

**IN THE COMMUNITY COURT OF JUSTICE**  
**OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES**  
**ABUJA**

SUIT NO:

BETWEEN:

1. **INCORPORATED TRUSTEES OF OKPAMAKHIN COMMUNITY INITIATIVE**
2. **MR. OYUGBO AIDELOMON**
3. **MR. CAPTAIN EDIARE**
4. **MR. FERDINARD OHIREN**
5. **MR. ISAAC ADUBI**
6. **MRS. JOY ISI EMWANTA**
7. **MR. SUNDAY OGEDENGBE**
8. **MR. ABRAHAM OGEDEGBE**



**PLAINTIFFS**

(For and on behalf of persons who are farmers and users of the  
Owan Benin Compartment 10 and Iuleha/Ora/Ozalla Forest Reserves  
on the Owan Forest Zone (OFZ))

**AND**

**FEDERAL REPUBLIC OF NIGERIA**

**==== DEFENDANT**

**APPLICATION**

Pursuant to:

1. Article 33 of the Rules of the ECOWAS Community Court of Justice
2. Rule 11 of the ECOWAS Court Protocol (“The Protocol”)
3. Article 59 of the ECOWAS Revised Treaty (“The Protocol”):
4. Article 1 (2), 11 (1) & (2) & 15 of the International Covenant on Economic, Social and Cultural Rights 1976
5. Articles 7 (1) (a), 9, 14, 17 (2) & (3), 21 (1), (2) & (5) of the African Charter on Human and People’s Rights (“The African Charter”)
6. Articles 6, 15 & 19 of the International Covenant on Civil & Political Right (ICCPR) 1966
7. Paragraphs 4.6. & 4.9 of the National Policy on the Environment (Revised) 2016
8. Section 20, 39 & 44 (1) of the Constitution of Federal Republic of Nigeria 1999
9. Section 41 of the Forestry Law of Bendel State of 1968

10. Section 8 (1) of Forestry Regulation of Bendel State of 1966
11. Article 6 of UN Declaration on the Right and Responsibility of Individuals, Groups & Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental.
12. Article 13 of United Nations Framework Convention on Climate Change of 1994
13. Article 4 of the Convention on Access to Information, Public Participation in Decision-Making & Access to Justice in Environmental Matters (Artheus) Convention of 1998
14. Declaration of Principles on Freedom of Expression in Africa, Banjul of 2002.

**I. NAME AND ADDRESS OF THE PLAINTIFFS**

- a) INCORPORATED TRUSTEES OF OKPAMAKHIN COMMUNITY INTIATIVE  
72 Ivbihe Village, Ozalla, Owan West Local Government Area (LGA)
- b) OYUGBO AIDELOMON  
Uhonmora, Owan West LGA
- c) CAPTAIN EDIARE  
Igun Street, Orhua. Orhua,  
Uhunmwode LGA
- d) FERDINARD OHIREN  
Uhonmora, Owan West LGA
- e) ISAAC ADUBI  
Ozalla, Owan West LGA
- f) MRS. JOY ISI EMWANTA  
Ore Street, Orhua, Uhunmwode LGA
- g) SUNDAY OGEDENGBE  
Sobe, Owan West LGA
- h) ABRAHAM OGEDENGBE  
Uzebba, Owan West LGA

## **II. DESIGNATION OF THE DEFENDANT**

The Defendant is the Federal Republic of Nigeria, a founding member state of the Economic Community of West African State (ECOWAS) and subject to the jurisdiction of this Honorable Court and with a domestic mandate to promote and protect community rights to ancestral land and livelihood sustenance as provided for in enabling laws and legislations

## **III. SUBJECT MATTER OF THE PROCEEDINGS**

- a) The right not to be deprived of one's means of subsistence
- b) Indigenous Peoples' Right to Food, Water and Nutrition
- c) The Right of Indigenous People to Land and Property
- d) The Right of Indigenous People to Information
- e) Right to Take Part in One's Culture

## **IV NARRATION OF FACTS**

1. The 1<sup>st</sup> Plaintiff is a registered not for profit organization whose trustees are farmers in the disputed lands and mandate to share sustainable ways to grow food.
2. The Plaintiffs are plantation farmers and users of the reserved community land of the Owan Benin Compartment 10 and Iuleha/Ora/Ozalla Forest Reserves on the Owan Forest Zone (OFZ)
3. The 2<sup>nd</sup> – 7<sup>th</sup> Plaintiffs head separate farm groups under 'Taungya' (a practice of community block farming to establish tree plantations by planting and tending tree seedlings together with food crops to encourage natural regeneration of the diverse floras and conservation of animals and other life forms of the forest.
4. The Plaintiffs aver that farmers under the 'Taungya' scheme and leaderships of each of the Plaintiffs range from 40-150.
5. The Plaintiffs aver that the OFZ is the ancestral forest land of the various groups of individual communities (clans) namely Irhue, Akugbe, Ozalla, Sobe, Iuleha, Ora and others) within the Owan Forest Zone spreading across communities like Orhua, Oke-Irhue, Umokpe, Ekpan, Agudezi, Ago-Ehiorobo and Ofumwegbe etc. (in Uhumwode LGA); Ozalla, Igbira Camp, Uhumora, Oke-Ora, Sabongida-Ora, Eme-Ora, Ugbeturu, Atoruru, Ugbebezi, Ago Oshodin, Obi Camp, Etiose, Ewei, Uzebba, Ukpuje, Avbiosi, Sobe (in Owan West LGA) Agbanikaka, Uhiere, Odiguetue, Odighi etc. (in Ovia North East LGA).
6. The Plaintiffs aver that the communities whose forest land is encroached upon are mainly across Ovia North East, Uhumwode and Owan West Local Government Areas and secondarily to some others in Owan East LGA.

7. The Plaintiffs are indigenes and farmers from Orhua, Oke-Irhue, Umokpe, Ekpan, Agudezi, Ago-Ehiorobo and Ofumwegbe, Ozalla, Igbira Camp, Uhunmora, Oke-Ora, Sabongida-Ora, Eme-Ora, Ugbeturu, Atoruru, Ugbebezi, Ago Oshodin, Obi Camp, Etiose, Ewei, Uzebba, Ukpuje, Avbiosi, Sobe, Agbanikaka, Uhiere, Odiguetue and Odighi etc.
8. The Plaintiffs aver that the entire communities within and around OFZ is also known as Okpamakhin, a derivative name of Prince Okpame who later reigned as Oba Ozolua (1483 - 1514) and that he (Oba Ozolua) and subsequent traditional rulers of the old Bini kingdom and rulers from within the forested communities, had severally replanted OFZ with economic and medicinal trees, during the era of 'Ugboba' (forest lands that were farmed and regenerated as the Oba's farms), which the various local communities also maintained until the arrival of the British Colonial Government (hereinafter referred to as BCG).
9. The Plaintiffs aver that the British Colonial Government (hereinafter referred to as 'BCG') was a trustee for the local communities and accounted to them from whom the land was simply passed over to the Defendant and its agent for management.
10. The forest is reserved as community forest since the British Colonial days
11. The Plaintiffs aver that following the handover of OFZ by the British Colonial Government to the Defendant, most of its vast land areas had been ceded by the Defendant for plantation erection, regeneration, excessive logging, and scanty de-reservation to few local communities.
12. The Plaintiffs aver that the reserved forest land had been commonly used and owned by the aforementioned communities and managed on their behalf by the Defendant and its agents
13. That Owan Forest Zone has only a total of 35, 500. 52 hectares of reserved community forest now left, after initial de-reservation by government, which the Respondent is now giving out to investors
14. The Plaintiffs aver that Owan Forest Zone is commonly used by hundreds of thousands people from the thickly populated local communities, including the Plaintiffs and outsiders for farming, collection of non-forest products, medicines, source of water, craft and woodworks, traditional worship centers as with some existing 'Shrines', and 'Old-growth Fetish Groves' and for environmental replenishment
15. The plaintiffs aver that the reserved portion of the Owan Forest Zone (OFZ) is a secondary forest and low bush

16. The Plaintiffs aver that they have always replenished the reserved forest and used same for agricultural purposes even before the British Colonial Government
17. The Plaintiffs aver that the Defendant and its agent revoked part of the Owan Forest Zone measuring about 14, 000 hectares given to Iyayi Group of Companies for tree regeneration plantation.
18. The Plaintiffs aver that the said revoked portion of the OFZ reverts back to the community for usage and or management.
19. The plaintiffs aver that the Defendant and its agent want to give 13,750 hectares of Owan BC 10 and Ora/Ozalla/Iuleha Forest Reserves on Owan Forest Zone, a low forest in use by the Plaintiffs to new agro-investors.
20. The plaintiff aver that the Defendant and its agents have signed Memorandum of Understanding for oil palm plantation project in Edo State, in which local growers of the oil palm trees, including the Plaintiffs are supposed to be primary beneficiaries but have not been consulted but threatened with eviction.
21. The plaintiffs aver that a formal request was made to the Respondent on the list of profile of prospective investors and same was turned down.
22. The plaintiffs aver that forest reserves of the Owan Forest Zone have been in use by the local communities for ages including the Plaintiffs and subsequently made official by the Defendant in 1971 under the 'Taungya' scheme.
23. The plaintiffs aver that the Defendant and its agents continues to conceal the investors now on board for the remaining lands of Owan Forest Zone presently farmed on by the Plaintiffs.
24. The plaintiffs aver that the Owan Forest Zone is a rare lowland rainforest ecology and an appendage of the Niger Delta mangrove and one of the highest in biodiversity concentration in Nigeria
25. The plaintiffs aver that some areas of OFZ, being a rare Guinea Lowland Rainforest ecosystem, with very high biodiversity had been severally carved out for conservation, with the related projects established in the zone.
26. The plaintiffs aver that the various communities existed for long and depended on the Owan Forest Zone and resources before the Respondent was created

27. The plaintiffs aver that the Defendant has declared the Plaintiffs community forest plantation as public property without acknowledging the use rights and customary land tenure of the Plaintiffs who have lived in the forest land since birth.
28. The Plaintiffs aver that they have managed their land for years and depended on same and resources therein for their livelihood before they relinquish it to the British Colonial Government for management, before it was handed over to the Respondent
29. The plaintiffs avert that the Defendant wants to take over their community land because of the global demand for land, oil palm and mining.
30. The plaintiffs aver that the exploitation of the forest reserve by the Defendant is without regard for social, economic and environmental impacts
31. The plaintiffs aver that that the transaction between the Defendant, its agents, investors and community is not transparent
32. The plaintiffs aver that the Owan Forest Zone was intended to constitute such forest reserves for the particular use and benefit of the indigenous communities.
33. The plaintiffs aver that it has no commitment on employment and community based benefits sharing
34. The plaintiffs aver that women; particularly the children and the physically-challenged of the local communities, are the most susceptible to the undue ceding of the forest reserved land, with the attendant destruction to crops, their past time of dependence on the gathering of non-timber forest resources and the impaired losing their craftwork with forest resources, like the rattans or canes.
35. The plaintiffs aver that forest under local community's ownership and management performs better in terms of conservation, restoration and other sustainable forest management practices.
36. The plaintiffs aver that they attend regular sustainable environmental and livelihood trainings organized by the Respondent, Civil Society groups and other charities on the law, use and management
37. The plaintiffs aver that the defendant and its agents are bulldozing their way to the forest reserve across their farm land in a way that deny them the chance to produce, collect their own food, and sustain a diversified and nutritious diet for themselves and their families

38. The plaintiffs aver that farming practices deployed by local community farmers balance a healthful ecology
39. The plaintiffs aver that they owned and used the reserved forest land for plantain plantation, mixed cropping and trees to regenerate and conserve the land as guaranteed by the law.
40. The plaintiffs aver that the Defendant wants to eject the Plaintiffs so as to solely reap the carbon benefits and leave the A Plaintiffs worse off.
41. The plaintiffs aver that the Defendant has started bulldozing access roads into their farm land on the Owan Forest Zone with the aid of heavily armed policemen
42. The plaintiffs aver that bringing down their farm land and crops affects the longevity of the Plaintiffs as life is short and brutish in Nigeria
43. The plaintiffs aver that their existence, culture and food sovereignty is threatened

## **SUMMARY OF PLEAS IN LAW**

- 1.0 *JURISDICTION OF THIS COURT OVER THE SUBJECT MATTER/ADMISSIBILITY*  
**Article 9(4)** of the Court’s Protocol grants this Court’s “jurisdiction to determine cases of violation of human rights that occur in any Member State.” In the case of *Hon. Dr Jerry Ugokwe v Federal Republic of Nigeria*. This Court held that the reference to the African Charter in Article 4 of the Revised ECOWAS Treaty, as well as in other provision enable the Court to “bring in the application of rights catalogued in the African Charter”.
- 1.1 The 1<sup>st</sup> Plaintiff is a legal person who is suing for the violation of the right of its members who are also farmers and other land users within the Owan BC 10 and the Iuleha/Ora/Ora community forests, respectively (being an integral part of the Owan Forest Zone), Edo State, Nigeria. The rights amongst contested in this case includes right to property & forest land, livelihood and environmental conservation sustainability). These rights no doubt are within the stipulated exceptions for the enforcement of a fundamental right by a legal person.
- 1.2 So also, this Court has jurisdiction over the subject matter seeing that the act or omission is performed by Defendant (s) agent. In Registered Trustees of **FACULTY OF PEACE ORGANIZATION & 3 ORS v. FEDERAL REPUBLIC OF NIGERIA** ECW/CCJ/JUD/06/22 @ 16 this Court has this to say;

**“Ahead of analyzing the substantive rights allegedly violated by the Respondent, the Court considers it expedient to first address**

**the *raison d'être* for making the Federal Government of Nigeria the Respondent in this matter where the alleged human rights violation was carried out at the behest of the Government of Edo State. In addressing this issue, the Court recalls it has in a plethora of cases reiterated the principle of state responsibility under international law whereby a State Party to international human right instruments is held responsible for the violation of the rights of its citizens by the conduct of any of its organ empowered to exercise elements of governmental authority. Such organ having acted in that capacity, shall be considered as an act of the State under international law even if in the particular case, the organ exceeded its competence according to internal law or contravened instructions concerning its activity.**

See also **TIDJANE KONTE & ANOR V REPUBLIC OF GHANA (2014) CCJELR 131 @ 38; MOHAMMED SAMBO DASUKI (RTD) v FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/JUD/23/16 @ 28; AIRCRAFTWOMAN BEAUTY IGBOBIE UZEZI V FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/RUL/01/21 @ 40**

- 1.3 The Court has jurisdiction to enforce human rights provisions contained in the African Charter, which is part of domestic law Nigeria by virtue of the African Charter on Human and Peoples Right(s) (Enforcement and Ratification) Law, Cap A9, Laws of the Federation of Nigeria, 2004. This includes the right to non-discrimination. Under **Article 10(d)** of the Court's Protocol, access to the Court is open to individual(s) and or organization(s) on application for reliefs for violation of human rights.
- 1.4 The provision of the extant law cannot be used to bar the jurisdiction of this court and in the instant case there is a conflict between a state's international obligations under human rights and domestic legislation, the former prevails. The breach above identified falls within the competence of this court pursuant to Article 9 (4) of the Supplementary Protocol (A/SP/1/01/05) amending the protocol (A/P/1/7/91) relating to the community Court of justice. Evidently, this situates the claim before the court as one bordering on the violation of human rights which has occurred in a Member State. It is trite that a mere allegation of a violation of human right without more in a member state is sufficient *prima facie* to justify the court's jurisdiction. See **MANNEH v. REPRESENTATIVE OF GAMBIA JUDGMENT NO: ECW/CCJ/JUD/03/08**
- 1.5 This Court is competent to determine whether the Defendant has violated the plaintiffs' rights. Nigeria had already ratified the ECOWAS Treaty and has thus



accepted an obligation to protect the human rights of its citizens. The Defendant is a party to the Revised Treaty of the Economic Community of West African State (ECOWAS Court's Protocol, since its entry into force on 5 November, 1996; and a party to the Supplementary Protocol, which extended this Court's jurisdiction to hear human rights cases brought by individuals or groups, since its provisional entry into force on 19 January, 2005

- 1.6 Any declaration by which a state accepts the jurisdiction which does not bar the tribunal from reviewing that state's compliance with its pre-existing substantive, unless a state party has made a specified declaration to the contrary. Again, consistent with new **Article 10(d) (ii)** of this Court's Protocol, this matter has not been submitted for adjudication to any other international tribunal. We submit that this case is admissible.
- 1.7 The Defendant is a signatory to African Convention on the Conservation of Nature and Natural Resources of 1968. Nigeria signed the law in 1968 and domesticated it in 1974. The Defendant ratified the African Charter on Human and Peoples' Rights (hereafter referred to as "African Charter") on 22 June, 1983 and acceded to the International Covenant on Civil and Political Rights on 29 July, 1993 and became a party to the International Covenant on Economic, Social and Cultural Rights in 1972 pursuant to the Rules of Procedure of the Community's Court of Justice and the decision of the Court.
- 1.8 Whether or not there is a cause of action in this suit, the relevant document to be considered by this Court is the Application filed. In line with the consistently held decision of this Court, once an alleged violation is founded as an international or community obligation of the state, the jurisdiction of this Court is invoked. See **SERAP v. FRN & 4 ORS** (2014). The mere allegation that there has been a violation of human rights in the territory of a member state is sufficient prima facie to justify the jurisdiction of this Court on the dispute, surely without any prejudice to the substance and merits of the Complaint which has to be determined only after the parties have been given the opportunity to present their case with full guarantees of fair trial. See **HISSEN HABRE v SENEGAL** (2010) CCJELR @ 65
- 1.9 We submit that failure of the Respondent to protect their human rights under international human rights instrument to which the 1<sup>st</sup> Respondent is a member constitutes a wrong doing against them and violates their fundamental human rights as provided for under Articles 1, 3, 4, 6, 23, and 24 of the African Charter. This raises a fundamental issue against the Respondent and this is sufficient cause of action. See **REV. MFA & ORS v. FRN & ORS** ECW/CCJ/JUN/06/19 @ 10

## ***SUBSTANTIVE ISSUES FOR DETERMINATION***

### **2.0 The right not to be deprived of one's means of subsistence**

2.1 Sir, the Owan BC 10 and Iuleha/Ora/Ozalla forest reserves of the Owan Forest Zone (OFZ) of Edo State, Nigeria was intended to constitute such lands a forest reserve for the particular use and benefit of the indigenous communities and broadly of Edo State and the nation at large. See **section 5 (1) (d)** of the Forestry Law of Bendel State. A member of an indigenous communities may take timber or any minor forest produce from the reserve for domestic purposes or for construction of agricultural implements but not for sale. See **section 8 (1) (2)** of Forestry Regulation of 1968

2.2 The devolution of forest rights to local communities has become part of forest reforms in many countries. **Par 4.9 (No. 9 & 14) @ 26** of the National Policy on the Environment (Revised) 2016 mandates the Defendant to promote sustainable land management best practices by involving local communities. The high sounding criticism of centralized approach to forest land management and conservation command sense of wisdom. By **Section 41 (1)** of the Forestry Law of Bendel State it provides that “forest reserves shall be managed by the state on behalf and for the benefit of the owners of the lands so constituted. **Section 41 (3)** of the Forestry Law provides further thus;

**“Ownership of lands which have been constituted forest reserves or protected forests shall be vested in the indigenous communities of the area in which such lands are situated and for the avoidance of doubt, the forest reserves or protected forests are hereby declared to be and have always been owned by such community”.**

2.3 Customary rights are inherited from ancestors or emerged out of the day to day practices, in this case of using land for collective interests. **Par 4.6 (No. 10) @ 21** of the National Policy on the Environment (Revised) 2016 mandates the Defendant to integrate economic and social development priorities and forest conservation measures so that local communities can share in the management of the resources.

2.4 We submit that the Owan BC 10 and Iueleha/Ora/Ozalla forest reserves, respectively of the Owan Forest Zone (hereinafter referred to as “OFZ”) is owned by the local communities constituting the Owan Forest Zone and the indigenous persons living or farming and other users therein. This also means that the community/plaintiffs enjoy co-management right of the land with the Defendant. This is in line with global

standard aimed at maximizing, protecting and preserving and replacing of the forest land and resources.

- 2.5 We submit that the formalization of the collective right will increase the Plaintiffs' self-determination over the land that holds social, cultural, economic, and spiritual values for the communities. We submit further that this court reserved the powers in statute and inherent to grant the right over forest resources to local communities. No doubt, economic growth goes hand in hand with social justice, respect for human rights, high labor, environmental standards, health and safety protection. In this case, the Defendant wants to take the land of the Plaintiffs to give to large private farms without precise compensation or due consultation with the Plaintiffs
- 2.6 Forest includes forest reserves, protected forests and communal forest areas. See **Section 2** of Forestry Law of 1958. There are types of forest, they include government forest reserve, local government forest reserve, wildlife sanctuary, community forest reserve, private forest reserve, forest plantation, strict nature reserve, Garden Park and urban forest. My Lords, forest reserves are land areas reserved by the state for preservation of commercial harvesting of wood products and other biological resources. The natural resources on the land are not harvested, in order to capture and conserve the elements of biodiversity that can be missing from sustainably harvested sites.
- 2.7 Sir, contemporary land grabbing is the capturing of control of relatively vast tracts of land and other natural resources through a variety of mechanisms and forms that involve large-scale capital that often shifts resource use orientation into extractive character, whether for international or domestic purposes, as capital's response to the convergence of food, energy and financial crises, climate change and migration imperatives. We, therefore, submit that the ongoing clamor for joint management of forest land by the Plaintiffs is to create an opportunity to reduce carbon emissions and other related climate change demands on the reserved community forest land and or to so as to reap the carbon benefits and leave the Plaintiffs worse off.
- 2.8 The impact of land grabbing on local communities is high on human rights of poor, rural and minority communities. Targeted lands are usually already used by farmers and forest dwellers (who also collect non-timber products). Sir, **Article 21 (5)** of the African Charter states that "State's parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their people to freely benefit from advantages derived from their national resources". The Plaintiffs have lived and farmed in the forest and land now in dispute. The Plaintiffs are resisting the Defendant's move to powering private corporations to produce crops for biofuel. To prevent the occurrence of damage to the natural environment and socio-economic deficit due to the effect of

customary land acquisition, the Court must interpret the laws in a way that helps the poor against the rich. Remember, **Article 24** of the African Charter provides thus;

**“All People shall have the right to a general satisfactory environment favorable to their development”.**

### 3.0 **Indigenous Peoples’ Right to Food, Water and Nutrition**

The obligation to fulfill this right emphasizes the desire to develop and reform the agrarian system. See **Art 11 (2) & (3)** of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976 which perspicuously calls upon states to take into account food security concerns. **Article 11 (1)** recognizes the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing, housing and to the continuous improvement of living conditions. **Article 11 (2) ICESCR** recognizes the fundamental right of everyone to be free from hunger. The presence of agro forests and trees in the landscape decreases local people’s vulnerability to climate change. The Plaintiffs are desiring to sustainably grow agricultural crops or minor forest produce on the reserved community forest and same is protected by law. See **section 2** of the Forestry Law of Bendel State.

3.1 State involvement in large-scale industrial cultivation of land has an obligation to refrain at all time from polices of which the effects can be foreseen or that they are aware will have negative effect on food. Sir, illegitimate land acquisition does not compliment national food security. It degrades natural resources including water and biodiversity and is not environmentally sustainable. Currently, the defendant and its agent are working on planting oil palm on the high and low forest of OFZ. There is a pull of fund called Oil Palm Development Fund meant for the big companies and till now the plaintiffs or the community leaders have not been consulted. See **Exhibit F**.

3.2 As we know, forests and trees are crucially important for the livelihood of the Plaintiffs who are local communities especially women and marginalized/vulnerable groups. Forests lands are a source of subsistence incomes of poor people in rural communities and are particularly relevant in terms of food security. They provide fuel wood for food preparation, wild foods that contribute to a diverse and nutritious diet and ecosystem services that are vitally important for the production of food. In this case, the Plaintiffs’ greatly impacts on ancestral farms are about to be ceded to big farms and this affects access to staple food, water and nutrition.

### 3.3 **The Right of Indigenous People to Land and Property**

3.4 Most acts of land confiscation follow a similar process involving the frequently arbitrary nature of land acquisition with little or no effort to find alternatives to reduce or preclude the need for subsequent displacement. A long-term conspiracy between government and business interest to fraudulently enrich the duo at the expense of

ordinary people is the nucleus of land grabbing. Land disputes are a major national problem with rising discontent over displacement for plantation agriculture, resource extraction and infrastructure projects –often with inadequate consultation, due process of law or compensation for those displaced.

- 3.5 The taken over of the plaintiffs’ land was not carried out in accordance with international human rights law, neither was it undertaken solely for the purpose of promoting the general welfare. See **Article 4** of ICESCR. Article 21 of the African Charter of Human and Peoples’ Rights provides that;

**“All people shall freely dispose-off their wealth and natural resources.**

**This right shall be exercised in the exclusive interest of the people. In no case shall a people be derived of it”.**

- 3.6 The amount of the compensation and the time and manner of payment must be just and equitable, inflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances including the current use of land, the history of the acquisition, the market value of the property, the extent of direct state investment and the purpose of the expropriation. By virtue of **Section 44 (1)** of the Constitution of 1999, no moveable property or any interest in an immoveable property shall be taken possession of compulsorily and right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that among other things requires the prompt payment of compensation given to any person claiming such compensation a right of access to court for the determination of their interest in the property and the amount of compensation. See **ERONINI v. ERONINI** (2013) 14 NWLR (Pt. 1373) 32 @ 53 paras E-F. We submit that access to use of and control over land and related natural resources are necessary condition for the realization of human rights of the Plaintiffs.

- 3.7 In the past, access to land by the natives was straight forward but now complex. The Plaintiffs enjoy users’ rights under Native law and custom. Generally communal land belongs to the community or the family as a group. The individual members of the community or family members have the rights to use land and manage same for optimal output. Land was used primarily for subsistence and not for commercial purposes and as such every member of the community had an innate right to use farm land. A member of the community was entitled only to use and occupy the portion of land as allocated. He had a right of exclusive possession over the land allocated to him and could maintain an action for trespass against other members of the community interfering with his possession. One of the first cases to decide this issue is **ONWUKA v. EDIALA** (1989) 1 NWLR Page 182 where the Supreme Court pointed out that, while **Section 1** of the Land Use Act does expropriate the ownership (i.e. freehold title) vested in the Communities,

yet there remained a customary right to use and control of the land. Justice Belgore JSC in **ABIOYE v. YAKUBU** (1991) 5 NWLR (Pt.190) 130 @ 241 held that the Land Use Act appeared like a volcanic eruption is no more than a slight tremor. He held further that section 36 has not divested the traditional holders of their land unless such land is legally acquired by the government or local authority. The Court in **ADELEKE v. AKINYELE** (2011) 49 WRN 22 also held that an occupier of a land used for agricultural purposes on the commencement of Land Use Act shall continue to be entitled to possession of the land.

### 3.8 **The Right of Indigenous People to Information**

3.9 Today, lands grab in Owan Forest Zone (OFZ) serves interest of investing governments and characterized by a lack of transparency and participation of local population. This has led to loss of access to land and resources leaving the Plaintiffs unable to feed themselves as in this case. Today, foreign investors acquire large stretches of farm land in use by the Plaintiffs for export and bio fuels. As at today, up to over 200,000 local population will be driven off their farm lands at OFZ. Worst of it is that negotiations are often held under a high level of secrecy and access to information is denied to the public. The Plaintiffs being the affected populations were not duly consulted in the whole exercise. The 1<sup>st</sup> Plaintiff forwarded a request note to the Defendant under the Freedom of Information Act of 2011 and the request was not acted on.

3.10 The right to access information held by the state including Nigeria is regulated in both local and international human rights treaties establishing the right of every person to freedom of opinion, expression, including the right to seek, receive and impart information and ideas. The Inter-American Commission on Human Rights expressly recognized that access to information held by state as a fundamental right of expression every state must guarantee. UN Human Rights Committee has interpreted **Article 19** on International Convention on Civil and Political Rights to include a right of access to information held by public bodies. Also, Aarhus Convention on Access to Information, Public Participation in Decision and Access to Justice in Environmental Matter 1998 promotes access to information and public participation in decision-making. The implementation of these laws will no doubt improve access to information and public participation in decision-making with a view to enhance the quality and the implementation of decisions, contribute to public awareness. The need to give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns cannot be overemphasized.

3.11 Various international treaties and conventions lean credence to the fundamental status of right to information across the globe. The world's only binding legal multilateral instrument on access to information is the Tromso Convention 2009. The adoption of treaties guaranteeing the principle of publicity of documents is accompanied by

acknowledgement of the right of access to information about all human rights and fundamental freedoms in a number of UN Declarations. Everyone has the right, individually and in association with others to know how the right to information and freedom of expression are given effect in domestic legislative, judicial or administrative systems. See **Article 6** of UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental. There is also UN Framework Convention on Climate Change which facilitates public access to information on climate change. See **Article 13** of United Nations Framework Convention on Climate Change 1994

3.12 Sir, the involuntary displacement is under the contexts of State's backed agriculture projects (the establishment of agro-industrial plantations by private entities) violates human rights as against free prior and informed consent of the land users. The defendant leased out the plaintiff farm land without consultation or compensation. **Article 21 (2)** of the African Charter Provides that;

**“ ..... disposed shall have the right to the lawful recovery of its property as well as to an adequate compensation.”**

3.13 The requirement of free, prior and informed consent of local people like the Plaintiffs is a major issue in many land deals. Land confiscation, forced displacement and force resettlement is a major business related human rights issues. In this case, the forest land was given to crony companies with extreme wealth and political leverage by successive government. Financially backed foreign investors took major part of the forest land for palm plantation. This is because most of the land is already home to people and indigenous communities, there are serious concerns that larger-scale dispossession and potential human right abuses are possible. See **Article 14** of the Universal Declaration of Human Rights (1948) provision that the fundamental right of freedom of expression encompasses the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers”.

3.14 There is a public duty on public authorities to disseminate and without any delay environmental information of imminent threat to human health or the environment and also severely restricted chemicals and hazardous pesticide formulations that may impact on human health and the environment. See **Article 4** of the 1998 UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (*Artheus Convention*). See also Declaration of Principles on Freedom of Expression in Africa 2002. Most of these treaties have been incorporated into Nigeria laws and so the Defendant is liable for failing to disclose information as requested in **Exhibit P**. Nigeria is a signatory to several international laws that guarantee the right to public information as a fundamental right in order to

facilitate public examination of policies and stimulate participation among diverse sectors of society.

3.15 My Lords, there is a user right of community land by the Plaintiffs. Remember, communal lands are lands in the state at the disposal of an indigenous community on behalf of the community. See **Section 2** of the Forestry Law of Bendel State cap. 59 of 1968. Indigenous community means any group of persons occupying any lands in accordance with and subject to customary law. See **section 2** of the Forestry Law of Bendel State. The right to development sets high standards in participation in decision making in a draft of investment contracts and requires a fair distribution of the economic benefits. **Article 25** of ICCPR provides for the right to participate in the conduct of public affairs. **Article 9** of the African Charter states that every individual shall have the right to receive information. The plaintiffs have now approached a grievance mechanism under **Article 7 (1) (a)** of the African Charter which states that every individual shall have the right to have his cause heard.

### 3.16 **Right to Take Part in One's Culture**

The greatest impact of the agric-business is displacement, urbanization and loss of traditional agriculture. Failure to take part in one's culture of farming and land system leads to loss of culture and identity. Land is an inheritance with remembrance, it is a family integrity and symbol of togetherness. It is a means of family continuation across generations. It is knowledge passed from one generation to the next. It is the link between people's past and present and future. It connects lives from the past with those in the present and to a foreseeable future. Land is a symbol of individual's education and ethnic identity. The value of it cannot be measured and if taken away can never be properly compensated.

3.17 The duty to continuously improve living conditions does not permit the displaced local populations deprived from access to productive resources in dispensable to their livelihood. Foreign domination of the agricultural sector can pose an obstacle to the individual duty to contribute to African tradition as laid out in the African charter. See **Article 17 (2) & (3)** of the African Charter- every individual may freely take part in the cultural life of his community. See **Article 6** of the International Covenant on Civil & Political Right (ICCPR) 1966 the right to life and survival. The promotion and protection of morals and traditional values is the duty of the Defendant. **Article 15** states that the covenant recognizes the right of everyone to take part in cultural life. All people have the right of self-determination including the right to freely pursue their economic, social and cultural development. See **Article 1** of the ICESCR.

3.18 There is African Convention on the Conservation of Nature & Natural Resource whose motion objective is to conserve our natural & human resource of our continent for the total advancement of our peoples in sphere of human endeavor. This is



intended to preserve the traditional rights & property of local communities and reserve the prior consent of the communities concerned in respect of all that concerns their access to and use of traditional knowledge and culture. **Article 21 (2)** of the African Charter in case of exploitation, the dispossessed people shall have the right to the lawful recovery of the property as well as to an adequate compensation. **Article 14** of the African Charter states that the right to property shall be guaranteed. We submit that the non-recognition of land use and occupation by the plaintiffs who are farmers in the disputed land amounts to a discriminatory practice & unequal protection by law as protected in **Article 2 & 3** of the African Charter. People must not take the law into their hands by attempting to enforce what they consider to be their right or entitlement. See **ERONINI v. ERONINI** (2013) 14 NWLR (Pt. 1373) 32 @ 48 para D.

## **V. ORDERS SOUGHT BY THE PLAINTIFFS**

1. The plaintiff seeks the following orders:
  - a) **A DECLARATION** that the Plaintiffs communities owned and are entitled to use or manage the reserved and deforested part of the Owan Forest Zone and resources therein so as to promote sustainable land management best practices as guaranteed by **Section 20** of the Constitution of Federal Republic of Nigeria of 1999, National Policy on the Environment (Revised) of 2016, **Article 11 (1) & 15** of the International Covenant on Economic and Socio Cultural Rights of 1976, **Article 21** of the African Charter of Human and peoples' Rights, **Section 41 (3)** of the Forestry Law of Bendel State of 1968 and **Section 8 (1) (2)** of Forestry Regulation of 1968
  - b) **A DECLARATION** that the act of the Defendant and its agent to give out 35, 500. 52 hectares of reserved community land of the Owan Forest Zone to big businesses constitutes a misappropriation and or impairment of the right of the Plaintiffs to take part in their cultural and rural life as provided for in **Article 17 (2) & (3) & 22** of the African Charter on Human and Peoples' Rights, **Article 6 & 15** of the International Covenant on Civil & Political Right (ICCPR) 1966 & **Article 1** of the International Covenant on Economic and Socio Cultural Rights of 1976
  - c) **A DECLARATION** that the failure of the Defendant to release the information sought for in a letter dated 7<sup>th</sup> day of March 2022 sent by the 1<sup>st</sup> Plaintiff to the Defendant seeking for information relating to the identity of the investors and nature of proposed grant on the Owan Forest Zone and a copy of the transcript of the meeting with affected local communities is a breach of its right to information and public records as provided for in **Section 39** of the Constitution of Federal Republic of Nigeria of 1999, **Article 19** of the International Covenant on Civil and Political Rights (ICCPR) of 1966, **Article 13** of United Nations Framework Convention on Climate Change 1994 and **Article 14** of the Universal Declaration of Human Rights (1948)

- d) **AN ORDER** that the Plaintiffs enjoy the forest land (including the reserved and deforested) and its natural resources and wealth in line with the right of indigenous people to land and property and the right not to be deprived of means of subsistence as provided in **Article 1 (2)** of the International Covenant on Economic and Socio Cultural Rights of 1976 and **Article 21 (1), (2) & (5)** of the African Charter on Human and Peoples’ Rights of 1966
- e) **THE SUM OF N500, 000 (Five Hundred Thousand US Dollars Only)** being money claimed for the breach of the Plaintiffs rights as above

**4.0 CONCLUSION**

Cronies and crops suffers set back in Owan Forest Zone. Their lands have been ceded to would be ‘portfolio’ investors in the most clandestine mode. Inadequate application of land laws has opened rural dwellers to rampant land grabbing by unscrupulous, well-connected businessmen and government institutions who anticipate a boom in agricultural and property investment. If unchecked, it has the potentials to undermine the country’s livelihood, environmental and land reform processes and impede long-term economic progress. We urge your Lordships to grant the reliefs as sought in the application.

**DATED THIS ..... DAY OF----- 2022**



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