

Freedom of Expression and of the Press and the African Charter

By The Hon Mr Justice P Nnaemeka-Agu, Former Justice of the Supreme Court of Nigeria

Introduction

The African Charter on Human And People Rights, like the Universal Declaration of Human Rights and such Regional Instruments as the European Convention and the Inter-American Convention, made elaborate statements on human rights norms and principles. The African Charter goes beyond the other two Regional Covenants in that it contains corresponding duties of individuals and Member States. But it falls short of them in that it provides, for the enforcement machinery, for only the African Commission on Human Rights and courts in exercise of their domestic jurisdictions. It did not envisage or provide for an African Court of Human Rights. One of these norms provided for is freedom of expression and of the press. It is that norm that I wish to focus upon in this paper.

Freedom of Expression

Even though the words "freedom" and "expression" are words of common usage, I deem it necessary to define or explain their use in this context, albeit briefly. In ordinary parlance, "freedom" means liberty, exemption from control, without restraint, licence. But in our context, it must be noted that not all these shades of meanings are applicable. This is because "freedom" in the sense it is used in relation to freedom of expression is ordered freedom¹ which by itself is antithetic to licence. In general law, it does not confer an absolute and unrestricted right to speak or publish against our government or our neighbour without responsibility whatever one may choose, or an unrestricted licence with immunity for every possible use of language.² Rather, freedom of expression connotes that one may say or publish anything with utmost responsibility provided that one does not infringe such laws as those of sedition, official secrets, libel, slander, or injurious falsehood. It does appear though from analogy from the decision of the European Court of Human Rights in *Lingens v Austria* (1986) Series A No. 103; 8 EHRR 407, that a court can overturn a local law on criminal libel if it runs counter to the tenor of Art 10 of the European Convention. Subject to these laws, one may say or publish anything against the government or anybody. "Expression" in the context of freedom of expression includes both speaking orally or writing whether ordinarily or in the print or electronic media. By its very nature, freedom of expression is no doubt, the very foundation of every democratic society. It gives the citizens of the State the freedom and right to discuss issues - and write freely on current and contemporary issues - matters of public interest whether such matters are political, social, educational or even for public enlightenment.

"The press" is a compendious expression which is used to describe the aggregate of publications issuing from print or electronic media. Such publications may include those in

newspapers, radio, television, books, magazines, artistic representations and other publications. The main purpose of the freedom of expression and of the press is to foreclose public authority from assuming a guardianship position of the public mind.³ Its true essence is free flow of information, news and/or ideas to/from the citizenry, that is freedom of expression subject only to the laws of the particular country relating to libel, slander, official secrets, sedition and injurious falsehood.⁴ Press censorship or any act which may give the impression that the State dictates to the individual or the press, print or electronic, what to write or say on an issue is antagonistic to the concept of freedom of expression and of the press in a democratic society.

The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (to be hereinafter referred to simply as the Charter) was adopted by the Organization of African Unity in Nairobi, Kenya, in June 1981. Due, however, to the fact that it required the ratification of a majority of the members (26) before it could come into force, it did not come into force until 1986. Like the UN Covenant on Civil and Political Rights, it has a single organ, to wit: the Commission which came into being in 1987. But, unlike the European Convention, it provided for no court of human rights and doubts have been raised about the efficacy of the Commission. Yet because Member States undertook to implement the Charter and domestic courts of Member States are empowered to enforce the provisions of the Charter in their various decisions on human rights,⁵ it would have been useful to consider its far reaching provisions in the area of human rights in some detail. But limitations of time and the particular theme of this paper will not permit any detailed treatment.

It is enough to say that such rights as equality before the law, human dignity and inviolability, prohibition of slavery, torture, and degrading treatment are guaranteed without qualification: whereas some rights including the freedom of expression are qualified.⁶

I shall advert to a part of the preamble to the Charter which states and re-affirms its underlying spirit. It states:

Recognising on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and protection of peoples' rights should necessarily guarantee human rights.

In short, the Charter accepts, like the Universal Declaration of 1948, the inherent dignity of man and the equal and inalienable rights of all members of the human family, the universality of fundamental human rights and the justification for their international protection and enforcement.

Freedom of Expression

On freedom of expression, the Charter provides in Art 9 thus -

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinion.

It is noteworthy also that the Charter after a statement of the various rights in Chapter I - quite unlike other international and regional instruments - proceeded to prescribe corresponding duties in Chapter II. Relevantly, it states in Art 27, sub-para 2 and Art 28 as follows:

Article 27

1. . . .
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, moral and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."

Then after dealing with measures of safeguard, the mandate and procedure of the Commission etc, it dealt with applicable principles. Expressly, it enjoined the Commission to draw inspiration from international law on human and peoples' rights and international instruments, including the Universal Declaration, relating thereto.⁷

Scope of Freedom of Expression Under the Charter

It can be seen from the above provisions of the Charter that freedom of expression is intended to embrace so much. It extends to all types of expressions, oral, written, artistic expression, or broadcasting, which conveys information, opinions or ideas. It includes:

- (i) The right to receive information, and
- (ii) The right to express and disseminate opinion.

These are expressly conferred by Art 9.

- (i) The right to receive information

Under Art 9, government, no matter how benevolent, is not intended to constitute itself the guardian of whatsoever information, opinion or idea a citizen may impart or receive. The right to receive information impliedly prohibits a government from restricting or preventing a person from receiving information which another person is willing to impart to him. It probably does not create an obligation on the part of the government to impart such an information to the individual. Such was the decision on a similar provision in the European

Convention in the case of *Leander v Sweden*.⁸ As was stated in the Nigerian case of *Archbishop Olubunmi Okojie v Attorney-General of Lagos State* (1981) NCLR 218, such a fundamental right entrenched and guaranteed by a constitution is not liable to be abridged or abrogated by executive acts. Rather, it is intended to limit the powers of the Executive in such matters. But equally, it is not intended to impose any burden on the Executive which the norm itself does not expressly or by natural implication convey.

(ii) The right to express and disseminate opinion and information

This right is again guaranteed by Art 9 of the Charter. It is a very wide right and includes a broad range of information conveyed in different ways by way of opinions, ideas, information. It may be conveyed by oral speech, writing of different types including books, journals, newspapers or artistic expression. Its breadth, meaning and implication were recently adumbrated by the European Court of Human Rights in the case of *Handyside* where it stated.

Freedom of expression constitutes one of the essential foundations of a (democratic society), one of the basic conditions for its progress and for the development of every man . . . it is applicable not only to "information" or "ideas" that are favourably conceived or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance, and broad-mindedness without which there is no democratic society.⁹

Although the provision in Art 9 of the African Charter deals with only the right to express and disseminate opinion and does not contain the word "information", I do not think that any difference in principle was intended. Rather, I believe that the same principle and concepts are implied. This is borne out by reading the Charter as a whole.

It will be observed, too, that Art 9 of the African Charter does not expressly mention freedom of the press. This is exactly similar to the case with Article 10 of the European Convention. Yet in many important decisions, the European Court of Human Rights has held that the principles of freedom of expression apply with equal force to freedom of the press, both print and electronic media. It has been held, and common sense confirms this, that for freedom of expression to have the desired impact, it must, and does, include freedom of the press. One may wonder how a good deal of the necessary communication to and from the members of the public which the freedom entails could have been effectuated without the involvement of the mass media.

An interesting twist in the European situation which does not apply to the African situation simply because there is no supranational court of human rights in the African Region, a need for which I have emphasized elsewhere¹⁰ - is shown by the English case of *Sunday Times*. The paper was restrained by an order of injunction issued from the House of Lords from publishing an article on the drug thalidomide. The ground for the restraint was that the publication would interfere with the administration of justice in pending proceedings on a claim for negligence in the manufacture and distribution of the drug. The European Court held that the injunction was unnecessary because no "pressing social need" was proved. So it held that the injunction was in violation of Art 10 of the European Convention. What is, perhaps, more relevant to our circumstances is the opinion of the European Court that it was

incumbent on the mass media to keep the public properly informed on judicial proceedings just as in other matters of public interest. After all, the media was a "purveyor of information and public watchdog", the Court held in the *Barthold case*. Cases decided by the American Court of Human Rights show a similar trend of the free press being regarded as "the cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion" . . . and . . . "a condition *sine qua non* for the development of political parties, trade unions, scientific and cultural societies . . .".¹¹ Such communication media must also be open to all without discrimination.¹²

In my view, these decisions are proper beacon lights and guides to courts in the African Region which may be faced with identical problems in the area of freedom of expression. Therein lies one aspect of the international character of human rights norms.

Thus it can be seen not only that the Charter has expressly provided for the right to freedom to receive information and to express and disseminate opinion that is, in ordinary language freedom of speech or of expression and the press, but also that it has adopted the principles of international law and instruments relating thereto. These are of great importance to all the courts in the African Region in exercise of their interpretative jurisdictions over matters of human and peoples' rights. Decisions of European and American courts of human rights are of strong persuasive authority in such cases. This is because while interpreting any particular provision relating to freedom of expression or of the press in their domestic jurisdiction, they can with perfect propriety have due regard to decisions of the courts in other jurisdictions in similar circumstances. In this respect, Art 27, read with Art 28, is important in that:

- (i) It emphasizes the need in exercise of these rights and freedoms to have due regard to the rights of others. In other words exercise of such a right or freedom of expression does not entitle the person exercising it to libel or slander others or to commit the tort of injurious falsehood against them.
- (ii) It emphasizes the need to exercise the right in such a way as not to imperil the collective security of the state. This is usually provided for by such laws as those of sedition and official secrets.
- (iii) It is limited also by considerations of the moral and general interests of the State. It appears to me that the purport of this provision is to exclude the publication of purely scandalous matters and matter of pure seditious sensationalism from protection under the Charter.

Whose Responsibility?

After five successful colloquia on international human rights norms and measures for protection and advancement of human rights, it has become obvious that fine and even grandiose statements of principles in national constitutions and international instruments are not enough. In the final analysis it is only the existence of an independent and effective judiciary that can make them work. This is because "judges have a key role to play in the renewal in countries in all parts of the world of principles of democracy, human rights and the rule of law - to do justice to everyone within their jurisdiction by due process of law . .

..¹³ It is therefore apposite to ask whether the fine statements of principles in the African Charter, particularly in Arts 9 and 27(2) set out above, placed any duty on the shoulders of the judiciary. In other words, whose duty is it to decide on the above limitations? It is pretty settled that when in any state a question arises as to interpretation of a law or a legal instrument it is the undisputed responsibility of the various judiciaries in the African Region to interpret the various provisions of the Charter. Having adverted to the above limitations, I must emphasize the fact that the function of the judge is always to balance any or all of these limitations with his bounden duty of protecting and enforcing human rights. It is worthy of note in this respect to observe that, unlike the European Convention¹⁴ and the American Convention¹⁵, which specify that certain rights may be derogated from in times of war or public emergency that threatens the life of the nation, there is no express derogation clause in the African Charter.

In my opinion, the wording of Arts 9, 27 and 28 read together fall short of such an express power of derogation in the other two Conventions. It appears that, as presently worded, rather than giving express authority to any other arm of government to derogate from the right, they rather leave it to the judge to apply his interpretative skill to the circumstances of any particular case and decide whether or not any act called in question is, by the manner of exercise of it, in breach of other peoples' rights or in jeopardy of the collective security of the state or the common and moral interest of all. It is all a matter of difference between leaving the issue at the power of the politician with his characteristic kaleidoscopic criteria for what is right and rather leaving it to the judge who will decide according to known principles, guided by precedent. As Hon Justice Kirby rightly observed:

Judges of the common law have choices. Their task is by no means mechanical. To exercise their choices they must have points of reference. Choices must not be made upon the idiosyncratic whim of a particular judge. They must be made by reference, among other things, to the fundamental principles of international human rights norms.¹⁶

A number of other differences flow from this significant difference as to the situs of the competence to decide on human rights issues. The politician, be he the executive or the legislator, has usually only his political interests to serve and take into account. The judge is a professional whose primary function is to do justice and who is himself all through on trial at the forum of public opinion, the dictates of precedent and rules of practice and procedure and the whip of his conscience. He cannot do violence to the proven facts of the case. He cannot deviate from the established rules of interpretation or ignore the authority of similar cases decided in similar circumstances. Above all, if what he has before him is a case of interpretation and application of constitutional guarantees of human rights and freedoms, he has always to remember the fact that he has to bear a number of principles in mind. He has to interpret and apply purposefully, that is in such a manner as to achieve the desired objective. He has to take into account the nature and scope of the constitutional provision. The Privy Council underscored this point in the case of *Attorney-General of The Gambia v Momodu Jobe* (1984) AC 689, at p 700, per Lord Diplock, where he said:

A Constitution, and in particular that part of it which protects and entrenches human rights and freedoms to which all persons in the state are to be entitled is to be given a generous and purposeful construction.

The Supreme Court of Nigeria said much the same thing in the case of *Nafui Rabui v Kano State* (1980) 8-11 SC 130, where Udoma JSC, stated at p 149:

My Lords, it is my view that the approach of this court to the construction of the Constitution should be and so it has been, one of liberalism, probably a variation of the theme of the general maxim *ut res magis valeat quam pereat*. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends.

Several other decisions of the Supreme Court of Nigeria have followed the trend of thought in Rabui case.¹⁷ In a beautiful and well-researched paper on *Freedom of Expression: Relevant International Principles* by Hon Recorder Anthony Lester QC, one of the best known experts on human rights, which was read at the maiden session of these colloquia held in Bangalore, India, in 1988, and published in *Developing Human Rights Jurisprudence*¹⁸ he cited decisions of the highest courts of several countries of the world, the Commonwealth in particular, to show that a similar approach to cases on human rights is the vogue world-wide. Quite apart from the accepted fact that beautiful or grandiose statements on human rights in international instruments or national constitutions may come to nought unless the judiciary of the particular country breathes life and meaning and purpose into them, the challenge facing the judiciaries of Africa in this respect, particularly at this period of its history, is pretty obvious.

It is equally refreshing to note that in the area of freedom of expression as an aspect of human rights there are abundant source materials in other international and national provisions. Among them are Art 19 of the International Covenant on Civil and Political Rights, Art 10 of the European Convention of Human Rights, s. 19 of the Constitution of India (1950), Art 10 of the Federal Constitution of Malaysia (as amended up to 1981), Art 12 of the Constitution of Mauritius, Art 19 of the Constitution of the Islamic Republic of Pakistan (1973), s. 46 of the Constitution of Papua New Guinea (1982 as qualified by s. 38), Arts 14 and 15 of the Constitution of the Democratic Socialist Republic of Sri Lanka, the First Amendment to the United States Constitution and Art 20 of the Constitution of Zimbabwe (1980). Further reference may be made to most post-British colonial countries, now in the Commonwealth, including those of Nigeria, Ghana and most Caribbean countries. Outside the Commonwealth, reference may be made to Art 5 (IX) of the Constitution of the Federal Republic of Brazil, 1988.

Most of these are similarly worded and carry the same implications. Decisions on many of those similarly worded provisions will have persuasive effect on any court in Africa faced with the problem of interpretation and application of Art 9 of the African Charter of Human and Peoples' Rights.

What Alternative?

Have the judiciaries in the African Region any alternative than to apply their skills and good judgements in exercise of their interpretative powers purposefully in advancing freedom of

expression and other human rights in the Region? The Charter itself leaves them no alternative. For, as I have pointed out, though not creating a supranational court of human rights, it provides in Art 7 thus:

Article 7

1. Every individual shall have his cause heard. This comprises:
 - (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
 - (b) The right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) The right to defence, including the right to be defended by counsel of his choice;
 - (d) The right to be tried within a reasonable time by impartial court or tribunal;
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be inflicted only on the offender.

So it is the intendment of the Charter itself that cases on human rights, which have been amply spelt out not only in the Charter but also in the written constitutions of the different countries in Anglo-phone Africa, shall be adjudicated upon by the respective judiciaries and in accordance with well known principles.

Good News and Bad News

In the area of human rights in the African Region there have been what I may call good news as well as bad news. In many countries in the African Region, apart from those under military regimes, in the statements of human rights and other provisions in the Charter as well as in many domestic provisions in their respective constitutions, they are as good as those of other Regions. This is good news. Makers of their organic and other laws must be congratulated on this. But in the execution and application of these norms, there have been rampant complaints about assaults on human rights, some of them serious, and some others have made deliberate attempts at their abridgement. These features are probably worse in countries that have come under military regimes, many of which have either suspended or abridged human rights by Decrees.¹⁹

More disturbing is the fact that some courts in their approach to cases arising therefrom do not always show sufficient courage or circumspection, although this has not always been the case. In the case of *Governor of Lagos State v Ojukwu* (1986) 3 NWLR 621, the Supreme Court of Nigeria had courage to condemn a State Governor for "executive lawlessness" for

a serious infringement of human rights. But, for a court to hold that a union of journalists as a class does not have the *locus standi* to challenge a law which takes away their freedom of expression is bad news. In the *Nigerian Union of Journalists v Attorney-General of Nigeria* (1986) LRC 1, the Court of Appeal held that Nigeria Union of Journalists had no *locus standi* to sue to challenge the right of freedom of expression taken away by Decree No. 4 of 1984, and which runs counter to the freedom of expression guaranteed by s. 36 of the Constitution of 1979. A similar trend is manifested by the decision of a High Court of Anambra State in the *State v Nwankwo* (1986) 6 NCLR 645, at p 662 in which it was held that even an unrestricted use of language could deprive a journalist of the protection under the right to freedom of expression. Fortunately in *Nwankwo v The State*, the Court of Appeal corrected the error of the High Court. On the part of the Executive it is disturbing to observe that some Chief Executives of governments consider their positions as being tantamount to immunity from criticisms: the law of sedition is in places being stretched to a breaking point.²⁰ These are aspects of the bad news - from both the executive and the judicial arms of government.

It appears pertinent, though, that I must underscore a caveat. The right to freedom of expression conferred by Art 9 of the African Charter, and indeed all other similar provisions in the domestic constitutions of many African countries, must be read and construed subject to its being exercised in pursuit of the truth and in the pursuit of Arts 27 and 28 of the Charter, that is in accordance with the truth and the publisher's duties towards his family, society, state and the international community and with due regard to the rights of others. As was pointed out in a case on the First Amendment to the United States Constitution in *Kline v Robert M Mcbridge Co* 170 Misc 974, 11 NYS 2s 674 at p 679. Liberty of the press connotes "the right to print and publish the truth, from good motives and for justifiable ends." This is a good pointer to a very useful guide to the courts in the African Region on their interpretation and application of the norm of freedom of expression.

Finally, I wish to end this paper by adopting the opinion of Justice Murphy in the US case of *Thornhill v Alabama* (1940) 310 US 88 where he said:

Abridgement of freedom of speech and of the press . . . impairs those opportunities for public education that are essential to public exercise of the power of correcting error through the process of popular government . . . Mere legislative preference for one rather than another means for combating substantive evil, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that when the effective exercise of these rights is claimed to be abridged, the courts should "weigh the circumstances" and "appraise the substantiality of the reasons advanced" in support of the challenged regulations.

I am of the clear view that with the present state of the Charter and our organic laws and the powers usually given to judges in the African Region, in appropriate metaphor, the ball is squarely in the judges' courts. They should prove themselves equal to the challenge.

Challenges For Nations

I would like to end this paper on Freedom of Expression, and my earlier paper on Discrimination²¹, and the African Charter by making one final point. It has been stated by high authority with respect to the relationship, from the English point of view, between International and Regional Laws on the one hand and Domestic Law on the other thus:

"As regards the United Kingdom all rules of customary international law are either University recognized or have at any rate received the assent of this country as *per se* the law of the land. To that extent there is still valid in England the common law doctrine, to which Blackstone gave expression in a striking passage, that the law of nations is part of the law of the land. It has been repeatedly acted upon by the courts and can be regarded as an established rule of English law."²²

This principle is fully adopted by English Judges, as can be illustrated by many cases. See, for an example, *Trendtex Trading Corporation v Central Bank of Nigeria* (1977), All E.R. 881. This principle is now almost generally true of most Commonwealth countries in which the English tradition has been received and has taken firm roots.

But it would be a drastic over-simplification to assume that because the African Charter is an international instrument designed for countries in the African Region it would be automatically binding on all Member States in the Region and be enforceable by individuals in such States. For, the question of bindingness of such an instrument is always determined by considerations as to what extent treaty obligations are part of the domestic law of the particular state. This raises the often recondite issue of incorporation. It may also be necessary to determine how far rights of individuals can be said to have been safeguarded and guaranteed by the particular treaty. An important fact is that the Charter, like most treaties, even if subscribed to by the State, is still the handiwork of the Executive. But, with the exception of military regimes in which executive and legislative functions are usually collected in one body or even an individual, the Executive does not make laws. It therefore stands to reason that after the Executive has assented to a treaty such as the Charter, it still has got to go through a process usually, in written constitutions, prescribed by the organic law of the particular State whereby the treaty gets incorporated as a part of the law of the particular country. In the United Kingdom, the nature of the problem is illustrated by those connected with the European Convention On Human Rights. Based on the theories that, because the Executive is not a source of law - only the Legislature and the Judiciary are - it cannot impose such a treaty as though it were a law on the people by merely assenting to it as an international agreement; so it is only if Parliament passes a law incorporating such as a part of the law of the land that it becomes a part of such law. Views have been strongly expressed by British Judges that inspite of the country subscribing to the Optional Protocol, the Convention is not a part of the domestic law of the United Kingdom. Cases such as *Malone v Commissioner of Police* (1979) 2 All E.R. 620 and *Rex v Secretary of State For the Home Department, Ex parte Brind* (1991) 1A.C. 696 clearly illustrate the difference, in England, between the country being a party to such an international treaty and its taking the further step to incorporate it as a part of its domestic law.

Why, it may be asked, will the judiciary in Britain, as another source of law, not incorporate such treaties? The answer is simple. The Judicature as the guardian of the Constitution will

not trespass into the preserves of the other arms of government or distort or ignore the organic structure of the Constitution. So, much as it is true that in many areas, such as in the law of negligence, judges have reflected evolutionary trends in the moral and social aspects of society, judges have usually proceeded rather gradually and cautiously from existing principles. In doing so, they do not import treaties or treaty obligations and enforce them as binding obligations. But when there is an international legal norm, they can apply them for their persuasive effect, just as they can refer to academic text books or relevant judgments of courts in, say, the Commonwealth or other foreign countries on an issue before the court and allow themselves to be persuaded by them. But I must emphasize that aspects of these problems are peculiar to Great Britain because of the unwritten nature of its Constitution.

For historical reasons, countries in Commonwealth Africa are in more favourable positions. For, all of them, while getting independence from their colonial masters, did so on clearly drafted and duly promulgated written constitutions. Most of those constitutions clearly provide for how binding treaties should be made by the particular country. I take the case of Nigeria, as an example. Section 17 of the Constitution of Nigeria, 1979, which is now the same with section 13 of the Constitution of Nigeria, 1989, provides as follows:

- "13 (1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
- (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted, unless it is ratified by a majority of all the Houses of Assembly in the Federation."

Pursuant to this provision, the National Assembly in 1983 passed "The African Charter of Human and peoples' Rights (Ratification and Enforcement Act) 1993 Cap. 10 in Vol.1 Laws of Nigeria, 1990 which made the Charter operative in the Federation. Similar provisions as section 12 of the Nigerian Constitution, 1979, are contained in the constitutions of several countries of Commonwealth Africa.

I am convinced that any country in the African Region which goes as far as Nigeria has gone in its constitutional or other organic law legislation needs to have no problem with the incorporation of the provisions of the African Charter into its domestic law.

Endnotes

1. See *Williams v Majekodunmi* (No. 3) (1962) 1 All NLR 413.
2. See *The State v Nwankwo* (1985) 6 NCL 645, p 662.
3. See *Thomas v Collins*, 89 L ed 430.
4. See *Tony Momoh v Senate of the National Assembly* (1981) 1 NCLR 102.
5. See Art 7(1)(a) of the Charter.
6. See Umozuruike, *Developing Human Right Jurisprudence*, Volume 3 pp 40-41.
7. See Art 60 of the African Charter.
8. Series No. 116, 9 ECHR 433 of 26 March 1987.
9. See Judgment in series A No. 24.1 EHRR 737 of December, 7, 19.
10. See my paper on *The Domestic Application of International Human Rights Norms: The Nigeria Experience* published at pp 38 in *Developing Human Rights Jurisprudence*, Volume 3, at p 36. See also Resolution 18(j) of the Abuja Colloquium.
11. See its Advisory Opinion in the case of *Compulsory Membership of Journalists Association*: OC 5185.
12. Ibid.
13. See "Abuja Confirmation", para 13.
14. See Art 15.
15. See Art 27.
16. Hon Justice Kirby, *Developing Human Rights Jurisprudence*: Volume 3, at p 56.
17. See among others, *A-G Kaduna State v Hassan* (1985) 1 NWL 483; *Adigun v A-G Oyo State* (No. 2) (1987) 2 NWLR 197, *FCSC v Laoye* (1989) 2 NWLR 652; *Military Gov of Ondo State v Adewunmi* (1988) 3 NWLR 288. Several scores of cases followed suit.
18. See *Developing Human Rights Jurisprudence*: Volume 1 (1988) at pp 23 to 56.
19. See section 35 of the Constitution of the Federal Republic of Nigeria 1979, now s. 38 of that of 1989.

20. In Nigeria this has been done by, among others, Decrees Nos. 1 of 1984, 2 of 1984, 4 of 1984 and 13 of 1984.
21. Supra, p.31
22. Oppenheim: International Law (1992) at pp. 56-57