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INTERNATIONAL LAW AND STRUGGLE FOR THE FREEDOM AND WELFARE OF MAN IN AFRICA

by Itsejuwa E. Sagay

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1. Introduction

This is not the first inaugural lecture given by a Professor of Law in this University, nor indeed is it the first given by a Professor of International law. The first inaugural lecture from the Department of International Law entitled, "West African contribution to the Law of International Water Courses" was delivered by Professor K. Rowny on the 14th of May, 1974.[1] The second one from that same Department entitled "Nigeria and International Law, Today and Tomorrow" was delivered by Professor David Ijalaye on the 6th of March 1978,[2] almost 4 years after Professor Rowny's. Coincidentally, the third one, which I am about to give, is coming almost exactly 4 years after Professor Ijalaye's. I hope that there is no magic in the number 4 for my Department because I look forward to listening to the next one much earlier.

One might raise the issue, what is there to say again, after two earlier lectures? What new thoughts and ideas can profitably be raised in the discipline of International Law in a third inaugural lecture? My answer to that is simple. International Law is an incredibly vast discipline, which is getting even wider with every passing day. Indeed one can consider the term "International Law" as a generic term embracing a large number of disciplines which have one thing in common – the rules they enunciate transcend national boundaries, and affect States, international organisations and even individuals within States. The new area of International Economic Law has developed so fast within the last two decades that it is almost certain to cut its umbilical cord with International Law and form the core of another group of disciplines before long.

The previous International Law inaugural lectures dealt with International Water Courses, and the impact of International law on Nigeria and their relationship with each other

respectively. In this lecture, I intend to examine very briefly, the status of Human Rights in International Law, and its state within the independent countries of Africa, including intra-African practice in this vital aspect of human existence. My personal contribution to knowledge in this area will not receive much consideration since my primary aim is not only to explain and enlighten, but also, and this in my view is the most important, to create greater awareness of the gross inadequacies in the implementation of Human Rights obligations in Africa and generate some momentum towards the effective promotion and protection of Human Rights in the continent.

The title of this Lecture, the "Freedom and Welfare of man in Africa" was deliberately chosen to reflect the fact that the application of Human Rights in Africa has been selective, narrow and one sided. For example, "freedom" which stands for the right to self-determination and independence, has almost universally and consistently been applied. Only Namibia and South Africa have so far not enjoyed the full benefit of this rule of International Law. For Namibia, the end is already in sight. But for South Africa, the struggle will continue for some years to come.

However, when it comes to the welfare aspect of Human Rights, we find little or no compliance at all by African States with obligations in both municipal and international Law. The term 'welfare' includes *inter alia* freedom from discrimination (whether racial, ethnic, tribal, sectional, religious, sexual, social or political), the right to life, liberty, or security of the person, the prohibition of torture, cruel or degrading punishment, the right to a fair hearing, prohibition of arbitrary arrest and detention, the right to privacy and family life, freedom of movement, association and peaceful assembly, freedom of thought, conscience and religion, freedom of opinion and expression, freedom to participate directly or indirectly in the government of one's

country, periodic and genuine elections based on universal adult suffrage, the right to social security, the right to work, the right to education, the right to health care, and the right to an adequate standard of living for the well-being of one and his family, including food, housing and social services. These are only some aspects of the welfare of the citizen that a State is obliged to observe and make provision for.

This brief resume of some of the contents of Human Rights will no doubt have demonstrated to you how all pervasive, how indispensable this concept is to any form of existence above the animal level. Moreover, the interconnexion between Human Rights and the other aspirations of Humanity are clear. "For what purpose", declared U. Thant,[3] "is international peace and security to be maintained, if not to preserve the right to life, liberty and the pursuit of happiness? What is the use of economic development if it does not in the words of [the U.N.] Charter "promote better standards of life in larger freedom?

". . . . Brave men and women have shown through history that for these basic freedoms, they are willing to fight, and, if need be, to die. These represent lasting human values, which will survive all current political theories and ideological controversies."[4]

In short, to deny one his human rights is to deny him his humanity, his inherent and inalienable rights as a human being.

2. The Status of Freedom and Welfare in Africa before 1945

Before 1945, i.e. prior to the establishment of the U.N., with the exception of Ethiopia and Liberia, the whole of Africa was under different forms of colonial rule. The colonial system was of course based on brute force, the exploitation of the colonised and the refusal to recognise their communities as subjects of International Law and therefore

entitled to its benefits and protection. Colonialism gathered momentum *pari passu* with the industrial revolution. The European powers, with Britain and France in the fore-front embarked on an orgy of conquest, annexation and subjugation of the African peoples with the primary aim of creating cheap and secure sources of raw materials for their industries and future markets for their manufactured goods. This basic economic aspect of the relationship between the capitalist Western European States, and Africa, with some minor changes, still remains valid today.

Apart from the loss of political, economic, social and cultural sovereignty by the colonised peoples of Africa, the psychological and social climate generated by colonialism was very fertile for the growth and spread of racial discrimination and the denial of their Human Rights. Africans were characterised as primitive, backward, barbarous, uncivilised and incapable of governing themselves. The oppressive measures imposed on the ruled, and the shamelessly one sided "agreements" extracted from their rulers, known in history as "protection treaties", were rationalised by the emphatic rejection of the view that the Human Being in Africa had the same rights as the Human Being in Europe.

The Treaty of Berlin, 1885 between the European Powers was concluded primarily to eliminate friction between these Powers in their commercial and colonising activities and to regulate "the conditions most favourable to the development of trade and civilisation in certain regions in Africa and to assure to all nations the advantage of free navigation of the two chief rivers of Africa flowing into the Atlantic." There is a reference to the furthering of the moral and material well-being of the "native populations." But this was at best cosmetic and, in truth, it was further justification for the imposition of colonial rule.

The status and condition of the colonised peoples did not improve much during the era of the League. The right of self-

determination was not recognised and colonialism was not only regarded as legitimate in International Law, but it infact enhanced the prestige of the colonial powers. The legal personality of the colonial peoples was totally subsumed in that of the imperial master. This was the position when in the wake and as a consequence of the second world war, the United Nations Organisation was established on 26th June 1945.

3. The United Nations and the Development of the Rules of Freedom and Welfare

In the following discussion, I have classified Freedom and Welfare into two broad groups. The first group contains the type of Human Rights that have an international character, in the sense that they have been enforced directly by the U.N. on the states concerned. These are:

(i) the Right of Self-Determination,
(ii) the Prohibition of Racial Discrimination,
(iii) the Legitimacy of Liberation Struggles and Wars and finally,
(iv) the current move towards a New International Economic Order.

The second group consists of those Human Rights which have a more local or national character. This is the aspect basically concerned with a State's treatment of its own nationals and non-nationals, resident within its territory. These are by their very nature suitable for application and enforcement by the individual, State or State machinery. Reference was made to this group earlier when I listed some of the rights I regarded as constituting the welfare aspect of Human Rights. These range from the right to life, freedom from torture and degrading treatment to the right to peaceful assembly, freedom of association and so on.

I shall deal with the first group and their impact in Africa before considering the second group and the state of the

implementation of its component rights in Africa.

Human Rights as we know them today are the off-spring of the U.N. In the words of one writer:

> International Law rules framed in terms of the protection of human rights against state interference are very largely a post-1945 phenomenon. Before then individuals were seen mostly as aliens and nationals, not as individuals. Some protection was afforded them as aliens, but the treatment of nationals was regarded as being within the domestic jurisdiction of sovereign states. . . . After the First World War, efforts were made to protect minority groups by treaty, but no protection of individuals generally, on a natural law or other basis was attempted. Events in Europe in the 1930s and in the Second World War focused attention upon this wider question and the guarantee of human rights became one of the purposes for which the Allied Powers fought. It was therefore no surprise when the realisation and protection of human rights became one of the purposes of the United Nations and when the charter imposed obligations upon members to this end. [5]

Self-Determination

The right of self-determination is an established right in International Law. Indeed it is regarded as a peremptory norm, part of *jus cogens,* i.e. superior rules of International Law from which no derogation is permissible.[6] Much has been written about its development and establishment as a rule. My purpose will therefore be fully served by very brief references to this development.

The U.N. Charter declares in paragraph 2 of Article 2 that one of the purposes of the Organisation is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples

and to take other appropriate measures to strengthen universal peace."

Other Articles in the U.N. Charter which give recognition to the right of self-determination are 55, 73, 75 and 76. Article 73 deals extensively with non-self-governing territories and applies the principle to them, whilst Articles 75 and 76 deal with Trust Territories and the Trusteeship System, to which the principle of self-determination is also emphatically applied.

Inspite of the consistent objection and opposition of the colonial powers, the U.N. General Assembly proceeded to apply the principle to all non-self-governing territories. In order to achieve maximum effectiveness, the U.N. set up various bodies to act as the machinery for the supervision of the implementation of self-determination in non-self-governing territories. These included (1) the Ad-hoc Committee on Information concerning Non-self-Governing Territories, (1945-1961). (2) the Special Committee on South West Africa, (1948-1962), (3) the Special Committee on Portuguese Territories, (1961-1974), (4) the Special Committee on the situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, popularly known as the Special Committee of Twenty-Four, (5) Trusteeship Council, and the Council for Nambia, 1967.

So successful was U.N. action in this area that by December 1960, the General Assembly was in a position to make the famous Declaration on the Granting of Independence to Colonial Countries and Peoples. As I commented on another occasion "The Declaration constitutes the most concrete manifestation of state practice to the effect that self-determination had become a legal right of all peoples and that there now exists a legal obligation on all States not to obstruct the realisation of this right, but to promote it actively in cooperation with the United Nations."

The import of this landmark in the legal history of self-determination is clearly manifested in the first two paragraphs and paragraph 5 of the Declaration.

1. The subjection of peoples to alien subjugation and domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and cooperation.
2. All peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
5. Immediate steps shall be taken in trust and non-self-governing territories, or all other territories which have not yet attained independence, to transfer all powers to the people of those territories. . . . .[8]

The true effect of the activities of the U.N. between 1945 and 1960, and particularly, after the enunciation, development and establishment of the rule of self-determination can best be appreciated from the following statistics of Independence for colonial and other non-self-governing territories.

(i) In 1945, there were 51 States in the U.N. Of these, only 4, (counting Egypt and South Africa) were African States.

(ii) By 1955, the membership of the U.N. had risen to 76, but the African members were only 5.

(iii) By 1965, U.N. membership stood at 114; of these, the African figure had swollen to 35, nearly one-third.

(iv) Presently, U.N. membership is 151, and of these, Africa accounts for 50.

Between 1960, when the Declaration was issued by the U.N. and the present time, about 55 States have achieved self-determination and independence. The full impact of this

rule of International Law which developed from its cradle in the U.N. Charter in 1945 to full adulthood in 1960 can even better be appreciated by the fact that about 80 formerly non-self-governing territories have become independent and joined the U.N. as sovereign States since the U.N. was established in 1945.

The Prohibition of Racial Discrimination

Although racial discrimination in a very general sense has existed for several centuries, only in Southern Africa has it been allowed up till today, to flourish as an official policy, and practised with fanatical fervour. Racial discrimination, particularly in South Africa, has become the foundation on which the white minority has built its hopes and future. Elaborate, political, legal, social, economic and cultural structures and institutions have been established by the settler minority regime in order to guarantee their perpetual domination of the black majority and their continued monopoly of the economic resources of the territory. Apartheid as this inhuman system is called, has been described as a "social malignancy rooted in the obsession of a minority to retain the luxury of privilege through the brutal exercise of force."[9]

The sources which have given rise to the rule prohibiting the practice of racial discrimination and apartheid are far too numerous even to mention. I have myself done some work in this area, and the outcome of that work is soon to appear in the form of a monograph entitled *Racial Discrimination in International Law,* to be published by the University of Ife Press.

However, as was the case for the principle of self-determination, so has the U.N. been in the forefront of the fight against racial discrimination, and it is its activities that have largely been responsible for the emergence of the rule of International Law prohibiting the practice of racial discrimination. For example, in the U.N. Charter alone, the following

Articles make provision for the promotion of the principle; the preamble, Articles 1, 13, 55, 56, 62 and 76.

Apart from numerous resolutions adopted since the question was first raised in 1946 with regard to the treatment of Indians in South Africa, certain epoch making decisions and instruments have emerged from the U.N. which deserve special mention. These are:

(i) The Universal Declaration of Human Rights, 1948 ,
(ii) The Declaration on the Elimination of all forms of Racial Discrimination, 1963 ,
(iii) The Resolutions and Proclamation of the International Conference on Human Rights, Teheran, 1968,
(iv) The International Convention on the Elimination of All Forms of Racial Discrimination, 1965 and
(v) The International Convention on the Suppression of the Crime of Apartheid, 1973 .

Whilst the three Declarations proclaim what the state of the Law is, and the obligation of States in that respect, the two conventions seek to buttress the existing customary rules, and general principles of Law by creating direct obligations on signatory states in the form of treaties.

In its preamble, the Declaration on the Elimination of all Forms of Racial Discrimination[10] states that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration of Human Rights without any distinction as to race, sex, etc., that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, that there is no justification for racial discrimination either in theory or in practice. The preamble goes on to declare that all forms of racial discrimination and still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights tend to

impair friendly relations amongst peoples.

Article 1 states that "Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of principles of the Charter of the United Nations and as a violation of human rights and freedoms proclaimed in the Universal Declaration of Human Rights . . . ." Article 2 proclaims that "No State, institution, group or individual, shall make any discrimination whatsoever in a matter of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin." According to Article 5, "an end shall be put without delay to governmental and other policies of racial segregation and especially policies of apartheid, as well as forms of racial discrimination and separation resulting from such policies."

The Declaration which as a whole has 13 paragraphs in its preamble and 11 in its substantive provisions, covering all possible aspects of racial discrimination, segregation or apartheid leaves no loophole for the excuse usually advanced by South Africa that its policies of "separate development" help to prevent racial conflict.[11]

The International Convention on the Elimination of all forms of Racial Discrimination, which was adopted by the U.N. General Assembly on 21 December, 1965[12] elaborated and reduced into treaty form the 1963 Declaration on the same subject. Additionally, the Convention made provision for the establishment of a Committee on the Elimination of Racial Discrimination whose functions include:

(1) the consideration of reports by Parties to the Convention on the legislative, judicial, administrative and other measures which they have adopted and which give effect to the provisions of the Convention;

(2) complaints by one Party against another that it is not giving effect to the provisions of the Convention and

investigation by the Committee of such allegations;
(3) the appointment of a Conciliation Commission where the matter is not settled within a specific period; and
(4) the receipt of complaints by individual citizens of Parties that recognise the competence of the Committee in this respect.

The creation of an institution of this type to monitor the compliance by States of their obligation to prohibit racial discrimination was itself a remarkable development. Equally noteworthy was the provision that an individual could (if certain conditions were fulfilled) petition an international body against his own State for an alleged act of racial discrimination. The Convention entered into force on 4th January, 1969.

The International Convention on the Suppression of the Crime of Apartheid, which was adopted by the General Assembly on 30 November, 1973[13] consitutes a revolution in International Law. The Convention which declares apartheid to be a crime against humanity makes provision for its suppression and for the punishment of individual members of organisation and institutions and state officials whenever they commit, participate in, incite or inspire the commission of acts constituting apartheid.

Article V gives the power of trial and punishment to any party to the Convention. Article (V(a) specifically empowers a Party to the Convention to try and punish *anyone* who commits the crime of Apartheid. Thus apartheid is treated as a crime *jure gentium* and its perpetrators treated as outlaws, as the enemies of all mankind – *hostis humani generis*, "whom any nation may in the interest of all capture and punish"[14] i.e., they have the status of international criminals who are punishable wherever found.

The Commission on Human Rights is empowered under the Convention to prepare, on the basis of reports of competent organs of the U.N. periodic reports from States,

Parties to the Convention, a list of individuals, organisations, institutions, and representatives of States which are alleged to be responsible for the crime of apartheid as well as those against whom proceedings have been taken for the commission of the crime.

These are indeed far reaching provisions and by any standards this Convention represents one of the boldest steps ever taken by the U.N. for the enforcement of Human Rights. The Convention entered into force on 18th July, 1976.

Currently as a consequence of its breach of the rule of International Law prohibiting the practice of racial discrimination South Africa is the subject of numerous international sanctions, although as the whole world knows, the refusal of the Western Powers to comply with U.N. General Assembly decisions have considerably reduced the effectiveness of these sanctions.

It is worth noting that Nigerians have been the successive Chairmen of the U.N. Special Committee against Apartheid since the middle 70s. Mr. Leslie Harriman was Chairman up till 1980. He was then succeeded by Mr. Akporode Clark, who was Chairman up till 1981. The current Chairman is Alhaji Maitama Sule, the Nigerian Representative to the United Nations. This Committee has initiated and supervised the implementation of all the major decisions taken by the U.N. against South Africa, since 1962.

The Legitimacy of Liberation Struggles

The principle of International Law recognising the legitimacy of liberation struggles and wars is clearly an offspring of the right of self-determination. For once peoples are recognised as having a right to self-determination, it follows logically, and inevitably, that they must also be legally entitled to resist any action aimed at denying them that right. A liberation struggle involving the use of armed

force to achieve freedom and independence against colonial tyranny and oppression is a legitimate exercise of the right of self-defence enshrined in Article 51 of the U.N. Charter.

The legitimacy of the struggle of colonial peoples to achieve freedom and independence has been recognised by the General Assembly, the Security Council and other organs of the United Nations and has been affirmed and re-affirmed in numerous resolutions and decisions. In one of the more recent of these, the General Assembly *inter alia* re-affirmed

> . . . that the recognition by the General Assembly the Security Council and other United Nations organs of the legitimacy of the struggle of colonial peoples to achieve freedom and independence entails, as a corollary, the extension by the organisations within the United Nations System of all the necessary moral and material assistance to the peoples of colonial Territories and their national liberation movements. [15]

As part of a general international effort to revise existing Conventions on Humanitarian International Law (particularly the Geneva Conventions), widen their scope, ensure better protection of civilians, prisoners of war and combatants in all armed conflicts, the International Committee of the Red Cross, at the instigation of the U.N. convened between 1971 and 1977 a series of Conferences of Government Experts to deliberate on the question of the re-affirmation and development of international humanitarian laws Applicable to armed conflicts. At the conclusion of these conferences, two protocols to the 1949 Geneva Conventions on the Laws of War were adopted on 8th June, 1977[16] The first protocol dealt with the protection of victims of international armed conflicts, whilst the second dealt with the protection of victims of non-international armed conflicts.

The first protocol (i.e. on international armed conflicts)

confirmed the international legal status of liberation struggles. Thus under article one paragraph 4, an international armed conflict is defined to include "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations. . . ."

One of the consequences of the classification of liberation struggles as international armed conflicts is that the freedom fighters are fully protected by International Law. When captured they must be treated as prisoners of war and the civilian populations under their control are also protected by Law. Furthermore, it is also legitimate to render liberation movements, moral and material support, including arms, ammunition, financial aid, training and transit facilities.

The full backing by International Law, the U.N. and its agencies, including the O.A.U. were in my view decisive in the successful liberation struggles in Guinea-Bissau, Cape Verde, Mozambique, Angola and Zimbabwe, which led to the freedom and independence of those peoples and territories.

A New International Economic Order

One other area in which International Law is responding to the needs of humanity, particularly humanity in the third world, is the economic area, where the U.N. and various other organisations and agencies, both ad-hoc and permanent, are working towards the establishment of a New International Economic Order. The present system of international economic relations is grossly inadequate for the needs of the majority of the peoples of the world. This system has made it possible for the industrialised nations to grow richer by the exploitation of the developing countries. It has demarcated the world into capital-importing nations – who export basically raw materials and primary commodity goods at dismally low prices to the capital-exporting nations and the latter who

export manufactured goods in turn to the already impoverished developing nations at high prices. There is general discontent and dissillusionment amongst the developing nations, with the present order which leaves them still economically dependent on the developed nations despite their years of political independence.

In 1977, Dr. Kurt Waldleim, the former Secretary-General of the U.N. summarised the position thus:

> Many new nations having won political independence, find themselves still bound by economic dependence. For a long time, it was thought that the solution to this problem was aid and assistance. It is increasinly clear however, that a new International Economic Order is essential if the relation between rich and poor nations are to be transformed into a mutually beneficial partnership. Otherwise the existing gap between these groups of Nations will increasingly represent a potential threat to international peace and security.
>
> Moreover, the dependence of the developing world upon the developed is changing – indeed in certain cases has been reversed. Many developed nations are finding themselves in serious economic difficulties. The international system of economic trade relations which was devised 30 years ago is now manifestly inadequate for the needs of the world community as a whole. The charge against that order in the past was that it worked well for the affluent and against the poor. It cannot now even be said that it works well for the affluent. This is an additional incentive for evolving a new economic order. [17]

Unfortunately, although there has been much movement in efforts to create this new economic order during the last twenty years, there has been little progress. Already the U.N. has declared two Development Decades, the first

from 1960 to 1970, and the second from 1970 to 1980. The modest target of 5% growth rate set by the 1st Development Decade was never met, and the gap between the rich and poor nations continues to yawn widely.

Other U.N. organs like the United Nations Conference on Trade and Development have only recorded modest achievements, inspite of the historic and colourful meetings in Santiago, 1968, New Delhi, 1972 and Nairobi, 1976. The so-called North-South Dialogue has also foundered at Cancum in Mexico, the scene of the last summit meeting of Heads of State representing the two groups, held in November, 1981.

The obstacle to progress is of course the Western capitalist and industrial States who do not as yet see the benefits they would derive from a change in the present economic order, out of which they are doing very well.

Inspite of this generally bleak picture, some modest movement in the right direction is already taking place. The provisions on non-reciprocal tariff preferences, and the system for stabilising the export earnings of the A.C.P. countries in the Lome Conventions between the E.E.C. countries and the A.C.P. countries, are a step in that direction.[18] Also in the Nairobi Conference of UNCTAD, 4th – 31st, 1976, an over-all integrated programme for commodities was adopted. The main objectives of this programme which covers a minimum of 18 commodities are:

1. To achieve stable conditions in commodity trade including avoidance of excessive price fluctuations, at levels which would:
   (a) be remunerative and just to producers and equitable to consumers;
   (b) take account of inflation and changes in the world monetary situations;
   (c) promote equilibrium between supply and demand within expanding world commodities trade.

2. To improve and sustain the real income of individual developing countries through increased export earnings and to protect them from fluctuations in export earnings, especially from commodities."[19]

The most important measure taken to support the programme was the decision to create a common fund to finance the establishment of internationally owned stocks for the range of products covered by the Programme.[20]

4. Freedom and Welfare Within Independent African States

We have so far been considering the group of Human Rights that have an international characteristic. We shall now consider those that are local or internal to state in the sense that they only arise out of the relationship between a state and its citizens or other groups or individuals within a State's territorial jurisdiction. This group of Human Rights has equally received the recognition and attention of International Law and its agencies, primarily the U.N. and related bodies. The only difference is that by their nature, implementation has traditionally been left to States, and regional organisations. The concern of the United Nations with the promotion and protection of Human Rights and fundamental freedoms stems directly from the realisation by the international community that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.[21] The second world war proved to many the close relationship between outrageous behaviour by a Government towards its own citizens and aggression against other nations, between respect for Human Rights and the maintenance of peace.[22]

International Standards and Obligations in Human Rights

Apart from the Human rights provisions of the Charter, the U.N. has sought to promote and protect the Human Rights and Fundamental Freedoms of the individual by four major instruments known together as the International Bill of Human Rights. These are:

(i) the Universal Declaration of Human Rights,
(ii) the International Covenant on Economic, Social and Cultural Rights,
(iii) the International Covenant on Civil and Political Rights and,
(iv) the Optional Protocol on the International Covenant on Civil and Political Rights.

Having proclaimed the Universal Declaration of Human Rights in 1948, the U.N. now turned to an even more difficult task: transforming the principles into treaty provisions which establish direct legal obligations on the part of each ratifying State. Eventually, it was decided that two covenants rather than one were needed: one dealing with civil and political rights and the other with economic, social and cultural rights.

On 16th December, 1966, the General Assembly adopted the two International Covenants and the Optional Protocol. Each Covenant required a minimum of 35 ratifications or accessions to come into force. Whilst the Covenant on Economic, Social and Cultural Rights entered into force on 3rd January, 1976, the Covenant on Civil and Political Rights entered into force with the Optional Protocol on 23rd March, 1976.

Under the International Covenant on Civil and Political Rights, a State undertakes to protect its citizens and peoples within its territorial jurisdiction by law against cruel inhuman and degrading treatment. It recognises the right of every

human being to life, liberty, security and privacy of person. The Covenant prohibits slavery, guarantees the right to a fair trial and protects persons against arbitrary arrest or detention. It recognises freedom of thought, conscience and religion; freedom of opinion and expression; the right of peaceful assembly and of emigration and freedom of association.

Under the International Covenant on Economic, Social and Culture Rights, States acknowledge the responsibility to promote better living conditions for their peoples. It recognises everyone's right to work, to fair wages, to social security, to adequate standards of living and freedom from hunger. It also recognises the right to health and education, and to form trade unions. Both Covenants contain the right of self-determination, and the right of peoples to freely utilize and enjoy their natural wealth and resources.[23]

Those familiar with the Nigerian Constitution will see the close relationship between the Covenant on civil and Political Rights and the provision on Fundamental Rights in Chapter IV of the constitution. Also, similarities can be found between the Covenant on Economic, Social and Cultural Rights, and Chapter II of our Constitution entitled "Fundamental Objectives and Directive Principles of State Policy", whose provisions are non-justiciable.

Implementation Measures

Under the Covenant on Civil and Political Rights a Human Rights Committee of 18 persons has been established. This Committee considers reports submitted by States Parties on the steps taken by them to implement the Covenant. The Committee may address general comments to these States and to the U.N. Economic and Social Council. Under optional provisions of the Covenant, the Human Rights Committee may consider communications from a State Party

alleging that another State Party is not fulfilling its obligations under the Covénant. The Committee then acts as a fact finding body to investigate these allegations.

The Optional Protocol on Civil and Political Rights enables the Human Rights Committee to consider communications from private individuals claiming to be victims of a violation of any of the rights in the Covenant. However, the individual must have exhausted all local remedies, where there are local remedies to exhaust.

States Parties to the Covenant on Economic Social and Cultural rights undertake to submit periodic reports to the Economic and Social Council on the measures they have adopted and the progress they have made towards realizing the rights.[24]

Human Rights Provisions in African Constitutions, Laws and Organisations

The international impact of the Universal Declaration on Human Rights and these Covenants, has been tremendous. The Constitutions of the following African countries either refer expressly to the Declaration as being applicable to their countries or contain detailed provisions on many of the rights proclaimed in the Declaration. For example, the Constitutions of the following States expressly refer to the Declaration: Algeria (1963), Burundi (1962), Cameroon (1960), Chad (1960), Democratic Republic of the Congo (1963), Dahomey (1964), Gabon (1961), Guinea (1958), Ivory Coast (1960), Madagascar (1959), Mali (1960), Mauritania (1961), Niger (1960), Senegal (1963), Togo (1963), and Upper Volta (1960). All these countries solemnly affirm thein devotion and adherrence to the principles and ideals of the Declaration.

The Constitution of Somalia, (1960) states in Article 7 that "The Somali Republic shall comply, in so far as applicable, with the Universal Declaration of Human Rights . . . ."

The Constitution of Rwanda, (1962), expressly provides in Article 13 that "fundamental freedoms as set forth in the Universal Declaration of Human Rights shall be guaranteed to all citizens." In the preamble to the Constitution of the Democratic Republic of the Congo, now Zaire, (1967), the Congolese People proclaimed their adherence to the Universal Declaration. Even Equatorial Guinea has the following provision in Article 3 of its Constitution of 1968: "The State shall recognise and guarantee the Human Rights and freedoms set forth in the Universal Declaration of Human Rights and shall proclaim that the freedoms of conscience and religion, association, assembly, speech, residence and domicile, and the right to property, education and decent working conditions are to be respected."[25]

Nigeria is said to derive her comprehensive provisions on fundamental rights from the European Convention of Human Rights, 1950.[26] But since the contents of the latter Convention are themselves derived from the Civil and Political provisions of the Universal Declaration, it is clear that the ultimate source of the Nigerian provisions is the Universal Declaration.

Under Chapter IV of the Nigerian Constitution, the following rights and freedoms are guaranteed: the right to life, the right to dignity of the human person (including freedom from torture, and inhuman and degrading treatment) the right to personal liberty, the right to fair hearing, the right to privacy and family life (i.e. protection of the privacy of citizens, their homes, correspondence, telephone conversation etc.) the right to freedom of expression and of the press, the right to peaceful assembly and association, the right to freedom of movement, the right to freedom from discrimination, and the right to compensation for property compulsorily acquired. The rights to freedom of movement and freedom from discrimination are extended to Nigerian citizens only. Moreover, racial discrimination is nowhere

prohibited in the constitution, although we are parties to both the Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Suppression and Punishment of the Crime of Apartheid.

At the African regional level, the O.A.U. Charter itself proclaims that the O.A.U. States re-affirm their adherence to the Charter of the U.N. and the Universal Declaration of Human Rights, whose principles provide a solid foundation for peaceful and positive cooperation among States.[27] One of the five purposes of the Organisation is the promotion of international cooperation, having due regard to the Charter of the U.N. and the Universal Declaration.[28]

These are admittedly very weak references to Human Rights. But as we shall soon see, the Member States of the O.A.U. are more concerned with sovereignty and territorial integrity than with Human Rights. Indeed the only type of Human Rights for which they have ever shown any enthusiasm, are the ones violated in Southern Africa, i.e. self-determination, the legitimacy of liberation struggles and the prohibition of racial discrimination.

Even in these areas in which African States have enthusiastically supported the application of the principles of Human Rights, their practice has been at best inconsistent and selective. When self-determination is being applied to Southern Africa under colonial or white minority regimes, African enthusiasm and participation are total. But when required to apply the principle amongst themselves, African States have been the most notorious violators of the right of self-determination.

For the past 7 years or so, Morocco has been attempting unsuccessfully to annex Western Sahara. The O.A.U., normally the most vociferous champion of the right of self-determination, has been engaged in evasive and dilatory manoeuvres for 3 years, instead of recognising the Sahraoui

Republic (as Western Sahara is now known) and supporting the Polisario Front, the Territory's Liberation Movement. Presently, Mr. Edem Kojo has redeemed the image of Africa by facilitating the admission of the Sahraouï Republic into the O.A.U. The objection of 19 O.A.U. States to this move is a shameful admission of their lack of commitment to self determination. The Nigerian fence-sitting tactics in this sordid episode is an embarrassment to the enlightened public in this country.

The Actual Practice in African States

The State of Human Rights in independent African States, is, to put it very mildly, very dismal. The contrast between the paper declarations in constitutions and laws and the actual practice is staggering. The Law of Human Rights is at one extreme, whilst the practice of African States is at the other. This shocking state of affairs is closely related to the state of democracy in Africa. Democratic government and respect for Human Rights and Fundamental Freedoms go hand in hand.

In terms of democratic government, African States can be roughly classified into 4 groups:

1. Democracies
2. Mild Dictatorships and One Party States
3. Totalitarian Regimes
4. Special Cases.

Democracies

There are 7 democracies in Africa, namely, Botswana, Djibouti, Gambia, Mauritius, Nigeria, Senegal and Zimbabwe.

Mild Dictatorships and One Party States

The degrees of tolerance and oppression vary in these States. Some like Tanzania, Algeria and Zambia are relatively mild and benevolent one party States. Others like Cameroon, Egypt, Tunisia and Kenya, have relatively oppressive regimes. The States in this group are 21 in number. They are: Algeria, Cameroon, Comoro Islands, Congo, Egypt, Gabon, Guinea-Bissau, Cape Verde, Ivory Coast, Kenya, Libya, the Malagassy Republic, Mauritania, Mozambique, Niger, Sao Tome and Principe, the Seychelles, Tanzania, Tunisia, Upper Volta and Zambia.

Totalitarian Regimes

These are the States in which an individual or a group is in absolute power and absolute control. These tend to be the worst transgressors of Human Rights. All the murderous and blood thirsty regimes belong in this group. There are 19 of them. They are: Benin, Burundi, Central African Republic, Ethiopia, Equatorial Guinea, Guinea, Lesotho, Liberia, Mali, Malawi, Morocco, Rwanda, Sierra Leone, Somalia, Sudan, Swaziland, Togo, Uganda and Zaire. I have left out South Africa, which is in a special class of its own for the problem there is far more complex than in the proper African States. The South African situation is an amalgam of racial discri-imination, colonialism, and gross violations of human rights.

Special Cases

There are three countries which do not fit into any of the groups above because of the peculiar situations existing in them. In Ghana, the debilitating impoverishment of the State, the shattered and collapsed economy and the terrible suffering of her peoples necessitate extreme measures which justify depature from democratic forms. In Angola, the MPLA government is fighting to save the independence, sovereignty and territorial integrity of the State from the

military and economic aggression of South Africa, its African Surrogates and the U.S., their mentor. In the circumstances, normal democratic government is not possible. In Chad, the bitter civil war, and total political, territorial and social disintegration make any form of government impossible.

Thus the picture that emerges is that; of the 50 independent African States, only 7 can claim to be democracies. Some of the 21 listed under mild dictatorships have good Human Rights records. But the vast majority of those within this group are gross violators of Human Rights. The States in the third group recognise no Human Rights at all, except of course the Human Rights of the black people of South Africa and Namibia.

Apart from the gross violations of Human Rights referred to above, many of these States specialise in the mass murder of whole populations, torture, cruel and inhuman treatment of their victims and detentions without trial. In Burundi, then under the absolutist rule of Michael Micombero, over 100,000 Hutus, the majority ethnic group, were massacred between 1972 and 1973 in a bid by Micombero to maintain his own personal rule and that of his minority ethnic group, the Tutsis. Micombero was overthrown by Lt. Col. Bagaza in 1976, but the oppression continues. The country is still in the hands of another dictator and the Tutsi minority.

The case of the Central African Republic which became an empire and reverted back to the status of a Republic once more, has always oscillated between the tragic and the comical, between the ridiculous and the sublime. The murders, tortures, mutilations and detentions of the Bokassa regime were shocking enough. But when he added to all this the massacre of school children, even his French backers were forced to organise a coup to get him out. The C.A.R. remains unstable today, although the Human Rights situation there has improved to the extent that the right to life has now received some recognition.

Equatorial Guinea started off independence in 1968 with the solemn declaration of adherence to Human Rights, which I mentioned earlier. Within months, President Marcias Nguema, as if driven by an irresistible maniacal force, commenced on a programme of regular depopulation of his little Republic by mass murders and other genocidal acts. By 1977, about a quarter of the population of 300,000 had been massacred, and another one quarter driven into exile. The civil service was decimated, and the whole population was in a state of rebellion.

After repeated killings and brutal and inhuman treatment of the more than 20,000 Nigerian contract workers, who produced virtually all the wealth of the country, the Nigerian government was forced to evacuate its citizens in 1975. Many women of Equatorial Guinea citizenship, married to Nigerian husbands were not allowed to accompany their husbands. After the departure of the Nigerians, Nguema resorted to measures of forced labour for his countrymen. With his overthrow in 1980, the worst features of his regime have been abandoned. But the country remains under the firm control of a military dictator who happens to be Marcias Nguema's nephew.[29]

The Ugandan case is of course the most celebrated of these gory and macabre accounts of African blood-baths. After he overthrew Obote in 1972, Amin first revealed his true nature by expelling all Asian citizens and other residents of Asian origin, (mainly people of Indian and Pakistani origin) and seized their properties. With this accomplished, he now turned on his own Uganda natives with terrifying ferocity. The Chief Justice, and former Prime Minister, Mr. Joshua Kiwanuka was murdered; so was the Vice-Chancellor of Makerere University, and after that the blood-bath started. A special Unit, ironically named the State Research Bureau was established specifically to torture and murder. Nobody was exempted from the orgy of death: from students to

workers, from Cabinet Ministers to Amin's wife, the purges continued, unrelenting and unabating. The total number of murders committed under Amin's regime will never be accurately determined. An estimate of 250,000 is probably on the conservative side.

Amin was of course overthrown in 1979, and Obote was finally installed in 1980 after obviously rigged elections. Now, Obote in order to retain power is using Amin's methods. Daily, murders and arrests of civilians continue, and a minor civil war is on. In terms of Human Rights, both in the civil and political and in the economic, social and cultural spheres the people of Uganda cannot be said to have benefited much by the change from Amin to Obote.

I have only been discussing the worst cases. Similar but less malignant conditions exist in the remaining totalitarian regimes listed earlier.

In the One Party States, and indeed in the Democracies, conditions are far from satisfactory. In Kenya for example, virtually all political power is retained by one ethnic group and its associates from a few other groups and all the wealth of the country is in the hands of a few families, acting in concert with international monopoly capital.

Even in our own country, Nigeria, democracy is still treated as an alien cutlure, being forced down our unwilling throats. We have exchanged the form for the substance. Having a right to vote once in 4 years and being exploited, cheated and betrayed in between elections does not constitute democracy. It is on the contrary a betrayal of democracy which not only devalues it, but in the end kills commitment to it. Nigerians have wondered why the regime of Jerry Rawlings in Ghana which overthrew a democratically elected government was so popularly received. The answer is that the Liman government had so totally debased and discredited the concept of elective democracy that it no longer had any value in the eyes of the ordinary Ghanaian.

The Nigerian democracy and therefore the continued toleration of Human Rights in the country is sustained by the negative factors of size and diversity, what political scientists and constitutional lawyers refer to as centrifugal factors. If Nigeria were a small and unilingual country, there would neither be democracy nor Human Rights. But inspite of these inhibiting factors on our naturally oppressive, intolerant and tyrannical nature, some disqueting episodes have occurred during this so-called Second Republic against which the whole nation must maintain vigilance if we are to remain free. Shugaba, Wilmot, raids on Newspapers by armed police, Press censorship circulars, – issued and disowned – all are too fresh and too frequently recalled to warrant further expatiation.

Even the manner in which we have managed our economic resources can constitute a breach of the Economic and Social Rights of the people of this country. To quote from the much attacked but relatively accurate Survey of Nigeria by *The Economist* of 23rd to 29th of January 1982,

> But for the poor – and the overwhelming majority of Nigerians, despite oil, are very poor indeed, utterly uneducated, and increasingly separated from their roots in the farm and village – life is very tough indeed. Disease, especially malaria is rife, urban housing scarce. Exhausted male workers drop off to sleep all the time. Women's everyday concern is not the price of oil, but the rapidly growing shortage of firewood and fuel. The gap is vast between the would-be modern bits of society and the stressful life of most people. At best, Nigerian's friends can with the eye of faith discern some progress. . . . At worst – and a lot of its is at the worst – Nigeria is the realisation of a Broederbonder's [White South African] bad dream, the place where Africans have their chance and are chucking it away.

5. Human Rights and Democratic Government

It does not take much empirical research to discover that those in power in African States (this is also true for tyrannical Regimes all over the world) feel impelled to oppress, and suppress Human Rights, in order to retain their hold on power indefinitely. The lust for office, and the urge to hold on to it leads to the need to eliminate all those who could challenge this desire, or who are regarded as a threat in any sense. Once power is maintained in this manner, oppression and total disregard of Human Rights become part and parcel of the regime's strategy of survival.

On the other hand, once a group in power is prepared to surrender it if it loses an election, or if its term of office comes to an end, there will absolutely be no need to oppress any one, or suppress Human Rights.

The renowned scholar and statesman, Professor Authur Lewis once made the following observation about politics and politicians in West Africa and their urge to suppress and eliminate opposition parties by any means:

> No politician will admit that he suppressed his political opponents primarily because he wants to stay in power, he will more usually say that their policies or tactics endanger the country. Yet throughout history, a primary love of power has been the main motive of politicians; interest in policy has been so minor that it is quite common to suppress an opponent today and adopt his policy tomorrow.
>
> There are serious arguments for the single party. . . . But it would be mistaken to forget that much of what is going on in some of these countries is fully explained in terms of the normal lust of human beings for power and wealth. The stakes are high. Office carries power, prestige and money. The power is incredible. Most African Ministers

consider themselves to be above the law and are treated as such by the police. Decision making is arbitrary. Decisions which more advanced countries leave to civil servants and technicians, are in these countries made by ministers, often without consulting expert advice. The prestige is incredible. Men who claim to be democrats, infact behave like emperors. Personifying the State, they dress themselves up in uniforms, build themselves palaces, bring all other traffic to a stand-still when they drive, hold fancy parades and generally demand to be treated like Egyptian Pharaohs. And the money is also incredible. Successful politicians receive, even if only elected to Parliament, salaries two to four times as high as they previously earned, plus *per diem* allowances, travelling expenses and other fringe benefits. There are also vast opportunities for pickings in bribes, state contracts, diversion of public funds to private uses and commissions of various sorts. To be a Minister is to have a lifetime's chance to make a fortune. [31]

This was a lecture delivered in 1965. How trully depressing that these comments are even more valid today, 17 years after they were first made. In his Kwame Nkrumah Memorial Lecture entitled "The Problems of Africa" delivered at the University of Cape Coast Ghana in 1976, another statesman and politician who had been intimately involved in West African politics for over 40 years, Chief Obafemi Awolowo, had this to say about Democracy and Human Rights:

The solution to the problem of individual freedom is for all the Governments of Africa to take early steps to liberalise and democratise themselves, to acknowledge and defer to the sovereignty of the people, and to restore to the people and the press all the fundamental freedoms

enshrined in the U.N.'s Universal Declaration of Human Rights to which African States have subscribed.

With one or two exceptions, I think it is correct to say that today, African States are guilty of tyranny and oppression towards the masses of Africans in the same way as the Colonial Powers were. Indeed it can be said that the African States concerned are guiltier. For under colonial rule, the voice of dissent was allowed to be raised and was not silenced or forbidden as now; political activities were permitted and there was no indefinite state of emergency such as is now the common feature all over Africa. [32]

6. Consequences of the Suppression of Human Rights

Since 1945, International Law, the U.N., its agencies and related organisations, have played the decisive role in bringing freedom and welfare to Africa and African peoples. They have been the constant and unfailing friends and allies of African States. This happy and fruitful relationship cannot for long endure if the wide-spread violations of Human Rights in Africa continue. Very soon, Namibia will be free, and South Africa will remain the only bastion of racial discrinination and resister of self-determination in Africa. Sooner or later, therefore, International Law will turn its search-lights on the Human Rights situation in Africa States. It would then be forced to use the very same instruments, agencies and machinery it has employed for so long in fighting against the breaches of Human Rights in South Africa, to combat breaches of Human Rights in black African States. It will be a sad day for Africa when it can no longer count on International Law and the U.N. as allies, but suddenly discovers them as foes.

However, it is important to appreciate when that day

comes, that the role of International Law and the U.N. will remain constant and consistent – that of protector of the freedom and welfare of man, against oppressors.

As Chief Awolowo pointed out in the Lecture already referred to, there is no reason why the people of Africa should accept oppression simply because the new oppressors are fellow Africans, and countrymen , and not the white imperial masters or the white minority in Southern Africa.

> . . . . What African leaders must bear in mind is this. Tyranny and oppression cannot be more tolerable simply because they wear native garbs. The apparent calm which pervades Africa today is unnatural; unnatural because it has been induced by fear and suppressed resentment, and not by any kind of voluntary acquiescence, conformity or approval, on the part of the people. Furthermore, fear inhibits initiative and, no matter what we do, neither full development nor full employment of our human resources can properly take place under the abnormal circumstances in which the vast majority of Africans now live.
>
> It follows, therefore that the sooner we terminate the existing human deprivations and state of wide spread fear and latent instability and allow the people to choose their leaders in a free and fair election, in short the sooner we restore to the people their inherent civil rights and liberties, the better for material progress and spiritual well-being of all the peoples of Africa and for the enhancement of Africa's self-respect as a civilised continent in the comity of nations. [33]

As was pointed out earlier, International Law sanctions could in future be imposed directly on African States committing gross breaches of Human Rights. However in addition to direct sanctions, such delinquent regimes could be subjected to indirect sanctions. The Idi Amin regime was toppled

from Uganda by foreign intervention and invasion by Tanzanian troops. Under normal circumstances, the Tanzanian action could have been charaterised and condemned as an act of aggression against Uganda; this in spite of Idi Amin's provocative military adventure to the River Kagera. But so rotten and bloodstained was the Amin regime that the Tanzanian invasion and conquest of Uganda was regarded as lawful in International Law as an act of humanitarian intervention.

The right has frequently been exercised by a State in another sovereign State "when a government although acting within its rights of sovereignty, violates the rights of humanity, either by measures contrary to the interests of other States, or by an excess of cruelty and injustice which is a blot on civilisation."[34]

The European powers often exercised this power against Turkey in the 19th Century, for the latter's inhuman treatment of the Balkan populations under its control.[35] Also the Belgians justified their paratroop landing in Stanleyville (Congo/Zaire) in 1964, for the purpose of rescuing foreigners taken hostages by the break-away regime there, by a reliance on the right of humanitarian intervention.[36]

Thus it is clear that violation of the Human Rights of one's citizens, not only leads to internal instability and stagnation, but can also constitute a threat to international peace and security.

7. Africa, Human Rights and the Future

The first step towards the improvement of the present state of Human Rights in Africa is to embark on effective enforcement of existing international and national legal obligations on this subject. Judicial and quasi-judicial organs of enforcement must be established when they do not exist, and made effective, where they already exist. Those within the common law system must allow resort to the

prerogative writs of *Hebeas Corpus, certiorari, mandamus* and *probibition.* This also means that the independence of the judiciary must be guaranteed, and that only men of great courage and of the highest moral fibre and integrity should be appointed to the higher bench.

In the civil law countries, the administrative courts which handle cases between the State and the citizen must also be given enough powers and independence to enable them protect citizens against state oppression. Officials actually responsible for carrying out acts contrary to the Human Rights of other citizens should be made personally liable, both in tort and in criminal law. There should never be an "unknown soldier" in the history of the protection of Human Rights again.

The Ombudsman system which originated in Sweden, but has become widely adopted all over the world, including Nigeria, could be improved and made more effective. The Ombudsman or Public Complaints Commissioner, should represent individuals in cases where the right of the individual under the law has been infringed upon or violated by a public official or officials. He should be given extensive powers to receive and investigate individual complaints as well as complaints through the press and other information media. He should also have powers to initiate investigations personally and to inspect public institutions such as prisons and police cells to ascertain whether breaches of individual rights have occurred in them. He should be given the powers to institute criminal proceedings against public officials for the abuse of powers or authority conferred on them. The Ombudsman is particularly useful in developing countries, where the ordinary ctizen cannot afford to initiate court proceedings in order to challenge a violation of his Human Rights.[37]

Finally, Africa must follow the footsteps of Western Europe and set up a regional machinery for the promo-

tion and protection of Human Rights. Under the European Convention of Human Rights, the Human Rights Commission, the Court of Human Rights, and the Council of Ministers, were established to ensure compliance with the Rights provided for the Convention. One State can make a complaint that another one is violating the Human Rights of its own citizen. Moreover, a citizen can complain to the Commission that his own State has violated his Rights.

As one learned commentator declared recently with regard to the European Convention of Human Rights:

> For the first time in world history a citizen is legally empowered to take his own Government to an international judicial forum, the European court of Human Rights for the vindication of his legal rights. In Europe where the Human Rights Convention has been adopted, over 200 million citizens of the signatory States can secure remedies against their governments by referring their grievances to the European Court and its kindred institutions – the European Commission and the Committee of Ministers. By any standard, this is a constitutional revolution of the highest moral and philosophical magnitude. In sum, it means the complete subjection of government to the rule of law. [38]

The irony of this of course is that it is Africans who need a Commission of Human Rights and a Court of Human Rights. The Western Europeans who do not seriously need these institutions have them, and the Africans who need them badly, would not have them.

The U.N. has made many vigorous attempts since 1969 to persuade the member States of the O.A.U. to establish an African Human Rights Commission.[39] These efforts have at last borne some fruits. In January 1981, a meeting of the Ministers of Justice of the member States of the O.A.U. adopted a draft Charter of Human and Peoples Rights.

This was subsequently approved by the Assembly of O.A.U. Heads of State and Government. The Charter is to come into force after ratification by the 26th O.A.U. State. An African Commission on Human and Peoples Rights would then be established to promote the Charter, protect the rights laid down in it and investigate serious abuses of the rights guaranteed by the Charter with a view to providing a remedy.

The substantive provisions of the Charter cover all areas of Human Rights encompassed by the U.N. covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights.

In spite of its short comings – it does not prescribe the extent to which derogations may be made in times of emergency, nor does it contain a positive right of workers to form trade unions – it is nevertheless, a positive concrete and significant development towards the effective protection and promotion of Human Rights in Africa.

Unfortunately, so far, only 12 states have ratified it. These are: Congo, Egypt, Gabon, Guinea, Mali, Mauritania Rwanda, Senegal, Sierra-Leone, Somalia, Togo and Tanzania. It is particularly disturbing that Kenya, whose President is the current Chairman of the O.A.U. and Nigeria, which has the largest black population in the world, and is the so-called leader of Africa, have so far failed to ratify the Charter. The general reluctance of African States to ratify their own treaty on Human Rights, is an eloquent testimony of the African attitude to the protection and promotion of human rights generally. O.A.U. States which are so concerned with human rights' violations in South Africa would strengthen their case against that delinquent State by showing that they are equally concerned about violations in their own territories. This concern should be demonstrated by the immediate ratification of the African Charter on Human and Peoples Rights.

In the final analysis, the best guarantee of Human Rights

is a change in the attitude of man in Africa. Once he undergoes the necessary change, once he rises to the standard where he has nothing to gain by oppression, when his nature has acquired the ingredient that will enable him have a correct sense of values, in short once he succeeds in curbing his primitive and obsessive lust for power, privilege and money, the protection of Human Rights will become second nature to him. Let us hope that that day will not be too long in coming.

FOOTNOTES

1. University of Ife, Nigeria, Inaugural Lecture Series, No. 14.
2. *Ibid.* No. 29.
3. U. Thant, Secretary-General of the United Nations, 1961 – 1970 in *Portfolio for Peace*, a Vice Publication at p. 122.
4. *Ibid.*
5. D.H. Harris. *Cases and Materials on International Law*, 2nd Ed. p. 499.
6. See for example: (i) Umozurike, *Self-Determination in International Law* Archon, 1972; (ii) *The Development of International Law Through the Political Organs of the United Nations*, Rosalign Higgens; (iii) Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations;* (iv) I.E. Sagay, *International Law and the Southern African Situation;* N.I.I.A., Lecture Series No. 24, pp. 5-21.
7. I.E. Sagay, *International Law and the Southern African Situation, Ibid.* N.I.I.A. Lecture Series, No. 24, 1978, p. 16.
8. General Assembly Res. 1514 (XV) of 14 December 1960.
9. Julian Friedman, *Basic Facts on the Republic of South Africa.*
10. Res 1904 (XVIII) of 20 November 1963.
11. Pleadings, *South West Africa Cases, I.C.J. Pleadings* Vol. 4, p. 266, (1966).
12. Res 2106A (XX)
13. Res 2922 (XXVII)
14. See for example, General Assembly resolutions 2621, 2627, 2708, 2646, 2649, 2714, 2704, 2678, 2652, 2734, 2671, and 2707 adopted in the 25th Session alone (1970), of the General
15. Res. 32/36 of 28 November 1977. For a discussion and documentation of U.N. action in this regard, see the U.N. publication, *United Nations Action in the Field of Human Rights*, New York 1980, pp. 224 and 246 - 247.
16. *International Legal Materials*, Vol. XVI, No. 6, November 1977.
17. Kurt Waldheim, culled from *Reshaping the International Order (RIO)*, a Report to the Club of Rome, coordinated by Jan Tinbergen, 1977 p. 9.
18. See Titles I and II of the Lome Convention 1975.
19. U.N. Doc. TD/Res/93 (IV).
20. For a detailed discussion of aspects of the proposals for a New International Economic Order See (i) *ECOWAS Within the Framework of International Economic Law*, Unpublished LL.M. Dissertation by Ime Udom, and (ii) Christos Theodoropoulos

"Commodity Agreements and the New International Economic Order," a paper presented at the Regional Workshop on the Teaching of International Law, Institute of Advanced Legal Studies, Lagos, 21-25 July 1980.

21. *United Nations Action in the Field of Human Rights* (1980), p. 5.
22. *Ibid.*
23. *Ibid.* See also the U.N. publication entitled *The International Bill of Human Rights.*
24. *Ibid.*
25. See, *United Nations in the Field of Human Rights,* U.N. Publication ST/HR/2/Rev. 1. (1980).
26. U.K.T.S. 70 (1950), Cmd. 8969.
27. Preamble.
28. O.A.U. Charter. Article 11(e).
29. For facts about conditions in African States, see (i) *Africa Guide,* 1980, (ii) *Africa, Year Book and Who is Who.*
30. *The Economist* 23-29 January 1982, survey pp. 3 - 4.
31. W. Arthur Lewis, *Politics in West Africa,* O.U.P. (1965) pp. 30-32.
32. Chief Obafemi Awolowo, *The Problems of Africa,* MacMillan (1977) p. 70.
33. *Ibid,* p. 70.
34. Professor Arntz, *Revue du Droit International,* 1876 Vol. 8 p. 675.
35. See A.G. Stapleton, *Intervention and Non-intervention* (London, 1866).
36. U.N. Doc. S/6063.
37. U.N. Publication ST/HR/SER.A./2 – The Report of the U.N. Seminar on National and Local Institutions for the Promotion and Protection of Human Rights.
38 Olu Onagoruwa, *Human Rights in Nigeria and its International Perspective – An Appraisal,* a Lecture delivered to the Law Students' Society of the University of Ife on 30th April, 1982.
39. *Seminar on the Establishment of a Regional Commission of Human Rights with Special Reference to Africa,* U.N. Doc. ST/TAO/HR/38, 1969 and *Seminar on the Study of New Ways and Means of Promoting Human Rights with Special attention to the Problems and Needs of Africa,* U.N. Doc. ST/TAO/HR/48, 1973.