

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE PORT HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT HARCOURT

FFe/PH/PHR/140/12
SUIT NO.....

IN THE MATTER OF AN APPLICATION BY THE APPLICANTS FOR THE ENFORCEMENT OF THE FUNDAMENTAL RIGHTS TO LIFE AND TO A GENERAL SATISFACTORY ENVIRONMENT FAVOURABLE TO THEIR DEVELOPMENT

BETWEEN

1. THE EXTRA STEP INITIATIVE
2. EUGENE ABELS

} }

APPLICANTS

AND

1. FEDERAL GOVERNMENT OF NIGERIA
2. FEDERAL MINISTRY OF THE ENVIRONMENT, NIGERIA.
3. NATIONAL ENVIRONMENTAL STANDARDS AND REGULATIONS ENFORCEMENT AGENCY
4. THE COMMANDER JOINT MILITARY TASK FORCE (Operation DELTA SAFE).

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RESPONDENTS

ORIGINATING MOTION
BROUGHT PURSUANT TO

1. ORDER II RULES 1, 2, 3, 4 and 5 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AS PRESERVED BY SECTION 315 OF THE 1999 CONSTITUTION.
2. INHERENT JURISDICTION OF THE HONOURABLE COURT.

TAKE NOTICE that this Honourable Court shall be moved on the day of2019, at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel on behalf of the Applicant may be heard praying the court for the following reliefs:

1. **A DECLARATION** that the continuous and unmitigated pollution of the environment and atmosphere in Port Harcourt and its environs by particulate matter, also known as black soot, which Port Harcourt residents including the 2nd Applicant have continuously inhaled for over three (3) years now, constitutes a grave threat to the Applicants' right to life as guaranteed by Section 33 of the Constitution of the Federal Republic of Nigeria 1999 and Article 4 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A9) Laws of the Federation of Nigeria, 2004.
2. **A DECLARATION** that the continuous and unmitigated pollution of the environment and air around Port Harcourt and its environs, by particulate matter, also known as black soot, is a gross violation and infraction of the Applicants' right to a general satisfactory environment favourable to their development as guaranteed under Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A9) Laws of the Federation of Nigeria, 2004.
3. **AN ORDER** of this Honourable Court directing the 2nd and 3rd Respondents to take urgent and reasonable steps to trace all sources and stop the continuous pollution by particulate matter, otherwise known as black soot, which is being continually emitted into the atmosphere in Port Harcourt and its environs.
4. **AN ORDER OF INJUNCTION** restraining the 4th Respondent from continuing the environmentally unfriendly practice of burning confiscated petroleum products and thereby contributing to the emission of particulate matter or black soot into the atmosphere around Port Harcourt and environs.
5. **And for such further Orders or other Orders** the Honourable Court may be disposed to making in view of the facts and circumstances of the case.

Dated the 1st Day of August 2019



Nelson G. Ologhadien Esq.

Applicant's Solicitor
Noble Crest Solicitors
#30 Agudama Street,
D/Line, Port Harcourt
Rivers State.
08033422165
nologhadien@noblecrest.com

FOR SERVICE ON:

1. **1ST RESPONDENT**

c/o:
Federal Ministry of Justice,
Federal Secretariat,
Abuja.

2. **2ND RESPONDENT.**

Federal Ministry of the Environment,
Federal Secretariat,
Abuja.

3. **3RD RESPONDENT**

National Environmental Standards
and Regulations Enforcement Agency,
No. 4 Oro-Ago Crescent,
Off Mohammed Buhari Way,
Garki- Abuja.

4. **4th RESPONDENT**

The Commander, Joint Task Force
- Operation Delta Safe (OPDS).
Igbogene, Yanegoa,
Bayelsa State.



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4. THE COMMANDER JOINT MILITARY TASK FORCE (Operation DELTA SAFE).

}
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RESPONDENTS

STATEMENT

NAMES AND DESCRIPTION OF APPLICANTS

1. Extra Step Initiative: A Non-Governmental Organization (NGO) with registered Address at Plot 151 Ordinance Road, Trans-Amadi Industrial Layout, Port Harcourt, Rivers Port Harcourt. Primarily concerned with advocating for good governance and currently at the forefront of the advocacy to stop the black soot in Port Harcourt and environs.
2. Eugene Abels, Businessman, Adult citizen of the Federal Republic of Nigeria and Port Harcourt resident, with residential

address at No. 2 Churchill Road, Port Harcourt, Rivers State, Nigeria.

RELIEFS SOUGHT BY THE APPLICANTS

1. **A DECLARATION** that the continuous and unmitigated pollution of the environment and atmosphere in Port Harcourt and its environs by particulate matter, also known as black soot, which Port Harcourt residents including the 2nd Applicant have continuously inhaled for over three years now, constitutes a grave threat to the Applicants' right to life as guaranteed by Section 33 of the Constitution of the Federal Republic of Nigeria 1999 and Article 4 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A9) Laws of the Federation of Nigeria, 2004.
2. **A DECLARATION** that the continuous and unmitigated pollution of the environment and air around Port Harcourt and its environs, by particulate matter, also known as black soot, is a gross violation and infraction of the Applicants' right to a general satisfactory environment favourable to their development as guaranteed under Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A9) Laws of the Federation of Nigeria, 2004.
3. **AN ORDER** of this Honourable Court directing the 2nd and 3rd Respondents to take urgent and reasonable steps to trace all sources and stop the continuous pollution by particulate matter, otherwise known as black soot, which is being continually emitted into the atmosphere in Port Harcourt and its environs.
4. **AN ORDER OF INJUNCTION** restraining the 4th Respondent from continuing the environmentally unfriendly practice of burning confiscated petroleum products and thereby contributing to the emission of particulate matter or black soot into the atmosphere around Port Harcourt and environs.

5. **And for such further Orders or other Orders** the Honourable Court may be disposed to making in view of the facts and circumstances of the case.

GROUND FOR SEEKING RELIEFS:

1. By Section 33 of the Constitution of the Federal Republic of Nigeria 1999 and Article 4 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A9) Laws of the Federation of Nigeria, 2004, the fundamental right to life of the Human being is guaranteed.
2. Under and by virtue of Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A.9) Laws of the Federation of Nigeria, 2004; all peoples shall have the right to a general satisfactory environment favourable to their development.
3. That the Respondents have failed in their respective and collective duties to take necessary measures to protect the environment and to ensure that the people living and carrying on business within and around Port Harcourt, which the 2nd Applicant is one, enjoy their right to a general satisfactory environment as required and enshrined under and by virtue of Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap.A.9) Laws of the Federation of Nigeria, 2004.
4. That the above failure to protect the environment also possess a grave threat to the lives of the 2nd Applicant and all other residents of Port Harcourt and its environs.
5. That by section 46 of the Constitution of the Federal Republic of Nigeria, 1999, any person who alleges that any of the provisions of Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999, "has been, is being or is likely to be contravened in any state in relation to him, may apply to a High Court in that state for redress.
6. That by Order II, Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules, 2009; Any person who alleges that any of the Fundamental Rights provided for in the Constitution or in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being,

or is likely to be infringed, may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.

Dated the 1st Day of August 2019



Nelson G. Ologhadien Esq.

Applicant's Solicitor
Noble Crest Solicitors
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D/Line, Port Harcourt
Rivers State.
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Federal Secretariat,
Abuja.

2. 2ND RESPONDENT.

Federal Ministry of the Environment,
Federal Secretariat,
Abuja.

3. 3RD RESPONDENT

National Environmental Standards
and Regulations Enforcement Agency,
No. 4 Oro-Ago Crescent,
Off Mohammed Buhari Way,
Garki- Abuja.

4. 4TH RESPONDENT

The Commander, Joint Task Force
- Operation Delta Safe (OPDS).
Igbogene, Yanegoa,
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RESPONDENTS

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

1. **Eugene Abels**, Adult, Male, Christian, Nigerian Citizen of No. 2 Churchill Road, Port Harcourt, Rivers State, do hereby make oath and state as follows:

1. That I am the 2nd Applicant herein and by the said reason I am conversant with the facts of this case.
2. That I have the consent and authority of the 1st Applicant to depose to this affidavit.

3. That the 1st Applicant is a Non-Governmental Organisation (NGO) championing the "stop the soot campaign" which is a civil society advocacy initiative at the forefront of the movement to stop the black soot polluting Port Harcourt and environs.
4. That the 1st Respondent is the Executive arm of the Federal Republic of Nigeria and has the primary responsibility of protecting the lives, property and health of all Nigerians and residents of Nigeria, including the responsibility of ensuring a safe, clean and sustainable environment for all person's resident in Nigeria.
5. That the 2nd Respondent is the Ministry of the Federal Government of Nigeria specifically saddled with all responsibilities concerning the environment in Nigeria and for ensuring the protection of the environment for the benefit of all Nigerians.
6. That the 3rd Respondent is a parastatal of the 2nd Respondent, established by law, with the primary responsibility of ensuring a cleaner and healthier environment for all Nigerians and ensuring environmental compliance monitoring and enforcement.
7. That the 4th Respondent is the Commander of the joint military task force created by the Federal Government with the responsibility of curtailing the activities of armed criminals, illegal artisanal refiners of crude oil, and protecting critical national oil and gas assets in the Niger Delta Area of Nigeria.
8. That since the last quarter of the year 2016, there have been unabated pollution of the environment and atmosphere in Port Harcourt and its environs by airborne particulate matter otherwise known as black soot.
9. That as convener of "stop the soot campaign", and subsequently under the auspices of the 1st Applicant, I have made several entreaties and representations to governments at various levels to stop the soot in and around Port Harcourt, and to live up to their respective lawful responsibilities of protecting the environment for

the benefit of all the people living and doing business in Port Harcourt and environs, but all my efforts have been met with shocking indifference and in some cases outright political resistance and blackmail.

10. That sometime in September 2016, under the auspices of the stop the soot campaign, we organised a peaceful protest to the Rivers State Government House and the Federal Secretariat Port Harcourt in respect of the extensive pollution of the Port Harcourt environment by the deadly particulate matter. Photos from the said protest are herein attached and marked **Exhibit 1**.
11. That following the above protest, government at various levels promised to do something about the black soot in and around Port Harcourt, yet nothing was done and the black soot continues to pollute the atmosphere in Port Harcourt and its environs.
12. That sometime in January 2018, we appealed to the British Prime Minister on the problem of the dangerous black soot which has enveloped Port Harcourt and nearby communities, and a letter directing us to the common wealth office was sent to us in acknowledgement of our cry for help. A copy of the said letter is herein attached as **Exhibit 2**.
13. That sometime in April 2018, we gave notice to the 1st Respondent of our intention to embark on a massive public protest march against the continued pollution of the atmosphere around Port Harcourt by the hazardous black soot, and we also made a further call for action.
14. That on April 18 2018, when the 1st Respondent failed to act, we mobilised thousands of residents of Rivers State and civil society and we marched on the Rivers State Government House, the Department of Petroleum Resources and the Rivers State House of Assembly and the Federal Secretariat, where we dropped off petitions on the impending dangers of the black soot pollution to the health of residents and visitors to Port Harcourt and Rivers

State. Photos from the said peaceful march are herewith attached as **Exhibit 3**.

15. That on April 19 2018, at the instance of the 1st Respondent, officials of the World Health Organisation (WHO) and The United Nations Environment Programme (UNEP) met with the 2nd Respondent, the Rivers State Government and Civil Society including the stop the soot campaign, at the Stakeholder Democratic Network (SDM) office in Port Harcourt. I was present at the said meeting. However, no tangible results came out of the said meeting.
16. That on April 26, 2018, the 2nd Respondent organized a stakeholder meeting on soot in Port Harcourt at the 3rd Respondents office and I was also in attendance at the said meeting, where the then Minister of State for Environment, Alhaji Usman Jibril promised to set up a comprehensive inter-ministerial investigation team and action procedure/timeline (Inter-Ministerial Committee on Soot). However, this promise was also observed in breach and no further communication on the Port Harcourt soot has been heard from the 1st, 2nd or 3rd Respondents.
17. That on August 20, 2018, under the auspices of the stop the soot campaign, we did a 300-page petition supported by 3 scientific reports about the consequences of inhaling sub-micron particulate matter, to the United Nations (UN) Secretary General, the World Health Organisation (WHO), European Union (EU) Commission, The Pope, Vice President Yemi Osibanjo and the Rivers State Governor were all copied in the said petition. A copy of the said petition is herewith annexed as **Exhibit 4**
18. That from the several scientific reports, the major causes of the black soot polluting Port Harcourt and environs are the activities of illegal artisanal refineries, gas flaring and the setting ablaze of illegally refined petroleum products by the military, especially the 4th Respondent. Copies of (3) three scientific reports clearly identifying the above as causes of the dangerous black soot and prevalent particulate matter in Port Harcourt are herewith attached as **Exhibits 5, 6 and 7**, respectively.

19. That in April 2019, the Government of Rivers State received the Report of a technical team it commissioned to look into the black soot issue. The team made up of over twenty experts from various inter-disciplinary and relevant fields, conducted an investigative study into the airborne particulate black soot in Port Harcourt and its environs, and the Report unequivocally states that illegal bunkering and gas flaring are the two major sources of the black soot in Port Harcourt. A copy of the said report is herewith attached as **Exhibit 8**.
20. That the responsibility of regulating the petroleum industry, including the environmental aspects and impacts of its operations, falls squarely within the purview of agencies of the 1st Respondent, which are the primary regulators of the oil and gas industry; which has been responsible for crude oil exploration and extraction and the continuous flaring of associated gas emanating from crude oil extraction.
21. That the responsibility of stopping gas flaring as a vital component of tackling the black soot pollution rests squarely on the 1st Respondent and its relevant agencies, yet gas flaring has continued unabated.
22. That the practice of the 4th Respondent of setting ablaze illegally refined petroleum products seized by its men serves to aggravate the black soot problem in Port Harcourt and neighbouring communities.
23. That since the prevalence of pollution from the dangerous particulate matter or black soot, there has been an upsurge in the diagnosed cases of respiratory diseases amongst residents of Port Harcourt and the potential for inhalation of known carcinogens due to black soot prevalence have surged amongst residents of Port Harcourt and its environs.
24. That in the April 2019 scientific report referred to in Paragraph 19 above, the technical study team, following a hospital-based review of the records of a total of 22, 077 (Twenty Thousand,

Seven Hundred) persons who received care for soot related conditions at the health facilities in Rivers State, found in respect to adverse respiratory, skin and reproductive conditions related to the black soot, a clear significant rise in all the assessed health events following exposure to the black soot in Rivers State. While death and mortality rates from respiratory tract infections also showed a numerical increase. Page 27 (xxvii) of the Executive Summary of the above **Exhibit 8** is herein attached as **Exhibit 9**.

25. That the said report also found, based on the risk of analysed pollutant samples of the black soot in Port Harcourt and its environs that the heavy metals concentrations found in the black soot and measured in the study showed that thousands of people in Port Harcourt are expected to suffer cancerous and non-cancerous effects from the soot in the atmosphere. Page 30 (xxx) of the Executive Summary of **Exhibit 8** is herein attached as **Exhibit 10**.
26. That certain persons known to me, such as one Mr. Ebitan Egbuson - who has had cause to relocate from Port Harcourt, and Miss Deborah Batubo; my close friend's daughter, find it very difficult to breathe whenever they are in Port Harcourt and thus prefer to stay away from Port Harcourt.
27. That I am deeply worried about my health and afraid for my life due to the continued inhalation of particulate matter or black soot from the Port Harcourt environment.
28. That the 1st Respondent and its agencies including the 2nd to 3rd Respondents have failed in their respective responsibilities, as the black soot in Port Harcourt and environs continues unabated. And the 4th Respondent's act of burning petroleum products confiscated from illegal artisanal refiners also exacerbates the problem of the dangerous black soot around Port Harcourt and environs.
29. That it will be in the overall interest of justice and in furtherance of the enforcement of the fundamental rights to life and a clean environment of the 2nd Applicant and all persons living and doing

business in Port Harcourt and its environs if this Honourable Court grants the Applicants' application.

30. That the Applicants have reduced several relevant information about the black soot in Port Harcourt into a Computer Disk (CD) format and hereby attach the said CD to this Affidavit as **Exhibit 11**. Applicants further undertake to make facilities available for the Honourable Court to view the said exhibit in open court if the Honourable Court is so inclined.
31. That I depose to this affidavit in good faith, in the overall interest of the public, to the best of my knowledge and in accordance with the Oaths Act in force.



.....
DEPONENT

Sworn to at Federal High Court Registry
Port Harcourt.
This ... *18* ... day of *August* ... 2019

BEFORE ME

COMMISSIONER FOR OATHS



FEDERAL HIGH COURT
Date: *1/8/19*
PORT HARCOURT

THIS IS EXHIBIT 7

BEFORE ME



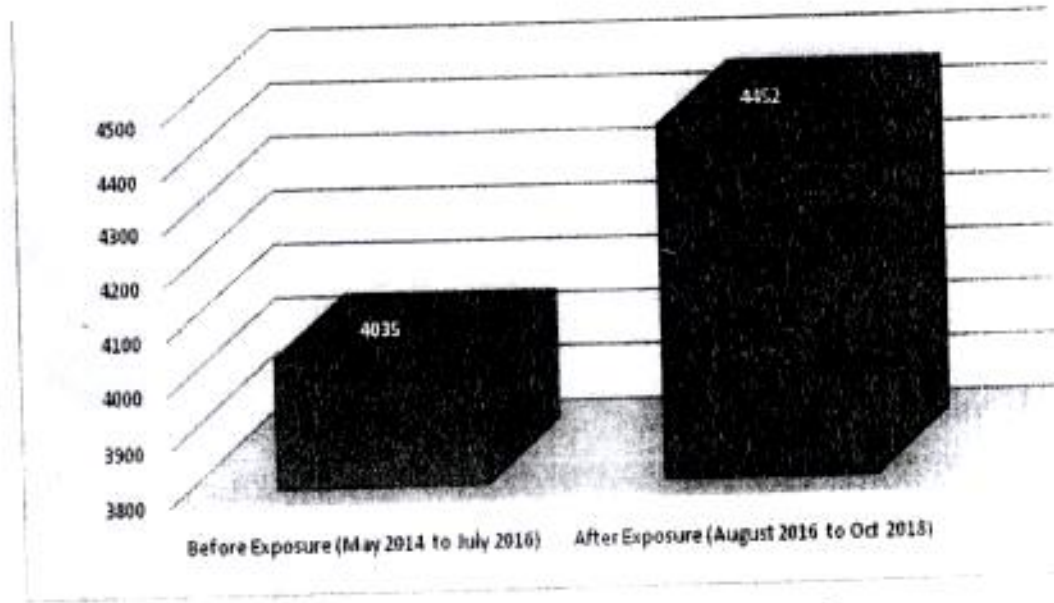
COMMISSIONER FOR OATHS



ES 6: Health Impact Studies

As part of this study, the Public Health and Disease Control Department of the State Ministry of Health established a hospital-based analysis of disease trends in the past five years (2014-2018) in the state to ascertain if there are differences in morbidity and mortality patterns that can be attributed to the appearance of soot in Rivers State. A total of 22,081 records of persons who received care services for soot related conditions at the health facilities were reviewed, Four data sets were excluded bringing the number to 22,077.

The 27-month before and after study, in reference to the respiratory, skin and reproductive conditions related to soot clearly show a significant rise in some of the assessed health events following exposure to the putative factor, presumably the soot incident in the State, except for the cardiovascular conditions. While death and mortality rates from respiratory tract infections also showed a numerical increase, a causal relationship was inferentially associated with the case report of myeloproliferative disorder in a young *kpofire* worker who is reported to have been dangerously exposed to chemicals suspected to be toluene as an occupational hazard of the *kpofire* business. In addition, a key informant who is actively involved in the cooking of crude oil, related that injuries from exposure to heat, chemicals of crude and smoke inhalation are often common amongst camp members. Use of personal protective equipment(PPE) is optional and often limited to any available gloves and boots. This is wrong. PPE should be mandatory.



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RESPONDENTS

APPLICANTS' WRITTEN ADDRESS

1.0: **INTRODUCTION**

My Lord before you is a Motion on Notice brought pursuant to Order II Rules 1, 2, 3, 4 & 5 of the Fundamental Rights (Enforcement Procedure) Rules 2009. The motion is supported by a 31 paragraph affidavit deposed to by the 2nd Applicant on record. We rely on all the paragraphs of the said affidavit and the exhibits attached thereto.

2.0: **BRIEF STATEMENT OF FACTS**

The facts giving rise to this application are as contained in the affidavit in support of the application.

3.0: **ISSUES FOR DETERMINATION**

1. Whether the continuous pollution of the atmosphere in Port Harcourt and its environs by particulate matter, otherwise known as black soot, is not a threat to the life of the 2nd Applicant and other residents of Port Harcourt?
2. Whether the continuous pollution of the atmosphere in Port Harcourt and its environs by particulate matter, otherwise known as black soot, does not constitute an infringement of the Applicants' fundamental right to a general satisfactory environment favourable to their development as guaranteed under Article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP A9) Laws of the Federation of Nigeria 2004.

4.0: **LEGAL ARGUMENT**

ISSUE1:

Whether the continuous pollution of the atmosphere in Port Harcourt and its environs by particulate matter, otherwise known as black soot, is not a threat to the life of the 2nd Applicant and other residents of Port Harcourt?

1. The fundamental right to life is guaranteed under Section 33(1) of the Constitution of the Federal Republic of Nigeria 1999, which provides to the effect every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

2. The fundamental right to life has also been expressly guaranteed by Article 4 of the African Charter on Human and Peoples' Rights (ACHPR) thus:

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

1. It is the case of the Applicants in this suit that the continuous and unmitigated pollution, from the dangerous black soot or particulate matter, in and around Port Harcourt, Rivers State, Nigeria, where the 2nd Applicant resides and carries on business, is a threat to the 2nd Applicant's fundamental right to life and the fundamental right to life of all persons residing and doing business in Port Harcourt and this is contrary to Section 33 of the Constitution of the Federal Republic of Nigeria, 1999, and Article 4 of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act (CAP A9) Laws of the Federation of Nigeria 2004.
2. In the affidavit in support of this application, the Applicants have shown that the pollution from the dangerous black soot or particulate matter which has enveloped the city of Port Harcourt and environs has continued unabated due to the neglect of the 1st to 3rd Respondents whose responsibility it is to ensure that the environment is clean and healthy for all residents and visitors to Port Harcourt and neighbouring towns. Such neglect has led to a rise in incidents of respiratory diseases in Port Harcourt and a much higher potential of inhalation of cancerous substances in the Port Harcourt atmosphere. We refer my Lord to paragraphs 19, 23 to 27 of the affidavit in support of the application and the exhibits attached thereto, especially Exhibit 8 attached there under.
3. We submit that the above situation poses a grave threat to the fundamental right to life of the 2nd Applicant and all residents of

Port Harcourt and environs affected by the black soot pollution and we urge the Honourable court so to hold.

4. My Lord, through judicial activism, courts in other commonwealth jurisdictions have laudably conceptualised the right to life as imposing a positive obligation on the state to safeguard the life of every person, stating that protection and preservation of the human life is at the very core of the responsibilities of the state and it is of paramount importance. This purposive reconceptualisation of the law has been vital in guaranteeing the right of the individual to a clean environment, the absence of which will adversely impinge on the inviolable right to life.
5. In Bangladeshi, the High Court in **DR M. FAROOQUE V. BANGLADISH (1997) 49 DHAKA REPORTS (AD), p. 1.**; expanded the right to life to include anything that affects life, public health and safety and enjoyment of polluted free water and air and sustaining conditions consistent with human dignity.
6. In Pakistan, Article 9 of the Constitution of Pakistan provides that no person shall be deprived of life or liberty save in accordance with the law. (This provision is similar to Section 33 (1) of the Constitution of the Federal Republic of Nigeria, 1999). However, the Supreme Court of Pakistan in **SHEHLA ZIA CASE (PLD 1994) SC 693**, held that Article 9 includes all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The Court further held that the fundamental right to preserve and protect the dignity of man and the right to life cannot be guaranteed without access to food, clothing, shelter, education, healthcare, clean atmosphere and unpolluted environment.
7. Closer home, in the case of **PETER K. WAWERU V. REPUBLIC, (2008) CHR, 187 PP 188 to 189**, the High Court of Kenya, sitting in Nairobi; Held that the denial of wholesome

to 3rd Respondents to take any reasonable and verifiable steps to stop the black soot in and around Port Harcourt constitutes a clear threat to the life of the 2nd Applicant as guaranteed by section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Article 2 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP A9) Laws of the Federation of Nigeria 2004.

11. In **GBEMRE V. SHELL & ANOR (Unreported Suit No. FHC/B/CS/53/O5- , Federal High Court, Benin Judicial Division, 14th November, 2005)**. The Federal High Court held that Sections 3 (2) (a) and (b) of the Associated Gas Re-injection (Continuing Flaring of Gas) Regulation are null and void for being inconsistent with the Applicants' rights to life and dignity of Human Person. Notably, the Honourable court held thus:

"These constitutionally guaranteed rights inevitably include the rights to clean, poison-free, pollution-free healthy environment. To flare gas in the course of oil exploration and production activities...is a gross violation of their fundamental right to life (including healthy environment) and dignity of human person. Failure to carry out Environmental Impact Assessment concerning the effects of gas flaring activities is a clear violation of section 2 (2) of the Environmental Impact Assessment Act, Cap E12 Vol.6, Laws of the Federation of Nigeria 2004 and has contributed to a further violation of the said fundamental rights".

12. Having regard to the facts of this case and the state of the law, issue one ought to be resolved in favour of Applicants and we urge the Honourable Court so to hold.

ISSUE 2

Whether the continuous pollution of the atmosphere in Port Harcourt and its environs by particulate matter, otherwise known as black soot, does not constitute an infringement of the Applicants' right to a general satisfactory environment favourable to their development as guaranteed under Article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (CAP A9) Laws of the Federation of Nigeria 2004.

5.0 LEGAL ARGUMENT:

1. In arguing this issue, reference shall be made to the provisions of Articles 1 and 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004.
2. Article 1 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004, provides thus:

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

3. Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004, provides thus:

"All peoples shall have the right to a general satisfactory environment favourable to their development"

4. A careful perusal of the above provisions of the African Charter on Human and Peoples Rights (Ratification and Enforcement)

Act (Cap A9) Laws of the Federation of Nigeria, 2004 leaves no doubt that the Applicants are entitled to the relief sought.

5. We submit that it is the statutory duty of the 1st to 3rd Respondents to ensure that the Nigeria environment is clean and safe. By **Section 20 of Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended**, the Federal Government has the constitutional responsibility to protect and improve the environment and safeguard, the water, air, land, forest and wildlife of Nigeria. It is in furtherance of this constitutional responsibility that the 1st Respondent established the 2nd Respondent with the mandate to ensure effective coordination of all environmental matters, to ensure that environmental matters are adequately mainstreamed into all industrial and developmental activities and to monitor and enforce environmental protection measures within Nigeria.
6. In carrying out its responsibilities, the 2nd Respondents functions through departments and parastatal one of which is the 3rd Respondent. Under **section 2 of the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, (No. 25) of 2007**, the 3rd Respondent has responsibility for the protection and development of the environment, including coordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.
7. It is the case of the Applicants that the 1st to 3rd Respondents have clearly failed in the above statutory responsibilities as black soot continues to pollute Port Harcourt and environs without any clear policy or action plan by the 1st to 3rd respondent to mitigate or tackle the occurrence and harmful effects of the pervasive black sooth within Port Harcourt and its environs. Indeed, the attitude of the 1st to 3rd Respondents towards the black soot in Port Harcourt and environs has been one of shocking indifference, merely wishing away the problem or waiting and hoping that somehow the problem would simply blow over.

8. It is also the case of the Applicants that the continuous pollution of the atmosphere in Port Harcourt and its environs by dangerous particulate matter, otherwise known as black soot constitutes a grave violation of the right of the 2nd Applicant and all residents of Port Harcourt and its environs to a general satisfactory environment favourable to their development as provided under Article 24 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004,. We refer my Lord to the affidavit filed in support of this application and all the exhibits attached thereto.

9. In **Social and Economic Rights Action Centre and another v. Federal Republic of Nigeria (Ogoni land case), 155/96 SERAC & CESER /NIGERIA (delivered at the 30th Ordinary session held in Banjul, the Gambia 13th and 27th October 2001)**:The African Commission on Human and Peoples' Rights upheld a complaint against Nigeria for permitting an oil consortium to contaminate the environment, causing members of the Ogoni Community to suffer "serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems".

10. Similarly, in **SERAP v. Nigeria. JUDGMENT N° ECW/CCJ/JUD/18/12**, the ECOWAS Court of Justice found that Nigeria had breached Art. 24 by failing to prevent third parties from causing oil contamination. The Court emphasised that Art. 24 imposes "both an obligation of attitude and an obligation of result. Specifically, at page 25 of the judgement, the Court held as follows:

"Thus, the duty assigned by Article 24 to each State Party to the Charter is both an obligation of attitude and an obligation of result. The environment, as

emphasized by the International Court of Justice, is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn ~ (Legality of the threat or use of nuclear arms, ICJ Advisory Opinion of 8 July 2006, paragraph 28). It must be considered as an indivisible whole, comprising the biotic and abiotic natural resources, notably air, water, land, fauna and flora and the interaction between these same factors (International Law Institute, Resolution of 4 September 1997, Article 1). The environment is essential to every human being. The quality of human life depends on the quality of the environment."

"Article 24 of the Charter thus requires every State to take every measure to maintain the quality of the environment understood as an integrated whole, such that the state of the environment may satisfy the human beings who live there, and enhance their sustainable development. It is by examining the state of the environment and entirely objective factors, that one judges, by the result, whether the State has fulfilled this obligation."

11. We therefore submit that the right to a general satisfactory environment, as guaranteed under article 24 of the African Charter on Human and Peoples' or the right to a healthy environment, as it is widely known, imposes clear obligations upon a government. It requires the government to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources and the environment.
12. We further submit that by failing to take any concrete measures at all to mitigate the effects or to stop the dangerous black soot which has been polluting the atmosphere in Port Harcourt

and environs for over three years now, the 1st to 3rd Respondents have violated Article 24 of the African Charter on human and Peoples' Rights (Ratification and Enforcement) Act (Cap A9) Laws of the Federation of Nigeria, 2004, which guarantees the right to a general satisfactory environment favourable for development and we urge the Honourable Court so to hold.

13. My Lord, from available scientific evidence as shown in the exhibits attached to the affidavit in support of the application, gas flaring and pollution from the activities of illegal artisanal refineries are the two major causes of the black soot in Port Harcourt. We refer my Lord to paragraphs 18, 19 and 22 of the affidavit in support of the application and the exhibits attached thereto.
14. By section 44 (3) of the CFRN 1999:
"Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under, or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly".
15. In view of the above clear and unequivocal provisions of the Constitution, it is beyond any shadow of doubt that the regulation and control of the Petroleum Industry in Nigeria, falls within the exclusive purview of the 1st Respondent and its relevant agencies.
16. In the supporting affidavit, the Applicants have deposed that the 1st Respondent and its relevant agencies have completely failed in the responsibility to stop artisanal refining of crude oil and also failed to stop the flaring of associated gas from crude oil production which are the two major contributory factors to the black soot polluting the Port Harcourt environment. See

Paragraphs 19, 20, 21 and 28 of the affidavit in support of the application.

17. In **Social and Economic Rights Action Centre and another v. Federal Republic of Nigeria (SUPRA)**, The African Commission on Human and Peoples' Rights ordered the Nigerian government to "undertake a comprehensive clean-up of lands and rivers damaged by oil operations,"; to "ensure that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and to "provide information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations."
18. Also, in **SERAP V. Nigeria (SUPRA)**, The ECOWAS Court concluded and adjudged that "the Federal Republic of Nigeria, by comporting itself in the way it is doing, in respect of the continuous and unceasing damage caused to the environment in the Region of Niger Delta, has defaulted in its duties in terms of vigilance and diligence as a party to the African Charter on Human and Peoples' Rights, and has violated Articles 1 and 24 of the said instrument."
19. We submit that the above decisions are clear judicial restatements of the right to a generally satisfactory environment favourable to development enunciated in Article 24 of the African Charter on Human and Peoples' Rights, and this obligates governments to desist from directly threatening the environment of their citizens. The State is under an obligation to respect these rights and this clearly entails some action on the part of the state; for example, to desist from carrying out, sponsoring or tolerating any practice, policy or measures violating the right of the people to a generally satisfactory environment.
20. In paragraph 18, 22 and 28 of the affidavit in support of the application, the applicants have further deposed on the

burning of seized petroleum products by the 4th Respondent. This deposition is corroborated by the exhibits attached to the application. Specifically Exhibits 6 and 7, which are scientific reports on the black sooth in Port Harcourt.

21. We submit that it is public knowledge that the above practice of burning confiscated petroleum products is not environmentally friendly as it emits noxious fumes into the atmosphere with consequential negative effects on the environment and we urge the Honourable Court so to hold.
22. In **SERAP v Nigeria (SUPRA)**, The ECOWAS Court of Justice, in the course of finding a violation of Art 24 of the African Charter on Human and Peoples' Rights' affirmed that "it is public knowledge that oil spills pollute water, destroy aquatic life and soil fertility with resultant adverse effect on the health and means of livelihood of people in its vicinity".
23. Finally, we humbly commend to this Honourable Court the decision of the Federal High Court (Per Nwodo J) in the case of **ODAFE & ORS V. ATTORNEY GENERAL OF THE FEDERATION & ORS (2005) CHR 309**, where the Honourable Court in espousing the purposive reconceptualization of Human rights in Nigeria since the domestication of the African Charter on Human and Peoples' Rights stated the law as follows:

"The government of this country has incorporated the African Charter on Human and Peoples Rights (Ratification and Enforcement Act (Cap A9) Laws of the Federation of Nigeria, 2004 as part of the laws of this country. The Court of Appeal in Ubani v. Director, SSS (1999) 11 NWLR (Pt 129) held that the African Charter is applicable in this country. The Charter entrenched the socio-economic rights of person. The Court is enjoined to ensure the observance of these."

24. We therefore urge my Lord to resolve issue two in favour of the applicants and grant all the reliefs sought by the applicants.

6.0: **CONCLUSION:**

The Applicants have shown that the matter is well founded as the 1st Applicant has the locus to promote public interest litigation in Nigeria and the 2nd Applicant is a person directly affected by the black soot pollution in and around Port Harcourt, Rivers State, Nigeria. The Applicants have also shown that the 1st to 3rd Respondents have not given the particulate matter/black soot Pollution any meaningful or deserved attention, as there is yet any reasonable or verifiable action on the part of the said Respondents to stop or mitigate the harmful effects of the particulate matter/ black soot debacle. This clear dereliction of duty has created a situation where the particulate matter / black soot pollution continues unchallenged. Since such nonchalant attitude towards very explicit statutory and charter responsibilities cannot be justified, the reliefs sought by the Applicants ought to be granted.

We are most obliged, Sir!

Dated the 1st Day of August 2019



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FOR SERVICE ON:

1. **1ST RESPONDENT**

c/o:

