the governance of the State implicate relevant international norms. However, unless such is the situation, the delimitation of subnational territories or administrative units within an independent State remains primarily within the domestic jurisdiction or competence of that State. This is especially true given that such decisions must consider and balance various factors, including population density, geography, economic viability, ethno-cultural and linguistic identities, and other relevant criteria.

54. In this case, the Applicant contends that Respondent has violated Article 19 of the African Charter simply because it has failed to create a sixth state in the South East zone, so that it has the same number of states as other geopolitical zones (excluding the North West). In the Court's view, the gist of the Applicant's complaint is not that the South East lacks the minimum necessary representation in Nigeria's governance by way of states and other administrative units, but rather that it deserves an additional state. The creation of such an additional

subnational territory or administrative unit necessarily requires the Respondent to have a *margin of appreciation* in determining its internal constitutional organization and administration. This is because, as noted above, the delimitation of a State's territory into subnational units involves consideration of several factors, and it is the State that is best positioned to evaluate and balance these factors.

55. In *Prince v South Africa* [2004] AHRLR 105, para 51, the African Commission stated that "the margin of appreciation doctrine informs the African Charter in that it recognises the respondent state in being better disposed in adopting national rules, policies and guidelines in promoting and protecting human and peoples' rights as it indeed has direct and continuous knowledge of its society, its needs, resources, economic and political situation, legal practices, and the fine balance that needs to be struck between the competing and sometimes conflicting forces that shape its society."

56. Having regard to these considerations, the Court is unable to conclude that the mere failure to create an additional state in the South East zone constitutes a violation of Article 19 of the African Charter. This is because the people of the area are already represented in the Respondent's governance structure by five federated states, which, in the Court's view, satisfies the Respondent's minimum obligation to ensure that the people can exercise their right to internal self-determination through participation in national decision-making. The creation of any additional federated state is a matter best determined

by the Respondent in accordance with its constitutional processes rather than by this Court. Accordingly, the Court concludes that the Respondent has not violated Article 19 of the African Charter or Article 26 of the ICCPR by failing to create a sixth state in the South East geopolitical zone of Nigeria.

(b) Alleged violation by the Respondent of the right to development of the people of the South East geopolitical zone of Nigeria for failing to create a sixth state in the area

(i) Submissions of the Applicant

57. On this issue, the Applicant submits that the Respondent's failure to create an additional state in the South East zone violates Article 22 of the African Charter, which guarantees the right to development. The Applicant contends that the creation of an additional state would have resulted in increased revenue from the federal government, and an additional state capital that would have attracted infrastructure and other amenities. A new state would also have expanded employment opportunities through the growth of the civil service and businesses. However, the Respondent's failure to create a sixth state, despite multiple demands, has deprived the people of the South East of these potential developmental benefits.

(ii) Submissions of the Respondent

58. The Respondent submits that, contrary to the Applicant's claims, there has been no marginalization of the people of the South East in violation of its obligations under the African Charter. The Respondent further argues that the South East zone receives its fair share of revenues from the Federation Account, as well as a portion of oil revenues for development. For these reasons, the Respondent maintains that it has not violated Article 22 of the African Charter on the right to development by failing to create a sixth state in the South East geopolitical zone.

(iii) Analysis of the Court

59. The Court recalls Article 22 of the African Charter which states that "[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind."

60. In *African Commission v Kenya* (*Ogiek case*) [2017-2018] AfCLR 9, (para 208), the African Court noted that "the term 'peoples' in the Charter comprises all populations as a constitutive element of a State" and that "[t]hese populations are entitled to social, economic and cultural development being part of the peoples of a State." It follows that the people of the South East zone of Nigeria, who are part of the population of the Respondent State, are entitled to development in accordance with Article 22 of the African Charter. The question before the Court is whether the Respondent's failure to create a sixth

state in the South East constitutes a violation of this right to development.

61. The Court notes that the ability of a people to participate in the formulation and implementation of policies and programmes that affect their lives is a key element of the right to development. (See *Ogiek case*, paras. 209–210; *Centre for Minority Rights Development (Kenya) & Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, ACHPR, Comm. No. 276/03 (*Endorois case*), paras. 277–278). Representation within the governance system of the State is crucial to ensuring this participation.

62. However, as the Court noted in its discussion of the first issue, it is not the Applicant's case that the people of the South East have a level of representation in the governance of the Respondent State that may be considered short of the minimum required. The region has five states within the federal governance system of the Respondent. The Applicant's complaint is that an additional state is needed for development and that the Respondent's failure to create it violates Article 22 of the African Charter. While the creation of an additional state may have positive developmental effects, the Court does not consider it an absolute requirement for the Respondent to fulfil its minimum obligation of ensuring representation for the people of the South East and, by extension, their development, given that the area already has five states. Moreover, the creation of an additional state involves considerations and assessments that the Respondent, rather than this Court, is best placed to undertake.

63. In view of these considerations, the Court holds that the Respondent has not violated Article 22 of the African Charter on the right to development by failing to create a sixth state in the South East geopolitical zone of Nigeria.

X. REPARATIONS

64. In light of the Court's conclusions that the Respondent has not violated Articles 19 and 22 of the African Charter, nor Article 26 of the ICCPR, the Court makes no decision on reparations.

XI. COSTS

65. Pursuant to Article 66(11) of the Rules of the Court, the Court decides that each party shall bear their own costs.

XII. OPERATIVE CLAUSE

66. For the foregoing reasons, the Court sitting in public and after hearing the parties:

On jurisdiction

i. Declares that the Court has material jurisdiction over the Application but lacks personal jurisdiction over the Second Applicant and therefore strikes the Second Applicant off the suit.

On Admissibility

ii. Finds that the Application is admissible.

On the Merits

iii. Declares that the Respondent did not violate Article 19 of the African Charter and Article 26 of the ICCPR by failing to create a sixth state in the South East geopolitical zone of Nigeria.

iv. Declares that the Respondent did not violate Article 22 of the African Charter by failing to create a sixth state in the South East geopolitical zone of Nigeria.

v. Dismisses all the orders or reliefs sought by the Applicant.

On Costs

vi. Decides that each party shall bear their own costs.

Done at Abuja this 17th day of March 2025 in English and translated into French and Portuguese.

Hon. Justice Dupe **ATOKI**
Presiding Judge

Hon. Justice Gberi-Be **OUATTARA**
Member of Panel

Hon. Justice Edward Amoako **ASANTE**
Judge Rapporteur

ASSISTED BY:
Dr. Yaouza **OURO-SAMA** (Chief Registrar)