

**REPORT ON THE APPLICATION OF INTERNATIONAL INSTRUMENTS IN
NIGERIA**

By Hon. Justice M. A. Borisade, President National Industrial Court of Nigeria.

Nigeria has a written Constitution now cited as: "Constitution of The Federal Republic of Nigeria 1999." The Constitution is the Supreme Law of the Land and its provisions are binding on all authorities and persons throughout the Federal Republic of Nigeria [See Section 1(1)].

If any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void. [Section 1(3)].

Section 12(1) of the Constitution provides that no International Instrument, e.g. treaty or Convention shall have the force of law except to the extent to which any such instrument has been enacted into law by the National Assembly of the Federal Republic of Nigeria.

The effect of this Constitutional provision is that International Instruments like I.L.O. Conventions, even after ratification by Nigeria, have no legal effect upon the rights and duties of the citizens of Nigeria except such Conventions have been properly enacted into law by the National Assembly or promulgated by a Decree, if it were during the Military regime.

Nigeria became a member of the International Labour Organisation (I.L.O.) in 1960 after the country gained her independence from Britain. Since independence in 1960, Nigeria has ratified the following International Labour Conventions:

c.8	Unemployment indemnity (Shipwreck) Convention, 1920 (No.8)	16.06.1961
c.11	Right of Association (Agriculture) Convention, 1921 (No. 11)	16.06.1961
c.15	Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)	17.10.1960
c.16	Medical Examination of Young Persons (Sea) Convention, 1921 (NO.16)	17.10.1960
c.19	Equality of Treatment (Accident Compensation) Convention, 1925 (No.19)	17.10.1960

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c.58	Minimum Age (Sea) Convention (Revised), 1936 (No.58)	16.06.1961
c.59	Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	16.06.1961
c.64.	Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)	17.10.1960
c.65	Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)	17.10.1960
c.81	Labour Inspection Convention, 1947 (No.81) Excluding Part II	17.10.1960
c.87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)	17.10.1960
c.88	Employment Service Convention, 1948 (No.88)	16.06.1961
c.94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	17.10.1960
c.95	Protection of Wages Convention, 1949 (No. 95)	17.10.1960
c.97	Migration for Employment Convention (Revised), 1949 (No. 97) Has excluded the provisions of Annexes I to III	17.10.1960
c.98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	17.10.1960
c.100	Equal Remuneration Convention, 1951 (No.100)	8.05.1974
c.104	Abolition of Penal Sanctions (Indigenous workers) Convention, 1955 (No. 104)	25.10.1962
c.105	Abolition of forced Labour Convention, 1957 (No.105)	17.10.1960

c.116	Final Articles Revision Convention, 1961 (No.116)	27.06.1962
c.123	Minimum Age (Underground Work) Convention, 1965 (No. 123) Minimum age specified: 16 years	14.05.1974
c.133	Accommodation of Crews (supplementary Provisions) convention, 1970 (No. 133)	12.06.1973
c.134	Prevention of Accidents (Seafarers) //convention, 1970 (No.134)	12.06.1973
c.144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	3.05.1994
c.155	Occupational Safety and Health Convention, 1981 (No. 155)	3.05.1994

Although the above-mentioned Conventions have not been specifically incorporated into the country's domestic law, a good number of their provisions have either been entrenched in the Constitution of the Federal Republic of Nigeria or reflected in the Country's labour legislation.

Examples of I.L.O. Conventions entrenched in the Nigerian Constitution are:

Convention No.29 – Forced Labour Convention, 1930: mentioned in Section 34, Chapter IV of the Constitution under the Fundamental Rights.

Convention 87 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) mentioned in Section 40 of the Constitution.

Convention 98 – Right to Organise and Collective Bargaining Convention 1949 (No. 98) mentioned in Section 40 of the Constitution.

Convention No. 100 – Equal Remuneration Convention, 1951 (No.100) mentioned in Section 17 of the Nigerian Constitution

African Charter on Human and People's Rights made in Banjul on the 19th day of January, 1981 has been incorporated into the domestic law of Nigeria vide AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (RATIFICATION AND ENFORCEMENT) ACT, CAP 10, Laws of the Federation of Nigeria 1990.

The provisions of a number of I.L.O Conventions connected with labour matters are also incorporated in the Labour Act, CAP 198 Laws of the Federation of Nigeria, 1990.

The hierarchical classification of sources of domestic law in Nigeria was enunciated by the Supreme Court of Nigeria in the case of LABIYI Vs. ANRETIOLA reported in (1992) Nigerian Weekly Law Reports (NWLR) Part 258 at page 139 as follows:

1. Constitution (Suspension and Modification) Decree 1984
2. Decrees of the Federal Military Government
3. Unsuspended provisions of the Constitution 1979
4. Laws made by the National Assembly before 31/12/83 or having effect as if so made.
5. Edicts of the Governor of a State in Nigeria
6. Laws enacted before 31/12/83 by the House of Assembly of a State, or having effect as if so made.
7. Common Law as represented by judicial precedents.

The above classification was applicable under the former Military regime.

The position under our present democratic dispensation will be as follows:

1. Constitution of the Federal Republic of Nigeria 1999.
2. Laws made by the National Assembly (Senate and House of Representatives), and assented to by the President Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria;
3. Laws enacted by the House of Assembly of a State.
4. Common Law as represented by judicial precedents.

Once the provisions of an International Instrument are incorporated into domestic law by the appropriate legislative authority, they rank at par with domestic law, they become binding, and Nigerian Courts must give effect to them like all other laws falling within the judicial powers of the courts in Nigeria.

The place of International Instruments incorporated into the domestic law of the Country was well articulated by the Supreme Court of Nigeria in the case of ABACHA V. FAWEHINMI (2000) 6 NWLR Part 660.

The facts of the case are:

The respondent is a legal practitioner, an author, publisher, human rights activists, pro-democracy campaigner and the National Co-ordinator of

the National Conscience Party (NCP). On Tuesday, 30th January, 1996 at about 5.15 in the morning, a horde of Police and State Security Service (S.S.S.) officers of the appellants, fully armed with guns, invaded his residence. Without presenting any warrant of arrest or giving any reason therefore, they arrested the respondent and took him away to S.S. S. Lagos State Office at Shangisha, Lagos and detained him for about a week without anybody to see him. Thereafter, he was secretly transferred to Bauchi Prison and detained thereat.

As a result of the foregoing, an application for the enforcement of the respondent's fundamental rights was filed at the Federal High Court, Lagos on behalf of the respondent seeking the following reliefs:

1. A declaration that the arrest of the applicant, Chief Gani Fawehinmi, at his residence at 9A Ademola Close, GRA, Ikeja, Lagos on Tuesday, January, 30, 1996 by the State Security Service (S.S. S.) or officers, servants, agents, privies of the respondents and/or of the Federal Military Government constitutes a violation of the applicant's fundamental rights guaranteed under Articles 4, 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap.10 Laws of the Federation of Nigeria, 1990 and is therefore illegal and unconstitutional.
2. A declaration that the detention and the continued detention of the applicant without charge since Tuesday, January 30, 1996 when the applicant was arrested by the officers, servants, agents and privies of the respondents at his residence 9A Ademola Close, GRA, Ikeja, Lagos constitutes a gross violation of the applicant's fundamental rights guaranteed under Articles 5, 6 and 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria, 1990 and is therefore illegal and unconstitutional.

After leave was granted and service of the appropriate processes were effected on the appellants they files a preliminary

objection to the action challenging the competence of the suit in the following terms among others:

"That the applicant/respondent cannot maintain this action against the respondent/applicants on the ground that the Court lacks the constitutional jurisdiction to entertain any action relating to the enforcement of any of the provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.1990."

At the hearing of the preliminary objection, the appellants contended that the respondent was detained pursuant to a detention order signed by the Inspector-General of Police under the provisions of the State Security (Detention of Persons) Decree No.2 of 1984 (as amended) and consequently the court has no jurisdiction to hear the action in that its jurisdiction was ousted by the Decree. The respondent's counsel in his argument contended that the Inspector General of Police has no power to issue the detention order in that Decree No.11 of 1994 which sought to vest him with that power was otiose; that the provisions of the said Decree No.2 of 1984 are inferior to and cannot override the provisions of the African Charter on Human and Peoples' Rights under which the respondent was seeking the aforesaid reliefs.

The trial court after hearing arguments on the objection, upheld it and struck out the suit of the respondent. The respondent consequently appealed to the Court of Appeal against the decision of the trial court.

The Court of Appeal in a unanimous judgement upheld the decision of the trial Court on the ground:

"That the learned trial judge was right in coming to the conclusion that the Inspector-General of Police is empowered to issue a Detention Order under the provisions of Decree No. 2 of 1984 as amended and he had no jurisdiction to entertain the matter in that by virtue of the provisions of Section 4 of Decree No.2 of 1984 as amended and Decree No.12 of 1994, the jurisdiction of the court is ousted to entertain the appellant's case." The Respondent appealed to the Supreme court against the judgement of the Appeal Court particularly as it relates to the status of the African Charter on Human and Peoples' rights.

In the determination of the appeal, the Supreme Court considered the following statutory provisions:

- a. Constitution of the Federal Republic of Nigeria 1999, Section 12(1): which states:

"12(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly."

- b. The African Charter on Human and Peoples' rights (Ratification and Enforcement) Act, Cap.10, Laws of the Federation of Nigeria, 1990, Section 1: which states:

"As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria".

The provisions of the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) Cap. 10, Laws of the Federation of Nigeria, 1990, Articles 1, 4, 5, 6 and 12 are:

- "1. The member States of the Organisation of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them."
- "4. Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
5. Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.
6. Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons

and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained."

- "12(i) Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
- (ii) Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality.
- (iii) Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the laws of those countries and international conventions.
- (iv) A non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
- (v) The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups."

Allowing the appeal in a unanimous decision, the Supreme Court of Nigeria held as follows:

1. *On Meaning, import and purport of a Treaty –*
According to the Vienna convention on the Law of Treaties of 1969, "treaty" means an international agreement or by whatever name called, e.g. Act, Charter, Concordant, convention, Covenant, Declaration, Protocol or Statute, concluded between states in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
2. *On Principles governing interpretation and application of a treaty or convention –*
/ The spirit of a convention or treaty demands that the interpretation and application of its provision should meet international and civilised legal concepts. That means those concepts which are widely acceptable and at the same time of clear certainty in application. Thus,

the courts will not construe a statute so as to bring it into conflict with international law./

3. *On Condition precedent to bindingness of international treaty on Nigeria -*
An International treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, it has no such force of law as to make its provisions justiciable in our courts. This was the tenor of section 12(1) of the 1979 Constitution now re-enacted in section 12(1) of the 1999 Constitution.

4. *On Effect of enactment of international treaty into domestic legislation-*
Where an international treaty entered into by Nigeria is enacted into law by the National Assembly; as was the case with the African Charter on Human and Peoples' Rights which is incorporated into our domestic law by the African Charter on Human and Peoples' rights (Ratification and Enforcement) Act, it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts./

5. *On Import and purport of the African Charter on Human and Peoples' Rights -*
"The African Charter as far as Nigeria is concerned, is not purely a matter of public international law (or international customary law per se) regulating the relationship between member states which are signatories to it. It is an understanding between some African States concerned to protect and improve the human rights and dignity of their citizens and other citizens within the territorial jurisdiction of their countries, to the commitment of which, that understanding has been translated into a legal obligation by adopting the Charter as domestic law. In our own case, it is the African Charter on Human and Peoples' rights (Ratification and Enforcement) Act earlier referred to which is the domestic law."

6. *On Status and applicability of the African Charter in Nigeria -*
By virtue of the African Charter on Human and Peoples' rights (Ratification and Enforcement) Act, Cap 10, Laws of the Federation of Nigeria, 1990 the African Charter is now part of the laws of Nigeria and like all other laws courts must uphold it.

7.

On Jurisdiction of domestic courts to enforce Articles of the African Charter –

The individual rights contained in the Articles of the African Charter on Human and Peoples' rights are justiciable in Nigerian courts. Thus, the Articles of the Charter show that individuals are assured rights which they can seek to protect from being violated and if violated to seek appropriate remedies; and it is in the national courts such protection and remedies can be sought and if the case is established, enforced.

8.

On Status of African Charter on human and Peoples' Rights (Ratification and Enforcement) Act vis-à-vis other municipal statutes –

The African Charter on Human and Peoples' rights (Ratification and Enforcement) Act, Cap.10, Laws of the Federation of Nigeria, 1990 is statute with international flavour. Being so, therefore, if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. Thus it possesses a greater vigour and strength than any other domestic statute. ¹

9.

On Procedure for enforcement of a right or remedy where no specific procedure provided for –

When there is no provision as to the procedure to be followed in enforcing the jurisdiction conferred, the plaintiff is entitled to bring the case in the usual form of an action and have it heard. This is because the courts make less fuss about complaints based solely on adjectival law that tend only to impede the attainment of justice. The maxim *ubi jus ibi remedium* (where there is a right there is a remedy) holds good.