COMMUNITY COURT OF JUSTICE,
ECOWAS

COUR DE JUSTICE DE LA COMMUNATE,
CEDEAO

TRIBUNAL DE JUSTICA DA COMMUNIDADE,
CEDEAO

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IN THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)
HOLDEN AT ABUJA, IN NIGERIA
SUIT No: ECW/CCJ/APP/26/13
JUDGMENT NO. ECW/CCJ/JUD/04/20

BETWEEN

1. THE REGISTERED TRUSTEES OF JAMA'A FOUNDATION
2. ALHAJI SULEIMAN AHMED
3. ALHAJI MUHAMMED ZAILANI
4. MALLAM SALE WAZIRI
5. WADE BALARABE }Applicants
6. YAKUBU YUNUSA
   (For themselves and all Muslim members of Southern Kaduna, in Kaduna State of Nigeria whose lives and properties were affected by the Ethno-Religious cleansing of 18th and 19th April 2011).

AND

1. The Federal Republic of Nigeria
2. The Attorney General of The Federation and Minister of Justice

} Respondents

COMPOSITION OF THE COURT

Hon. Justice Gberi-Be Quattara - Presiding
Hon. Justice Dupe ATOKI - Member/Judge Rapporteur
Hon. Justice Keikura BANGURA - Member

Assisted by
Tony ANENE-MAIDOH - Chief Registrar

REPRESENTATION TO THE PARTIES

1. Adekola Mustapha
2. A.A. Agoro } For the Applicants

3. Matthew Echo
4. Adeola Adeniyi } For the Respondents
5. Genevieve Nwoye

JUDGMENT OF THE COURT

Parties

1. The Applicants' are Nigerian Citizens, predominantly Muslims and mostly Hausa/Fulani who have been living in the Southern part of Kaduna State of Nigeria from time immemorial and can trace their ancestors to about 1810 AD. They are community citizens within the definition.

2. The 1st Respondent is the Federal Republic of Nigeria, a Member State of the ECOWAS and signatory to the African Charter on Human and Peoples' Rights and other international human rights instruments. The 2nd Respondent is the Chief Law Officer of the Federation of Nigeria.

3. **Summary of the Facts Applicants' Case**

4. The Applicants filed this application against the Respondents for the violation of their rights to life, right to sanity and integrity of human person, right to equal protection under the law and the violation of their rights to basic enjoyment of economic and social rights guaranteed under the African Charter and other international human rights instruments. The case of the Applicants is that the run up to the 2011 general elections brought about ominous signs of danger in the polity in which various heads of security agencies assured citizens of their safety and protection. In the midst of this menace, various uncompromising utterances, messages of hate and disunity were said to have been made by indigenous Christian youths of the Community which include statements like: "we shall free our land from Islam", "this land belongs to Jesus". There were also information posted on the face

book wall of one David Ayuba, a member of the indigenous Community and Staff of Diamond Bank Plc, Abuja.

5. The attention of the Security Agencies particularly the Divisional Police Officer in charge of Zonwa in Kaduna State was drawn to all these to which he called an emergency meeting of the community stakeholders on the 18th of April, 2011 to discuss ways to avert an impending mayhem. However, before the meeting started, the indigenous youths who had a premeditated plan and information about the proposed meeting mounted illegal road blocks all over the town making it difficult for most of the stakeholders to get to the venue for the meeting.

6. All efforts by the stakeholders to dissuade the youths from mounting the illegal road blocks proved abortive. That while the meeting was on-going, one of the stakeholders received a phone call after which he exclaimed: "they are killing our people in Zaria and we are going to take revenge". On hearing this, the meeting ended up abruptly. That the Divisional Police Officer of Zonkwa did not make any efforts afterwards to reinforce the security surveillance within and outside the community nor get his men to dislodge the indigenous youths who had mounted road blocks around the Community.

7. Consequently the youths in that vicinity set ablaze a lorry carrying farm yields which was parked beside the Mosque whereupon the mosque was also set ablaze. Shops suspected to be owned by Muslims in the Community were burnt down. The attack extended to the residents of Hausa/Fulani Muslims in which people were killed to the exclusion of women and children. Also, their houses, private and commercial vehicles, motorcycles, livestock, places of worship and Islamic schools were looted and burnt down.

8. That on the said 19th of April 2011, a house to house search was carried out killing any Muslim male found therein with the corpse set ablaze. That even the 80 year old Imam of the village was macheted. That the final phase of the genocide was carried out in front of wives and children of the deceased. Applicants put up a list of those allegedly identified carrying guns and other deadly weapons, persons who sustained various degrees of injuries as well as those that were shot.

9. The Applicants' state that all these acts continued unchecked until the early hours of the 19th of April 2011. That the alleged acts spread to other neigbouring villages to Zonkwa namely: Matsirga, Atlas District, Bodari village of Bajju Chiefdom, Aduan (5) of Fantsuam Chiefdom Kamuru Ukulu, Madakiya, Mararaba Rido,

Angwan Rimi, Gigan Maga, Sabon Sarki, Kafanchan etc. without the intervention of the Divisional Police Officer, his men or any other top placed person contacted.

10. Applicants' lamented as their communities have suffered similar callous attacks for more than five times in the past to the knowledge of the Respondents of which the security agencies ought to be alert to avert a reoccurrence. That the Respondent hardly responds within time until the situation gets out of hand even when they have always had privileged information about the impending attack. That the 1st Respondent failed to contact the Nigerian Army or any other security agency to support them in stopping the mayhem when it had every reason to do so.

11. Applicants' further state that no single individual or group has been brought before any Court for trial even when arrests were made as all known suspects have been let off the hook without being brought to justice. That in the present attack, 827 people were killed and 71 persons injured in about ten villages where these acts were allegedly committed yet the only arrest made was in Kafanchan.

12. They further alleged that reports on the attacks and fighting within the communities were broadcast by the local radio and television stations and other media houses immediately the killing and destruction began which ought to have put the Respondent on the edge to act immediately by deploying armed security agents but failed to do so. That the Respondent set up a judicial panel into the post Presidential Election violence of the 16th of April 2011 and the Kaduna State Government also set up a Commission of Inquiry both of which had the mandate among others, to look into the riot that engulfed some parts of Nigeria after the said Presidential Election. Nevertheless, Applicants maintained that the Respondents' failure to effectively investigate previous attacks made it a confidence booster for the perpetrators of these acts.

13. That the Applicants who survived this pogrom are now refugees, having been rendered homeless, their farmland ravaged, livestock stolen or killed, children made orphans, girls raped, wives now widows and with no means of livelihood to take care of their surviving young ones. That the internally displaced persons are living in very pathetic, sub human and difficult conditions with difficulty obtaining basic food, medications and sanitary items. The displaced children have lost school sessions and that about 189 women have put to bed in an exceptionally difficult condition. That prior to the crisis, information was had that both Christians and Muslims of Southern Kaduna were in possession of dangerous weapons, yet, the Respondent failed to investigate and confiscate those weapons.

14. **Summary of Pleas in Law of the Applicant**

15. Applicant says the Federal Government of Nigeria has a duty and obligation under the relevant statutes and conventions to take pre-emptive measures to protect and guarantee the Applicants Rights to life. The failure of the Federal Government of Nigeria to provide security for the deceased and those who are alive but lost their assets and properties and their continued refusal to provide for those who are alive now is contrary to Applicants Rights to life guaranteed under Article 4 (g) of the Revised Treaty of the Economic community of West African States (ECOWAS) 1993 which provides for the applicability of the provisions of African Charter on Human and people rights to members states of ECOWAS state as follows:

> *"Member States have obligation ....for recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples Rights."*

16. The Applicants argued that the Respondent has ratified the African Charter on Human and People's Rights Article 1 of which provides that:

> *"The member States of the Organisation of African Unity parties of the Charter shall recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them."*

17. Article 2 provides that:

> *"Every individual shall be entitled to the enjoyment of the rights and freedom recognised and guaranteed in the present charter without distinction of any kind such as race, ethic group, colour, sex, language, religion, political or any other opinion, national, social origin, fortune, birth or other status."*

18. Article 3 provides for equality before the law and protection under the law, while Article 4 provides that:

> *"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."*

19. The International Covenant on Civil and Political Rights provides that:

> *''every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life''*

20. Article 12 of International covenant of Economic, Social and Cultural rights provides:

> *‘’The State Parties to the present covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’’*

21. The duty of due diligence under International Law evolved from the principles of diplomatic protection whereby a state incurs international responsibility for the commission of an international wrongful act against a non-national persons. It has been applied in the context of human rights violations since landmark case of *VELASQUEZ RODRIQUEZ VS. HONDURAS (1989).* In this case the Inter American court of Human Rights held that a state must take action to prevent human rights violations, and to investigate, prosecute and punish them when they occur. The Court determined that:

> *“The state’s failure or omission to take preventive or protective action itself represents a violation of basic rights on the State’s part. This is because the state controls the means to verify acts occurring within its territory.”*

22. States may also be responsible for private acts if they fail, with due diligence, to prevent violation of rights or investigate and punish acts of violence, and for providing adequate compensation. The Council of Europe Recommendation (2002) of the Committee of Minister to member states recognize that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons and provide protection to victims.

23. The Applicants contend that the Respondents have failed to discharge its positive obligation diligently by not taking prompt preventive operational measures to protect individuals whose lives were at risk. Article 23 of the International Covenant on Civil and Political Rights recognises that the family is the natural and fundamental group unit of society and is entitled to protection by society and state. Protection of the family and it members is also guaranteed, directly or indirectly, by other provisions of the Covenant. Thus Article 17 establishes a prohibition on arbitrary or unlawful interference with the family

24. Victims of arbitrary killing are entitled to adequate compensation from the state where the violation was committed. Granting compensation is separate from the additional obligation on states to conduct prompt, transparent and effective

investigation and punish perpetrators. The Applicants contends that the failure of the Respondent to exercise due diligence and professionalism particularly on the part of its security agents' amounts to violation of the rights to life of their members and dependants killed under pretext of election violence.

25. The Applicants whose properties were destroyed and the deceased like every citizen of the ECOWAS are equal before the law and are entitled to equal protection of the law as enshrined in Article 3 of the African Charter of Human and Peoples Rights. The Applicants have a right to National and International peace and security as enshrined in Article 23 of the African Charter of People and Human Rights.

26. Applicants argue that the actions and inactions of the Respondent constitute a flagrant violation of the Applicants rights listed in the Initiating Application in paragraphs 16 -18 as guaranteed by the African Charter of People and Human Rights and 19 -20 as guaranteed by other International Human Rights Instruments to which Nigeria is a signatory.

27. **Order and Reliefs Sought by Applicants**

i. A DECLARATION that failure of the Federal Government of Nigeria, their servants, agents and privies to provide adequate and timely security for all that were killed in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi all within southern Kaduna before, during and after the April 2011 Presidential Election is unlawful as it constitute a violation of Nigeria's international Human Rights obligations and commitments to respect, promote and ensure the right to life, as guaranteed under the African Charter of People and Human Rights and the UN International Covenant on Civil and Political Rights to which Nigeria is a state party

ii. A DECLARATION that the failure of the Federal Government of Nigeria, their servants, agents and privies to promptly arrest, investigate and prosecute particularly in the entire Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi the perpetrators of the acts which led to the brutal killing of over 800 (Eight Hundred) Muslim members of southern Kaduna in Kaduna State represented by the Applicants herein and displacement of over 60,000 (Sixty Thousand) others is unlawful as it violates their rights to life, right to security, right to dignity of human persons and equal protection of the law as guaranteed under the African Charter of People and Human Rights; the UN International Covenant on Civil and Political Rights and UN International Covenant on Economic, Social and Cultural Rights to which Nigeria is a state party.

iii. A DECLARATION that the Applicants have rights to National and International rights to effective and adequate remedy for the pogrom perpetrated against them and their dependants when the Respondents, their servant, agents, and privies abdicated their duty to promptly and effectively arrest, investigate and bring to justice those suspected to have been responsible as recognized by the African Charter of Peoples and Human Rights, the International covenant on Civil and Political Rights and the International covenant on Economic, Social and Cultural Rights.

iv. AN ORDER directing the Federal Government of Nigeria, their servants, agents and privies to respect, protect, promotes, fulfil and ensure the entrenchment of a sustainable enabling environment to guarantee the right of the Applicants and all members of their community to life and sanctity of human person; to dignity and security of the human person; and other internationally recognised human rights.

v. AN ORDER directing the Federal Government of Nigeria to pay adequate monetary compensation as chronicled in EXHIBITs attached herewith, the summary of which are:

A. 839 lives killed at N22,982,428.00 per person is N1, 947,909,894.00

B. 88 injured persons at N100,000.00 per person is N8, 800,000.00

C. 664 houses looted, vandalized and burnt/destroyed N1, 892, 286, 580.00.

D. Household items looted/destroyed N32, 680, 000.00

E. Office structures and assets looted and destroyed N181, 952,970.00

F. Motor vehicles burnt during the Mayhem N102, 350,000.

G. 45 No of Mosque vandalized and burnt down N866, 800,000.00

H. 5 No Islamiyya (Islamic Schools) vandalized and burnt down N172, 800,000.00

I. Over 300 Market Stalls and shops destroyed at N270,000 each N81, 000,000.00

J. General damages N100, 000,000.00

GRAND TOTAL: N105, 066,204,016.00 (Ten billion, sixty-six million,two hundred and four thousand, sixteen Naira only)

28. **Respondent's case**

29. Preliminary Objection of the Respondent**.**

i) On the 31st of March 2014, the Respondents filed a preliminary objection based on the following points.

ii) That the 1st Applicant has no locus standi to bring this action for itself because it has not suffered any loss or harm as a result of the alleged act/omission of the Respondent.

iii) That the 1st Applicant cannot also bring this action on behalf of Applicant 2-6 because they have not suffered any loss and not being direct victims,

iv) That there is no record of any authorisation from the victims or their close relations.

v) That the Applicant has not established a cause of action to justify this suit.

30. Response of the Applicants to the preliminary objection.

31. with regards to the allegation that they lack the locus standi to bring this case, the Applicants argued that they filed this suit for themselves and on behalf of over 60,000 members of Southern Kaduna whose lives and properties were affected in the Ethno-Religious cleansing of 18th and 19th April, 2011, and that it is only this Court that has the powers to determine whether or not they have suffered any harm which can only be determined at the substantive stage.

32. On the legal capacity of the 1st Applicant to institute this action, the Applicants' state that its legal capacity was admitted in a previous ruling involving the same parties before this Court in suit no. ECW/CCJ/APP/27/11, with ruling no: ECW/CCJ/RUL/17/12, to which the Court assumed jurisdiction.

33. On the absence of authorization from the victims and failure of victims to personally access the Court, the Applicants state that the doctrine of locus standi has been relaxed in favor of Public Interest Litigation (PIL) and that by virtue of the large consensus in international law on human rights violations affecting communities, access to justice should be facilitated. They also argued that in PIL, the Plaintiff need not prove that he has personally suffered injury or that he has a special interest that has to be protected judicially.

34. On cause of action, the Respondent alleged that the allegations did not disclose any characterization of violation of human rights.

35. **Statement of defence of the Respondent.**

36. The Respondents state that Applicant filed an Amended Application dated January 25, 2017, by which it sued the Federal Republic of Nigeria (1st Defendant), and the Attorney General of the Federation (2nd Defendant) seeking several reliefs. The 1st and 2nd Respondent filed a response denying the violation of the rights of the Applicants. It is imperative to emphasize that the Federal Government of Nigeria is committed to the security of lives and property of Nigerians as the Constitution of the Federal Republic of Nigeria recognizes the right to life of every citizen and indeed the 1999 Constitution (as amended) provides for the protection of the citizenry's fundamental rights.

37. The1st Respondent is and has also been committed to collaborating with Member States of the Economic Community of West African States (ECOWAS) and other partners to make the region terror-free and to promote the requisite environment for peace and security towards realizing the goal of regional integration and development.

38. The Respondent further contend that it cannot be said to have failed to exercise appropriate diligence in the protection of its citizens and the general public as they are and have been committed to ensuring that the right to life, freedom of movement, freedom of association; right to human dignity, right to integrity and right to the security of Nigerians are protected. Accordingly, the Respondents cannot be said to have violated Sections 33, 34, 35, 36, 40, 41, 42 and 43 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended), Articles 3, 5, 7 and 8 of the Universal Declaration of Human Right or Articles 5, 6 and 7 of the African Charter on Human and People's Rights or any other international treaty or convention.

39. **Pleas in law by the Respondent.**

40. Whether the 1st and 2nd Respondent are in breach of the African Charter on Human and People's Rights and the other International Conventions relied on by the Applicants. We submit that the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) in Section 1 (1) provides for the supremacy of the Constitution. Furthermore, Section 33 (1) CFRN 1999 provides as follows:

"Every person has a right to life, and no one shall be deprived intentionally of his life……………."

41. In the same vein, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP A9 LFN 1990 was enacted to enable Nigeria give effect to the African Charter on Human and Peoples' Rights. In recognition of the sanctity of human life, Article 4 of the Charter provides as follows:

"Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right".

42. Respondents argues that it was in regard for human rights and life, as substantiated in our Counter Affidavit to the Applicants' Application, that the Federal Government deployed law enforcement agencies to put a stop to the riots/unrest that erupted after the 2011 election.

43. The Respondents submit that the Government of Nigeria is committed to ensuring the right to life, freedom of movement, freedom of association, right to human dignity, right to integrity and right to the security of every Nigerians irrespective of tribe, religion and class. The Government is also committed to ensuring that human rights provided for under Articles 3, 5, 7 and 8 of the Universal Declaration of Human Right and Articles 5, 6 and 7 of the African Charter on Human and People's Rights and other international treaties and conventions are guaranteed.

44. Respondent's submission is further established in Pastor Kure's allegations documented in Exhibit 32 (Daily Trust of June 19, 2011), page 351 of the Applicant's Application. Pastor Emmanuel Nuhu Kure stated:

"...It is clear that the whole crisis was thoroughly pre-planned with logistics set out, and line of action and operation spelt out clearly. Otherwise, how would you explain a spontaneous call to prayer on most of the loudspeakers in the mosque across the city at the same time at 9pm or thereabout with a shout of Allahu Akbar? Muslims began to troop toward, the mosque and designated areas to be followed at 10pm with another call on loudspeakers. This was repeated a few times and the killings and burnings began. How come the fighters on that night wore black dresses or dark pants like coloured uniform, and surrounded the walls of the Anglican Cathedral and the Yoruba Baptist pastor's house and setting them on fire while shooting without any resistance if it was not premeditated and planned?..."

45. It is therefore Respondents humble submission that, from documented facts and from report of the Seik Ahmed Lemu post-election panel facts, no group or people of a particular religious adherent will claim “sole victims” of the crisis. In furtherance of the Federal Government’s concern for the welfare of the citizenry, the Sheikh Ahmed Lemu Panel was set up shortly after the 2011 post-election crisis, to enquire into the root cause and outcome of the post-election violence and to make recommendations that will help forestall future occurrences.

46. Respondents submit that, with all these steps taken by the Federal Government, it would not be out of place to say that the Federal Government had taken giant steps in addressing the situation and also preventing a re-occurrence of the crisis especially by setting up the Sheikh Lemu Committee. It therefore cannot reasonably be said that the Federal Government reneged on her obligation to her citizens. By the admission of the Applicants in their originating processes, the 1st Respondent set up many high powered Committees to investigate the post-election crisis which engulfed some parts of the Country in 2011. They submit that a Government that is not alive to her responsibility of protecting and safeguarding the lives and property of her citizens will not take such step.

47. The result of this committee was the White Paper on the Report of the Federal Government Investigation Panel on the 2011 Election Violence and Civil Disturbances dated August 2012, which the Applicant has annexed to their Application as Exhibit 26 in this matter. The committee identified some root causes and made some recommendations. The Federal Government has also enforced many of the recommendations made which include:

a. That there should be security agencies manning all vulnerable and flashpoints as lack of security was the major cause of the post-election violence.

b. That Government should intensify efforts in monitoring activities in mosques and churches such that inflammatory sermons are avoided and contained. Also that intra and inter religious committees should be strengthened to ensure compliance with the guidelines on religious activities.

c. That the Federal and State Government should collaborate to establish large farm settlements and develop agricultural and agro-allied industrial development programmes, to address the crucial questions of economic development, youth unemployment, youth restiveness and social security.

d. That the Government should establish a Mobile Police Barracks between Zonkwa and Kafanchan as well as Gonin Gora both in Kaduna State.

48. The recommendations were adopted by the Federal Executive Council which directed the Federal Ministry of lands and Housing to assess the reported losses and damage to properties in all affected states. Following the recommendations of the Sheikh Ahmed Lemu Panel, the Federal Government approved the release of the sum of N5, 747,694,780.00 to the nine of the affected States of the Federation.

49. The Government also took steps to establish proactive security measures to address the flashpoints in the State, including the enhancement of the State Security Outfit, (Operation Yaki). This was a comprehensive security arrangement to protect lives and properties in the various communities. The Government established the Bureau for Religious Affairs (Christian and Islamic matters) and Inter-Religious Harmony Committee at the State and Local Government levels. This was an institutional arrangement aimed at addressing negative Religious activities in Kaduna State. The Federal Government also established different initiatives to create employment for example, You Win, and public works programmes, Youth in Agric Business for Nigeria, the SURE-P programmes and other job creation programmes in Housing and other sectors.

50. The Federal Government following the recommendation of the panel directed the Inspector-General of Police to establish Mobile Police Barracks between Zonkwa and Kafanchan as well as Gonin Gora both in Kaduna State. Respondents submit that the above are responsive and noble acts expected of a democratic Government; and urge the Court to resolve this issue in favour of the Defendants, to hold that the Federal Government of Nigeria did not fail in its duty under the Constitution of the Federal Republic of Nigeria and the various Statutes, and refuse the reliefs sought by the Applicants.

51. **Orders Sought by the 1st and 2nd Defendants.**

52. Respondents urge this Honourable Court to hold as follows:

1. That it cannot be said that the Respondents failed to provide protection and exercise due diligence before, during and after the post-election riot of 2011 in Kaduna South.

2. That the Federal Government of Nigeria promptly took steps to intervene in the crises by deploying security operatives within a reasonable time and by taking step

to set up a committee to look into the matter and for carrying out measures to prevent future occurrence.

3. That the Respondents did not in any way breach or violate the fundamental human rights of the victims of the 2011 post-election violence as no government personnel and/or agent was said to have perpetuated or participated in the alleged killings and destruction of properties.

4. That the Federal Government by their action did not infringed on or violate the Applicants' right to life; to sanctity and integrity of human person; guaranteed by the Constitution of the Federal Republic of Nigeria 1999, Articles 1, 2, 3, 4 and 5 of the African Charter on Human and People's Rights; Articles 2, 3, 8, 12, and 25, of the Universal Declaration of Human Rights; Articles 2, 3, 6 and 26, of the International Covenant on Civil and Political Rights, Articles 2, 3, 5, 10, 11, and 12 of the International Covenant on Economic, Social and Cultural Rights

5. That the application of the Applicants be dismissed.

53. **Legal analysis of the Court.**

54. The Respondent filed a preliminary objection which was heard and reserved for judgement. The Court will now address the issues raised in the said objection.

55. Issues for Determination for the Preliminary Objection.

1. Whether the Applicants has the Locus Standi to institute this action for themselves and on behalf of all Muslim members of Southern Kaduna State victims.
2. Whether there is any cause of action for Applicants to institute this suit.

56. Whether the Applicants has the Locus Standi to institute this action for themselves and on behalf of all Muslim members of Southern Kaduna State victims.

With regards to whether the 1st Applicant has the locus standi to institute this action for other victims, the court has held in plethora of cases that non-governmental organisations (NGOs) and public spirited individuals can institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the rights of many people, as Public interest issues are

generally for the welfare and wellbeing of every individual in a society. In *SERAP V. FRN (2010) CCJELR, PG. 196, PARA 32, & 34* the Court stated that:

> *"The doctrine of actio popularis was developed under Roman law in order to allow any citizen to challenge a breach of a public right in Court. This doctrine developed as a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court. In public interest litigation, the Plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have standing. Plaintiff must establish that there is a public right which is worthy of protection which has been allegedly breached and that the matter in question is justiciable."*

57. *Also, in REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) & 10 ORS, V. FEDERAL REPUBLIC OF NIGERIA & 4 ORS where the* Defendant challenged the standing of the 1st Plaintiff on grounds that it has not been affected in any way by the acts attributed to the Defendant and that there is no public interest to legitimize the claim, the Court held in para 58 that:

> *"……a strict legal interpretation of the concept of victim, for the purpose of human rights protection, has evolved into a more flexible approach in order to allow other persons, not directly affected by the alleged violation, to have access to Court, and seek justice, on behalf of the actual victim and to hold accountable the perpetrators"*

See also *STELLA IFEOMA NNALUE & 20 ORS V. FRN ECW/CCJ/JUD/24/15 PG. 6- 8.*

54. The killings of over 800 people and destruction of property worth several billions of naira is clearly a matter of Public interest for which the 1st Applicant whose legitimacy as an NGO is recognised, is legally empowered to bring this action on behalf of the affected communities and the Court so holds.

58. Another reason the Respondent adduced to oust the 1st Applicant from this suit is premised on the requirement of authorisation to institute this action. The court notes the requirement of mandate as of paramount importance when suing in a representative capacity as seen in the decisions of this Court in *BAKARY SARRE & 28 ORS V. THE REPUBLIC OF MALI ECW/CCJ/JUD/03/11, PG 72, PARA 38, AND MME AZIABLEVI YOVO & 31 ORS V TOGO TELECOM & REPUBLIC OF*

TOGO ECW/CCJ/JUD/04/12, NOSA EHANIRE & 3 ORS V. FRN ECW/CCJ/JUD/03/17.

59. This said, the Court has a different approach when it relates to matters of public interest as captured hereunder.

> *"However, exceptions to this rule exist. These include but not limited to cases of collective interest (usually referred to as public interest litigations) and the non-victims receiving authority to act on behalf of the victims or their close relations. It is noteworthy that public interest litigations refer to cases in which Courts allow volunteers like Lawyers, Citizen Petitioners, NGO's to bring actions on behalf of some victimized groups who ordinarily are without sufficient means of access to legal services or justice".*

SEE In *THE INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHT ENLIGHTENMENT FOUNDATION V. FRN (2016) ECW/CCJ/JUD18/16 & 2 ORS*

60. In view of the above stated reasons, the Court holds that the 1st Applicant needs no authorization and possess the locus standi to approach this Court in a representative capacity. The Respondents objection in this regard is dismissed.

61. With regards to whether the 1st Applicant has the locus standi to institute this action for itself, this Court has maintained in its jurisprudence that a Non-Governmental Organization (NGO) cannot maintain an action as a victim of Human Rights violation. This position is supported in *THE INCORPORATED TRUSTEES OF THE MIYETTI ALLAH KAUTAL HORE SOCIO-CULTURAL ASSOCIATION V. FEDERAL REPUBLIC OF NIGERIA* (2011) ECW/CCJ/RUL/11/12 where the Court held as follows:

> *"Thus there is a clear distinction between these two classes of cases, one in which the corporate body sues as the victim and the other in which it sues on behalf of the victim, the victim here being identified as a human being. In the former situation the corporate body has no locus or capacity to sue, but in the latter situation, it has".*

62. In line with the Courts reasoning above, this Court holds that the 1st Applicant being an NGO lacks the requisite standing to institute this action as a victim of human rights violation. The objection of the Respondent in this regard is therefore upheld.

63. On the lack of capacity of the 2nd to 6th Applicants to bring this suit for themselves and on behalf of other victims because they have not suffered any loss, the Court has maintained an essential criterion in its flourishing jurisprudence that the Plaintiff in a human right action must attain the status of a victim who has suffered some loss or damage. This assertion has gained credence from Article 10 (d) of the 2005 Supplementary Protocol to the effect that every action relating to human rights protection, must be filed by an individual or a corporate body who fulfils the requirement of being a victim. Article 10 (d) of the Supplementary Protocol 2005 on the Court states that access to the Court is open to:

> *"Individuals on application for relief for violation of their human rights"*

64. To qualify as a victim, the Applicant must be able to establish that it has suffered a personal loss and have an interest that is direct and ascertainable. Further, the case of *AZIAGBEDE KOKOU & 68 ORS V. REPUBLIC OF TOGO ECW/CCJ/JUD/07/13 PAGE 175 @24,* the Court held that:

> *"To claim to be a victim, there must exist a sufficient direct link between an applicant and the prejudice he deems to have suffered as a result of the alleged violation."*

Also in the case of *ODAFE OSERADA V. ECOWAS COUNCIL OF MINISTERS, ECOWAS PARLIAMENT & ECOWAS COMMISSION, ECW/CCJ/JUD/01/08 @ 27*, the Court held that:

> *"Generally, and from a legal standpoint, the necessity for an Applicant to provide justification of interest in a case is attested to by the adage that where there is no interest, there is no action, and also an interest is the measuring rod for an action. In other words, an application is admissible only when the applicant justifies that he brings a case before a Judge for the purposes of protecting an interest or defending an infringement of such. Such an interest must be direct, personal and certain."*

65. In essence;

> *"A victim is anyone who suffers individual or collective harm (or pain) such as physical or mental injury, emotional suffering, economic loss, or generally any impairment of human rights as a result of acts or omissions that constitute gross violations of human rights, or serious violations of humanitarian law norms."*

See The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Survivors of Violations of International Human Rights and Humanitarian Law, *GA RES 60/147, PMBL, SEC IX, UN DOC A/RES/60/147 (MARCH 21, 2006)*

66. An individual can bring an action on behalf of another only when Applicant is a close relation of a victim of violation of human rights. Following from the above, the Court holds that another teleological interpretation is that individuals who are not direct victims can ground an action before the Court if they are relation of the direct victim of violation of human rights. The above position is further supported where the Court stated that whilst the issue of mandate cannot be dispensed with in a representative capacity; an exception to the requirement was made in *STELLA IFEOMA & 20 ORS V. FEDERAL REPUBLIC OF NIGERIA (2015)* thus:

> "*when it becomes impossible for him whose right is violated to insist on that right or to seek redress, either because he is deceased or prevented in one way or the other from doing so, it is perfectly normal that the right to bring his case before the law Courts should fall on other persons close to him…"*

This was further emphasized when the Court held that:

> *"if for any reason, the direct victim of the violation cannot exercise his/her rights, in particular, for being irreversibly incapacitated or having died as a result of the violation, the closest family members can do so, while assuming the status of indirect victims."*

67. It follows from the above that a victim can be a person who suffers directly or indirectly any harm or pain (physical or mental injury), emotional suffering (through loss of a close family member or relation), economic loss (loss of Properties) or any impairment that can be categorized as human rights violation. Additionally, other than the loss, harm or damage, an Applicant must prove an interest in the matter which must be direct and personal. This Court has through several decisions made exception for individuals and organizations who have not suffered directly or personally to institute actions in a representative capacity on behalf of victims.

68. Since the Respondent contend that that Applicants 2-6 cannot maintain this action for themselves having not establish any loss as victims, the court will now analyse all facts as presented by Applicants 2-6 to determine their status as victims or otherwise.

69. *Applicants 4 & 5*

The Court having reviewed the testimonies of Applicants 4 & 5 confirms that they alleged loss of children, grandchildren and family members respectively. Therefore

being close members of the alleged victims the court find that Applicant 4&5 have locus stand to bring this action in a representative capacity.

70. Applicants 2, 3 & 6

With respect to Applicants 2, 3&6 apart from been named as such in the originating application, they did not testify to any material fact nor swear to any witness statement on oath to enable a determination of their status as a victim. Since there is no evidence that they have suffered either direct or indirect loss to qualify them as victims, the court finds that Applicant 2,3&6 cannot maintain an action for themselves.

71. With regards to their capacity to sue on behalf of other victims of the Southern Kaduna State crisis, they are covered under the principles of action popularis where spirited individuals are allowed to bring an action on behalf of a group for public wrong. That the killings and destruction as evidenced in this case is a public wrong is not in dispute. This issue was very well canvassed by this Court in the case of *REV. FR .SOLOMON MFA & 11 ORS V. FEDERALL REPUBLIC OF NIGERIA ECW/CCJ/JUD/06/19* where the Court held at Paragraph 59 that:

> *"Even though the Court held that the Applicants have failed to maintain this action in their personal capacity, the law recognizes the right of individuals and corporate bodies who are not victims to bring an action in a representative capacity under the principle of Actio Popularis. The Court under this situation will allow NGO and public spirited individuals to institute actions on behalf of group of victims usually from a community or class of people based on common public interest to claim for the violation of their human rights, because this group may not have the knowledge and the financial capacity to maintain legal action of such magnitude which affects the general public interest. Public interest issues are generally for the welfare and wellbeing of every individual in a society."*

72. Having reviewed the arguments of both parties on the preliminary objection of the Respondent as it pertains to the locus standi of the Applicants, the Court holds as follows:

- The 1St Applicant being a lawfully recognized NGO cannot sue on its behalf but has the locus standi to bring this action on behalf of the Muslim members of the southern Kaduna crisis.-
- The 4th and 5th Applicants having alleged loss of close family members are deemed victims and have the locus standi to maintain this action on their behalf but not on behalf of other victims.

- The 2nd, 3rd & 6th Applicants not been victims do not have the locus standi to sue on their behalf but can maintain an action on behalf of the Muslim members of the Southern Kaduna crisis.
- In all, the court dismiss the Respondent's objection and hold that all the Applicants have locus standi to sue in the various capacities canvassed above.

73. The Court will now proceed to examine the second head of the preliminary objection which deals with the cause of action to institute this suit.

74. ***Whether the applicant has established any cause of action to institute this suit.***

75. The Respondent contend that the Applicants have not disclosed any reasonable cause of action against them. A cause of action is a matter for which an action can be brought, a legal right predicated on facts upon which an action may be sustained. It is the right to bring a suit based on factual situations disclosing the existence of a legal right. It is often used to signify the subject matter of a complaint or claim on which a given action or suit is grounded whether or not legally maintainable. See INCORPORATED TRUSTEES OF FISCAL AND CIVIC RIGHTS ENLIGHTENMENT FOUNDATION V. FRN (2016), ECW/CCJ/JUD/16/18

The Court also defined cause of action with reference to the case of Letang v. Cooper (1960) 2 All ER 929 as:

> *"the reason or the facts that entitle a person to sue or bring his case to the Court, or a factual situation that entitles one person to obtain from the Court a remedy against another person".* See SERAP V FEDERAL REPUBLIC OF NIGERIA (2014) ECW/CCJ/JUD/16/14**,** para 77,

76. The reason adduced by the Applicants for instituting this suit is the alleged failure of the Respondent to provide adequate and timely security measures to curtail the mayhem that occurred in the April 2011 post-election crisis, having received privileged information of the impending attacks which led to loss of lives and property in Zonkwa, Kafanchan and other neighbouring villages. The Applicants further allege that persons who survived the pogrom have been made refugees, having been rendered homeless, with their farmlands ravaged and their livestock stolen or killed. Applicants' further state that children have been made orphans, girls raped, and wives now widowed and with no means of livelihood to take care of their surviving young ones; about 189 women have giving birth to babies in exceptionally difficult condition; the internally displaced persons are living in very pathetic, sub

human and difficult conditions with difficulty obtaining basic food, medications and sanitary items and the children have lost school sessions.

77. The facts as presented by the Applicants raises fundamental human right issues capable of attracting the attention of the Court with a view to establishing whether or not the allegations complained of constitute a violation of the rights of the Applicants notably the rights contained in Articles 4 and 5 of the African Charter amongst others.

78. The Court therefore holds that the Applicants have established a cause of action which is an allegation of human rights violations against the Respondent and the preliminary objection on this head is dismissed.

Merit

79. Issues for determination

80. After a careful analysis of the facts as alleged by the Applicants, the Court was able to identify only one issue for determination as follows;

Whether the Respondent (failed in) fulfilled their obligation to protect and prevent the violations of the human rights of the Applicants and the affected southern Kaduna Muslim victims listed in exhibits 2-20.

81. In analysing the facts on merit, the Court must first resolve the admissibility of certain documents to which the Respondent objected. The Applicants in support of their claims sought to tender certain documents namely:

a. Exhibit 1 – list of Army Barracks, Divisional Police Stations and outpost Police Stations situated within and around the crisis area in Kaduna State.
b. Exhibit 2-20 – List of names of those who were killed in the Mayhem.
c. Exhibit 11-20 – names of persons injured and those whose properties and houses were destroyed across the communities.
d. Exhibit – 21 – various pictures taken from the crisis scene
e. Exhibit 22- 23 – Social media inciting message posted by one David Ayuba.
f. Exhibit 26 – Photocopies of the Federal Government of Nigeria white paper report on the recommendation of the investigation panel into the said Crisis.
g. Exhibit 27- photocopies of Kaduna State white paper on recommendation of the report of the investigation panel into the said crisis

82. The Respondent however objected to their admissibility on the following grounds:

a. That exhibits 1, 3, 6, 11, 12, 18 and 19 are all photocopies and no proper foundation was laid as to what happened to the originals
b. That exhibits 21 are pictures to which the rightful person to tender same is the person who took the pictures.
c. That the author of exhibit 22 and 23 David Ayuba is not a party in the suit and not before this court.
d. With respect to exhibits 11, 12, 18 and 19, that they were not signed nor authored by anybody.
e. In particular reference to exhibits 26 and 27 which are the Government white paper reports, the Respondent argued that they are inadmissible since they are public documents they must be duly certified by the authority that produced them. They quoted copiously from the Evidence Law of the Respondent-Federal Republic of Nigeria-in support of their claim. In conclusion they urged the Court to reject the photocopies of all the cited documents and declare them inadmissible.

83. The Applicant argued in response that since the Respondent is the maker of the said exhibits 26 &27, and having requested same from the Respondent who refused to obliged, it was in order to tender the photocopies for which they urged the court to rule as admissible. (See Annexure J letter dated 5th November 2012 addressed to the Attorney General of the Federation requesting for the release of a copy of the white paper report). With regards to the other exhibits, the Applicants maintain that their photocopies are nonetheless admissible.

84. The Court, upon analysing the objection of the Respondent and reply of the Applicants on the admissibility of the above referred documents, states that the Community Court of Justice of the ECOWAS does not rely on the constitutional provisions or other national legislations of Member States to determine its jurisdiction or its practice and procedure. It is trite that if a relevant document is in the possession of the adversary party and where upon request it has been refused, the Applicant can very well tender a copy of the said document. The applicant having proved such request was made (annexure J) has fulfilled the condition precedent and laid the appropriate foundation to tender a photocopy of the said reports. The Respondent having not denied the veracity of the content of the said reports but only to the extent that a foundation was not laid to tender a photocopy; the Court for

reasons adduced above admits the White paper reports of the Kaduna State and the Federal Republic of Nigeria marked as exhibit 26, 27 respectively and all other exhibits sought to be tendered by the applicants and will analyse the probative value as canvassed by both parties.

85. The Court will now proceed to analyse the facts as alleged by both parties to decide if they have proved their cases.
The summary of the case for the Applicants is as follows;
a) The attacks by the Christian youths of the Southern Kaduna community led to the brutal killing of over 800 (Eight Hundred) and injury of over 70 (seventy) Muslim members of southern Kaduna in Kaduna State. Details of the dead, next of kin and injured were annexed.
b) Several properties including houses, shops, mosques, churches, vehicles, motorcycles and more were destroyed while some where completely burnt down. Details of these properties and their value were annexed.
c) The Respondent failed to act in a timely manner to minimise the casualties of dead and injured as well as the loss of properties. The distance of the police Stations to the various scenes of the attacks are attached.
d) The Respondent did not make any arrest nor prosecute the perpetrators in fulfilment of its obligation under Art 1 of the ACHPR.
e) The survivors are refugees, having been rendered homeless, their farmland ravaged, livestock stolen or killed, children made orphans, girls raped, wives now widows and with no means of livelihood to take care of their surviving young ones. They further alleged that the internally displaced persons are living in very pathetic, sub human conditions with difficulty obtaining basic food, medications and sanitary items.
f) The displaced children have lost school sessions and that about 189 women have had babies in an exceptionally unhealthy conditions and that the Respondent has not resettled the victims neither has acceptable standard of basic human necessities been provided.
e) The Respondent did not compensate the Applicants and the other victims of the Southern Kaduna State Communities on whose behalf the action is instituted.
g) The Respondent is therefore in violation of its obligation to protect the identified Muslims members of the Southern Kaduna State under Articles 1, 2, 3, 4 and 5 of the ACHPR and other international human rights instruments to which it is a signatory.

86. In all, the Applicants are seeking reliefs before this Court amongst others for compensation for the dead victims, the injured and for damaged properties and also reparation for their people living in internally displaced camps under deplorable conditions. They therefore claim the sum of **N105, 066,204,016.00** as compensation for themselves and the victims of the crisis listed in exhibits 2-20.

87. The summary of the Respondents case is as follows:

a) The Respondent in opposition to the claims denied any violation of the rights of the Applicants, contending that it reacted promptly to the crisis and took measures to quell the riots by mobilizing its security agents to the scene of the mayhem within a reasonable time despite its overstretched resources.
b) The Respondents averred that no government personnel and/or agent perpetuated or participated in the alleged killings and destruction of properties and thus cannot be held responsible for the attacks.
c) Respondents relying on exhibit 26 claimed that after the riot, they fulfilled their obligation by arresting and prosecuting the perpetrators. They claimed that a panel of investigation into the crisis was set up and its recommendations in a white paper was adopted by the Federal Executive Council which directed the Federal Ministry of lands and Housing to assess the reported losses and damage to properties in all affected states.
d) Respondent averred that following from the White paper report of the investigating panel, the sum of N5, 747,694,780.00 was approved to ensure that the nine affected States, including Kaduna State where the Applicants' communities are situated receive adequate compensation for their losses.
e) The Respondents' refuted inhuman conditions alleged in the internally displaced camps and insists that they provided food and accommodation facilities for the victims in the Internally Displaced Camps.
f) In the interim, the Respondent raised a preliminary objection to the admissibility of the action on the 2 grounds; that the 1st Applicant lacked the locus standi to institute this action on behalf of themselves and all the Muslim victims of the crisis in the said communities and that no reasonable cause of action has been established to maintain the suit before the Court.
g) The Respondents therefore urge the Court to hold that it did not violate the human rights, nor fail in its obligation to protect, prevent and fulfil the rights of the Applicants as guaranteed in the relevant provisions of the African

Charter on Human and Peoples' Rights and other International Human Rights instruments relied upon by the Applicants.

88. As a general rule, the burden of proof lies on the party who asserts the existence of facts. Where however that burden is discharged, the burden may shift to the other party to lead evidence in rebuttal. In *FEMI FALANA & ANOR V REPUBLIC OF BENIN & 2 ORS (2012) ECW/CCJ/JUD/02/12 PG. 34,* the court held that:

> *"As always, the onus of proof is on a party who asserts a fact and who will fail if that fact fails to attain that standard of proof that will persuade the court to believe the statement of the claim".*

See also *SIKIRU ALADE VS FEDERAL REPUBLIC OF NIGERIA (2012) ECW/CCJ/JUD/10/12. PARA 48.*

89. The burden is therefore on the Applicants in this case to prove all the facts as alleged above. However, it is also trite law that facts admitted need no proof. The Court notes that the Applicants tendered 27 Exhibits in support of their claims and having ruled that they are admissible, the Court is obliged to examine their contents to assess their probative value.

*90. **Allegation of Violation of right to life.***

91. With regards to the allegation that the attacks by the Christian youths of the Southern Kaduna caused the death of over 800 and injury to 77 people of the same communities, The Court notes that the Respondent did not refute these allegations. In fact Exhibit 26 (which is the Recommendation of its panel of investigation into the said crisis) and which the Respondent made copious reference in its defence admits that hundreds of lives were lost, and several persons injured. Page 17 paragraph 15 (i) & (ii) of Exhibit 26 states:

> *(i) "The number of persons who lost their lives or sustained injuries and suspects arrested in various states are shown below – Kaduna- 827 lives lost; 71 people injured; No of arrest- Not applicable*
>
> *(ii). "It is to be noted that the statistical figure of deaths from Kaduna is 827 from which over eighty per cent are from the Southern Kaduna Senatorial District where communal violence has been known to be pronounced for over 25 years."*

92. The Respondent having admitted that hundreds of lives were lost and several injured, these facts as claimed by the Applicants being uncontroverted need no further proof. The Court therefore holds that the Applicants have proved as a fact the killings of 827 and injury of 77 people in Kaduna State including the

communities spread across Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi all within southern Kaduna in which 85% of the killings allegedly took place.

93. Though the facts of killings and destruction of properties in the alleged communities have been admitted as proved by the Applicants, the Court will proceed to analyse the defence of the Respondent to determine if they are exonerated from the mayhem that took place and therefore not in violation of their obligations to protect the communities of the Southern Kaduna.

94. The content of Paragraph 15 (i) & (ii) of exhibit 26, it is clear admission by the Respondent that the said crisis resulted in the death of 827 and 77 injured people and destruction of properties worth billions. The defence adduced is that to the extent no government personnel and/or agent perpetuated or participated in the alleged killings and destruction of properties, they are not in violation of their obligations under ACHPR.

95. Applicants on the other hand contend that having admitted that hundreds of the members of the said communities were killed, the Respondent by their inaction has violated Art 4 of the ACHPR which guarantees the right to life and which must not be arbitrarily deprived.

96. The Court in addressing this issue notes that Member States who are signatory to the (ACHPR) have the obligation to protect every right enshrined therein. Art 1 provides as follows:

> *"The Member States of the Organization of African Union parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them."*

Further, ECOWAS Protocol on Democracy and good Governance 2001 to which the Respondent is a signatory provides in Section 1 (h) thus;

> ***"****The rights set out in the African Charter on Human and People's Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States…"*

97. The Respondent being a signatory to the ACHPR is bound to recognise the rights enshrined therein and give effect to them in fulfilment of its obligation to protect.

The Court agrees with the reasoning of the *INTERNATIONAL LAW COMMISSION 53RD SESSION* when it opined thus:

> *"Every internationally wrongful act by a state gives rise to international responsibility. And international wrongful acts exist; where conduct consisting of an action or omission is imputed to a state under international law, and such conduct in itself as a direct or indirect cause of an external event constitutes a failure to carry out an international obligation of the state."*

98. This Court reaffirms that the provision contained in Article 1 of the ACHPR created an obligation of absolute character requiring the States Parties to take legislative, judicial, administrative, educational and other appropriate measures to fulfil their obligations. These obligations cannot be derogated from for reasons that perpetrators are non-state actors. The obligation to **protect** is more of a positive nature and require state to guarantee that private individuals do not violate these rights. States will be held responsible for any violations of rights under the charter regardless if such acts of violations were carried out by state agents or not. It is in that wise that The African Commission held as follows:

> *"The negligence of a State to guarantee the protection of the rights of the Charter having given rise to a violation of the said rights constitutes a violation of the rights of the Charter which would be attributable to this State, even where it is established that the State itself or its officials are not directly responsible for such violations but have been perpetrated by private individuals."* Communication *266/03, KEVIN MGWANGA GUNME ET AL V. CAMEROON (2009), PARA 122; COMMUNICATION 272/03, ASSOCIATION OF VICTIMS OF POST ELECTORAL VIOLENCE & INTERIGHTS V. CAMEROON (2009)*

99. The Commission further held that:

> *"This Article places on the State Parties the positive obligation of preventing and punishing the violation by private individuals of the rights prescribed by the Charter. Thus any illegal act carried out by an individual against the rights guaranteed and not directly attributable to the State can constitute, as had been indicated earlier, a cause of international responsibility of the State, not because it has itself committed the act in question, but because it has failed to exercise the conscientiousness required to prevent it from happening and*

for not having been able to take the appropriate measures to pay compensation for the prejudice suffered by the victims."

100. It follows that the perpetrators need not be agents of States as the obligation imposes a duty to protect individual persons within their jurisdiction from violations of their rights both by state and non-state actors. The Court is therefore compelled to come to the inevitable conclusion that the Respondent having admitted to the facts of killings and destruction of properties cannot be exonerated on the basis that the perpetrators are non-state actors. The Court therefore holds that the Respondent is violation of the right to life of the within named deceased persons

101. Member States must ensure that all reasonable measures have been taken to protect all the rights guaranteed under the African Charter and other International human Rights instruments to which they are signatories. It should however be noted that the Respondent will not automatically be held in violation of its obligation to protect once there are killings. The circumstances leading to the killing and destruction must be such as to render the Respondent in breach of its obligation to protect. The watch word here is reasonableness. Reasonableness depends on the circumstance of each case. What is reasonable in one case may be unreasonable in another case under different circumstances. Where there is an unanticipated and spontaneous uprising leading to the killing of persons the test of reasonableness will be how promptly the authorities responded to quell the uprising and protect further killings. However where the authorities had notice of the impending uprising and did nothing, either to protect the people or nip it in the bud, their action will be unreasonable even if they promptly arrived at the scene to quell the uprising once some people have been killed or injured**.**

102. In addressing the number of persons that the Applicants alleged were killed, it is imperative to address the discrepancy in the number of lives lost listed in the Initiating Application and those in Exhibit 26. The initiating application sought damages for "839 lives killed at N22, 982,428.00 per person totalling N1, 947,909,894.00". On the other hand Exhibit 26 which has been admitted by the court put the number of lives lost as 827. It will be recalled that the said Exhibit 26 is the report of the of the Committee set up by the Respondent to investigate and make recommendations regarding the crisis that led to the mass killing and destruction of properties in 9 States including Kaduna State were the deceased Applicants resided.

See page Page 17 paragraph 15 (i) & (ii) of Exhibit 26 states:

> *(i) "The number of persons who lost their lives or sustained injuries and suspects arrested in various states are shown below – Kaduna- 827 lives lost; 71 people injured; No of arrest- Not applicable*

The Court will therefore give credence to the number listed in Exhibit 26 which is 827 and hold that the death of the named 827 victims have been established/proved

103. The Court therefore holds that the Respondent failed in its obligation under Article 1&4 of the ACHPR to protect the right to life of the 827 of the within named applicants listed in exbibt 26 from Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi all within southern Kaduna district.

104. ***Allegation of injury.***

The Applicant claimed that 88 persons were injured in the said violence. Article 6 of the African Charter recognizes and protects both liberty of person and security of person. Injury is a violation of the right to security of person

The General Comment No 35 of the Human Right Committee on Art 9 of the Convention on the right to liberty and security of persons (which is pari material to Art 6 of the Charter) states that as follows;

. "Liberty of person concerns freedom from confinement of the body, Security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity. The right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained."

Injury having been recognised as a right and its infliction prohibited under Art 6 of the Charter, the claim of the Applicant thereof will be addressed under the consideration for compensataion. Review,

The Applicant's claim in respect 88 injured persons is for N100, 000.00 per person is N8, 800,000.00. The Court notes that Exh 26 page 17 lists the number of injured persons as 71. As concluded in paragraph 84 above, the Court will again give credibility to Exh 26 and find that the number of persons injured is 71.

105. Allegation of Violation of Rights to Property

106. Article 14 of the African Charter on Human and Peoples' Rights guarantees the peaceful enjoyment of property as follows:

"The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

The Applicants alleged that several of their properties were destroyed or completely burnt down, this was uncontroverted by the Respondent and reinforced in the findings in Exhibit 26 page 19 paragraph 16 as follows:

"16 (i) The damage was widespread involving places of worship (churches and Mosques), residential properties, business premises and public buildings (including government and security premises) as well as hamlets of nomadic Fulanis called ragas (especially in Kaduna State).

16 (ii) Puts the aggregate losses/damaged and claims for Kaduna State as N23, 330,737,540.00.

107. Additionally, the valuation by the Respondent of the damaged properties is further indicative of admission of the Applicants' allegation of such destruction in the said communities. The Respondent has not put up any justifiable defence to the widespread destruction of the said communities other than as earlier contended that its agents were not implicated in said destruction. As held above, the court comes to the inevitable conclusion that since the allegation of destruction of properties which the Respondent itself described as 'widespread' has been admitted, they remain uncontroverted and need no further proof. The Court relying on its reasoning above comes to the same conclusion that the Respondent cannot be exonerated from liability based on the contention that the perpetrators are non-state actor.

The Court therefore holds the Respondent in violation of its obligation to protect the property of the Applicants.

*108. **Allegation of Late deployment of security agents***

109. As regards the allegation that the Respondent failed to deploy security agents in a timely manner to minimise the casualties of dead and injured as well as the loss of properties, it is the contention of the Applicants that the Police failed to respond timeously to distress calls on the onset of the crisis. It exhibited several Police stations and their distance to the various hotspot (annexure A). From the chronicle, the farthest point to a Police Station is 2 hours by road; but the security officers arrived after several hours when many had been killed and several properties destroyed. The tardiness of the Respondent response is confirmed in the report of the panel of investigation set up by the Kaduna State where it was reported at page 138 paragraph 5.6.1 of exhibit 27 as follows:

"The Commission from the memoranda and testimonies before it noted that, while the security forces were quickly deployed to quell the riot in the Northern part of the state, the security forces were not posted to Southern part of the State until the 19th April, 2011."

110. The inadequate strength of the Police in Kaduna State was also been admitted by the Respondent in the report of its investigation which states on page 17-18 paragraph 15 (iii) of exhibit 26 as:

"*iii.....The strength of the police formations in Southern Kaduna State which as earlier stated has been a scene of recurring serious civil disturbances and violence over the last 24 years (1987, 1992, 1996, 1999 and 2011) is grossly inadequate*

111. The defence of the Respondent to this allegation is that their resources were overstretched and that while they were controlling crisis in the Northern Kaduna same also erupted simultaneously in Southern Kaduna which delayed prompt deployment. It is instructive that Exhibit 26 at page 17 paragraph 15 (ii) supra …puts the death in the Kaduna south senatorial district at 85% of the total death in Kaduna State.

112. While there is merit in the defence as it pertains to the fact of existence of simultaneous crisis which overstretched the resources both human and material and negatively impacted on their ability to promptly respond to the later crisis that erupted in Southern Kaduna; That notwithstanding, the Court is of the view that in the light of the history of Southern Kaduna which is volatile in nature and therefore prone to incessant violent unrest, the Respondent ought to have made provisions for a full-fledged police station with well-equipped standby battle ready anti-riot policemen. Though the Respondent were not in a position to have averted the mayhem, their earliest response could have mitigated the losses. The effect of such tardiness was held to be in violation of the obligation of a state when the African Commission held in a post-election crisis thus;

"Failure to take adequate measures to prevent the violence which led to the physical harm and material damage suffered by the victims violated Article 4 of the Charter of ACHPR." See the case of Association of Victims of Post Electoral Violence & Interights v. Cameroun; Communication 272/03, paragraphs 124 – 126**.**

113. The Court therefore holds that the deployment of security agents on the 19th of April 2011 in response to a crisis that started on the 18th of April 2011 and lasted

throughout the night cannot be said to be prompt. The Respondent having failed to provide adequate and timely security to prevent the killing of all who died and were injured in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi all within Southern Kaduna before and during the alleged crisis is in violation of its obligation under Articles 1 & 4 of the ACHPR to respect, promote and ensure the right to life.

*114. **Allegation of Failure to arrest and prosecute perpetrators.***

115. The Applicants further alleged that the Respondent made no arrest nor prosecute any of the perpetrators even when some of them were identified by names. Exhibit 26 @ page 17 paragraph 15 (iii) confirms the Applicants' claim when it states that:

> *iii. "There was no arrest in connection with those killings in Kaduna State South Senatorial District……"*

In admitting its failure highlighted above, the Respondent @page 18 stated that:

> *"It directs the Inspector-General of Police and Attorney General of the Federation to double their efforts in apprehending and prosecuting the perpetrators."*

116. The Respondent did not file any evidence before the Court in support of compliance with above directive or that arrests were made at any time before. The importance of punishment of perpetrators cannot be overemphasised both in the protection and the prevention of the violation of such rights. States are expected to bring to book perpetrators in accordance with the provisions of the sanctions provided for in the criminal law of that particular state. Sanctions could range from imprisonment to offering of public apology depending on the extent of the liability of the perpetrator in the alleged violation. However, the state responsibility is to ensure that required punishment is enforced to act as a deterrent and prevent subsequent or future occurrence. *The African Commission has held that:*

> ***"****Failure of states to investigate and prosecute allegations of unlawful killings or to provide redress to victims has amounted to a violation of Article 4 provisions**."***

See *COMMUNICATION 266/03, KEVIN MGWANGA GUNME ET AL V. CAMEROON (2009), PARA 122; COMMUNICATION 272/03, ASSOCIATION OF VICTIMS OF POST ELECTORAL VIOLENCE & INTERIGHTS V CAMEROON (2009), PARA 115.*

117. Similarly, this Court has held in plethora of cases that member States have a duty to protect all persons on its territory and to investigate and punish all acts of violations committed on its territory. See *Hadijatu Mani Koraou v. The Republic of Niger* (2004-2009) CCJELR p 240*; Sidi Amar Ibrahim & Anor v. Republic of Niger* (2011) ECW/CCJ/JUD/02/11; Badini Salfo v. Burkina Faso (2012) ECW/CCJ/JUD/13/12; Tidjani Konte v. Republic of Ghana; Obioma Ogukwe V Republic of Ghana, (2016) ECW/CCJ/JUD/20/16 para 8.3.

118. The admission by the Respondent in exhibit 26 supra that no arrest was made supports the allegation of the Applicant that it failed to put in place measures to identify and punish perpetrators in fulfilment of its obligation to prevent the violation of the human rights of the Applicants' communities. In view of the facts that there is no evidence before the Court to show that some persons have been charged and are being prosecuted, the court finds that the Applicants' claim that the Respondent did not arrest or prosecute any perpetrators of the attack has been proved. Consequently,

119. The Court therefore holds that the Respondent failed to promptly arrest and prosecute the suspects of the mayhem which led to the killing of over 800 (Eight Hundred) Muslim of southern Kaduna in Kaduna State. It therefore holds that it is in violation of its obligation under Article 1 of the ACHPR to protect and prevent the violation of the rights of the members in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi.

120. **Allegation of Failure to conduct a prompt and impartial investigation.**

121. The Applicant allege that the Respondent failed to conduct prompt and effective investigation into the crisis. Where a State is aware of the occurrence of acts amounting to violation of human rights in its territory and fails to carry out effective investigation into the violation so as to identify those responsible and hold them accountable, such State will be in violation of its obligation under international law. In an Application where an allegation of the violation of the right to life and failure to investigate was made, the Court held that:

> *"The right to life imposes an obligation on States to investigate all acts of crime and bring perpetrators to book."*

SEE *DEYDA HYDARA JR & 2 ORS V REPUBLIC OF GAMBIA ECW/CCJ/JUD/17/14* unreported

Equally the Inter American Court stressed that:

"*Once state authorities are aware of an incident, they should without delay institute an impartial and effective means to unravel the truth.*"
See *VELASQUEZ RODRIGUEZ V. HONDURAS, JUDGMENT JULY 29, 1988, INTER-AM. CT.H.R (SER. C) NO. 4 (1988)*.

122. The conclusion is that a prompt, effective, impartial investigation must be conducted in fulfilment of a States' obligation under the ACHPR and other international human rights instruments to which it is a signatory. With regards to the case at hand, exhibits 26 & 27 are evidence that the Respondent did in fact conducted a prompt and impartial investigation. Prompt; because the crisis took place on the 18th/19th April 2011 and the panel of investigation was set up on the 11th of May 2011. Impartial; based on the composition of the panel which include clerics of both warring religions, private individuals and community elders and leaders. The Applicants have not raised a violation of this obligation as they indeed tendered the 2 exhibits (26&27) which supports this fact.

123. It is instructive that the Respondent objected vehemently to the admission of the said exhibits which greatly supports the fact that it fulfilled its obligation to conduct an investigation into the crisis. It is even more so when on the other hand it relied heavily on its content to establish compliance with the recommendations contained therein including payment of compensations to the victim.

124. The Court therefore holds that the Respondent is not in violation of its obligation to conduct an investigation into the said crisis.

125. ***Allegation of Failure to pay compensation***

126. Applicants claim that the Respondent failed to pay any compensation to the victims and therefore put up the following claims.

A. 839 lives killed at N22, 982,428.00 per person is N1, 947,909,894.00

B. 88 injured persons at N100, 000.00 per person is N8, 800,000.00

C. 664 houses looted, vandalized and burnt/destroyed N1, 892, 286, 580.00.

D. Household items looted/destroyed N32, 680, 000.00

E. Office structures and assets looted and destroyed N181, 952,970.00

F. Motor vehicles burnt during the Mayhem N102, 350,000.

G. 45 No of Mosque vandalized and burnt down N866, 800,000.00

H. 5 No Islamiyah (Islamic Schools) vandalized and burnt down N172, 800,000.00

I. Over 300 Market Stalls and shops destroyed at N270, 000 each N81, 000,000.00

J. General damages N100, 000,000.00

GRAND TOTAL N105, 066,204,016

127. State Parties are duty bound to provide effective protection of the rights and freedoms to all persons within their jurisdiction in respect of the international Human Rights Instruments they have signed unto. Where harm has been caused by the breach of its international obligations, it must make adequate reparations. The purpose of reparation can be viewed from two angles. On the one hand, it requires States to observe certain standards of law and order; and on the other hand to repair to the extent possible, any injuries caused as a result of a State's failure to meet those standards

128. In situation of mass killings and wanton destruction of properties as in the case at hand, the obligations comprise a duty to effectively prevent, investigate, prosecute, punish and provide redress for human rights violations. These obligations are not mutually exclusive. Victims of human rights violations, or their next-of-kin, have the right to effective redress for the wrongs committed. Wherever possible, such redress should be in the form of restitution of rights violated. If restitution is not possible, fair compensation for pecuniary and/or moral damages must be awarded. Redress in the form of rehabilitation should also be envisaged whenever necessary for victims. Jurisprudence abound to support these obligations. In the case of *INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA, AND ASSOCIATION MAURITANIENNE DES DROITS DE L'HOMME V. MAURITANIA; COMMUNICATION NO. 373/09 (2009) PARAGRAPHS 28 AND 29***:** *The African Commission stated:*

> *"That victims of human rights violations legitimately expected that, they would receive effective remedies to restore their rights."*

In the same vein this Court held in *TIDJANI KONTE V. REPUBLIC OF GHANA (2004) ECW/CCJ/JUD/11/14,* that:

> *"…even when perpetrators have been prosecuted, the State is still required to ensure the payment of reparation or damages to the victims in respect of the violation of their human rights."*

129. Having held that the Respondent has failed in its obligation to protect the lives and properties of the Applicant, the Court will now proceed to analyse the arguments of both parties with regards to compensation payable.

The case of the applicants is that they did not receive any compensation from the respondent. The respondent on the other hand pleaded that they released the sum of 5.7Billion naira to the 9 states affected by the violence including Kaduna state but did not plead the amount released for nor the amount paid to the Applicants who are victims from Kaduna State. No evidence was submitted in support of the alleged release of 5.7 Billion Naira. While it is trite that the burden of proof lies on the party that alleges a fact, the onus will however shift to the other party who has custody of the evidence to rebut same. Therefore on the face of it, the applicants having alleged nonpayment of compensation have the onus to prove same. In this instant what proof is expected of the Applicants? Obviously only the plea of nonpayment of compensation is sufficient to set the stage for a shift of onus to the Respondent who pleaded release of 5.7 billion Naira to the 9 affected States to prove that the named Applicants were beneficiary of the released sum. Unfortunately this averment by the Respondent was not supported any evidence.

130. The Court recalls an interesting scenario that played out when after examination in chief and under enquiry by the court a plaintiff witness (not a party) PW4 testified that 7 billion Naira was approved while 3 billion Naira was paid leaving a balance of 4 billion Naira. Below is the extract of the testimony.

Court: I want to know, what is the amount the state provided to help to repair the damages done after the crisis? How much? What is the total amount that states gives to the people?

BALA: My Lord, there are two (2) stages of that payment. One is by the State Government and the other one by the Federal Government. The Federal Government have approved 7 Billion Naira (N7, 000,000,000.00) to be paid to the victims. Which 3 Billion Naira (N3, 000,000,000.00) was released leaving a balance of 4 Billion naira (N4, 000,000,000.00) that is from the federal side, which is still pending at the moment. The State Government have provided one hundred thousand Naira (N100, 000.00) to each household as compensation. That was the position.

131. The court at this point is presented with contradictory statements out of which it must make sense to determine if indeed the applicants have received compensation as alleged. This contradiction is as confusing as it is confounding.

- Firstly, the amount released by the respondent as pleaded by the Respondent was 5.7 billion Naira but has increased to 7 billion Naira following the testimony of the PW4.
- Secondly, while Applicants maintained that no compensation was received, the Respondent insisted that the Applicants were compensated but did not plead nor provide any evidence of any specific amount paid to the Applicant; meanwhile the PW4 testified that 3 billion Naira was paid to Kaduna state out of the 7 billion Naira approved leaving a balance of 4 billion Naira.

This intriguing scenario continued to play out as the Respondent who never pleaded any specific amount that was paid to Kaduna State, in its final written address arrogated the payment of 3 billion Naira to Kaduna State obviously following from the testimony of the PW. The Applicants did not hesitate to berate the respondent for embellishing and smuggling into its written address facts not pleaded.

132. It is trite that information or facts obtained through cross examination which not rebutted through reexaminations if it supports the cause of adverse party will be so credited. Thus on the face of it, the testimony of the PW4 that 3 billion Naira was paid to the Applicants by the Respondent coming from the Applicant albeit under cross examination can be credited to it and can therefore be admissible but it will nevertheless be given its appropriate probative value.

133. The court at this point needs to determine following issues which the contradictions have thrown up.

1. What is the actual and proof of amount alleged to have been released by the Respondent to the States affected by the violence of 2011?
2. *What is the proof that within named Applicants were beneficiary of the payment of the 3billion Naira alleged to be released.*

While the court is inclined to attribute the testimony of PW4 in support of the Respondent's case, the question is whether the Court can take such adverse testimony coming from the Applicant hook line and sinker without an analysis of its probative value? In other words is the mere averment of payment of 3 billion Naira conclusive to aid the court to decide the above questions.
The relief sought by the applicants is for payment of compensation for all the 827 Applicants. Any evidence upon which the Court will base its decision confirming

such payment must be explicit and conclusive to establish the fact that each of the named Applicant was paid.

134. The court will now analyse the issues raised above by subjecting the testimony of PW4 to the probative test, in other words has this testimony added value to the Respondent's case?

1) *What is the actual amount alleged to have been released by the Respondent to the States involved in the violence of 2011?*

As it stands, the Court is presented with two different amounts released by the Respondent. a) 5.7 billion Naira to all the 9 affected States which was pleaded by the Respondent. b) 7 billion Naira as testified to by the PW4. This testimony does not indicate to whom the release was meant for. However from the PW4's statement that *" the Federal Government have approved 7 billion Naira which 3 billion Naira was released leaving a balance of 4 billion Naira that is from the Federal side",* the ordinary interpretation is that in the absence of any evidence to the contrary, since he is the Applicants' witness he can only speak for the Applicants therefore the 3 billion Naira was for the payment of the Victims of Kaduna State and thus the balance of 4 billion can only be outstanding in their favour. This is clearly in contradiction with the pleading of the Respondent that 5.7 billion was released for ALL the 9 affected states. In this wise, the testimony of the PW4 cannot avail the cause the Responded as the totality of his testimony leads to a conclusion that the whole 7 billion was meant for victims of Kaduna States only.

135. Having not provided any evidence to support the claim that 5.7 billion Naira was released and having found that the averment of PW4 is inconsistent with Respondent's pleadings the Court holds that the Responded did not establish that any amount was released to the 9 affected states particularly Kaduna state.

2) *What is the proof that within named Applicants were beneficiary of the payment of the 3billion Naira alleged to be released.*

136. From the analysis of the facts presented before the court no such evidence has been placed before it to substantiate any payment made to the named applicants save the oral testimony of PW4 that 3 billion was paid to unidentified persons. The court notes that following the testimony of PW4, the payment of 3 billion Naira was exported into the final written address of the Respondent, but same having not been pleaded in its defence cannot be canvassed as proof of payment via the such

testimony. In addition, evidence that all the Applicants received some compensation is fundamental and vital to a decision of the court and this has not been provided.

137. The Court recalls that before the closure of this case for judgment, the Respondent was availed 2 adjournments over a period of 10 months to provide the relevant proof of the payments alleged to have been made to the Applicants. The Respondent failed and or neglected to provide any such proof. The court, based on the above, finds that that the Respondent has not established via any evidence that it paid any compensation to the within named Applicants.

138. Having stated earlier that violation of rights attracts reparation, the Court must now proceed to examine the claim for damages of the Applicants for reparation to determine whether they are entitled to the quantum of compensations claimed.

The Applicants' claims can be categorized into three segments

1) Item (A)above represents the claim for the lives lost
2) Item (B) above represent the claim for the injured
3) Items (C-I) above represent a claim for a mixture of different physical properties

139. ***Compensation for Loss of lives*.**

While the Court notes that insofar as the right to life is concerned, it is impossible effect restoration in integrum that is to restore life, in such cases, compensation may be awarded in its stead to their heirs by succession. Therefore in assessing the damages for loss of lives, the following excerpts from exhibit 26 @ page 18 is instructive.

> *"The Panel recommends that relevant professional assessors should be appointed to assess the actual pecuniary value to be attached to lives lost and injuries sustained for the purpose of compensation".*

In response to above, the Respondent made the following commitment.

> **"***Government notes this recommendation and will work out the level of assistance to be given to the victims ………..."*

There is no evidence before this court that this recommendation has been complied with. If the Respondent has paid any compensation to the Applicant, same has not been proved before this Court. The court is a court of justice and not of speculations, its decision must be based on facts laid before it.

There is no evidence before this court that this recommendation has been complied with. If the Respondent has paid any compensation to the Applicant, same has not been proved before this Court. The court is a court of justice and not of speculations, its decision must be based on facts laid before it.

140. While no sufficient value can be placed on life, in consideration of all facts before it, the Court awards the sum of 5 million to each of the next of kin as compensation for violation of the right to life of the 827 named Applicants as listed in Exhibit 26.

141. Compensation for injury suffered.

142. The Court has earlier stated that infliction of injury is a violation of article 6 of the African Charter that guarantees the right to security of persons. Reparation in this wise will be in form of compensation as restoratio in integrum will more often than not be impossible. Having clarified earlier that the number of the injured is 71, the Court will now procced to analyse if they are entitled to the compensation claimed for injury suffered.

143. It is trite law that a party claiming for compensation for a loss or harm must proof same in detail and value. In the instant case the Applicants have not provided details of the nature of the injury such as that the injury led to the loss of a leg, an eye, permanent incapacity or any other harm or wound which is directly linked to the act or inaction of the Respondent, such injury. The claim is neither supported by any medical report. Even when the type of injury is proved. the damages resulting from same needs to be established. From the claim of the Applicant, each injured person is ascribed the sum of 100, 000.00 Naira. The Court is inclined to ask if the injuries sustained by the 71 victims are alike to command the same amount of 100, 000.00 Naira per person. The Court is not a charitable organization. In the absence of specific details of the injury sustained by the Applicant and proof thereof, their claims fail and same is hereby dismissed.

144. ***Compensation for office structure.***

The Applicants' claim for office structure looted/destroyed is in the sum of 181,952,970,00 Naira. However, the court notes that the claim was not pleaded at all in the context of the number of offices looted/destroyed, the location, the description and more. This claim was only imputed in the compensation list. Same being unsubstantiated fails and the court so holds.

145. Compensation for Loss of properties

D. Household items looted/destroyed N32, 680, 000.00

E. Office structures and assets looted and destroyed N181, 952,970.00

F. Motor vehicles burnt during the Mayhem N102, 350,000.

G. 45 No of Mosque vandalized and burnt down N866, 800,000.00

H. 5 No Islamiyah (Islamic Schools) vandalized and burnt down N172, 800,000.00

I. Over 300 Market Stalls and shops destroyed at N270, 000 each N81, 000,000.00

146. The claims above are for specific/pecuniary damages for the destruction of several houses, household items, motor vehicles, offices structures, market stalls, mosques and Islamic schools and the Applicants annexed list which described the number, specific amount for each item listed above as well as the addresses for the houses, schools and mosques. The Respondent did not dispute any of these claims. Its contention is that compensation has been paid to the Applicants. Nevertheless, the Court notes that there was no evidence authenticating the value placed on the said properties. In fact the report in Exhibit 26 reiterates this fact in page 19 paragraph 16(ii) when it noted that "*Very few claimants submitted bills of quantities for damaged/ burnt buildings.*"

147. In the absence of evidence authenticating the value of these properties, The Court holds that while it is unable to make an assessment of the exact value of the properties lost, on the basis of equity the Court will award what it considers reasonable. In reaching this decision, the Court is persuaded by the reasoning of the European Court in the case of *Esmukhambetov and Others V.* Russia (Application No.23445/03) Judgment Strasbourg 29 March 2011, para 203- 213**,** which has similar facts where houses, livestock, fruit trees, and so on were destroyed following an air raid carried out by the Respondent State on a village in Russia. In that case, the Applicants annexed documents (certificates) which described their destroyed possessions in detail, and also submitted a claim for compensation for their lost household belongings, livestock and crops.

The Court held that *"Seeing that the Government did not dispute the existence of such property before the attack, the Court found it reasonable to assume that the applicants possessed the property in question. In the absence of any independent and conclusive evidence as to the quantity and the exact value of that property, on the basis of principles of equity ………the Court considered it reasonable to award each of the applicants EUR 18,000 on that account."*

148. The Court will now proceed to award what it considers reasonable for each of the heads of properties listed. Ahead of the award for damages the Court notes that the number of market stall listed in exh C (iii) is 220 as against 300 listed in the summary of reliefs sought in page 15 of the amended Application. The Court therefore admits as established 220 market stall. Also the number of household items and motor vehicles are not stated in the summary of reliefs, but the Court notes that the numbers are reflected as 220 and 123 in Exhibit D and F respectively thus they are so admitted.

149. **Decision.**

150. This Court after examining the written submissions, and having heard parties in open Court in the first and last resort and for the reasons canvassed above, decides as follows:

151. Declares:

1. *That* the 1st Applicant has locus standi to sue on behalf of the victims listed in exhibits 2-10 only and not for itself.

2. *That* there has been a violation of Article 4 of the African Charter in respect of the killings of the 827 named applicants in Exhibit 26 arising from the attack of the communities in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi in the southern Kaduna district of Kaduna State

3. *That* there was no violation of Article 1 of the African Charter on the Respondents obligation to carry out an adequate and effective investigation into the circumstances surrounding the mass killings and destruction of properties of the within named Applicants communities in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi in the southern Kaduna district of Kaduna State.

4. *That* there has been a violation of Article 1 of the African Charter on account of the Respondent's failure to timeously deploy security agents to the hotspots in respect to the attacks in Zonkwa, Fadan Daji, Gidan Maga,

Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi in the southern Kaduna district of Kaduna state.

5. *That* there has been a violation of Article 1 of the African Charter on account of the Respondent's failure to arrest and prosecute perpetrators The Respondent conducted a time respect to the attacks in Zonkwa, Fadan Daji, Gidan Maga, Daddu, Farman, Madakiya, Matsirga, Samara Kataf, Maraban Rido, and Unguwan Rimi in the southern Kaduna district of Kaduna State.

152. **Orders:**

1. While no sufficient value can be placed on life, in consideration of all facts before it, the Court awards the sum of 5 Million Naira to each of the next of kin as compensation for violation of the right to life of the 827 named Applicants as listed in Exhibit 26.
2. The Respondent to pay the sum of 25,000 Naira as compensation to each of the 664 Applicants named in Exhibit C(i) for the houses destroyed.
3. The Respondent to pay the sum of 5,000 Naira as compensation to each of the 220 Applicants listed in pages 98-107 of the Amended Application for the Household items looted/ destroyed.
4. The Respondent to pay the sum of 5,000 Naira as compensation to each of the 123 Applicant listed in Exhibit F for the motor vehicles burnt.
5. The Respondent to pay the sum of 15,000 Naira as compensation for each of the 45 Mosque vandalized /burnt as listed in Annexure H.
6. The Respondent to pay the sum of 15,000 Naira as compensation for each of the 5 Islamiyah Schools vandalized / burnt listed on page 117 of the Amended Application.
7. The Respondent to pay the sum of 10,000 Naira as compensation to each of the 220 Applicant listed in pages 98-107 of the Amended Application for the destruction of Market stalls;

8. The Respondent to put at the Internally Displaced Persons camps all facilities that guarantee the health and general wellbeing of the displaced persons in line with its obligation under Article 16 of the ACHPR and Principle 18 of the Guiding principles on Internal Displacement.

9. The Respondent to effectively hold accountable the individuals responsible for the mass killing in Kaduna State, and complete their prosecution within a reasonable time

10. Orders that Parties should bear their own cost.

Thus pronounced in open court and signed on this 20th day of March, 2020 in the Community Court of Justice, ECOWAS Abuja, Nigeria.

AND THE FOLLOWING HAVE APPENDED THEIR SIGNATURES:

Hon. Justice Gberi-Be Quattara - Presiding

Hon. Justice Dupe ATOKI - Member/Judge Rapporteur

Hon. Justice Keikura BANGURA - Member

Assisted by

Tony ANENE-MAIDOH - Chief Registrar