

Appraising the Jurisprudence of the African Commission on Human and Peoples' Rights from 1995-2000 with Respect to the ESC and Solidarity Rights and its Legal Impact on the Status of Human Rights in Nigeria

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Introduction

Human rights had become internationalized. The European region had in 1950, procured the European Convention on Human Rights whilst the Americas had the Inter-American Convention on Human Rights in 1969. With this background and Africa's abhorrent record on human rights violations including slavery and slave trade, colonialism, apartheid, military and dictatorial regimes (some associated with looting the national treasuries of their States), there was an urgent need, even pressure, both from within and outside the continent, for an African Human Rights' Charter. Agitations were even stirred at the UN level in the same direction.¹

Concerned with this need, there was the Pan - African collaboration on human rights as initiated by the International Commission of Jurists which organized a conference of jurists in Lagos. "The Laws of Lagos" was a consequence of this conference. It contained *inter alia* a demand for an African Human Rights Charter complemented with a Human Rights Court. It was President Sedar Senghor of Senegal who secured the resolution of the OAU to direct the Secretary- General of the OAU to set the machinery in motion for an African Charter. The said Charter was adopted in the Nairobi Conference of Heads of State and Government in 1986.

It was incorporated into Nigerian Law as African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 of 1990. Having suspended Chapter 4 of the 1979 Constitution, the military regimes of Ibrahim Babanginda and Sani Abacha felt unlimited to further violate the human rights of Nigerians. But with the aid of the African Charter which Nigeria had domesticated, thus, becoming part of the domestic law, the violated became legally emboldened to challenge the violations of their human rights which the Nigerian Military Governments had frustrated through the regime of ouster clauses to incapacitate the courts.

The interpretation of the African Charter provisions by the African Commission of Human and Peoples' Rights is inevitable since it will form authoritative source not only for determining the legal status of the Charter provisions but further to appraise the status of the enforcement of human rights in Nigeria. It is in this context that this paper appraises how the Commission has treated the issue of the ESC and Solidarity rights, particularly with respect to those cases that emanated from Nigeria within 1995-2000. The paper will highlight the rights and duties provided by the Charter. It will undertake a survey of the ESC and Solidarity rights cases that came before the Commission and finally appraise same with respect to its impact on the legal status of the said rights. The appraisal will conclude with a way forwards towards implementing the regime of ESC and solidarity rights in Nigeria.

The Rights Protected Under the African Charter on Human and Peoples' Rights

Civil and Political Rights

Unrestricted Rights

¹ See Ojo and Sessay, "The OAU and Human Rights: Prospects for the 1980s and Beyond", 9 HRQ, 1986, No. 1, 89. See also, on the Origin of the African Charter, U.O. Umzurike; The African Charter on Human and Peoples' Rights, Martinus Nijhof Publishers, The Hague, 1997, Chapter 2

The Charter guarantees the following rights unrestricted, the rights to equality before the law, human dignity and inviolability. Further, it prohibits all forms of degrading treatment and exploitation, particularly slavery, torture and degrading punishment.

Fair hearing is guaranteed and Article 7 lists the elements thus: the rights to be heard, to appeal, presumption of innocence, right to defence by counsel of one's choice, and trial within a reasonable time by an impartial court or tribunal. Article 7(2) prohibits retroactive criminal legislation and insists that only the offender may be punished personally.

Restricted Rights

The qualified rights include the right to life, liberty, freedom of conscience, freedom of expression, freedom of association, assembly and movement. The provisions are short of making express derogations, rather it preferred, the following phraseology: "except for reasons and conditions previously laid down by law", "subject to necessary restrictions provided for by law," and "in accordance with law". Unlike the Nigerian Constitution of 1999 that stated "reasonably justified in a democratic society" or the European Convention that employed the phrase "strictly required by the exigencies of the situation", the Charter did not make any such references. There was no specific provision of the right to form trade unions as is with the European and Inter-American conventions, excepting incorporating same in Article 10(2) which makes reference to Article 29.

Article 13 secures the right of everyone to participate in government directly or through freely chosen representatives in accordance with the provisions of the law. This provision contemplates prohibition of military coups in Africa, which has become embarrassing. Again no special provision was made for emergencies. The Charter secures the independence of the judiciary and provides in Article 12(3) that any person may leave a country, including his own and, may seek asylum in other countries if persecuted. It guarantees "equal access to the public service" and to "public property and services". Prohibition is placed on discrimination against permanent residents of a federation on the basis of the origin of their ancestors.

The emphasis on equality is with respect to the individuals and the units of a state and Article 12(5) prohibits mass expulsion of non-nationals. "Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups". But this does not erode a state's competence to determine the conditions of entry for non-nationals. But once admitted, an alien becomes entitled to certain rights, including the right not to be expelled until after due process. The right to receive information and, also, to express and disseminate one's opinion is guaranteed in Article 9.

Article 14 protects the right to property but provides that it may "be encroached upon in the interest of public need or in the interest of the community and in accordance with the provision, of appropriate law". No mention is made of the level of compensation whether "prompt, effective and adequate"² or according to UN Standard of "appropriate" or "reasonable". In Article 15, the Charter guarantees the right to work under equitable and satisfactory conditions and equal pay for equal work. Individuals are entitled by virtue of Article 16 to enjoy "the best state of physical and mental health". In Article 16(2), a state is obliged not only to protect the health of the people, but further, "to ensue that they receive medical attention when they are sick". Article 17 guarantees the right to education, strangely though, this right is not limited to any level, it may mean that it includes primary, secondary, tertiary, vocational and adult education.

Group Rights

The Charter in Article 20 asserts the controversial right to self-determination of the people enabling them to freely determine their political, economic and social development. This right is dented with doubts as to its content and who is entitled to exercise it. Moreso, it is feared that the realization of this right will encourage secession and the break-up of sovereignty.

It is generally accepted that the right entails the right of any people to determine their future. This according to a learned writer "may assume the form of unitarism, federalism and confederalism or any other relations acceptable to the people"³. The component of a State that exercises it must have a reasonably identifiable interest and the more substantial the number in the group, the more effectual its realization.

² See Note of 3 August, 1938 reproduced in US Department of State Bulletin, Compensation for American Owned Lands Expropriated in Mexico 9Inter-American Series No. 16, 1938).

³ U.O. Umozurike, *ibid*, p. 28

The exercise of this right cannot be carried out in isolation as it must take cognizance of other principles of law such as sovereignty, territorial integrity and non-interference in internal affairs. But political and military realities cannot be ruled out.

Some claimants of this right have succeeded whilst others have failed with dire consequences. It is desirable that legitimate claims to self-determination succeed so that good governance and democracy will be enthroned which will be the evidence of manifestation of the right.⁴ It has become customary that colonized people are entitled to independence even with external support and use of force, “nothing shall justify the domination of a people by another”, so declares the Charter.⁵ This declaration is mainly directed to states with heterogeneous societies since experience has shown that independence does not automatically guarantee the rights of all peoples in the state to actively participate in government or alternatively be left to carry on as they can best do. This realization informed a learned writer’s position that: “this confirms our view that long after the demise of colonialism, self-determination shall still be relevant to people in metropolitan territories. It must not be thought of only in the colonial context”.⁶

Article 21 of the Charter provides that people are entitled to dispose of their natural wealth and resources and to lawful recovery or compensation in the event of spoliation or dispossession. In Article 21(5), states are called upon to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies. The right to national and international peace and security is guaranteed. All peoples have the right to equal enjoyment of the common heritage of mankind.

Women, children, the aged and the disabled (or challenged) are the four groups of persons that are marked out for special protection. States are obliged to ensure the exercise of the right to development and create a favourable environment for its realization.⁷ These categories of rights are referred to as the first, second and third generations of rights, respectively. They are so called not due to the fact that one group of rights develops and then dies for the subsequent one to emerge but that it reflects the time of their recognition in international law.

The Duties

The Charter took a further step by including duties in an international human rights instrument.⁸ The practice has been to enumerate rights and imply duties. In Chapter 11, Articles 27 to 29, the Charter recognized the duties of an individual to the family-preserve its harmonious development and cohesion, respect parents and maintain them in case of need. There is duty to the Nation- serve the nation, preserve its independence, integrity, security and solidarity and pay taxes. Also, the individual owes duties to the international community and other legally recognized bodies. Further, there is a duty to preserve positive African cultural values and to achieve African unity. But the process of enforcing these duties was not contemplated as it was not provided for.

In Part II: Measures of Safeguard, Chapter 1, Articles 30 to 45, the African Charter imposes the duty of enforcing the Charter on the African Commission which consists of eleven members. The functions of the Commission are to promote and protect human rights, lay down the principles for legislation on matters of human and peoples’ rights, interpret the Charter at the request of the OAU, its organs or organizations recognized by it and carry out other functions assigned to it by the Assembly of Heads of State and Government.

Based on the foregoing, it has participated in observing elections as part of OAU observer team. With the promotional responsibilities, it has organized and participated in the organization of seminars, symposia, and conferences. With the duty to “protect”, it has considered complaints from state parties against other states that were considered to have breached the provisions of the Charter. But so far, the greater number of complaints have come from individuals, groups and non-governmental organizations.

Upon receipt of a complaint, the Commission considers it for preliminary admissibility under Article 56 of the Charter and its Rules of Procedure and refers it to the state complained against.

⁴ See, U.O. Umzurike, *Self-Determination in International Law*, Archan Books, Connecticut, 1992 passim.

⁵ *Ibid*, Chapter 8

⁶ U.O. Umzurike, “The African Charter and National Laws: The Issue of Supremacy” *op. cit.*, p. 29

⁷ See K. Vasak, “A Thirty-Year Struggle-The Efforts to give Force of Law to the Universal Declaration of Human Rights”, *UNESCO Courier*, (Nov. 1977). For Criticism, see, R. Rich, “The Right to Development. A right of Peoples?”, In J. Crawford, *The Right of Peoples* 39-43.

⁸ Prof. U.O. Umzurike saw it as breaking “new grounds” by the Charter.

The Commission may call for oral evidence and then tries to reconcile the parties and restore good relations and then reports its activities to the Assembly of Heads of States. It may also refer urgent and serious situations of human rights violations to the Assembly of Heads of State.⁹

Treatment of Economic, Social and Cultural Rights by the Commission

Right to Work: Article 15

In Communication 39/90¹⁰, Annette Pagnouille of Amnesty International complained about Abdoulaye Mazou, a Cameroonian national. Mr. Mazon was imprisoned in 1984 by a military tribunal without trial, without witnesses, and without right to defence. He was sentenced to 5 years imprisonment for hiding his brother who was later sentenced to death for attempted coup d'état. Even after he had served his sentence in April 1989, he continued to be held in prison and was only freed by the intervention of Amnesty International on 23 May 1990. Although he was freed, he has not been reinstated to his position as a magistrate. The Commission found that by not reinstating Mr. Mazon to his former position after the Amnesty Law, the government has violated Article 15 of the Charter, because it has prevented Mr. Mazon to work in his capacity as a magistrate even though others who have been condemned under similar conditions have been reinstated.

This communication did not give the Commission the opportunity to discuss other ramifications of the right to work. All it showed is the jurisdiction the Commission has to pronounce upon a right that may ordinarily not be justiciable in most domestic jurisdictions. But the Commission did not find a cause to pronounce generally on "every individual shall have the right to work under equitable and satisfactory conditions..." The other questions such as — the extent of the liability of government in situations where there are no genuine economic restraints and where incapacity to provide jobs is as a result of lack of resources, still desire answers in order to fully appreciate the status of the right to work.

Articles 16 and 17: Right to Health and to Education

Communications 25/89¹¹, 47/90¹² 100/93¹³ allege *inter-alia* that public finances were mismanaged; that the failure of the Government to provide basic services was degrading; that there was a shortage of medicines; and that the universities and secondary schools had been closed for two years. The Commission, determined that the communications, taken together, evidenced a grave and massive violation of human rights in Zaria, brought the matter to the attention of the Assembly of the Heads of State of the Organization of African Unity, in December 1995.

The Commission held that Article 16 of the Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that States Parties should take necessary measures to protect the health of their people. It then concluded that the failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine as alleged constitutes violations of Article 16. The Commission equally held that since Article 17 of the Charter guarantees the right to education, that, the closures of universities and secondary schools constitute a violation of Article 17.

New elements were introduced by these communications which included the issue of mismanagement of public finances. The Commission was silent on that issue, maybe, because it could not address it under any recognized heading but nonetheless, reported the matter as a whole to the Assembly of Heads of States and OAU. The import of that referral was to underscore the political will it deserves to bring the violations to the fore which should have attracted the condemnation of Member states. The burden is not just that of the Commission, but even more of the Member States. Having brought the matter before the body, the Commission has discharged its obligation the rest is the political will to carry it into effect. It was the lack of that strong will that led to the disaster that ravaged Zaire. The law habit that cultures obedience to the rule of law is the responsibility of all, but more, that of political office holders. Communications 54/91¹⁴, 61/91¹⁵, 98/93¹⁶, 164/97¹⁷, 210/98¹⁸ relate to the situation prevailing in Mauritania between 1986 and 1992.

⁹ See Article 58

¹⁰ Annette Pagnouille v. Cameroon, 10th Annual Activity Report: 1996-1997

¹¹ Free Legal Assistance Group v. Zaire, 9th Annual Activity Report, (1995-1996)

¹² Lawyers Committee for Human Rights v. Zaire, 9th Annual Activity Report, (1995-1996)

¹³ Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah v. Zaire, 9th Annual Activity Report, 1995-1996

¹⁴ Malawi African Association v. Mauritania, 13th Annual Activity Report, (1999-2000)

The population of Mauritania is primarily composed of Moors (equally called Beidanes') and they live in the North of the country. There are various black ethnic groups, including the Soninke, Wolofs and the Hal-Pulaar in the South. The Haratines (freed slaves) are closely associated with the Moors, though they physically resemble the black population of the South. Consequent upon a coup d'etat of 1984 which brought Colonel Maaouya Ould sid Ahamed Taya to power, the government was criticized by members of the black ethnic groups for marginalizing black Mauritians. The Beidanes who favoured closer ties with the Arab world also criticized the government.

In the process of suppressing these oppositions, a great deal of infractions of human rights occurred in various shades including allegation of "endangering state security by participating in a plot aimed at deposing the government and provoking massacres and looting among the country's inhabitants". For this, a special summary procedure was applied, under the pretext that they had been caught in flagrante delicto.¹⁹ Spurious allegations were made by government and many persons were detained.

The conditions of detention were, at the very least, bad: the prisoners were not fed; they were kept in chains and locked up in over polluted cells lacking hygiene and access to medical care; some were burnt or buried in sand and left to die a slow death, electrical shocks were administered to their genital organs and they had weights tied on to them; their heads were plunged into water to the point of provoking suffocation; peper was smeared on their eyes and some were permanently kept in small, dark (or underground) cells which got very cold at night. Again both within and outside the prisons, the so-called "jaguar" position²⁰ was the form of torture utilized. The prisoners were beaten and their bodies burnt using various instruments. The women were raped.

In considering this state of affairs, the Commission held that the State's responsibility in the event of detention is even more evident to the extent that detention centres are its exclusive preserve. Being so, the physical integrity and welfare of detainees is the responsibility of the competent public authorities. It noted that some prisoners died as a result of the lack of medical attention. And that the general state of health of the prisoners deteriorated due to lack of sufficient food; they had neither blankets nor adequate hygiene. The Commission maintained that "(t)he Mauritanian state is directly responsible for this state of affairs.."

Human Rights apply to those who have been convicted, even condemned, and more especially those presumed innocent as they await the trial of their cases. Unfortunately this awareness is totally lacking in Africa including Nigeria. In Nigerian cells, and prisons, housing even the innocent, the state of hygiene is horrible, inmates sit for weeks and others maintain standing positions. The standard practice in Nigeria is that before a suspect is put inside the cell, he or she is stripped naked. This practice has refused to die despite the fact that it cannot be justified, notwithstanding detainee's state of health and the weather conditions. This is condemnable.²¹

With respect to the right to property as guaranteed in Article 14, the Commission held that the confiscation and looting of the property of black Mauritians and the expropriation or destruction of their land and houses before forcing them to go abroad, constitutes a violation of that right. It is worrisome that at the slightest agitation in Africa, property rights are infringed. Whether it is police or soldiers that are sent to bring normalcy to trouble spots, it turns to a looting venture. It happened in Nigeria at Odi, Ogoni, Zarki Ibiam. After the civil war, the government of Nigeria declared, "no, victor, no vanquished", nonetheless, some states expropriated the properties of the Igbos and justified same as 'abandoned properties'. The government of Nigeria has not taken a strong position against that, even after about 43 years of the war.

¹⁵ Amnesty International v. Mauritania, 13th Annual Activity Report, (1999-2000)

¹⁶ Ms. Sarr Diop, Union Interfricaine des Droits de l'Homme and RADDHO v. Mauritania, 9th Annual Activity Report, (1999-2000)

¹⁷ Collectif des Venves et Ayants-droits v. Mauritania, 13th Annual Activity Report, (1999-2000)

¹⁸ *Association Mauritanienne des Droits de l'Homme v. Mauritania*, 13th Annual Activity Report, (1999-2000)

¹⁹ This procedure provides for a trial without any prior investigation by an investigating magistrate. It restricts the rights of defiance as well as access to lawyers and allows the court to pass judgment without any obligation on the judges to indicate the legal bases for their conclusions.

²⁰ The victim's wrist are tied to his feet. He is then suspended from a bar and thus kept upside down sometimes over a fire, and is beaten on the soles of his feet.

²¹ The prison conditions in Guantanamo Bay detention facilities which has attracted consistent international condemnation is better than some 'homes' in Nigeria. When compared with the state of detention centres in Nigeria, the differences will shock the conscience of the international community.

In Communications 140/94,²² 141/94²³ and 145/95,²⁴ , in interpreting Article 14 of the Charter, the Commission was of the view that since the government did not offer any explanation for the sealing up of the premises of many publications, but maintained the seizure in violation of direct court orders, and that since those affected were not previously accused or convicted in court of any wrongdoing, the actions were in violation of Article 14.

Moreso, the right to property necessarily includes a right to have access to one's property and the right not to have one's property invaded or encroached upon. It concluded that the Decrees which permitted the newspapers to be sealed up and for publications to be seized cannot be said to be "appropriate" or in the interest of the public or the community in general.

One of the complaints in Communication 255/98²⁵ was that the search without warrant of CLO's premises and the seizure of its property is a violation of Article 14 of the Charter. The applicants contended that Article 14 implies that owners have the right to undisturbed possession, use and control of their property however they deem fit. Moreso, that there was no evidence offered of public need or community interest to justify the search and seizure. The Commission upheld these contentions.

Solidarity Rights

Right to Self — Determination

Communication 75/92²⁶ raises issues of great interest on the vexed right of self-determination. It was submitted in 1992 by M. Gerard Moke, President of the Katangese Peoples' Congress requesting the African Commission on Human and Peoples' Rights to: recognize the Katangese Peoples' as a liberation movement entitled to support in the achievement of independence for Katanga; recognize the independence of Katanga; help secure the evacuation of Zaira from Katanga. The complainants hinged their case on Article 20(1) of the African Charter on Human and Peoples' Rights. The Commission specifically noted that there are no allegations of specific breaches of other human rights apart from the claim of denial of self-determination. The implication of this is that for there to be a successful claim of self-determination, there must have been other breaches of other rights, which ofcourse if proven before the Commission, may lead to a decision to grant same.

It means therefore that in appropriate cases, the Commission may declare a people's right to self-determination. But one worry remains: what if a people genuinely desires and have resolved to determine their affairs, must the proof of other violations of other human rights be an obstacle? Must there be infringements of other rights before the right to self-determination will be realized? If so, is it limited to the right or must there be an amalgam of other violations to prove a breach of any human right? It must be noted that no group asks for the right of self-determination just for the sake of asking. Factors prompt the agitation and these factors bother on denial. The Commission stated the obvious when it held that: all peoples have a right to self-determination.

There may however be controversy as to the definition of peoples and the content of the right". This is understood because of the 'political content' of this right. It is this political content that makes its application inconsistent and generates the so called controversy. Its tendency to be controversial compels an initial reluctance on the courts and tribunals to hold that this has ripened for implementation. The Commission took a contentious position when it noted that: "(t)he issue in this case is not self-determination for all Zaireoise as a people but specifically for the Katangese". The Commission was merely preparing the ground to reject the application since it cannot be of fundamental consideration that the agitation is not for all Zaireoise.

It need not be. In the case of Alhaji Dokubo Asari, the leader of NDPVF who was detained for agitation for the right to self determination of his people, the Court of Appeal refused the application on the ground of an alleged statement by him that the country was evil and that he would continue to fight until its dissolution. The Court curiously held that: "when national security was involved, the issues of fundamental rights took second place"²⁷. With respect, this is a clear fallacy. The country exists for the people and not vice versa.

²² *CRP v. Nigeria*, 13th Annual Activity Report, (1994-1995)

²³ *CLO v. Nigeria*, 13th Annual Activity Report, (1999-2000)

²⁴ *Media Rights Agenda v. Nigeria*, 13th Annual Activity Report: 1999-2000

²⁵ *Huri-laws v. Nigeria*, 14th Annual Activity Report: 2000-2001

²⁶ *Congries du Peuple Katangais v. Zaire*, 18th Annual Activity Report: 1994-1995.

²⁷ Olabode Rhodes Vivour JCA, "Appeal Court Declines Dokubo's Bail Request": *Daily Independent* Thursday, June 8

Even the bare acknowledgement that these rights are fundamental defeats the fact that it can take second place. Yes, different measures may be taken in cases of emergency to realize those rights, but not to state that they take second place. A group that is wiped out because of perception of national security makes great mockery of the rights concept. Human rights do not disappear because of the existence of insecurity, some of them may be restricted, so that in the long-run, all will be realized. The Commission felt that self-determination may be exercised in any of the following ways: independence, self government, local government, federation, confederalism, unitarism or any other form of relation that accords with the wishes of the people but fully cognizant of other recognized principles such as sovereignty and territorial integrity.

It must be emphasized that all these variants of exercise of the right of self-determination definitely depends on the wishes of the people. This entails the realization that it is the wishes of the people that give impetus to the principles of sovereignty and territorial integrity and not otherwise. The people in exercise of the right to self-determination may wish a particular area to have integrity and sovereignty. It is not a practice that is generated outside the wishes of the people. The input of the people give the true colouration to these principles. This position recalls the problem in Bakassi. The President reached a deal on how to cede the Bakassi Peninsula to Cameroun.²⁸ The people of Bakassi vowed to fight the cessation of their territory, alleging lack of consultation by the authorities.

The Commission felt obliged to uphold the sovereignty and territorial integrity of Zaire and declined to hold that the Katange can exercise their right to self-determination. This is purely a legalistic position sustaining sovereignty and territorial integrity. The Commission may have sealed the problem legally, but factors on ground are radically different: wars, insecurity, famine, disease, etc. The former Soviet Union broke up and that region is better for it. If the reoccurring agitations in the Niger Delta, and South East can be arrested by recognizing their right to self-determination, so be it. In Communications 147/95²⁹ and 149/96³⁰, the complainants alleged that the right of the Gambian people to self-determination has been violated.

The applicant claimed that the policy that the people freely chose to determine their political status, since independence has been “hijacked” by the military. That the military has imposed itself on the people. The Commission held that it is true that, the military regime came to power by force, albeit, peacefully. It looks contradictory to state that military came to power by force and at the same time hold that process peaceful. When the people are cowed and intimidated into submission under the barrels of the gun, that cannot be properly classified as a peaceful process, unless it is the peace of the grave yard.

To brand the change peaceful is merely to source credibility where it is non-existent. But the Commission concluded that the change was not through the will of the people who have known only the ballot box since independence, as a means of choosing their political leaders. That the military coup was therefore a grave violation of the right of the Gambia people to freely chose their government as entrenched in Article 20(1) of the Charter. Military coups seek legitimacy from all shades. Sometimes the reactions of touts and rented crowds are used to justify the infraction.

In Nigeria, the same crowd that are presented as hailing the change, turn around to loot the property of those who are forced to stay at home because of the incidents of such take over. But the point of interest is that the Commission condemned military coups as an infraction of the rights of the people to choose their own leaders. This is unlike most domestic courts which shop for reasons to justify the intervention, including the argument that once the coup is successful, it has become legitimate. It is perplexing, the medium of transformation from illegality to legitimacy.

Conclusion

Nigeria domesticated the African Charter on Human and Peoples’ Rights *holus bolus*, in contrast to the provisions of her 1999 Constitution which separated the ESC and Solidarity rights in Chapter 2 from the CP rights in Chapter 4. The Chapter 4 rights have a separate enforcement procedure while the Chapter 2 rights are subject to the aspirational, progressive realization principles.

²⁸ Charles Ozoemena, “How we’ll Handover Bakassi-Obasanjo”, *Vanguard*, 16 June, 2006, Vol. 22: No. 6094 (front page)

²⁹ *Sir Dawda K. Jawara v. The Gambia*, 13th Annual Activity Report: 1999-2000

³⁰ *Sir Dawda K. Jawara v. The Gambia*, 13th Annual Activity Report: 1999-2000

The Commission in its judgments does not respect the separation of these rights, nor does it place different enforcement mechanisms on them, though, its judgments only stop at holding the state responsible, and in very serious cases, referring the issues to the Assembly. Any unenforceable judgment lacks real potency, except that it may stir international awareness on the breaches indicated. And so, there is a disconnect between the pronouncements of the Commission and the corresponding obligations upon the states concerned. The real challenge is the lack of enforceable mechanisms of the decisions of the Commission on the states. The lack is the absence of the political will on the members of the African Union.