

# **NIGERIA'S CONTRIBUTIONS TO INTERNATIONAL HUMAN RIGHTS**

## **PRAXIS**

### Abstract

*Global human rights discourse has been in ignorance of contributions of developing countries to this field. The perception of human rights from a predominantly Western perspective and as a Western ideal has contributed to the dearth in knowledge and research from the perspective of developing countries (particularly African countries) whose contributions to international human rights praxis have not featured in human rights discourse. The objective of this Paper is to situate Nigeria within the international human rights discourse by exploring how Nigeria has contributed to international human rights praxis and thus, contribute to the exchange of information and knowledge as well as further human rights debate. To this end, the Paper will undertake its objective by analysing evidence of Nigeria's efforts in certain developments including the struggle against colonialism and apartheid, the ban on dumping of toxic waste, the regulation of global arms trade as well as Nigeria's involvement in international bodies and regional organisations like the United Nations, African Union and the Economic Community of West African States.*

## **1.0 INTRODUCTION**

The signing of the Universal Declaration on Human Rights (UDHR) in December 1948 at the Palais de Chaillot, France in the aftermath of the Second World War, at a time when most African states were still contending with Colonial rule has strengthened the perception of the notion of human rights as a Western ideal. The perception is furthered by the fact that the UDHR,<sup>1</sup> an important international instrument which underlies the field of international human rights, was drafted principally by a Canadian, John Peters Humphrey, together with an eighteen member Commission chaired by the then First Lady of the United States Eleanor Roosevelt and of which the only African nation represented was Egypt. At the time of the passing of the Declaration, only three African countries were present (Egypt and Liberia voted in favour of the Declaration with South Africa abstaining).<sup>2</sup>

While the formalisation of human rights by international instruments may have as a result of Western efforts, it is imperative that the notion of human rights must be cross-culturally analysed to reflect the contemporary reality of increased number of state actors within the international legal order. It is to this end, that this Paper derives its impetus to consider whether and to what extent Nigeria has contributed to international human rights praxis. The choice of country is strategic. Nigeria's geographical location, population size and natural resources place it in pivotal stead in regional and global affairs.

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<sup>1</sup> Adopted 10 December 1948 by the United Nations General Assembly in Resolution 217/A (III), UN Doc. A/810 at 71 (1948)

<sup>2</sup> This may be attributable to the fact that the policy of Apartheid was in violation of the provisions of the Declaration

The objective of the Paper is to situate the research effort within the broader context of global discourse on human rights. Suffice it to enter a caveat at the beginning of the Paper that it is not intended as a portrayal of Nigeria as a bastion of human rights. While Nigeria's track record in human rights is not unimpeachable,<sup>3</sup> it would be a grave error to neglect Nigeria's contributions to international human rights praxis.

Prudence dictates that not every act of Nigeria which has in one way or the other contributed to international human rights would be chronicled in the Paper as such would be beyond the scope of the Paper.<sup>4</sup> The methodology adopted in the analysis would be inter-disciplinary as the issues involved cut across different fields of study including law, history, politics and international relations. Thematically and methodologically, the Paper is *sui generis* in relation to existing research and literature.

As part of its focus, this Paper will include Nigeria's involvement in the struggles against Apartheid and Colonialism in Southern Africa as well as Nigeria's role in international organisations, both at the regional and global level. Particularly, Nigeria's efforts in South Africa and Rhodesia (now Zimbabwe) will be discussed

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<sup>3</sup> See Anthony D' Amato, 'The Concept of Human Rights in International Law', (1982) 82 *Columbia Law Review* 1110, p.1111; Frontline, Nigeria: Defending Human Rights: Not Everywhere Not Every Right, International Fact-Finding Mission Report of The Observatory for the Protection of Human Rights Defenders, April 2010, p.6.

<sup>4</sup> Nigeria's political, economic, financial and diplomatic contributions to the development of African countries since its independence have been majorly noted. See Chiedu E. G. Iweriebor and Martin I. Uhomoibhi, *United Nations Security Council: A Case for Nigeria's Membership* (Lagos: Times Books Ltd, 1999), p.36

with a view to ascertaining the extent to which it contributed in bringing an end to the situations in the countries and ultimately, contributed to international human rights. Though atypical in literature of this sort, the Paper will consider Nigeria's role in peacekeeping operations, the non-proliferation and banning of nuclear weapons, the regulation of transboundary movement of hazardous waste, global arms trade and individual criminal responsibility. In doing so, the Paper will explore the interconnected and complementary nature of international peace and security, on the one hand and human rights on the other.

The Paper will also consider Nigeria's role in international organisations, both at the regional and global level; in particular, Nigeria's involvement in the Economic Community of West African States as well as its engagements with the African Commission on Human and People's Rights and the involvement of Nigerians in the Human Rights Council of the United Nations as well as its Special Procedures Mechanism.

For ease of logic and argument, this Paper is divided into 2 sections. The first section deals with Nigeria's contributions to the struggle against apartheid and colonialism, as well as its contribution to individual criminal responsibility will be considered. The second section will feature Nigeria's involvement in the establishment of a regulatory framework with respect to transboundary movement of hazardous waste, non-proliferation of nuclear weapons, global arms trade under regional and international organisations as well as its role in international and regional organisations particularly with respect to the peacekeeping, the work of the

Economic Community of West African States Court of Justice, the United Nations Human Rights Council and the African Commission on Human and Peoples' Rights.

## **2.1 APARTHEID**

Although the roots of Apartheid in South Africa preceded the assumption of power in 1948 by the Nationalist Government, the policy of separation or 'separate development' pursued by the Nationalist Government brought about the enactment of certain laws the purport of which was to enshrine racial discrimination into the political, social, economic fabric of the South African society. The policy of separation ensured that the black majority of the country was disenfranchised from voting, owning land, and being educated which compromised their skill set with attendant financial implications. For example, this was achieved by the enactment of Pass Laws which criminalised movement of blacks without a pass (reference book), the Population Registration Act which divided the country along racial lines;<sup>5</sup> the Group Areas Act which brought about the institutionalisation of separate living by designating areas for living for people of certain races;<sup>6</sup> and the Bantu Education Act 1953 which introduced apartheid into education by the establishment of a racially discriminatory educational curriculum; the Prohibition of Mixed Marriages Act which criminalised mixed marriages,<sup>7</sup> and the Immorality Amendment Act which criminalised sexual relations between members of different races.<sup>8</sup>

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<sup>5</sup> No. 30 of 1950

<sup>6</sup> No. 41 of 1950

<sup>7</sup> No. 55 of 1949

<sup>8</sup> No. 21 of 1950; see also Immorality Act of 1927

The Apartheid policy violated the fundamental human rights and freedoms contained in the Universal Declaration on Human Rights,<sup>9</sup> the International Covenant on Civil and Political Rights,<sup>10</sup> and the International Covenant on Economic and Socio Cultural Rights,<sup>11</sup> including the rights to freedom, equality and dignity, freedom from discrimination; life, liberty and security; freedom from cruel, inhuman or degrading treatment; equality before the law and equal protection of the law; freedom from arbitrary arrest, detention or exile; trial by independent and impartial determination; presumption of innocence in criminal trials; freedom from arbitrary interference with privacy, family and home; freedom of movement and residence within the borders of their countries; right to nationality and freedom from arbitrary deprivation of nationality; right to marry without limitation due to racial considerations; right to own property and freedom from arbitrary deprivation of property; right to take part in government of own country, equal access to public service and right to vote; right to equal pay for equal work; and right to education.

The contravention of international human rights provisions by the South African government policy of Apartheid garnered much international reproach and action. In 1960, the Security Council of the United Nations became seized of the situation in South Africa as a result of the apartheid policy. The Council took into account the grave concern aroused globally by the situation and while recognising the situation as having the potential to endanger international peace and security called upon the Government of South Africa to initiate measures to, inter alia, ensure that the situation does not continue or recur, and to abandon its policies of apartheid and

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<sup>9</sup> *Supra* note 1, Articles 2-26

<sup>10</sup> 999 *U.N.T.S.* 171, reprinted in 6 *ILM* 368 (1967), Articles 6-27

<sup>11</sup> 993 *U.N.T.S.* 3, reprinted in 6 *ILM* 360 (1967), Articles 6, 7, 10 and 13

racial discrimination.<sup>12</sup> In 1962, the United Nations General Assembly established the Special Committee on the Policies of Apartheid of the Government of South Africa.<sup>13</sup> It was not until 1963 that the Security Council became convinced that the situation in South Africa “seriously” disturbed international peace and security, and called upon all States to stop the sale and shipment of arms, ammunition of all types and military vehicles to South Africa.<sup>14</sup>

The pursuit of a policy of regional destabilisation by the South African Nationalist Government as well as the economic dependency on South Africa by neighbouring states resulted in the flourish of the apartheid policy,<sup>15</sup> and contributed to South Africa’s defiance in its stance against the General Assembly and the Security Council. Being at the forefront of the struggle against the apartheid policy of racial discrimination in South Africa, Nigeria gave considerable financial and material support to the struggle. Members of the African National Congress on exile, a national liberation movement in South Africa which led the struggle against racism, oppression and apartheid were hosted by Nigeria, most notably Nelson Mandela in 1962 and Thabo Mbeki in 1976.<sup>16</sup>

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<sup>12</sup> S/RES/134 (1960)

<sup>13</sup> General Assembly Resolution 1761 (XVII) of 1962; later known as United Nations Special Committee against Apartheid. The Committee had the mandate to keep the racial policies of South Africa under review when the Assembly is not in session.

<sup>14</sup> S/RES/ 181 (1963); also reiterated in S/RES/182 (1963). However, the absence of Chapter VII of the Charter of the United Nations, 1 *U.N.T.S.* XVI, being involved in the Resolutions left the choice of compliance open to States. It was not until 04 November 1977 that the arms embargo became mandatory by virtue of S/RES/418 (1977).

<sup>15</sup> Adekeye Adebajo and Chris Landsberg, ‘South Africa and Nigeria as Regional Hegemons’, in M.L. Baregu and C. Landsberg (ed.), *From Cape to Congo: Southern Africa’s Evolving Security Challenges*, (London: Lynne Rienner, 2003), p.176

<sup>16</sup> Peter Limb, *Nelson Mandela: A Biography* (Westport: Greenwood Publishing, 2008), p. 74; Adekeye Adebajo, ‘Nelson Mandela, Thabo Mbeki, and the ANC’s Footprint in Africa’ in Kwandiwe Kondlo, Chris Saunders and Siphamandla Zondi (eds.), *Treading the Waters of History: Perspectives on the ANC* (Pretoria: Africa Institute of South Africa, 2014) 120, p. 125

At the international level, Nigeria held an unprecedented chairmanship of the United Nations Special Committee against Apartheid established by the General Assembly for a total of twenty one (21) years.<sup>17</sup> In that regard, Nigeria frequently addressed the United Nations on the issue of apartheid. The General Assembly commended the work of the Special Committee, under Nigeria's chairmanship, for its diligence in monitoring the situation in South Africa and in promoting concerted international support against apartheid.<sup>18</sup> In furtherance of its campaign against apartheid, Nigeria hosted the World Conference for Action against Apartheid in August 1977. The Conference adopted the Lagos Declaration for Action against Apartheid which, *inter alia*, states thus,

“Apartheid, the policy of institutionalised racist domination and exploitation, imposed by a minority regime in South Africa, is a flagrant violation of the Charter of the United Nations and the Universal Declaration of Human Rights. It rests on the dispossession, plunder, exploitation and social deprivation of the African people since 1652 by colonial settlers and their descendants. It is a crime against the conscience and dignity of mankind. It has resulted in immense suffering and involved the forcible moving of millions of Africans under special laws restricting their freedom of movement, and the denial of elementary human rights to the great majority of the population as well as the violation of the inalienable right to self-determination of all the people of South Africa.”<sup>19</sup>

In the aftermath of the Lagos Declaration and the World Conference, the Security Council employed its enforcement powers under Chapter VII of the Charter of the United Nations to make the arms embargo contained in Resolutions 181 and 182

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<sup>17</sup> Between 1972 and 1975; 1976 and 1994

<sup>18</sup> *Yearbook of the United Nations (1991)*, (The Netherlands: Martinus Nijhoff, 1992), p.126

<sup>19</sup> A/CONF.91/9 (United Nations publication, Sales No. E.77.XIV.2 and corrigendum), Sect X; see also E.H. Lawson, *Encyclopedia of Human Rights*, second edition, (London: Taylor & Francis, 1996), p.83



(1963) mandatory by making a decisive determination for the first time in November 1977, since it became seized of the situation in South Africa in 1960, that the policies and acts of the South African government constituted a threat to the maintenance of international peace and security.<sup>20</sup>

Nigeria was relentless in its contributions to the struggle against apartheid until South Africa's first democratically elected non-racial government assumed office in May 1994 following the general elections in April 1994 and both the General Assembly and the Security Council of the United Nations removed the item of apartheid and the question of South Africa, respectively from their agendas in June 1994. Upon his celebrated release from prison in 1990, after twenty seven years, Nelson Mandela included a visit to Nigeria in his tour of countries that had supported South Africa in its struggle for liberation.

## **2.2 COLONIALISM**

The history of anti-colonial movement in Africa is not complete without mentioning Nigeria's role in combating colonialism in Nigeria and within the continent. The famous Aba Women's Riot of November 1929 which was a revolt of women over measures by the British colonial government in Nigeria to enforce taxation against

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<sup>20</sup> S/RES/418 (1977) where the Council expressly took note of the Lagos Declaration for Action against Apartheid

natives is a turning point in the anti-colonial movement.<sup>21</sup> Furthermore, Nigeria's anti-colonial struggles which culminated in its independence in October 1960 inspired many countries across the continent in their quest for self-determination. However, from a thematic perspective, this paper will focus on Nigeria's involvement in Southern Rhodesia.

With a history of white settlers in the colony, Southern Rhodesia in 1953 joined a federation of British colonies together with Northern Rhodesia (now Zambia) and Nyasaland (now Malawi) to form the Central African Federation.<sup>22</sup> The British Government had made assurances to Southern Rhodesia that in the event of a breakup of the federation and with the other federating entities attaining independence that Southern Rhodesia would be granted independence. The Whites in Southern Rhodesia which represented about 4% of the total population,<sup>23</sup> controlled the majority of votes having institutionalised a system whereby the right to vote was based not on equality but rather on property qualifications.<sup>24</sup> With the independence of Malawi and Northern Rhodesia, and the insistence of the United Nations and the Organisation of African Unity that Southern Rhodesia should be independent with black majority rule, Britain was reluctant to grant independence to a white minority government. Having assumed office as Prime Minister in 1964, Ian

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<sup>21</sup> See generally, A.E. Afigbo, 'Revolution and Reaction in Eastern Nigeria: 1900-1929 (The Background to the Women's Riot of 1929)', (1966) 3 *Journal of the Historical Society of Nigeria* 539-557

<sup>22</sup> Southern Rhodesia Order in Council, August 1, 1953; 160 *B.F.S.P* 22. See also Ian Brownlie and Ian R. Burns, *African Boundaries: A Legal and Diplomatic Encyclopaedia* (London: Royal Institute of International Affairs, 1979) p.1306, Robert Johnson, *British Imperialism* (New York: Palgrave Macmillan, 2003) p.196

<sup>23</sup> Barry M. Schultz, 'European Population Patterns, Cultural Persistence, and Political Change in Rhodesia', (1973) 7 *Canadian Journal of African Studies/ Revue Canadienne des Études Africaines* 3, p.21

<sup>24</sup> Robert Martin, 'The Rule of Law in Zimbabwe', in Ranka Primorac and Stephen Chan (ed.), *Zimbabwe in Crisis: The International Response and the Space of Silence* (Oxford: Routledge, 2007), 65, at pp. 73-74

Smith with a predominantly white government unilaterally declared independence from Britain in 1965.<sup>25</sup>

Ian Smith's government by the Unilateral Declaration of Independence (UDI) sought to perpetuate white minority rule in Southern Rhodesia in violation of the right of self-determination of the Black majority population.<sup>26</sup> Smith's defiant denial of majority rule resulted in a civil war and the isolation of Southern Rhodesia by the international community. The United Nations repeatedly called upon all States not to recognise the illegal racist regime in Southern Rhodesia, and the Organisation of African Unity roundly opposed Ian Smith's action.<sup>27</sup>

Creeping on the wave of its 'Pan-Africanism', Nigeria was invited to meetings of the Frontline States of Southern Africa, and also rendered assistance to liberation movements in Southern Rhodesia under the auspices of the Liberation Committee of the Organisation of African Unity. Nigeria directly assisted the Zimbabwean African National Union (ZANU), the Zimbabwean African Peoples Front (ZAPF) and the Patriotic Front of Zimbabwe.<sup>28</sup> In fact,

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<sup>25</sup> 'Proclamation by Prime Minister', 5 *ILM* 230 (1966)

<sup>26</sup> UNGA Resolution 2022 (XX) 5 November 1965, Preamble. See also Yaël Ronen, 'Status of Settlers Implanted by Illegal Territorial Regimes', in James Crawford and Vaughan Lowe (ed.), *The British Yearbook of International Law 2008* (Oxford: Oxford University Press, 2009) 194, p.199

<sup>27</sup> UNGA Resolution 2012 (XX) 12 October 1965, UNGA Resolution 2022 (XX) 5 November 1965, UNGA Resolution 2024 (XX) 11 November 1965; S/RES/217 (1965), S/RES/277 (1970), S/RES/288 (1970); Second Ordinary Session of the Assembly of Heads of State of the OAU held in Accra, Ghana from 21 to 26 October 1965 AHG/RES 25 (II) 22 October 1965 and Sixth Ordinary Session of the Council of Ministers of OAU held in Addis Ababa, Ethiopia from 28 February to 6 March 1966, CM/RES 75 (VI)

<sup>28</sup> Other beneficiaries included the South West Africa People's Organisation (SWAPO) in Namibia and the African National Congress and the Pan African Congress in South Africa, see O. Abegunrin, *Nigerian Foreign Policy Under Military Rule 1966-1999*, (London: Praeger, 2003), p.81

“The details of the bilateral aid were not published for security reasons, but according to some sources, beginning in 1976, Nigeria was giving about \$5 million annually to all the liberation groups in Southern Africa... Following Mozambique’s closure of her border with Rhodesia in March 1976, the Nigerian government gave \$1.8 million to the Mozambican government to boost her economy and to compensate the country for her total commitment to the liberation of Rhodesia and for enforcing the UN sanctions against the Ian Smith regime in Rhodesia. In March 1977,...the Nigerian government, presented to Mozambique’s foreign Minister, Joachim Chissano, a check for \$250,000 to fund the Mozambique-based Zimbabwean freedom fighters, ZANU. In May 1979,... presented a check for \$108,000 to President Samora Machel of Mozambique to help alleviate refugee problems resulting from the influx of nationalists from Zimbabwe.”<sup>29</sup>

The establishment of the South Africa Relief Fund by the Federal Government of Nigeria in 1976 received considerable support within the country and reached \$10.5 million within six months of its establishment with civil servants and public officers contributing 2% of their monthly salaries as well as private donations. The Federal Government also contributed \$3.8 million to the Fund.<sup>30</sup> The Fund was applied to the liberation of the people of South Africa from the racist regimes of colonialism in Southern Rhodesia and apartheid in South Africa. Nigeria’s financial contributions to the struggle against colonialism and apartheid in South Africa were not limited to the South Africa Relief Fund. Between the years of 1973-1978 Nigeria contributed \$39,040 to the United Nations Educational and Training Programme for Southern Africa.<sup>31</sup>

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<sup>29</sup> *Ibid.*, pp.81-82

<sup>30</sup> *Ibid.*, p.82

<sup>31</sup> *Yearbook of the United Nations 1973-78* (New York: United Nations Office of Public Information), pp.168, 174, 203, 226, 280, and 297; see also Abegunrin, *ibid.*, p.84

Nigeria vocalised its criticism of the racist regimes in Southern Rhodesia and South Africa before various international organisations particularly the United Nations, the Organisation of African Unity (now African Union) and the Commonwealth of Nations; and lobbied for the exclusion of Southern Rhodesia and South Africa from these international organisations. It also threatened not to participate in international sporting events unless South Africa, Southern Rhodesia and states supporting them were excluded from the events.<sup>32</sup> Nigeria took part in the organisation and implementation of an African Boycott of the Olympic Games in 1976 in Montreal as result of New Zealand's sporting involvement with South Africa.<sup>33</sup> In 1978, Nigeria boycotted the Commonwealth games in 1978 in Edmonton, Canada in protest of the continued sporting relationship between New Zealand and South Africa, despite the participation of other African nations.<sup>34</sup>

Despite the economic sanctions on South Africa which Nigeria lobbied for its support, intelligence reports implicated British Petroleum, which had oil concession rights granted to it with Shell Petroleum by the Federal Government of Nigeria, in an arrangement with North Sea Oil through which it sold oil to South Africa.<sup>35</sup> Furthermore, Britain maintained an intransigent stance to recognise the puppet government of Muzorewa installed by Smith which was a ruse for perpetuating white minority rule under the guise of a majority government as well as its efforts to

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<sup>32</sup> Toyin Falola and Matthew M. Heaton, *A History of Nigeria*, (Cambridge: Cambridge University Press, 2008), p.261

<sup>33</sup> See [http://news.bbc.co.uk/onthisday/hi/dates/stories/july/17/newsid\\_3555000/3555450.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/july/17/newsid_3555000/3555450.stm) (Last accessed 19/02/2015). See also Olayiwola Abegunrin, *Africa in Global Politics in the Twenty First Century* (New York: Palgrave Macmillan, 2009) p.17; and Richard Epsy, *The Politics of the Olympic Games: With an Epilogue 1976-1980*, (Berkeley: University of California Press, 1981), pp.125-130

<sup>34</sup> Michelle Sikes, 'Commonwealth Games, African Nations' in John Nauright and Charles Parrish (ed.), *Sports Around the World: History, Culture and Practice Vol.1*, (California: ABC- CLIO, 2012), p.113

<sup>35</sup> Abegunrin, *Nigerian Foreign Policy Under Military Rule*, *supra* note 27, p.86-87

remove the economic sanctions on Southern Rhodesia despite international pressure on Great Britain not to lift the sanctions.<sup>36</sup> Consequent upon these events, in 1979 the Federal Government of Nigeria nationalised the interests of British Petroleum in Shell-British Petroleum in Nigeria.

In support of the struggle against colonialism and apartheid, the Nigerian Government employed various economic strong arm tactics against countries which gave support, albeit indirectly to the racist regimes in Southern Africa including the disqualification of British firms in the award of government contracts, nationalisation of Barclays Bank, a British Bank, for its economic activities in South Africa and the repatriation of its British staff, the diversification of currency of monies of the Federal Government of Nigeria in British banks from pounds sterling to other currencies, and the withdrawal of its deposit from Barclays Bank of London when it purchased South African defence bonds.<sup>37</sup>

The struggle by national liberation movements and international support for the struggle culminated in the Lancaster House Conference of 1979 which resulted in democratic elections in March 1980 and independence of Southern Rhodesia in April 1980.<sup>38</sup> In support of the newly independent country, the Nigerian Government contributed \$25million between 1980 and 1981 for manpower development in

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<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*, p.87-88

<sup>38</sup> Report of the Constitutional Conference, Lancaster House 1979, 19 *ILM* 387 (1980); United Kingdom Southern Rhodesia – Report of the Constitutional Conference, Lancaster House, London, September – December 1979 (Lancaster House, 21 December 1979) (Cmnd 7802 1979)

Southern Rhodesia, and on its own undertook training programs for Rhodesian students, civil servants and the military in Nigeria.<sup>39</sup>

### **2.3 Individual Criminal Responsibility**

The scope of violations of human rights is of great magnitude when committed by certain state officials who have the machinery of state power available at their disposal. These violations, particularly when they are part of the policy of a state, impact greatly on the international system as gross flouting of international human rights standards and norms. Thus, the protection of human rights in international law has necessitated the employment of international criminal law, particularly individual criminal responsibility for violations of human rights with a view to ensuring accountability of such state officials and the non-entrenchment of a culture of impunity.

In March 2003, the Special Court for Sierra Leone issued a 17-count indictment against Charles Taylor while he was still President of Liberia for his involvement in crimes against humanity and war crimes through his support of the rebel movement known as the Revolutionary United Front (RUF) led by Foday Sankoh. The rebel movement was engaged in a campaign of gross violations of human rights and was notorious for recruiting child soldiers, abductions, forced labour, killing of innocent civilians, raping young girls and women, amputating limbs of male children, looting

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<sup>39</sup> Abegunrin, *Nigerian Foreign Policy Under Military Rule*, *supra* note 27, p.89

and burning villages as well as other forms of outrage on human beings in the war torn region in violation of the laws of war and international humanitarian law as laid down in the Geneva Conventions of 1949 and the Additional Protocols to those Conventions.<sup>40</sup>

Nigeria played a pivotal role in encouraging Mr Taylor to step down as Head of State to facilitate the peace process and granted him exile in August 2003. Following international clamouring for accountability for Charles Taylor's participation in the gross violations of human rights in Sierra Leone, in November 2006 the Nigerian Government surrendered Taylor to the United Nations Mission in Liberia (UNMIL) which transferred him to the SCSL to stand trial for his involvement in crimes against humanity and war crimes.

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<sup>40</sup> *Prosecutor v Charles Ghankay Taylor*, Case No. SCSL-03-01, Indictment, 3 March 2003. See <http://www.rscsl.org/Taylor.html>, (Last accessed 19/02/2015). In 2000, the President of Sierra Leone requested assistance from the United Nations to bring to justice those responsible for crimes against the people of Sierra Leone., see Letter from President of Sierra Leone to the UN Secretary-General, Kofi Annan UN Doc S/2000/786, Annex. This culminated in the creation of a Special Court for Sierra Leone, see Agreement on the Establishment of a Special Court for Sierra Leone between the United Nations and the Government of Sierra Leone , text available at <http://www.rscsl.org/documents.html>, (Last accessed 19/02/2015). See also S/RES/1315 (2000) and more generally, see Tom Perriello and Marieke Wierda, 'The Special Court for Sierra Leone Under Scrutiny', *International Center for Transitional Justice*, March 2006; James L. Miglin, 'From Immunity to Impunity: Charles Taylor and the Special Court for Sierra Leone', (2007) 16 *Dalhousie Journal of Legal Studies* 21, Michael Scharf, 'The Special Court for Sierra Leone', (October 2000) *ASIL Insights*



### **3.1 TRANSBOUNDARY MOVEMENT AND DUMPING OF HAZARDOUS WASTE**

Increase in generation of waste, strict environmental laws and monitoring of the laws, high costs of disposal and treatment of toxic waste in developed countries, the paucity of repositories for waste as well as the “not-in –my-backyard” movement have made developing countries to look for cheaper alternatives for disposing their hazardous wastes.<sup>41</sup> This has resulted in the trend whereby developed states capitalise on reduced (and invariably less efficient) costs of waste disposals by developing countries have been involved in transboundary movement of hazardous and toxic wastes and even dumping such waste in developing countries. The practice of dumping hazardous waste in sub-Saharan African countries has imperialist and racial undertones and morality behind the practice has been called into question.<sup>42</sup>

Sub-Saharan African countries present an attractive option to exporters of these toxic material due to the presence of weak technical and regulatory landscape on the subject matter, ineffective (or even non-existent) hazardous waste treatment and disposal facilities, high rates of poverty, institutionalised corruption, low education levels of the populations which affect knowledge of hazardous effect of imported waste. These factors, when combined with the poor health care infrastructure rife in sub-Saharan Africa, exacerbate the problem and dangers of the exportation of toxic waste to countries in the region.

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<sup>41</sup> Cyril Uchenna Gwam, ‘Toxic Wastes and Human Rights’, (2002) 2 *The Brown Journal of World Affairs*, p.186

<sup>42</sup> Olurominiyi Ibitayo, ‘Transboundary Dumping of Hazardous Waste’, (2008) *Encyclopedia of Earth*, available at <http://www.eoearth.org/view/article/156687/> (Last accessed 19/02/15)

Trade in toxic waste implicates certain fundamental human rights including the right to life, right to health and the right to a healthy environment guaranteed under various international human rights instruments.<sup>43</sup> The transboundary movement and dumping of hazardous waste threatens rights protected under the Universal Declaration of Human Rights,<sup>44</sup> the International Covenant on Civil and Political Rights,<sup>45</sup> and the International Covenant on Economic, Social and Cultural Rights;<sup>46</sup> and this has been acknowledged by the United Nations under the General Assembly, the Human Rights Council and its Special Procedures Mechanism.

The General Assembly has noted the impact of modern development and urbanisation on the environment and expressed concerns as to the impact of the quality of the environment on the enjoyment of basic human rights in developing as well as developed countries.<sup>47</sup> In a similar vein, the United Nations Human Rights Council has affirmed that the transboundary movement and dumping of toxic waste in general “may constitute a serious threat to the enjoyment of all human rights, including civil, political, economic, social and cultural rights and the right to development”,<sup>48</sup> and in particular “may constitute a serious threat to human rights including the right to life, the enjoyment of the highest attainable standard of physical and mental health, food, adequate housing and work, access to information,

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<sup>43</sup> See generally Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, UN Doc. A/HRC/9/22, 13 August 2008; Gwam, *supra* note 41, p.185

<sup>44</sup> *Supra* note 1

<sup>45</sup> *Supra* note 10

<sup>46</sup> *Supra* note 11

<sup>47</sup> UNGA Res. 2398 (XXII), 1968 (3 December 1968)

<sup>48</sup> Resolution 12/18, 12 October 2009, UN Doc. A/HRC/RES/12/18

and to safe drinking water and sanitation, public participation and the right to development.”<sup>49</sup> Also the Special Rapporteur on Hazardous Waste demonstrated the far-reaching human rights implications of transboundary movement and dumping of hazardous waste by the ‘Probo Koala’ incident in Abidjan, Côte d’Ivoire in 2006 which resulted in the death of 16 people and a variety of health complications for at least 100,000 people.<sup>50</sup>

Transboundary movement of hazardous waste has taken different forms. Firstly, there has been the practice of exportation of hazardous waste without the knowledge and consent of the governments of the importing country as occurred in Zimbabwe, Guinea, Sierra Leone, Congo, Liberia, Gabon and Nigeria.<sup>51</sup> This practice may be illustrated by the famous ‘Koko incident’ which occurred in Nigeria.

In 1987, an Italian business man resident in Nigeria while acting on behalf of a waste disposal company in Italy was alleged to have illegally exported 4,000 (four thousand) tons of toxic waste from Italy to Nigeria. The waste was falsely labelled as fertilisers and the Italian businessman deceived an illiterate Nigerian into agreeing to store the hazardous waste in his backyard at Koko, a river port in Southern

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<sup>49</sup> Resolution 9/1, 24 September 2008, UN Doc. A/HRC/RES/9/1. See also UN Doc. A/HRC/RES/1995/81, 8 March 1995; UN Doc. A/HRC/RES/2004/17, 16 April 2004; and UN Doc. A/HRC/RES/2005/15, 14 April 2005

<sup>50</sup> Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, *supra* note 43

<sup>51</sup> Valentina O. Okaru, ‘The Basel Convention: Controlling the Movement of Hazardous Waste to Developing Countries’, (2011) 4 *Fordham Environmental Law Review* 137, p.138; *Yearbook of the United Nations 2006* Volume 60 (New York: United Nations Publication, 2009), p.643

Nigeria, for which he was paid 100 dollars a month; a transaction which was alleged to have netted the Italian businessman a profit of 4.3 million dollars.<sup>52</sup>

The waste resulted in fatality. In response to the incident, the Federal Government of Nigeria arrested 40 persons including government officials for conspiracy in the importation of the waste, severed diplomatic relations with Italy, and ordered the seizure of the Danish ship which transported the hazardous waste into Nigeria. The Nigerian government also detained an Italian merchant ship, M.V. Piave and only renewed diplomatic ties with Italy when the Italian government agreed, in exchange for the release of the Italian merchant ship, to re-import the waste back to Italy.<sup>53</sup>

Secondly, it has involved the consent of the government of the importing country which in its economic desperation consents to the importation of hazardous waste, but usually without full awareness of the deleterious consequences of the nature and type of waste involved as occurred in 1988 in the island of Kassa in Guinea. A company owned by the Guinean and Norwegian governments, with the approval of the Guinean government, exported 15,000 (fifteen thousand) tonnes of hazardous waste from Norway into Guinea. The waste which was actually incinerator ash had been falsely described as building material with the government of Guinea being none the wiser. It was only upon the death of trees and natural life in the waste-affected area that the Guinean government discovered that the materials were toxic

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<sup>52</sup> Okaru, *ibid.*

<sup>53</sup> Arti K. Vir, 'Toxic Trade with Africa', (1989) 23 *Environmental Science & Technology* 23

and immediately requested the repatriation of the hazardous material back to Norway.<sup>54</sup>

Thirdly, there has also been the practice of packaging of consent to accept exportation of hazardous waste in exchange for economic and humanitarian aid. For instance the reported unsuccessful attempt by an unnamed company to export toxic waste to Liberia by promising to supply drugs worth 1 million dollars as well as build a hospital in Liberia in exchange for Liberia's acceptance to import the hazardous waste.<sup>55</sup>

It is on the strength of the foregoing, that Nigeria became involved in environmental rights, at least with regard to ban on importation of hazardous waste. In response to the environmental concerns and human rights implications of the phenomenon of trans-boundary movement in hazardous waste, the international community negotiated and adopted the Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal in 1986.<sup>56</sup> The Convention came into force in May 1992 and left a lot to be desired, particularly for African countries which were the dumping sites for merchants of hazardous waste.<sup>57</sup>

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<sup>54</sup> Okaru, *supra* note 51, p.139

<sup>55</sup> *Ibid.*, see note 15

<sup>56</sup> 1673 *U.N.T.S.* 126, reprinted in (1989) 28 *I.L.M.* 657

<sup>57</sup> The Convention does not expressly prohibit trade in hazardous waste; rather it seeks to regulate the trans-boundary movement of hazardous waste, the contractual nature of the provisions which are not binding on non-parties and the non-inclusion of a requirement to pay compensation for damage arising from the trade in hazardous

To strengthen the regime under the Convention, the parties to the Basel Convention adopted an important Protocol in 1999 which provides for liability and compensation for damages resulting from trade in hazardous waste.<sup>58</sup> While theoretically laudable, the reality is that this is far from the practice of the matter as the Protocol has not yet entered into force; a fact that is not unrelated to the absence of political and economic will of the generators and exporters of hazardous waste to be held liable for damages resulting from their action.

Member states of the Organisation of African Unity (now African Union) were sceptical about the extent to which the Basel Convention (negotiations for which were still underway) would protect African countries.<sup>59</sup> They were opposed to the approach under the Basel Convention to regulate, rather than outright ban, transboundary movement of hazardous waste.<sup>60</sup> This resulted in member states of the Organisation of African Unity not signing the Basel Convention at the time that it was opened for signature in 1989. However, Nigeria became the first African country to ratify the Basel Convention on March 31, 1991.

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<sup>58</sup> Protocol on Liability and Compensation for Damage Resulting from Transboundary Movement of Hazardous Waste and Their Disposal, UN Doc. UNEP/CHW.1/WG/1/9/2; text available at <http://archive.basel.int/pub/protocol.html> (Last Accessed 19/02/2015)

<sup>59</sup> The Organisation of African Unity (OAU) was established on 25 May 1963 by the OAU Charter, 479 *U.N.T.S.* 39, and in its succession, the African Union (AU) was established on 26 May 2001, OAU Doc. CAB/LEG/23.15.

<sup>60</sup> Resolution on Dumping of Nuclear and Industrial waste in Africa, OAU Council of Ministers Resolution CM/Res. 1153 (XLVIII) (23 May 1988), reprinted in 28 *ILM* 567 (1989). The OAU Council of Ministers had called on African nations to agree on a “common African position” for ameliorating the inadequacies of the Basel Convention in Resolution on a Global Conference for the Control of Transboundary Movement of Hazardous Waste, OAU Council of Ministers Resolution CM/Res. 1199 (XLIX) February 1989, reprinted in UN GAOR, 44<sup>th</sup> Sess., UN Doc A/44/291 (1989), at p.31-32. See also Beatrice Chaytor and Mita Manek, ‘An African Response to Basel: The Bamako Convention’, in B. Chaytor and Kevin R. Gray (eds.), *International Environmental Law and Policy in Africa* (The Netherlands: Kluwer Academic Publishers, 2003) 38

In 1991, Member states of the OAU adopted the Bamako Convention on the Ban of Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa.<sup>61</sup> By this instrument, African states were able to ban the importation of hazardous waste into Africa and also regulate its movement within Africa.

Although broader in scope than the Basel Convention, the Bamako Convention only entered into force in February 1996. It is against the backdrop of the facts that the Basel Convention came into force on 5 May 1992, four years earlier than the Bamako Convention, and the fact that the Basel Convention is a more global instrument than the Bamako Convention that the decision of the Federal Government of Nigeria to sign and ratify the Basel Convention is advanced as part of Nigeria's contributions to international human rights praxis. The Conventions are not mutually exclusive and the non-ratification of the Bamako Convention by Nigeria despite being a signatory to the Convention cannot obliterate Nigeria's efforts with regard to the ban and regulation of hazardous waste.

A Basel Convention Coordinating Centre for Training and Technology Transfer for the African Region (BCCC-Africa) was established in Nigeria for the African region.<sup>62</sup> The Nigerian government, through the Federal Ministry of Environment has made financial contributions and well as contributed social infrastructure and human resources to facilitate capacity building within the African region to enable

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<sup>61</sup> 30 *ILM* 775 (1991)

<sup>62</sup> Pursuant to Decision III/19 of the 3<sup>rd</sup> Meeting of the Conference of the Parties, UNEP/CHW.3/35 (28 November 1995); see also Article 14 of the Convention, *supra* note 56

African countries to meet the technical, institutional and regulatory requirements for the implementation of the Basel Convention.<sup>63</sup>

### **3.2 NON-PROLIFERATION OF NUCLEAR WEAPONS AND NUCLEAR WEAPONS FREE ZONE**

Traditional collective security paradigm, in international law, did not include the protection and promotion of human rights. This is evident in the controversial issue of whether there is a right to humanitarian intervention in international law and was not until recently formally adopted in the concept of responsibility to protect (R2P).<sup>64</sup> This Paper acknowledges that collective security and human rights, as normative systems are mutually reinforcing.<sup>65</sup> As a Commentator puts it,

“Yet, until more recently, within the dominant literature sets and in the prevalent institutional praxis, the concept of collective security has not been traditionally linked in as close or positive manner with the enjoyment of human rights.”<sup>66</sup>

Nuclear weapons portend grave consequences for human rights, including the right to life, health and a healthy environment especially in view of the adverse effects of nuclear technology to human life and health as seen in the use of nuclear weapons in Hiroshima and Nagasaki as well as the nuclear disaster and radioactive fallout in

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<sup>63</sup> See <http://www.basel.org.ng/index.php/2013-08-09-13-11-54/bccca-nigeria/profile>, (Last accessed 19/02/2015)

<sup>64</sup> Report of the International Commission on Intervention and State Sovereignty (ICISS) 2001, A/57/303, 14 August 2002, Annex.

<sup>65</sup> See Preamble of the Arms Trade Treaty, 52 *ILM* 985 (2013)

<sup>66</sup> Obiora Chinedu Okafor, ‘The African Commission on Human and People’s Rights as a Collective Human Security Resource: Promise, Performance and Prospects’ in Ademola Abass (edited), *Protecting Human Security in Africa* (Oxford: Oxford University Press, 2010) 313, at p.314



Chernobyl. Thus, it is imperative that the Paper considers the role played by Nigeria in the non-proliferation and banning of nuclear weapons at the global level and regional levels, respectively.

In pursuit of nuclear non-proliferation in Africa, the OAU in 1964 adopted the Declaration on the Denuclearisation of Africa, wherein the OAU member states proclaimed a readiness to undertake through an international agreement to be concluded under the United Nations, not to manufacture or acquire control of nuclear weapons.<sup>67</sup> The 1964 Declaration came as a joint response of African States under the auspices of the newly formed OAU to French nuclear weapons tests in the Sahara region Africa.<sup>68</sup> Between 1960 and 1966, France conducted 3 atmospheric and 13 underground tests of nuclear weapons in Africa which resulted in dangerous radioactive fall-out in several African countries, despite appeals of some African countries to France not to conduct the tests.<sup>69</sup> In response, a newly independent Nigeria severed diplomatic relations with France in 1961.

Progress under the 1964 Declaration was compromised by the pursuit of a nuclear programme by the Apartheid regime of South Africa. Although technologically disadvantaged in relation to the West, the pursuit of a nuclear programme by the

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<sup>67</sup> AHG Resolution 11(I) 1964, Paragraph 1; The UN General Assembly endorsed the Declaration in Resolution 2033 (XX), 3 December 1963. See also UNGA Resolution 1652 (XVI), 24 November 1961, passed at the instance of African States calling upon members states to respect the African continent as a denuclearised zone.

<sup>68</sup> E.I. Nwogwugwu, 'The Treaty of Pelindaba: An African Nuclear Weapon Free Zone' in Abdulqawi A. Yusuf (ed.), *African Yearbook of International Law/Annuaire Africain De Droit International* 1996, Volume 4 (The Netherlands: Kluwer Law International, 1997) 227, p.228

<sup>69</sup> Oluyemi Adeniji, *The Treaty of Pelindaba on the African Nuclear-Weapons-Free Zone*, UNIDIR/2002/16 (Geneva: Publication of United Nations Institute for Disarmament Research, 2002), p.35

Apartheid regime of the Nationalist government of South Africa constituted a threat to regional security in Africa. Nigeria which was actively involved in the struggle against Apartheid was determined to stop the nuclear weapons programme of the South African government. Nigeria appointed a Permanent Representative to the International Atomic Energy Agency and Governor on the IAEA Board of Governors in a bid to bring about an end to the monopoly of South Africa as the designated member for Africa on the Board.<sup>70</sup>

Despite progress on the denuclearisation of Africa being further impeded by the Cold War, Nigeria which was represented on the Political and Security Committee (First Committee) of the United Nations General Assembly from 1977 to 1990 “played a major role in the formulation of the annual resolutions” on the implementation of the OAU Declaration on Denuclearisation of Africa.<sup>71</sup>

In 1990 a group of experts was appointed by UN, together with the OAU, to study the modalities for the implementation of the 1964 Declaration on the Denuclearisation of Africa;<sup>72</sup> and Nigeria was not just appointed into the group but elected as Chairman of the group.<sup>73</sup> Also, in 1993 Nigeria was appointed into and elected as Chairman of a group of experts jointly appointed by the UN and the OAU to draft a treaty on denuclearisation in Africa.<sup>74</sup>

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<sup>70</sup> *Ibid.*, p.1

<sup>71</sup> *Ibid.*

<sup>72</sup> UNGA Resolution 45/56A, 4 December 1990

<sup>73</sup> Adeniji, *supra* note 69, p.2

<sup>74</sup> *Ibid.*

Efforts at the denuclearisation of Africa culminated in the draft and adoption of the African Nuclear Weapons Free-Zone Treaty (Pelindaba Treaty) in 1996.<sup>75</sup> Protocol I of the Pelindaba Treaty invites all Nuclear Weapons States to agree not to use or threaten to use nuclear explosive devices against any party to the Treaty or any territory within the African nuclear-weapon-free zone.<sup>76</sup> To do so in violation of the Treaty and the Protocol will engage the international responsibility of the State in breach. Protocol II invites Nuclear Weapon States to agree not to take any part in the testing of any nuclear explosive device anywhere within the African nuclear-weapon-free zone.<sup>77</sup> These Protocols have been signed by all Nuclear Weapons States and ratified by all of them, with the exception of the United States which is yet to ratify the Protocols.<sup>78</sup>

Nigeria's contributions to the non-proliferation of nuclear weapons have been on a global scale and not just limited with respect to the OAU. During negotiations for the Non-Proliferation Treaty,<sup>79</sup> Nigeria was a member of the Eighteen Nation Disarmament Committee and which advanced the view that non-proliferation was to be based on the principles of "responsible political actions by the major powers and in particular refraining from nuclear blackmail of smaller States or threatening their sovereignty with conventional weapons; banning of nuclear weapons and or renouncing their first use; and freezing the production of nuclear weapons and their delivery vehicles."<sup>80</sup>

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<sup>75</sup> 35 *ILM* 698 (1996)

<sup>76</sup> *Ibid.*, Additional Protocol I, Article I

<sup>77</sup> *Ibid.*, Additional Protocol II, Article I

<sup>78</sup> See <http://www.au.int/en/sites/default/files/pelindaba%20Treaty.pdf>, (Last accessed 19/02/2015)

<sup>79</sup> 729 *U.N.T.S.* 161; 7 *ILM* 8809 (1968)

<sup>80</sup> Adeniji, *supra* note 69, p. 14

Nigeria, together with the other two African States and the five non-aligned and neutral States members of the Eighteen Nation Disarmament Committee proposed five main principles to be the basis for the negotiation of the Non Proliferation Treaty.<sup>81</sup> The Non Proliferation Treaty was adopted in 1968 with the objective of preventing the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament. The Treaty enjoys widespread adherence by its 190 state parties and has been pivotal in nuclear non-proliferation.<sup>82</sup>

The Non Proliferation Treaty provides for review conferences to be held every five years,<sup>83</sup> and Nigeria has been actively represented and involved in the Review Conferences and the Preparatory Committees (PREPCOM) sessions for the conferences.<sup>84</sup> For instance in the 2010 Review Conference, Nigeria (as part of a group of States) submitted a Working Paper titled 'Further Strengthening the Review Process of the Treaty on the Non-Proliferation of Nuclear Weapons'.<sup>85</sup> During the Review Conference, Nigeria also articulated its view that Nuclear Weapons States had to commit to disarmament.<sup>86</sup>

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<sup>81</sup> *Ibid.*, pp.14-15

<sup>82</sup> Joseph S. Nye, 'Non Proliferation: A Long-Term Strategy', (1978) 56 *Foreign Affairs* 601, p.605

<sup>83</sup> *Supra* note 79, Article VIII (3)

<sup>84</sup> Noël Stott and Amelia Broodryk, *Securing Africa's Nuclear Resources*, (Pretoria: Institute for Security Studies, 2011), p.15

<sup>85</sup> 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Working Paper Submitted by Canada, Australia, Austria, Chile, Germany, Ireland, Italy, Japan, Mexico, the Netherlands, New Zealand, Nigeria, Poland, Sweden, Switzerland, Thailand and Ukraine, 18 March 2010, UN Doc. NPT/CONF.2010/WP.4

<sup>86</sup> See generally Final Document of the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, UN Doc. NPT/CONF.2010/50 (Volume III); William Potter, Patricia Lewis, Gaukhar Mukhatzhavanova and Miles Pomper, 'The 2010 Non Proliferation Treaty

Nigeria has regularly canvassed for adherence to the Non Proliferation Treaty not just to avoid the potential devastation by nuclear weapons but also to contribute to economic development. It has also called for the commitment of States to the moratorium of nuclear testing and the ratification of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) to ensure its entry into force.<sup>87</sup>

The United Nations Security Council, in 2004, adopted Resolution 1540 which mandates States to “refrain from supporting by any means non-State actors from developing, acquiring, manufacturing, possessing, transporting, transferring or using nuclear, chemical or biological weapons and their delivery system.”<sup>88</sup> Resolution 1540 complements the aims of the Non-Proliferation Treaty, including non-proliferation, disarmament and utilisation for peaceful purposes of nuclear weapons. The Security Council also established a Committee (1540 Committee) to monitor and oversee the implementation of the Resolution.<sup>89</sup> All member States of the United Nations are obliged to submit reports to the Committee on actual or intended steps with regard to implementation of the Resolution.<sup>90</sup> Despite the paucity of reports by African states, Nigeria is a notable exception in the sense of not just having

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Review Conference: Deconstructing Consensus’, *Center for Non Proliferation Studies Special Report 17 June 2010*, p.8

<sup>87</sup> Statement by Nigeria at the First Session of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons General Debate, Vienna, 30 April 2012, pp.2-3, available at <http://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120503/Nigeria.pdf>, (Last accessed 19/02/15)

<sup>88</sup> S/RES 1540 (2004), Paragraph 1

<sup>89</sup> *Ibid.*, Paragraph 4

<sup>90</sup> *Ibid.*

complied with its reporting obligation under Resolution 1540; it is also a Vice-Chair of the 1540 Committee.<sup>91</sup>

In April 2010, the government of the United States hosted an international nuclear security summit and invited only 4 African countries, including Nigeria to participate in the event during which the participants committed to strengthen nuclear security and reduce the threat of nuclear terrorism.<sup>92</sup> To build on the achievements of the 2010 summit, another international summit was organised in Korea in 2012 with Nigeria, as one of only 6 African countries which participated in the summit.<sup>93</sup>

Nigeria's contributions to global nuclear non-proliferation and disarmament have been acknowledged thus,

“... Nigeria has been engaged in the work to eliminate nuclear weapons. Nigeria was involved in the process to develop the Africa nuclear-weapons-free zone and was part of the joint group of experts that drafted the Treaty text. In addition to being part of the African Group in *fora* such as the UN First Committee and the CD [Conference on Disarmament], Nigeria is a member of NAM [Non-Aligned Movement] and the De-alerting Group. Since 2007, the De-alerting Group has “called for action to address the significant numbers of nuclear weapons that remain today at high levels of readiness”.”<sup>94</sup>

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<sup>91</sup> <http://www.un.org/en/sc/1540/committee/composition.shtml>, (Last accessed 19/02/15)

<sup>92</sup> See Communiqué of the Participants (13 April 2010) available at <https://www.whitehouse.gov/the-press-office/communiqu-washington-nuclear-security-summit> , see also <http://www.state.gov/t/isn/nuclearsecuritysummit/2010/> (Last accessed 19/02/2015)

<sup>93</sup> See [http://www.mofa.go.kr/ENG/policy/disarmament/nss/overview/index.jsp?menu=m\\_20\\_70\\_30](http://www.mofa.go.kr/ENG/policy/disarmament/nss/overview/index.jsp?menu=m_20_70_30), (Last accessed 19/02/2015)

<sup>94</sup> HelleWinge Laursen, ‘An Introduction to the Issue of Nuclear Weapons in Africa’, *Nuclear Weapons Project, Background Paper No 1*, May 2012, International Law and Policy Institute, p.16

### **3.3 GLOBAL ARMS TRADE**

Arms trade and transfer portend grave potential to affect the enjoyment of certain fundamental rights and freedoms including the right to life, right to freedom from torture and other forms of cruel, inhuman, or degrading treatment; rights to liberty and security of person, right to freedom from slavery, right to freedom of thought, conscience and religion; the rights to freedom of assembly and of expression, rights to health and education.<sup>95</sup> This potential is exponentially increased with advancements in technology and conventional weaponry development.

The problem with arms trade and the concomitant proliferation of small arms and light weapons is particularly highlighted during armed conflict. This is evident in the conflicts in Somalia, Liberia, Sierra Leone, Guinea Bissau, Côte d' Ivoire, Sudan, the Democratic Republic of Congo and Nigeria, just to mention a few. Global arms trade has the potential to constitute a threat to international peace and security, and invariably human rights.

On the one hand, there is the ability of the proliferation of arms to trigger armed conflict within a state and as well as in neighbouring states. For instance civil war in Liberia in 1989 triggered armed conflict in neighbouring States. Also consequent upon the Libyan conflict, there was increased availability of small arms and light weapons which found their way to North and West Africa for example, Mali and

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<sup>95</sup> 'The Arms Trade Treaty (2013)', *Geneva Academy of International Humanitarian Law and Human Rights Academy Briefing Paper No. 3*, June 2013, p.27

Nigeria resulting in the Mali crisis of 2012 and fuelling the insurgency by a radical Islam and extremist jihadist group known as Jama'atul Ahul Sunnah Lidda' Watal Jihad (People Committed to the Propagation of the Prophet's Teachings and Jihad)<sup>96</sup> in the North Eastern part of Nigeria.

On the other hand, there is the utility of arms in armed conflict which results in gross violations of human rights often resulting in the internal displacement of persons.

According to the United Nations,

“Small arms facilitate a vast spectrum of human rights violations, including killing, maiming, rape and other forms of sexual violence, enforced disappearance, torture, and forced recruitment of children by armed groups. More human rights abuses are committed with small arms than with any other weapon.”<sup>97</sup>

In December 2014, the global arms trade market was estimated to be approaching \$100 billion per year.<sup>98</sup> However, it must be stated that any estimate as to the worth of global arms trade is to be treated cautiously because of the likelihood of states to avoid full official disclosure of their arms trade activities by providing inaccurate information.

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<sup>96</sup> More commonly known as '*Boko Haram*' due to their rejection of Western education and culture.

<sup>97</sup> <http://www.un.org/disarmament/convarms/salw/>, (Last accessed on 19/02/15). On what constitutes 'small arms and light weapons', see the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons adopted by the UN General Assembly, A/60/88 and Corr.2, Annex, Paragraph 4, adopted by the UN General Assembly at its 61<sup>st</sup> Plenary Meeting on 8 December 2005, (A/60/49 [Vol.II], Decision 60/519)

<sup>98</sup> <http://www.amnesty.org/en/news/global-arms-trade-treaty-enters-force-2014-12-22>, (Last accessed 19/02/15)



The African continent accounts for the bulk of global armed conflicts, especially the sub-Saharan region. It is estimated that out of the 640 million small arms in global circulation, about 100 million are found within Africa, and about 30 million in sub-Saharan Africa and 8 million in West Africa alone.<sup>99</sup> It is further estimated that about 59% of SALW are in civilian possession, about 38% are possessed by government through the armed forces, 2.8% by the police and 0.2% by armed groups.<sup>100</sup> These statistics have accounted for the killing of about half a million people every year with firearms. For instance, in the Democratic Republic of Congo, it is estimated that more than 5 million people died as a result of the armed conflict in the country since 1998.<sup>101</sup>

The experience of a civil war (between 1967-1970) and the more recent Boko Haram insurgency, at least since July 2009 as well as the seizure of small arms and light weapons from a suspected Hezbollah cell in Kano state in the Northern part of Nigeria have fuelled Nigeria's active campaign against the illegal trade in small arms and light weapons (SALW) and the control of global arms trade. Nigeria has drawn the attention of the international community to the challenges faced by Africa, and indeed the international community by the problems caused by the proliferation of arms. While addressing the UN General Assembly thematic debate on 25 April 2013, the then Nigerian Foreign Minister, Ambassador Olugbenga Ashiru drew global attention to the fact that "the situations in the Sahel, the Great

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<sup>99</sup> V.O.S. Okeke and R.O. Oji, 'The Nigerian State and the Proliferation of Small Arms and Light Weapons in the Northern Part of Nigeria', (2014) 4 *Journal of Educational and Social Research* 415, p. 416

<sup>100</sup> *Ibid.*

<sup>101</sup> <http://www.amnesty.org/en/news/global-arms-trade-treaty-enters-force-2014-12-22>, (Last accessed 19/02/15)

Lakes and the Horn of Africa account for more than 60% of the Agenda of the United Nations Security Council.”<sup>102</sup>

As a result of the security situation posed by the proliferation of illicit small arms and light weapons, the Economic Community of West African States (ECOWAS), of which Nigeria is a prominent member, adopted a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa in October 1998. Nigeria set up a National Committee in 2001 to oversee the implementation of the Moratorium.<sup>103</sup> Following the ECOWAS in its bold move, the OAU (now AU) adopted a Common African Position on the Proliferation of Small Arms and Light Weapons in Bamako.<sup>104</sup>

In 2006, at the 30<sup>th</sup> ordinary summit of the ECOWAS in Abuja, Nigeria the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material was adopted to replace the 1998 Moratorium.<sup>105</sup> As part of the new regime to regulate arms trade, the ECOWAS established a Small Arms Unit to advocate appropriate policies and develop and implement programmes. Also, a Small Arms Control Programme was launched to replace the Programme for Coordination and Assistance for Security and Development.<sup>106</sup> Nigeria has ratified

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<sup>102</sup> ‘Peaceful Resolution of Conflict in Africa’, excerpt available at <http://www.un.org/press/en/2013/ga11364.doc.htm> (Last accessed 19/02/15)

<sup>103</sup> The efficacy of the Committee is doubtful.

<sup>104</sup> Ministerial Conference on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 30 November – 1 December 2000, Bamako, Mali; text available at <http://www.peaceau.org/uploads/bamako-declaration.pdf>; <http://2001-2009.state.gov/t/ac/csbm/rd/6691.htm> (Last accessed 19/02/2015)

<sup>105</sup> *Yearbook of the United Nations* 2006, *supra* note 51, p.661

<sup>106</sup> *Ibid.*

the ECOWAS Convention on Small Arms and Light Weapons, although it is yet to establish a National Commission to implement the Convention.

Apart from its regional activities, Nigeria has been involved internationally in its campaigns at regulation of global arms trade. In 2005, Nigeria (acting on behalf of the African Group of States) addressed the open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.<sup>107</sup> In 2006 at the UN General Assembly, Nigeria voted in favour of a Resolution which addressed the concerns of the international community of surplus stockpiles of conventional ammunition which may represent security risks and the destruction of such.<sup>108</sup> The Resolution further encouraged member States “to examine the possibility of developing and implementing, within a national, regional or sub-regional framework, measures to address accordingly the illicit trafficking related to the accumulation of such stockpiles.”<sup>109</sup>

Prior to 2013, there was no legally binding international instrument regulating arms trade at the global level.<sup>110</sup> It is against this background that Nigeria’s contributions may be assessed. In the absence of a binding global instrument, Nigeria was actively involved at the sub-regional and regional efforts within the auspices of the ECOWAS and the OAU (now AU), respectively. Nigeria was one of the 94 countries to express its views following the request of the General Assembly on the views of member states on the feasibility, scope and draft parameters for a comprehensive and legally binding instrument regulating the import,

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<sup>107</sup> Report of the Open-Ended Working Group, 27 June 2005, UN Doc. A/60/88, Paragraph 11, p.3

<sup>108</sup> Resolution 61/72, *Yearbook of the United Nations* (2006), *supra* note 51, p.662. The United States voted against this Resolution and Japan abstained from voting.

<sup>109</sup> *Ibid.*

<sup>110</sup> In 2001, the United Nations had adopted a Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, UN Document A/CONF.192/15

export and transfer of conventional weapons.<sup>111</sup> On 2 April 2013, Nigeria voted in favour of the adoption of the Treaty,<sup>112</sup> and on 12 August 2013 it signed and ratified the United Nations Arms Trade Treaty. As such, Nigeria became the fourth State (and first African State) to ratify the Treaty.

The adoption of the Arms Trade Treaty by the United Nations Conference in 2013 is a landmark development in international law with implications for international humanitarian law and international human rights.<sup>113</sup> The Treaty provides that State Parties shall not authorise any transfer of conventional arms or items covered under the Treaty “if it has knowledge at the time of authorisation that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilian protected as such, or other war crimes as defined by international agreements to which it is a Party.”<sup>114</sup>

The Treaty also provides for the obligation of State Parties, prior to authorisation of export of conventional arms or items covered under the Treaty to assess the potential of the conventional arms to be used to “commit or facilitate a serious violation of international humanitarian law, commit or facilitate a serious violation of

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<sup>111</sup> ‘Towards an Arms Trade Treaty: Establishing Common International Standards for the Import, Export and Transfer of Conventional Arms’, Report of the Secretary-General to the General Assembly, UN Doc.A/62/278, 17 August 2007

<sup>112</sup> UN General Assembly Resolution 67/234B

<sup>113</sup> The Treaty entered into force on 24 December 2014. The treaty does not include nuclear weapons, biological weapons and chemical weapons (weapons of mass destruction); rather it is concerned with conventional weaponry. Article 2(1) of the Treaty sets out the scope of applicability of the Treaty as all conventional arms within the categories of battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons, *supra* note 65.

<sup>114</sup> *Ibid.*, Article 6(3)

international human rights law, commit or facilitate an act constituting an offence under international conventions or relating to terrorism to which the exporting State is a party; commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organised crime.”<sup>115</sup>

Nigeria’s signing and record ratification of the Arms Trade Treaty as well as its efforts, both at the regional and global levels, are evidential of a committed stance against global arms trade. By being at the forefront of consenting to international obligations arising under the Treaty, it asserts its stance on the issue of global arms trade, paves way for other states that may want to emulate such commitment and very importantly, promotes and protects international human rights.

### **3.4 NIGERIA’S ROLE IN REGIONAL ORGANISATIONS**

Nigeria’s contributions to international human rights praxis are evident from its role and contributions to regional organisations, for instance in the establishment of the Economic Community for West African States (ECOWAS). Nigeria was instrumental in the creation of ECOWAS,<sup>116</sup> which was established to promote regional cooperation and integration in order to raise the living standards of people as well as to maintain and increase economic stability.<sup>117</sup>

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<sup>115</sup> *Ibid.*, Article 7

<sup>116</sup> See Treaty of Lagos 1975, 1010 *U.N.T.S.* 17, reprinted in 14 *ILM* 1200 (1975). The ECOWAS consists of Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Côte d’Ivoire, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. See generally Olatunde Ojo, ‘Nigeria and the Formation of ECOWAS’, (1980) 34 *International Organization* 571, pp.590-600

<sup>117</sup> Iweriebor and Uhomoibhi, *supra* note 4, p.38

### **3.4.1 Peacekeeping**

With the re-vivification of the United Nations at end of the Cold War, global expectations of the international organisation progressively undertaking, at least in an enhanced capacity its role in international peace and security which had been compromised by the stalemate of the Cold War, came to the fore. The United Nations rose to the occasion in 1991 to liberate Kuwait following its annexation by Iraq. However, the United Nations fell short of expectations, at least with regard to Africa. The inability or reluctance of the West to become involved in Africa's conflicts prompted Nigeria to rise to the occasion most notably in Liberia and Sierra Leone; invariably giving it the opportunity to make regional and global impact especially in the area of peace keeping.<sup>118</sup>

The ECOWAS was established as an organisation for economic integration of West African States with a Monitoring Group (ECOMOG), which is a multilateral armed force. Despite the multilateral nature of the armed forces making up the ECOMOG, Nigeria contributes more than other participants in terms of military might and financial assistance to ECOMOG interventions.<sup>119</sup>

Following the insurgency in the wake of 1985 presidential elections in Liberia and counter-insurgency actions which resulted in the indiscriminate ethnic killings, mass rape of women, burning of villages, looting of property and the enlistment of minors

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<sup>118</sup> Gerry Cleaver and Roy May, 'Peacekeeping: The African Dimension', (1995) 22 *Review of African Political Economy* 485

<sup>119</sup> Herbert Howe, 'Lessons of Liberia: ECOMOG and Regional Peacekeeping', (1996/97) 21 *International Security* 145, p.152

in the belligerency as ‘child soldiers’, the situation in Liberia constituted a threat to international peace and security in the West African region and resulted not just in armed conflict in neighbouring countries like Sierra Leone but also internal displacement of people thereby causing a refugee situation in neighbouring states including Guinea and Côte d’ Ivoire.

Liberia requested the United Nations to intervene in the conflict; a request which was declined by the Security Council.<sup>120</sup> In the absence of action by the United Nations Security Council which had primary responsibility for the maintenance of international peace and security,<sup>121</sup> the ECOMOG was sent into Monrovia in 1990 with a mandate to establish and supervise an immediate cease-fire and the establishment of an interim government to prepare for elections.<sup>122</sup>

Although ECOMOG did not, *per se*, have a human rights mandate i.e. to protect and promote human rights; nevertheless it was inevitable from the nature of the conflict and the circumstances which precipitated action by ECOMOG that its action would have consequences for human rights.<sup>123</sup> ECOMOG, under Nigerian command, established a degree of peace and order in Monrovia which allowed humanitarian workers and groups to return to Liberia. It also contained the warring factions, enabled the installation of an Interim Government of National Unity as well as

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<sup>120</sup> Ademola Abass, *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter* (Oxford: Hart Publishing, 2004), p.144

<sup>121</sup> Article 24 of the Charter of the United Nations, *supra* note 14. The UN withdrew its personnel in June 1990 after a fatal attack on UN premises in Monrovia.

<sup>122</sup> UN Doc. S/21485

<sup>123</sup> The ECOWAS Heads of State and Government emphasized that ECOMOG was to be deployed in Liberia “to stop the senseless killing of innocent civilian national and foreigners, and to help the Liberian people to restore their democratic institutions.” See *ibid.*

obtained a ceasefire.<sup>124</sup> The ECOMOG action in Liberia received commendation by the OAU as well as the United Nations.<sup>125</sup> The United Nations Security Council in Resolution 788 commended ECOWAS for its efforts to restore peace, security and stability in Liberia.<sup>126</sup>

Nigeria played a similar role in Sierra Leone following armed conflict in the country and the overthrow of the democratically elected government of President Ahmad Tejan Kabbah by a coup d'état in May 1997. The situation in Sierra Leone deteriorated into a human rights 'black hole' with incidents of mass killings, abductions, rape which resulted in a refugee crisis with at least 30% of the population being internally displaced.<sup>127</sup>

Nigeria led the ECOWAS mission in its intervention in Sierra Leone and succeeded in re-instating the democratically elected Government. In 1999, the parties to the conflict signed a peace agreement to end hostilities and form a government of national unity.<sup>128</sup> The United Nations Security Council commended ECOWAS and ECOMOG for its important role in the restoration of international peace and security.<sup>129</sup>

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<sup>124</sup> Yamoussoukro IV Accord, 30 October 1991, UN Doc.S/24815

<sup>125</sup> S/RES/813 (1993)

<sup>126</sup> S/RES/788 (1992) and reaffirmed in S/RES/813 (1993)

<sup>127</sup> See <http://www.un.org/en/peacekeeping/missions/past/unomsil/UnomsilB.htm>, (Last accessed 19/02/2015)

<sup>128</sup> Lomé Peace Agreement, UN Doc. S/1999/777 Annex

<sup>129</sup> S/RES/1162 (1998); see also S/RES/1270 (1999) and S/RES/1289 (2000)



Traditionally, peace keeping operations are established when parties to an armed conflict have reached a ceasefire agreement and agree to the presence of international troops to uphold the terms of such an agreement. The operations in Liberia and Sierra Leone were atypical of peacekeeping operations because they went beyond monitoring a ceasefire agreement but actually undertook enforcement action (peace enforcement).

Although the ECOWAS mission, led by Nigeria, in Liberia and Sierra Leone involved the use of military force without the express authorisation of the United Nations Security Council which has implicated the legality of the actions under Chapter VIII of the Charter of the United Nations,<sup>130</sup> the action of the Security Council in commending the missions is of noteworthy importance.<sup>131</sup> The Nigeria-led ECOWAS operation in Liberia was epoch-making in the sense that it gave rise to a situation where for the first time the United Nations participated in a peace keeping mission with a peace keeping force established by a regional organisation, or any organisation.<sup>132</sup>

Whatever short-comings the Nigeria-led ECOWAS operations in Liberia and Sierra Leone may be criticized as having, it is clear that the operations helped to secure a ceasefire and bring about an end to the conflicts.<sup>133</sup> Thus securing lives and human rights in the affected region and re-defined the concept of peacekeeping by, inter

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<sup>130</sup> Abass, *supra* note, 120, pp. 141-142

<sup>131</sup> S/RES/788 (1992); S/RES/911 (1994); S/RES/866 (1993). The Security Council in Resolution 911 expressly commended African States that had contributed troops towards the operation in Liberia.

<sup>132</sup> S/RES/866 (1993); see Christine Gray, *International Law and the Use of Force*, 3<sup>rd</sup> edition (Oxford: Oxford University Press, 2008) p.405

<sup>133</sup> Gray, *ibid.*, p.406

alia, providing a template for future action by regional organisations as well as joint action by the United Nations and regional organisations in this respect. The African Union has included enforcement action within its mandate and the ECOWAS has formalised the practice under a new Protocol which empowers it to undertake enforcement action.<sup>134</sup>

Nigeria's commitment to international peace and security is evident in its contributions towards peace keeping. In the wake of its attainment of independence, Nigeria sent troops to participate in the United Nations peace mission in the Congo (ONUC) in 1960.<sup>135</sup> Today, Nigeria is one of the largest contributors to international peace keeping operations and has participated in peace keeping operations in the Congo, Namibia, Angola, Western Sahara, Cambodia, Mozambique, Somalia, Rwanda, Yugoslavia, Bosnia-Herzegovina, Croatia, Macedonia, East Timor, Kosovo, Sierra Leone, Liberia, Afghanistan, Cote D'Ivoire, Burundi, Haiti, Sudan, South Sudan and Guinea Bissau.<sup>136</sup> As a result of its involvement in peacekeeping operations, Nigeria established a peace keeping office under the Nigeria Police Force to train and deploy troops for operations in support of international peace and security. It is estimated that over 12,000 personnel have been deployed by Nigeria to

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<sup>134</sup> Abass, *supra* note 120, p.152

<sup>135</sup> <http://www.un.org/en/peacekeeping/missions/past/unomsil/UnomsilB.htm>, (Last accessed 19/02/2015)

<sup>136</sup> See Isiaq A. Abdulwaheed, 'Nigeria and Peacekeeping Process in Africa: The Darfur Peace Process in Sudan', (2012) 3 *International Journal of Politics and Good Governance* 1, p.6; Ebere Richard Adigbuo, 'Diplomatic and Military Co-operations in Nigeria's Foreign Policy', (2013) 13 *International Affairs and Global Strategy* 11, p.13; see also [http://www.un.org/en/peacekeeping/contributors/2014/mar14\\_2.pdf](http://www.un.org/en/peacekeeping/contributors/2014/mar14_2.pdf) (Last accessed 19/02/2015)

peacekeeping operations under the auspices of the United Nations, the African Union and the Economic Community of West African States (ECOWAS).<sup>137</sup>

### **3.4.2 The ECOWAS Court of Justice**

By a 1991 Community Protocol, the ECOWAS Court of Justice was created with the mandate to resolve disputes between Community members and interpret Community Rules.<sup>138</sup> Though a regional effort, Nigeria has played an important role in the life of the court as well as the Court's contributions to human rights by helping to shape the human rights mandate of the Court.

Firstly, despite the 1991 Protocol entering into force in 1996, it was only with the active support of President Olusegun of Nigeria (1999-2003) that the Court assumed life. Secondly, although the 1991 Protocol did not envisage a situation whereby private individuals would have access to the court, a Committee of Eminent Persons, chaired by General Yakubu Gowon of Nigeria, in the review process geared towards the restructuring of the ECOWAS in 1993 were of the opinion that access to court should be granted to private litigants.<sup>139</sup>

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<sup>137</sup> <http://www.npf.gov.ng/information/peace-keeping-operations/> (Last accessed 19/02/2015)

<sup>138</sup> Protocol A/P.1/7/91, Article 9(2), (3). By Article 10(1) of the Protocol, the Court was granted jurisdiction to issue advisory opinions at the request of the Authority, Council, member State(s) or the Executive Secretary or any other institution of the Community.

<sup>139</sup> Committee of Eminent Persons for The Review of the ECOWAS Treaty, Final Report 16 June 1992, (on file with authors); see also Karen J. Alter, Lawrence R. Helfer and Jacqueline R. McAllister, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice(2013) 107 *American Journal of International Law* 737, p.741

Following the 2001 Good Governance Protocol which envisaged the possibility of the Community Court entertaining human rights cases,<sup>140</sup> the jurisdictional landscape of the Court was radically changed by the case of *Olajide Afolabi vs. Federal Republic of Nigeria*.<sup>141</sup> The case concerned a Nigerian trader who alleged that Nigeria, by unilaterally closing its border with Benin Republic, had violated his right to free movement of persons and goods. Nigeria challenged the jurisdiction of the Court and the standing of the complainant on the grounds that private individuals lacked access to court under the 1991 Protocol. The Court dismissed the suit but acknowledged the serious issues raised by the complaint. The decision gave impetus to a campaign to expand the jurisdiction of the Court and this resulted in a human rights mandate for the Court under a 2005 Protocol.<sup>142</sup>

Thus, the right of individuals to access to the ECOWAS court was upheld in *Tidjani v. Federal Republic of Nigeria*.<sup>143</sup> Likewise, a Non Governmental Organisation (NGO) registered in Nigeria has successfully asserted the right of NGOs to access to the ECOWAS Court in *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria*.<sup>144</sup> In addition, the Court has upheld, at the instance

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<sup>140</sup> Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, PeaceKeeping and Security, December 21, 2001, see Article 39. See also Frederick Cowell, 'The Impact of the ECOWAS Protocol on Good Governance and Democracy (2011) 19 *African Journal of International and Comparative Law* 331

<sup>141</sup> Case No. ECW/CCJ/APP/01/03, Judgment (27 April 2004)

<sup>142</sup> Supplementary Protocol A/SP1/01/05; see generally Alter, *supra* note 139, p.750

<sup>143</sup> Case No. ECW/CCJ/APP/01/06, Judgment, Paragraph 22 (28 July 2007); see also *Sikiru Alade v. Federal Republic of Nigeria*, Case No. ECW/CCJ/APP/05/11, Judgment (11 June 2012)

<sup>144</sup> Case No. ECW/CCJ/APP/08/09, Ruling, Paragraphs 59-61 (10 December 2010) and Case No. ECW/CCJ/APP/08/08, Ruling, Paragraphs 33-34 (27 October 2009)

of a Nigerian NGO, the right of a people to environment favourable for development.<sup>145</sup>

### **3.4.3 African Commission on Human and People's Rights**

The history of the African Charter on Human and Peoples' Rights can be traced to Nigeria when in 1961, at the African Conference on the Rule of Law in Lagos, Nigeria organised under the aegis of the International Commission of Jurists when the proposals to establish an African human rights instrument were first made.<sup>146</sup>

The African Commission on Human and People's Rights is an international human rights institution which was established pursuant to the African Charter on Human and Peoples' Rights (Banjul Charter).<sup>147</sup>

The Banjul Charter was adopted by the African Heads of State, including Nigeria, in June 1981 under the aegis of the OAU. The Commission came into existence with the entry into force of the Charter on 21 October 1986. The Commission is mandated to promote and protect human and peoples' rights.<sup>148</sup> While it is debatable whether and to what extent the Commission has fulfilled its mandate, a debate which

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<sup>145</sup> *SERAP v. Federal Republic of Nigeria*, Case No. ECW/CCJ/APP/09, Judgment, Paragraphs 111-112 (14 December 2012)

<sup>146</sup> See Law of Lagos, January 7, 1961 reprinted in (1961) 3 *Journal of International Commission of Jurists* 9. See generally Nsongurua J. Udombana, 'Toward the African Court on Human and Peoples' Rights: Better Late Than Never', (2000) 3 *Yale Human Rights and Development Journal* 45, p.58

<sup>147</sup> OAU Doc. CAB/LEG/67/3 rev.5, reprinted in 21 *ILM* 58 (1982), Article 30. The Charter entered into force on 23 October 1986

<sup>148</sup> *Ibid.*, Article 45(1) and (2)

is outside the scope of this Paper;<sup>149</sup> nevertheless the activities of the Commission under chairmanship of Nigerians would be scrutinised with a view to determining whether the activities have contributed to international human rights praxis.

Between 1989 and 1991 under the Chairmanship of a Nigerian, Professor U.O. Umozurike, the Commission commenced the procedure in respect of 16 complaints made against Member States and intervened in some complaints and the “mere intervention was enough to secure the human rights of the persons affected.”<sup>150</sup> The Commission embraced an active ratification drive by urging members who had not ratified the African Charter on Human and People’s Rights to do so. The Commission at its 5<sup>th</sup> ordinary session invited State Parties to take appropriate measures to establish national institutions for the promotion and protection of human rights, where none exist.<sup>151</sup>

The Commission under the chairmanship of Professor Umozurike also made several recommendations to Member States to incorporate the African Charter on Human and People’s Rights in their various national legal systems as required under the

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<sup>149</sup> On this see Udombana, *supra* note 146, pp. 64-73 who describes the Commission as “in fact, barking. [But] It was not, however, created to bite.”

<sup>150</sup> Presentation of the Third Activity Report of the Chairman of the Commission, Professor U.O. Umozurike to the 26<sup>th</sup> Session of the Assembly of Heads of States and Governments of the OAU (9-11 July 1990), Third Annual Activity Report of the African Commission on Human and People’s Rights (1989-1990) Annex VII, in Rachel Murray and Malcolm D. Evans (edited), *Documents of the African Commission on Human and People’s Rights: Volume 1* (Oxford: Hart Publishing, 2001), p.202. See also Rachel Murray, *The African Commission on Human and People’s Rights and International Law* (Oxford: Hart Publishing, 2000), p.168

<sup>151</sup> ACHPR/Res.2(V)89: Resolution on the Establishment of Committees on Human Rights or Other Similar Organs at National, Regional or Sub-Regional Levels (1989) adopted at the 5<sup>th</sup> ordinary session 03-14 April 1989; text available at <http://www.achpr.org/sessions/5th/resolutions/2/> (Last accessed 19/02/15)

Charter, as well as at all educational levels.<sup>152</sup> Particularly, the Commission requested the Assembly of the Heads of States and Governments of the OAU (now AU) to adopt a recommendation that Member States, Parties to the African Charter “introduce the provisions of Articles 1 to 29 of the African Charter in their Constitutions, Laws, Rules and Regulations and Other Acts Relating to Human and People’s Rights.”<sup>153</sup>

Other achievements of the Commission during this period include the recommendations to Member States to form or encourage national or regional bodies interested in human rights; to conduct regular broadcasts on the Charter; to observe the 21<sup>st</sup> day of October as African Day on Human and People’s Rights; to render reports every two years on steps of Member states towards the implementation of the Charter.<sup>154</sup> In addition, the African Review on Human and People’s Rights was launched and observer status granted to some non-governmental organisations.<sup>155</sup>

Under chairmanship by a Nigerian, the Commission was engaged in promotional campaigns aimed at creating awareness, at least within the African continent, on the imperative of human rights. Particularly, the Chairman was “convinced of the need

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<sup>152</sup> *Supra* note 150

<sup>153</sup> Resolution on the Integration of the Provisions of the African Charter on Human and People’s Rights into National Laws of States (1989) adopted at the 5<sup>th</sup> ordinary session 03-14 April 1989; text available at <http://www.achpr.org/sessions/5th/resolutions/3/> (Last accessed 19/02/15)

<sup>154</sup> See the 3<sup>rd</sup> Activity Report of the African Commission on Human and Peoples Rights and Annex VII, in Murray and Evans (edited), *supra* note 150, p.201-203

<sup>155</sup> See the 5<sup>th</sup> Annual Activity Report of the African Commission on Human and Peoples Rights and Annex V to the 4<sup>th</sup> Annual Activity Report of the African Commission on Human and Peoples Rights, respectively in Murray and Evans (edited), *ibid.*, pp.211-216

to carry on promotion activities in all member States through lectures and seminars” and to this end, attended and delivered lectures within the African continent.<sup>156</sup>

The Commission, between 2007 and 2013, was chaired by a Nigerian for the second time when Catherine Dupe Atoki was elected as chairman of the Commission.

During her tenure, a study on the question of the death penalty in Africa was launched.<sup>157</sup> At its 51<sup>st</sup> Ordinary session, the Commission called upon State Parties to establish clear legal framework for sustainable development of natural resources in line with international human rights law and standards;<sup>158</sup> and following the adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, urged State parties who had not ratified the Covenant and its Protocol to do so.<sup>159</sup> The Commission authorised the initiation of the process of expanding the Declaration of the Principles on Freedom of Expression in Africa to include access to information. It also condemned the actions of the parties to the armed conflict in Sudan and South Sudan over the incitement to war and xenophobia instigated by the parties and called upon State parties in the conflict to ensure the preservation of life and security of non-combatants.<sup>160</sup>

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<sup>156</sup> Seventh Session of the African Commission on Human and People’s Rights, Intersession Activity Report of the Chairman of the African Commission on Human and People’s Rights November 1989-April 1990, Annex VI to the 3<sup>rd</sup> Activity Report, in Murray and Evans (edited), *ibid.*, pp.200-201

<sup>157</sup> Final Communiqué of the 51<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights, 18 April - 2 May 2012. Text available at

<http://www.achpr.org/sessions/51st/info/communique51/>, (Last accessed 19/02/2015)

<sup>158</sup> Resolution 224, 51<sup>st</sup> Ordinary Session, 18 April - 2 May 2012. Text available at

<http://www.achpr.org/sessions/51st/resolutions/224/>, (Last accessed 19/02/2015)

<sup>159</sup> Resolution 223, 51<sup>st</sup> Ordinary Session, 18 April - 2 May 2012. Text available at

<http://www.achpr.org/sessions/51st/resolutions/223/>, (Last accessed 19/02/2015)

<sup>160</sup> Resolution 219, 51<sup>st</sup> Ordinary Session, 18 April - 2 May 2012. Text available at

<http://www.achpr.org/sessions/51st/resolutions/219/>, (Last accessed 19/02/2015)



Under the chairmanship of Catherine Dupe Atoki, the Commission boldly expressed its “deep concerns” at allegations of torture against the Government of Ethiopia and condemned the excessive restrictions on the work of human rights organisations.<sup>161</sup> It called upon the Government of Ethiopia to grant detainees and prisoners access to their families and legal counsel and to provide necessary medical treatment in accordance with the Banjul Charter.<sup>162</sup> The Commission took bold steps in condemning acts of terrorism in Nigeria and Mali.<sup>163</sup> In particular, the Commission denounced the universal declaration of independence of Azawad by the National Movement for the Liberation of Azawad (MNLA) as a threat to democracy, peace and security. While expressing concern at the human rights situation in the north of Mali “marked by serious and massive human rights violations, in particular the summary execution of soldiers of the Malian army, rape of women and young girls in Gao and Timbuktu, massacre of civilians and widespread looting of property belonging to the Government and individuals”, the Commission condemned the acts, urged the Government of Mali to take all necessary measures to end the conflict and acts of terrorism and called upon ECOWAS, AU and the international community to assist Mali in securing the country.<sup>164</sup> as being in violation of the Constitutive Act of the African Union and the African Charter on Human and Peoples’ Rights.

There have been more cases from Nigeria decided by the African Commission than from any other African country. This has strengthened the human rights mandate of the Commission thereby contributing to international human rights praxis. Nigerian

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<sup>161</sup> Resolution 218, 51<sup>st</sup> Ordinary Session, 18 April - 2 May 2012. Text available at <http://www.achpr.org/sessions/51st/resolutions/218/>, (Last accessed 19/02/2015)

<sup>162</sup> *Ibid.*

<sup>163</sup> Resolutions 214 and 217, 51<sup>st</sup> Ordinary Session, 18 April - 2 May 2012. Text available at <http://www.achpr.org/sessions/51st/resolutions>, (Last accessed 19/02/2015)

<sup>164</sup> Resolution 217, *ibid.*

NGOs have also prominently featured in the working of the Commission by strengthening the Commission's capacity through their engagements with the Commission.

The Commission has been instrumental in the protection of human rights and fundamental freedoms.<sup>165</sup> In *International Pen and Others v. Nigeria*, the Commission found that Nigeria was in violation of the right to dignity and the prohibition of torture, cruel and inhumane punishment and treatment in relation to the detention of Ken Saro Wiwa and his treatment while in detention.<sup>166</sup> The Commission further found that Nigeria had breached its obligations under international law to respect the inviolability of human beings and violated the right of the victims to fair hearing in relation to the conduct of the trial and their execution.

The requirement under Article 56(5) of the Banjul Charter to exhaust local remedies has been highlighted and brought to the fore by the Commission in a number of cases involving Nigeria.<sup>167</sup> However, in *Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, the Commission held that the in view of the military decrees ousting the jurisdiction of the Nigerian courts,

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<sup>165</sup> See *Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria*, African Commission on Human and Peoples Rights Communication. Nos 140/94, 141/94, 145/95 (1999); *Kazeem Aminu v. Nigeria*, African Commission on Human and Peoples Rights Communication. No 205/97 (2000) and *Huri-Laws v. Nigeria*, African Commission on Human and Peoples Rights Communication. No 225/98 (2000)

<sup>166</sup> African Commission on Human and Peoples Rights Communication. Nos 137/94, 139/94, 154/96 and 161/97 (1998)

<sup>167</sup> *Academic Staff of Nigerian Universities v. Nigeria*, African Commission on Human and Peoples Rights Communication. No. 107/93 (1993); *Stephen Aigbe v. Nigeria*, African Commission on Human and Peoples Rights Communication. No. 252/2002 (2003); *Aturu v. Nigeria*, African Commission on Human and Peoples Rights Communication. No. 72/92 (1994)

thus depriving the people of Nigeria the right to seek redress in court for violations of human rights, that there could not be said to be in existence adequate domestic remedies under Article 56(5) of the African Charter.<sup>168</sup>

On its own part, Nigeria was among the first countries to ratify the African Charter on Human and Peoples' Rights.<sup>169</sup> It has incorporated the Charter into its municipal law. While its record with regard to its obligations under international law to respect human rights and fundamental freedoms remain questionable, Nigeria's engagement with the Commission has been such that in *Media Rights Agenda v. Nigeria*, the Federal Government made it clear that it was not contesting the merits or otherwise of the case.<sup>170</sup> Based on this, the Commission found Nigeria to be in violation of Articles 3(2),5,,6, 7(1) (a-d), 9 and 26 of the Banjul Charter and Principle 5 of the United Nations Basic Principles on the Independence of the Judiciary.

### **3.5 NIGERIA'S ROLE IN INTERNATIONAL ORGANISATIONS**

#### **3.5.1 United Nations Human Rights Council**

The United Nations Human Rights Council was established by the General Assembly, in 2006, as an intergovernmental body within the United Nations system to replace the United Nations Commission on Human Rights.<sup>171</sup> The Council is

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<sup>168</sup> African Commission on Human and Peoples Rights Communication. No. 155/96 (2001), Paragraphs 36-41

<sup>169</sup> African Charter on Human and People's Rights: List of Countries Which Have Signed, Ratified or Adhered to the Charter, Annex I to 4<sup>th</sup> Annual Activity Report, in Rachel Murray and Malcolm D. Evans (edited), *supra* note 150, p.207

<sup>170</sup> African Commission on Human and Peoples Rights Communication. No. 224/98 (2000), Paragraph 72

<sup>171</sup> A/RES/60/251, 15 March 2006

charged with responsibility for promotion and protection of human rights.<sup>172</sup> Nigeria was elected to the United Nations Human Rights Council in 2006 and was the first African country elected to Chairmanship of the Council between June 2008 and June 2009, as represented by Dr Martin I. Uhomoibhi.

During Nigeria's presidency of the Council, the Council succeeded at its mandate in the thematic areas of right to development,<sup>173</sup> unilateral application and enforcement of coercive measures,<sup>174</sup> respect for human rights and fundamental freedoms of migrants,<sup>175</sup> right to food,<sup>176</sup> human rights of civilians during armed conflicts,<sup>177</sup> importance of Extraordinary Chambers in the Courts of Cambodia in ensuring individual criminal responsibility for violations of international human rights,<sup>178</sup> and

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<sup>172</sup> *Ibid.*, Paragraphs 2, 3 and 5

<sup>173</sup> See Resolution 9/3, 22<sup>nd</sup> Meeting of Council, 24 September 2008, Preamble and Paragraph 2(a) wherein the Council emphasized the "urgent need to make the right to development a reality for everyone" and decided to ensure that sustainable development and the achievement of the Millennium Development Goals were promoted and advanced in its agenda thus raising the right to development to be at par with other human rights.

<sup>174</sup> The Council condemned the unilateral application and enforcement by certain powers of coercive measures to wield political or economic pressure against States especially developing ones from exercising their right to freely decide their own political, economic and social systems. Asserting that such measures impede the full realisation of the rights contained in the Universal Declaration of Human Rights and international human rights instruments, Resolution 9/4, 22<sup>nd</sup> Meeting of Council, 24 September 2008, Paragraph 1

<sup>175</sup> The Council adopted a Resolution with a view to ensuring respect for the human rights and fundamental freedoms of migrants and the Council strongly condemned manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against migrants and stereotypes applied to them; see Resolution 9/5, 22<sup>nd</sup> Meeting of Council, 24 September 2008. Based on this, the Council requested States to adopt measures to prevent the violation of human rights of migrants and ensure that violators are prosecuted, Paragraph 1

<sup>176</sup> The Council stressed the primary obligation of States to ensure that vital food needs of their populations, especially vulnerable groups and households are met; Paragraph 6. It called upon States, individually and through international cooperation to take all necessary measures to ensure that the right to food as an "essential human rights objective" is achieved; Resolution 9/6, 22<sup>nd</sup> Meeting of Council, 24 September 2008, Paragraph 5

<sup>177</sup> While expressing concern at violations of human rights and international humanitarian law during armed conflicts which undermines the protection of human rights of civilians in armed conflict, the Council called upon all states to respect the human rights of civilians in armed conflict and to ensure that there is no impunity by bringing violators to justice; Resolution 9/9, 22<sup>nd</sup> Meeting of Council, 24 September 2008, Paragraphs 2-4

<sup>178</sup> Resolution 9/15, 22<sup>nd</sup> Meeting of Council, 24 September 2008. The Council noted the importance of the Extraordinary Chambers in the Courts of Cambodia and welcomed efforts in bringing to justice those responsible for the most serious violations of human rights under the Khmer Rouge regime. It

the dumping of toxic waste.<sup>179</sup> The Council also promoted advisory support and technical assistance to transitional societies *viz* Liberia.<sup>180</sup>

Nigeria has also contributed qualitatively to the work of the Human Rights Council through its special procedures mechanism. A Nigerian, Professor Okechukwu Ibeanu was appointed as a Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes between 2004 -2010. The Special Rapporteur visited Côte d'Ivoire to study the human rights impact of the Probo Koala incident.<sup>181</sup> In line with his mandate, the Special Rapporteur worked closely with the Secretariat of the Basel Convention, highlighting the human rights dimensions of waste trade to the 9<sup>th</sup> Conference of the Parties to the Convention,<sup>182</sup> and also worked towards a Conference of Parties of the Bamako Convention.<sup>183</sup>

In addition, another Nigerian Dr Joy Ngozi Ezeilo, was appointed as a Special Rapporteur for Trafficking in Persons, Especially Woman and Children from June 2008 to July 2014. In line with her mandate, the Special Rapporteur conducted investigations, visited countries and made reports to the United Nations General

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further encouraged the Government of Cambodia and the international community to provide all necessary assistance to the Extraordinary Chambers and requested the Secretary General of the United Nations to report to the Council on the role and achievements of the Office of the United Nations High Commissioner in assisting the promotion and protection of human rights in Cambodia.<sup>179</sup> Condemned dumping of toxic and dangerous waste because of their negative impact on human rights and extended the mandate of the Special Rapporteur and included within the scope of the Rapporteur's mandate the human rights responsibilities of transnational corporations and the rehabilitation of and assistance to victims.

<sup>180</sup> Resolution 9/16, 22<sup>nd</sup> Meeting of Council, 24 September 2008.

<sup>181</sup> See Report of the Special Rapporteur to the United Nations General Assembly on the Adverse Effects if the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights, *supra* note 43, Paragraph 13

<sup>182</sup> *Ibid.*, Paragraphs 18 and 29

<sup>183</sup> *Ibid.*, Paragraph 30

Assembly and the Human Rights Council on the thematic issue of trafficking in persons for the removal of organs;<sup>184</sup> the rights of victims to assistance, protection and support;<sup>185</sup> the rights of victims to remedies;<sup>186</sup> human rights in the criminal justice response;<sup>187</sup> and identifying core strategies in the prevention of trafficking.<sup>188</sup> In her work, the Special Rapporteur “consistently advocated the importance of the right to effective remedies for trafficked victims” with a view to ensuring the recovery of the victims, their reintegration into society and the prevention of further victimisation.<sup>189</sup>

#### **4.0 CONCLUSION**

Since its independence from British Colonial rule in October 1960, Nigeria has inspired and identified with the struggle of other African countries in their quest for self-determination. This Afro-centrism underlined much of Nigeria’s foreign policy as evident in its frontline position in the struggle against repressive colonial and apartheid regimes in Southern Africa as well as against the dumping of toxic wastes in Africa. It has also fuelled Nigeria’s efforts at assuming a dominant role in maintaining and securing international peace, security and stability within the African continent.

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<sup>184</sup> See Report of the Special Rapporteur on Trafficking in Persons, Especially Woman and Children to the 68<sup>th</sup> session of the UN General Assembly, 2 August 2013, UN Doc. A/68/256

<sup>185</sup> A/64/290, 12 August 2009

<sup>186</sup> A/HRC/17/35, 13 April 2011; A/66/283, 9 August 2011

<sup>187</sup> A/64/290, 12 August 2009

<sup>188</sup> A/65/288, 9 August 2010; A/HRC/23/48, 18 March 2013; A/67/261, 7 August 2012

<sup>189</sup> *Ibid.*

Whether motivated by hegemonic aspirations or otherwise, and despite domestic challenges and short-comings, Nigeria's involvement in regional and global issues has contributed to international human rights praxis.