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## **THE INSTITUTIONAL MECHANISM FOR THE DEFENCE OF HUMAN AND PEOPLES' RIGHTS IN AFRICA\***

### **INTRODUCTION**

After The world War I, the question of the defence of Human Rights for the first time received universal recognition, although it was limited in its contents and volume. One of the functions of the League of Nations was the protection of the rights of the minority in peace time<sup>1</sup>.

It was only after the World War II that the defence and promotion of Human Rights were declared as the necessary component element for the maintenance of international peace, security and co-operation. The protection and promotion of human and peoples' rights is not possible without creating a definite institutional mechanism. The basis of such institutional mechanism is the United Nations Organization (UNO) and the establishment of its system in combination with different regional international organizations.

The most important problem of the UN apart from the maintenance of international peace and security, is promoting respect for human rights and for fundamental freedoms<sup>2</sup>. In the UN system, there is no organ which its activities do not directly or indirectly touch on the promotion and protection of human rights. The present paper is limited to the consideration of those institutional organs of the UNO and OAU through which the protection of human and peoples rights in Africa and channeled.

The present paper has no intention of appraising violation of specific rights in each African nation. But it seeks to appraise collective efforts through institutional (International Organizational) mechanism for collective rights and nationhood and also setting the concrete instrument and environment for protecting and promoting individual rights in Africa.

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<sup>1</sup> Rajsoomer Lallah, *Developing Human Right Jurisprudence/Judicial Colloquium in Bangoalore* 26 February, 1988, p.3.

<sup>2</sup> *Human Rights Questions and Answers*. United Nations N.Y. 1987, p.2.

## ***THE USE OF UNIVERSAL INTERNATIONAL ORGANS IN THE HUMAN RIGHTS STRUGGLE OF AFRICAN STATES***

As a result of colonialism and its adverse effects on the human rights issues for the colonized and oppressed people, Africa and its people are not opportuned to take part or take any tangible part in universal arrangements or institution prior to the creation of the present United Nations. It is the institution we shall presently look at and see how Africa has fared in its human rights struggles to liberate itself.

### ***THE UNITED NATIONS INTERNATIONAL COURT OF JUSTICE***

The International Court of Justice (ICJ) is the main judicial organ of the UNO. The organization, competence and the procedures of the ICJ are defined by its statute constituting an integral part of the Charter of the United Nations. Consequently, all the members of the UN are *ipso facto* parties to the statute of the ICJ.<sup>3</sup>

In this wise all independent African States members of the UN are automatically parties to the statute of the international court of justice. The rules of the International Court of Justice adopted on the 6<sup>th</sup> of May, 1946 consists of three sections:

- (1) Establishment and functioning of the Court (Art 1-30);
- (2) Legal procedure on contentious matter (Art, 31-81);
- (3) Advisory opinion (Art, 82-84)<sup>4</sup>

The main jurisdiction of the court covers all cases which the parties refer to it<sup>5</sup>. The UN charter imposes a mission on the Court. To be one of the most important means of peaceful settlement of international disputes; to help the affair of peace and international security by its decisions; to strictly stand guard to the international legality and legal order and base its activities on the principles and

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<sup>3</sup> UN Charter, Art. 93 (1).

<sup>4</sup> Kozhevnikov F.I., Sharmazanashwili G.B. *International Court of Justice of the UNO*, Imo, M 1971 p. 144.

<sup>5</sup> The Statute of ICJ Art. 36(1).

norms of modern international law<sup>6</sup>. The fact that the International Court of Justice is the main judicial organ of the UN does not mean that other judicial organs within the UN or outside it cannot be created or resorted to. The UN charter provides that "nothing shall prevent members of the UN from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future"<sup>7</sup>. All the applications for consideration by the ICJ will result in the court's delivering either a judgement on contentious matters or an advisory opinion on consultative or other matters.

### ***HUMAN RIGHTS ISSUES IN SOUTH WEST AFRICA (NAMIBIA)***

Apart from advisory opinions of the ICJ which are technical means for normal functioning of the UN system, it delivers binding decisions on any matter falling under its competence.

Namibia's case is the only disputed case connected with Human Rights in Africa that was considered by the International Court of Justice since its existence. That is the question of the continuance of the existence of the mandate of South West Africa (Namibia)<sup>8</sup>. Delivering judgment on concrete disputes is the main purpose of the ICJ. The decision of the court is taken by the majority vote of the judges present. However the votes must not be less than nine<sup>9</sup>.

The case of South West Africa (Namibia)<sup>10</sup> began on the 14<sup>th</sup> November 1960 when two African States - Ethiopia and Liberia, acting independently of each other applied to the ICJ with a claim against South-Africa on behalf of South West Africa (Namibia). Before this case was instituted, the ICJ had three times given advisory opinion on the question of Namibia (1950, 1955 and 1956). In this case, the Court was asked to declare the South West Africa a mandated territory under SAR and that SAR continue to carry the obligations according to the mandate including the responsibilities concerning the control functions of the UNO and consequently the duty to present a yearly report to the

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<sup>6</sup> Kozhevniker F.I. op cit p. 27.

<sup>7</sup> The UN charter, Art. 95.

<sup>8</sup> The activities of the UNO on Human Rights, UNO New York, 1983 p. 356.

<sup>9</sup> The Statute of the ICJ, t. 25(2).

<sup>10</sup> Ethiopia and Liberia v SAR; ICJ Reports (1981) p. 13.

General Assembly relating to the conditions of the territory and submit petitions of the territory's population to the UN.

The Court was also asked to confirm that SAR conducts the policy of apartheid and do not aspire in full measure to help the betterment of the material, moral well-being and social progress of the inhabitants of the territory. The court was also to ascertain whether SAR carried out in relation to the territory approach contrary to its international status and as such obstructing the attainment of self-determination of the people of that territory. Further, the court was also to confirm if SAR created military bases on the territory and attempted substantially to change the contents of the mandate without the consent of the United Nations. Lastly the Court was asked to rule that these actions constitute violation of the obligation of SAR in accordance with the mandate and the SAR must stop these actions and fulfil its obligations. The essence of the suit is that SAR legally and actually annexed Namibia which constitutes a gross violation of the UN Charter and the Universal Declaration of Human Rights.

It is important to note that instituting the case at the ICJ, both Ethiopia and Liberia acted not only on behalf of Namibia but on behalf of all independent African states in as much as their intention to bring this suit against South Africa found support at the Second Conference of Independent States that took place from 14<sup>th</sup> to 24<sup>th</sup> June 1960 at Addis Ababa.

The legality of Ethiopia's and Liberia's suit is found in the resolution of the UN General Assembly adopted in its XIV session in which the right of any member state of the UN to apply to the Court in case of any matter arising and concerning the interpretation of application of the mandate on Namibia is confirmed.<sup>11</sup>

The Court in a special ruling of 20<sup>th</sup> May, 1961 combined the two cases into one and called the case for hearing<sup>12</sup>. After many difficulties, the SAR on the 30th of November, 1961 presented to the Court its preliminary objections against the competence of the court to consider the case. Apart from the general rules on preliminary objections, the ICJ Rule of Procedure recognizes a situation where preliminary objections may not be geared towards the rejection of the

<sup>11</sup> The United Nations Organization General Assembly Resolution adopted at the 14<sup>th</sup> Session 16 September -13<sup>th</sup> December, 1959 p. 33.

<sup>12</sup> ICJ Report (1961) p. 13.

general competence of the Court, but non-recognition of its competence in that concrete case for this or other motives.

The court gives decision on the objection or combines that objection with the main case and considers them together on their merits. The adoption of the latter option by the court will result in stopping or evading the whole preliminary objection without hearing it. The adoption of the former option was exactly achieved by South African Republic. In the preamble to the preliminary objection SAR argued that the governments of Ethiopia and Liberia have no **locus standing** in that case and in that connection, the court has no jurisdiction to hear it. The government of SAR argued its main thesis in the following four points:

Firstly, the mandate on Namibia in connection with the dissolution of the League of Nations is no more an agreement or convention having legal force by the meaning of Art, 37 of the Statute of the International Court of Justice.

Secondly, neither the government of Ethiopia nor the government of Liberia are "other members of the League of Nations" as it is demanded for *locus standi* by the meaning of Art. 7 of the mandate on Namibia.

Thirdly, the dispute being taken up by the governments of Ethiopia and Liberia with the government of SAR is not a dispute by the meaning of Art 7 of the mandate on Namibia.

Fourthly, the dispute cannot be resolved with the help of negotiations in accordance with Art. 7 of the mandate on Namibia.

On the 21<sup>st</sup> December 1962, the court rejected the preliminary objections of SAR and delivered its judgment to consider the case on its merits. That judgment of the court represents a good truism as all the points of the preliminary objections of SAR were without basis. The fact is that SAR based its rights on Namibia on the mandate of the League of Nations but as soon as the question of its obligations arises, SAR argues that with the dissolution of the League of Nations, the mandate has lost its force. It is clearly provided for in the agreement on the mandate on Namibia as follows:

"The mandatory state agrees that in the event of any dispute arising between the mandatory state and other members of the League of Nations concerning the interpretation or application of the conditions of

the mandate, such dispute, if it cannot be resolved by negotiations, must be submitted to the permanent court of international justice....”<sup>13</sup>

The submission of such dispute to the court is provided for by the statute of the International Court of Justice<sup>14</sup>. That was why the ICJ acted correctly in its decision to hear the Namibia’s case originally.

In this way, the court has already at that stage recognized that Ethiopia and Liberia have “a right or legal interest” for instituting a case against South African Republic in order to satisfy by way of judicial process that the holy mission of civilization defined by the mandate was not violated.

The judgment of the international court of justice of 21<sup>st</sup> December, 1962 created a good legal basis for a quick and undisrupted conclusion of the case in favour of the plaintiff fighting against the annexation policy of the SAR in Namibia.

However, at the second phase of the case, the court held that Ethiopia and Liberia had no *locus standi* in the case and accordingly rejected their claim<sup>15</sup>. This decision as bad as it was became a catalyst that made the UN to rekindle its efforts not only to see Namibia an independent country but also to dismantle the inhuman apartheid regime in South Africa. Today Namibia is an independent country while South Africa is a democratic country as against the former undemocratic apartheid regime. This was achieved with a better dynamism exhibited by a combined effort of the UNO, OAU and individual African States. Nigeria expended a huge financial and human resources for the achievement of substantial progress in the struggle for better life for the peoples of Namibia and South Africa.

### *THE TERRITORY OF WESTERN SAHARA*

The condition in the Western Sahara having borders with Morocco, Mauritania and Algiers and colonized up till 1979 by Spain had been considered since 1963. The UN General Assembly has times

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<sup>13</sup> Art 7 of the Agreement on the mandate on Namibia by SAR.

<sup>14</sup> Statute of the ICJ, Art. 37.

<sup>15</sup> A lot has been written about this judgment by many experts in the area of International Law. See Kozhevnikov F.I., Sharmazanashwili G.V. op. cit.

without number confirmed the inherent rights of the people of Western Sahara to self-determination and independence in accordance with the UN charter,<sup>16</sup> the OAU charter<sup>17</sup> and the UN General Assembly Declaration on the Granting of Independence to Colonial Countries and peoples<sup>18</sup> and other resolutions of the UN General Assembly and Organization of African Unity. Morocco and Mauritania agreed among themselves with Spain to divide the territory of Western Sahara between themselves after the granting of independence and departure of the Spanish<sup>19</sup>.

The Western Sahara territory opted for independent existence and declared itself independent state. Seeing the situation, the UN General Assembly expressed regret on the deteriorating condition as a result of the continued occupation of Western Sahara by Morocco and expanding occupation on a territory which was left alone only not long ago by Mauritania<sup>20</sup>. The UN General Assembly genuinely asked Morocco to urgently put an end to the occupation of the territory of Western Sahara.

At the eighteenth session of the assembly of Heads of State and Government of the OAU taking place in Nairobi from 24<sup>th</sup> to 27<sup>th</sup> of June 1981, it was decided that a general and free referendum on the question of self-determination be organized for the territory of Western Sahara. Due to some difficulties, there was not any referendum for that territory up till the present moment. This was due to substantial disagreements between Western Sahara and Morocco as the Moroccan authorities have deployed many of their population to settle in the territory of Western Sahara in order to boost its chances if and when there is going to be a referendum.

It should be noted that at the twentieth regular session of the Assembly of Heads of State and Government, taking place in November 1984 Western Sahara (SAHARAWI ARAB DEMOCRATIC REPUBLIC – “SADR”) was admitted as the 51<sup>st</sup> actual member of the Organization of African Unity<sup>21</sup>

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<sup>16</sup> UN Charter, 1945.

<sup>17</sup> O.A.U. Charter, 1963.

<sup>18</sup> G.A. Resolution 1514 (XV) of 14 December, 1960.

<sup>19</sup> Mathews K. **The African Group at the UN as an instrument of African Diplomacy**, NIIA Vol. 1, 1988 p. 224.

<sup>20</sup> G.A. Resolution 34/37 of 21<sup>st</sup> November, 1979.

<sup>21</sup> The Organization of African Unity 1963-1988, NIIA. Vol. 14 No.1 1988 p. 244-246.

As a sign of protest against the above decision of the OAU, Morocco withdrew its membership from the Organization of African Unity. There is a war situation between Morocco and Western Sahara up till now. The UN General Assembly praised the efforts of the OAU and appealed for a ceased fire between Morocco and the people's Front Liberation of Western Sahara<sup>22</sup>.

In the resolutions 1986/21 of 10<sup>th</sup> March 1986, and 1987/3 of 19<sup>th</sup> February, 1987, the UN Commission of Human Rights supported the request of the UN General Assembly to moderate the negotiations between the parties to the conflict. The commission manifested anxiety to the development of the situation in the Western Sahara and expressed its satisfaction in the character of cooperation between the UNO and OAU in this matter.

The admission of Western Sahara into the membership of the OAU, though premature, is an expression of positive attitude to Human and peoples rights issues in Africa. The action of the OAU did not, however, resolve the conflict between the Western Sahara and Morocco on one hand and between the OAU and Morocco on the other.

Nevertheless, we are of the opinion that Western Sahara has inalienable right to self-determination, which is recognized by the rules of modern international law and by the international community.

The pretension of Morocco on the territory of Western Sahara does not rest on any legal basis. The resolution of this question lies not only on the direct disputing parties in this case, but also on the OAU, the UNO and the UN Commission on Human Rights. The Western Sahara is ready to fulfill any condition of the above mentioned bodies if only to maintain its right to self-determination and independence.

### **MAURITANIA AND HUMAN RIGHT ISSUES**

The UN Commission on Human Rights in 1982 resolved to support the government of Mauritania by empowering its sub-commission on the prevention of discrimination and protection of the minority to send a delegation of not more than two people to Mauritania with the aim of studying the situation in that country and determining her needs in connection with the question of slavery and slave trade.<sup>23</sup>

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<sup>22</sup> G.A. Resolution 37/28 of 23<sup>rd</sup> November, 1982.

<sup>23</sup> The UN Human Right Commission Resolution 1982/20 of 10<sup>th</sup> March, 1982.

The sub-commission in accordance with decision 1982/7 of 27<sup>th</sup> August 1982 empowered its chairman to appoint Mr. Bossui and Mr. Mudav to visit Mauritania. In view of the above, Mr. Bossui visited Mauritania on that purpose from the 14<sup>th</sup> to the 22<sup>nd</sup> January 1984. In his report<sup>24</sup> Mr. Bossui expressed confidence that slavery as an official institute has already been abolished in Mauritania but the possibility that in some localities, where the government's presence is weak, some situations constituting **de-facto** existence of slavery may subsist.

The sub-commission requested Mr. Bossui to submit a concluding report on this question at its 39<sup>th</sup> session<sup>25</sup>. In that concluding<sup>26</sup> report, Mr. Bossui repeated his former position expressed in 1984 concerning the subsistence of slavery in Mauritania and thanked the government of Mauritania on behalf of the sub-commission and the society against slavery for the success in its work.

It should be said that in the conditions of Africa, where in most states, the central state power does not evenly spread to all the parts of the state's territory and more so where some pre-colonial traditional institutes such as slavery or serfdom exists, the assistance of international humanitarian mechanism complementing national efforts towards their prohibition is not only necessary but also imperative in order to bring Africa into the main stream of development in this emerging new millennium.

## **UGANDA AND HUMAN RIGHT ISSUES**

After the first state military coup d'etat in Uganda in 1971, Human Rights became object of gross violation by the Idi-Amin government<sup>27</sup>. The gross violation of Human Rights in Africa in the 1970s especially in the Central African Republic and Uganda motivated the majority of African States to study the question of Human Rights in greater details. Information about the violations of Human Rights taking place in Uganda became international in dimension. This situation gave rise to frequent unconstitutional change in government. Between 1979

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<sup>24</sup> UN Action in the field of Human Rights N.Y. 1988 p. 197.

<sup>25</sup> Resolution 1984/24. of 11<sup>th</sup> March, 1985.

<sup>26</sup> Ibid.

<sup>27</sup> Eze, Osita: **OAU and Human Rights: 25 years after**, NIIA Vol. 14 No.1, 1988 p. 163.

and 1987 five coups and countercoups were already recorded. All these events cannot but adversely affect Human and peoples rights.

In 1979; the UN General Assembly expressed deep concern over tragic deaths of people, willful destruction of properties and serious damages that afflicted the economic and social infrastructure of Uganda. World body passionately appealed to the international community with an urgent call to donate generously for satisfying the need of the country in reconstruction, restoration and development.

The UN Commission on Human Rights asked the UN Secretary-General to give advisory services and other types of necessary cooperation for rendering assistance to the government of Uganda by taking necessary measures in order to continue as before to guarantee the fulfillment of Human Rights and Fundamental freedoms<sup>28</sup>. In resolution 1984/45 of 13<sup>th</sup> March, 1984, the UN Commission on Human Rights noted the efforts exerted by the Ugandan government for restoration of democratic system of government in that country and asked the secretary-general to continue his contacts with the government of that country and render all possible assistance to the government and people of Uganda.

The contacts between the UN and the government of Uganda continues up till now and at the present moment; the situation with Human Rights in Uganda has improved. This is not to say that the existing situation with Human Rights in that country does not need improvement.

### ***THE CENTRAL AFRICAN REPUBLIC AND HUMAN RIGHT ISSUES***

The gross violation of Human Rights in the Central African Republic was not very different from the situation which occurred in Uganda. As mentioned earlier, the violation of Human Rights in the Central African Republic became one of the reasons that sensitized African States to study in-depth the conditions of Human and peoples rights in Africa within the sphere of the Organization of African Unity.

The gross violation of Human Rights in the Central African Republic attracted even the attention of the UN. Apart from the actions of the UN General Assembly, the UN Commission on Human Rights

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<sup>28</sup> Resolution 30 (XXXVII) of 10<sup>th</sup> March, 1981.

asked the UN Secretary-General to provide advisory and other corresponding forms of assistance to the government of the Central African Republic to guarantee the promotion of rights and fundamental freedoms in that country<sup>29</sup>. It also requested all states, specialized institutions and other UN Organs and also humanitarian and Non-Governmental Organizations to co-operate with and assist the government of Central African Republic in the Area of Human Rights and fundamental freedoms among others.

The recommendation of the UN Commission on Human Rights concerning Human Rights situations in the Central African Republic was approved by the UN Economic and Social Council (ECOSOC)<sup>30</sup>. However the government of the Central African Republic did not co-operate with the UN secretary-general and the latter did not take any further action on the matter. All the same, the actions of the UN General Assembly and the UN Commission on Human Rights one way or the other assisted the protection and promotion of Human Rights and fundamental freedoms of the people of that country through the efforts of the OAU with the support of the UN and its organs.

### ***AFRICA'S EFFORT TOWARDS SAFEGUARDING HUMAN RIGHTS***

By the early 80s substantial number of African States have attained political independence. Instead of Human Rights situations to improve in view of the above the reverse was the case. This was brought about by unstable governments, hunger, disease and above all gross violations of Human and people rights. These violations forced African States to address the issue of Human Rights in concrete terms. The result of the efforts of African States was the adoption of the African Charter on Human and Peoples' Rights by the Assembly of Heads of State and Government in Nairobi, Kenya during its session holding between 24<sup>th</sup> – 28<sup>th</sup> of June, 1981. The African Charter of Human and people's rights entered into force on the 21st of October, 1986.

Nigeria, being one of the leading members of the OAU has signed, ratified and passed the African Charter on Human and Peoples

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<sup>29</sup> Resolution 15 (XXXVII) of 9<sup>th</sup> March, 1981.

<sup>30</sup> ESCSOC Resolution 1981/40 of 8<sup>th</sup> May, 1981.

Rights to law as part and parcel of its body of laws<sup>31</sup>. The provisions of this Charter have been sought for protection when rights guaranteed under it were violated<sup>32</sup>. This has also availed all the hierarchy of the Courts system in Nigeria, especially the Supreme Court the opportunity to pronounce on this African Charter vis-a-vis other fundamental laws concerning Human and People's Right in Nigeria<sup>33</sup>.

The African Charter on Human and People's Rights was adopted by the Civilian Government in Nigeria in 1981. Despite the fact that the charter came into force during the military era and that the military regime in Nigeria domesticated it into Nigerian legal corpus, Human rights situation was not in any way better than that of other African Nations. The military regime became an obnoxious and absolute regime against rights to association, speech, fair hearing among others. Ouster clauses in Decrees became the order of the day. The only legal document that managed to cross the hurdle of ouster clauses was the African charter on Human and peoples' Right (Ratification and Enforcement) Act. The *locus classicus* case of **Abacha v Fawehinmi** was principally based on this all important Act.

The case of **Abacha v Fawehinmi**<sup>34</sup> dealt with many issues. The most important being the question of the relationship between international laws and municipal law. This question is briefly referred to in the Constitution of the Federal Republic of Nigeria 1979 and 1999 in the following words:

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....<sup>35</sup>

Considering the question of incorporation of international treaty into municipal law, the Supreme Court of Nigeria in the case of **Abacha v Fawehinmi** held that:

Where an international treaty has been promulgated into law by the National Assembly like, in the

<sup>31</sup> The African Charter on Human and People's Rights (Ratification and Enforcement) Act. Cap. 10 Laws of the Federation 1990.

<sup>32</sup> **Chief Gani Fawehinmi v Gen. Sanni Abacha & 3 ors** (1996) 9 NWLR pt. 475 p. 710.

<sup>33</sup> **Abacha v Fawehinmi** (2000) F.W.L.R (pt. 4) p. 533.

<sup>34</sup> *Ibid.*

<sup>35</sup> Constitutions of the Federal Republic of Nigeria 1979 and 1999 s. 12 (1).

instant case, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, cap 10, that treaty becomes binding and our courts have a duty to give effect to it like all other laws falling within the judicial power of the courts."<sup>36</sup>

On the status and essence of the African Charter vis-a-vis the 1979 and 1999 Constitutions, the Supreme Court of Nigeria further held that:

"The African Charter, like chapter IV of the 1979 and 1999 Constitutions of Nigeria, gives to citizens of member states of the Organization of African Unity rights and obligations. These rights and obligations are to be enforced by our courts if they must have meaning"<sup>37</sup>

On the question of which law prevails where there is a conflict between a statute and the provisions of the African Charter, the Supreme Court of Nigeria seems to uphold the monist theory of International Law thus:

"No doubt cap 10, LFN (African Charter) is a statute with international flavour. Being so, therefore, I would think that if there is a conflict between it and another statute its provisions will prevail over those of that other statute for the reason that is presumed that the legislature does not intend to breach an international obligation. To this extent I agree with their lordships of the court below that the Charter possesses 'a greater vigour and strength' than any other domestic statutes"<sup>38</sup>

The vexed issue in cap 10 LFN 1990 (African Charter) is the specific procedure to be adopted in enforcing a recognized right by the charter. This specific procedure was not expressly provided for in the African Charter. The Supreme Court, relying on the authority of **Fajinmi v The**

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<sup>36</sup> **Abacha v Fawehinmi** (2000) F.W.L.R. (pt. 4) 547.

<sup>37</sup> **Abacha v Fawehinmi** (2000) F.W.L.R. (pt. 4) 547.

<sup>38</sup> *Ibid* p. 586.

Speaker, Western House of Assembly<sup>39</sup> and *Ogugu v The State*<sup>40</sup> held:

Where a party has a right recognized by law but for which no enforcement procedure is provided the jurisdiction of the court is not thereby ousted, a party is entitled, following the **maxim ubi jus ibi remedium** (where there is a wrong, there is a remedy) to bring his case in the usual form of an action and have the same heard accordingly.<sup>41</sup>

The court went on to add and further held as follows:

Where a person is aggrieved by a violation of his right entrenched in the African Charter on Human and Peoples' Rights, that person may commence an action by a Writ or by any other permissible procedure such as the Fundamental Rights (Enforcement procedure) Rules 1979. It is therefore wrong for the trial court and the Court of Appeal to decline jurisdiction to hear the respondent's case for reasons of an alleged use of a wrong procedure.<sup>42</sup>

## CONCLUSION

Human rights or rights of man or fundamental freedoms are claims asserted as those which should be or sometimes stated to be those which are, legally recognized and protected to secure for each individual the fullest and freest development of personality and spiritual, moral and other independence<sup>43</sup>. They are conceived as rights inherent as rational, free-willing creatures, not conferred by mere positive law, nor capable of being abridged or abrogated by positive law.

The African Nation States have gone through thick and thin in trying to establish a legal regime for the promotion and protection of Human and Peoples' Rights.

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<sup>39</sup> (1962) ISCNLR 300, (1962) 4 NSCC 144, (1961) IAIINLR 305.

<sup>40</sup> (1994) 9 NWLR (PT 366)1.

<sup>41</sup> *Abacha v Fawehinmi* (2000) F.W.L.R (pt. 4) 548.

<sup>42</sup> *Ibid.*

<sup>43</sup> Walker D. M: *The Oxford Companion to Law*, Clarendon Press. Oxford 1980 p. 591.

African states having availed themselves of the opportunity of using international mechanism to liberate themselves from the shackles of colonialism, embarked on collective and individual efforts to promote Human and Peoples' Rights. These efforts culminated in signing and the adoption of the African Charter on Human and Peoples' Rights. This important document having come into force in 1986 will no doubt compliment all the existing laws among member states of the O.A.U.

This all important international treaty has been tested and accepted as forming part and parcel of Nigerian laws vide the **locus classicus case** of **Gen. Abacha & ors v Chief Fawehinmi**<sup>44</sup>. The decision of the Supreme Court of Nigeria in this case has raised the hope and aspirations of Nigerians that we have entered the stage where Human and People Rights can be claimed and asserted by due process of law.

It is a pointer to other African Nations that have not domesticated the African Charter to quickly do so if they are to be named among civilized Nation States in Africa and indeed in the whole world in the new millennium.

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44 (2000) F.W.L.R. (PT.4) 533.