SEMINAR ON THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN THE GAMBIA

ORGANISED BY THE INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT

KAIRABA BEACH HOTEL, THE GAMBIA

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PREFACE

The seminar on the application of international human rights law in The Gambia primarily targeted members of the Gambian Judiciary and the Gambia Bar Association (GBA). In view of its being based in The Gambia, the Institute for Human Rights and Development felt obliged to organise an event for the benefit of the Gambian Judiciary and GBA. The seminar attracted a total of about sixty participants.

As the title of the seminar suggests, the theme of the seminar was the domestic application of international human rights law for the protection of fundamental human rights, relying on international and regional human rights instruments already ratified by The Gambia.

The seminar aimed at enhancing knowledge of international and regional human rights treaties for judges and lawyers with a view to promoting the application of international human rights law in The Gambia. The event also envisaged institutional strengthening of the Judiciary, GBA and the Department of State for Justice through continuing legal education for its members in order to keep abreast with current developments in the international human rights law field, among other related activities.

DAY ONE
Thursday, 29th June 2000
Opening Ceremony

Present at the opening ceremony were eminent members of the Judiciary and the Bar, government officials, representatives of diplomatic missions and international institutions including scholars of international repute. The Australian High Commissioner to The Gambia and the Vice-President of The Gambia Bar Association were among the distinguished guest speakers.

The Welcome Address was delivered by Ms. Julia Harrington, the Executive Secretary of the Institute for Human Rights and Development.

Speech by Mr Matthew Neuhaus, the Australian High Commissioner to The Gambia

Ladies, Gentlemen and Distinguished Guests, it is a pleasure to speak here before so many lawyers and I am delighted that this is the first time I am speaking in The Gambia. I would like to make the following four points;

- My personal interest as High Commissioner in human rights issues,
- The Australia- Africa Governance Fund
- Australia-Gambia links
- The importance of building democratic institutions like the Judiciary and the Bar in Africa.

I grew up in East Africa as a son of missionary parents. I studied law and for my graduate studies pursued international law at the Universities of Sydney and Cambridge respectively. Between 1983 and 1985 I was based in Nairobi where I found a strong human rights community. In 1993/94, I was appointed as the Australian delegate to the Sixth Commonwealth Summit. The key outcome of the event was the passage of a resolution on the international criminal court. Between 1995 and 1997 the concept of the Centre for Democratic Institutions and the Africa Governance Fund was established.

The scheme was established in early 1999. The value of the contribution is about three million dollars for over three years for Africa. The Fund invites funding proposals for small scale projects whose costs range between 50,000 dollars and 100,000 dollars. The Gambia is one of the first beneficiaries of this fund.

The aim of the Africa Governance Fund is to contribute to the improvement of governance in selected African countries by strengthening key institutions of civil society and building the capacity of government agencies. Assistance can be provided under the Fund to activities with a primary focus on any of the following;

- Electoral processes and electoral education
- Judicial capacity building and reform
- Parliamentary capacity building and reform
- Capacity building for the Executive arm of Government
- Constitutional reform and democratisation
- Law reform and legal developments
- Economic policy reform (e.g. market liberalisation)

- Development of appropriate regulatory frameworks
- Strengthening public administration
- Enhancing transparency and addressing corruption
- Free speech and the media
- Enhancing the participation of civil society in the above processes
- Human rights

Australia-Gambia relations have been rather limited by reason of the geographical distance between the two countries. However, links have been maintained through the former British Empire and the Commonwealth. Australia is a member of the Commonwealth Ministerial Action Group charged with the responsibility of looking into human rights issues and the implementation of democratic governance. As a result, Australia has increased its interaction with fellow Commonwealth countries including The Gambia.

Two weeks ago I gave a talk on African Leadership at a seminar held at the Centre of International Studies, University of Cambridge. One of the themes of that presentation was the need to address leadership problems by focusing on institutional development rather than leadership. During colonialism, institutions were only developed in a limited way. Unfortunately, the West still makes the mistake of focusing on individuals often with undesirable consequences.

Today's seminar helps to address this and contribute to institution building in the Commonwealth and West Africa in particular. Inspite of the cultural relativity argument, the belief that human rights values are universal reigns supreme. Furthermore, in a globalised world, everyone should have access to the greater freedoms promised by the United Nations Charter.

I will conclude by using two quotations from John Locke ; 'Wherever law ends tyranny begins' as witnessed in many parts of the world, and 'No man is an island' in the context of nations and individuals in the globalised world. Thank you and I wish you well.

The Executive Secretary of the Institute, Ms. Julia Harrington who was chairing the opening session, then invited Mr Bola Carrol, the Vice-President of the Gambia Bar Association to give his remarks.

Address on behalf of the Gambia Bar Association by Bola Carrol, Vice-President of the Gambia Bar Association

First I would like to express the profound appreciation of the Gambia Bar Association at its being invited to participate at this seminar.

The theme of this seminar echoes the unfamiliar because the domestic application of international human rights law is still in it's infancy in The Gambia. The situation is not fortuitous, but has been engendered by certain practical and theoretical constraints. On the theoretical level, the relationship between international law and municipal law has troubled both theorists and the courts. Often asked questions are; should international law prevail over domestic law or vice versa? Is international law part of domestic law and if it is how can it be incorporated into the municipal law of states?

Two main theories have sprung up from these questions. The first theory is monism and the second is dualism. An intermediate theory has also been conceived referred to as harmonisation. The monist school championed by Kelsen, Grotius and Verdross espoused the theory that international law and municipal law

are not essentially different and must be regarded as manifestations of a single conception of law. From this theoretical viewpoint, international law is not foreign therefore making rules and principles of international law automatically binding on domestic courts. They are incorporated into municipal law and individuals may invoke them in defence of their rights when infringed.

Dualists such as Triepel and Anzillotti hold a different view which considers international law as radically different from municipal law. This implies that international law can only become part of municipal law through legislation. The harmonisation theory steers a mean course between the two extremes.

It is my humble view however that no legal system is purely monist or dualist. Though these theories have considerably lost their significance, they continue to impede the effective domestic application of international human rights norms.

Other more mundane constraints in the domestic application of international human rights norms are the lack of familiarity by judges and lawyers with international human rights law. This reveals an urgent need for the judges and lawyers to be better informed on international human rights treaties and norms so that they may apply these provisions and principles in constitutional and administrative law cases. To achieve this end, I would recommend the inclusion of international human rights law as a subject in the professional course curricula for legal training.

The adoption of international human rights law and its adaptation to constitutional and administrative law is now a reality as shown by the following notable cases. In the case of *Peter Ng'omongo v Gerson Mwangwa & the Attorney General*, the High Court of Tanzania in Dodoma held that in interpreting the Constitution, the courts must take into account the provisions of the 1948 Universal Declaration of Human Rights among other treaties which Tanzania has ratified. In South Africa, the case *of State v Makwanyane and The International Coalition for Gay and Lesbian Equality v The Minister Of Justice,* it was held by the South African Constitutional Court that international law could not be ignored in human rights litigation.

This seminar is not only relevant to our legal system but more pertinently, it is a positive step towards enhancing the protection of human rights values in The Gambia through domestic application of international human rights law. We believe it is a move that will be instrumental in forging a jurisprudence that will surmount the theoretical and practical hurdles that have hitherto hindered the transfusion of international norms with domestic law. The Gambia Bar Association highly commends the Institute for Human Rights and Development for this laudable venture.

Session I
Thursday, 29th June 2000, Morning
The Dualist Doctrine in International Law and its Application

The theme of the workshop was divided into four sub-topics spread over two days. The methodology applied throughout the seminar entailed panel presentations facilitated by a moderator. After the panellists had made their presentations, the moderator would then invite questions, views and comments from the participants. The first session of the day examined the dualist doctrine in detail, and provided an overview of country practices within the commonwealth in respect of the application of international law. The distinguished panellists during this session were Professor Osita Eze, a legal scholar and Director of Democracy and Development Studies at the Institute for Peace and Conflict Resolution in Nigeria, and Ms.

Julia Harrington, Executive Secretary of the Institute for Human Rights and Development, who took the place of Stephen Phillips, a lawyer at the European Court of Human Rights. Mr Bora Carrol moderated the session.

Paper by Stephen Phillips presented by Ms. Julia Harrington

Ms. Julia Harrington conveyed apologies from Mr Stephen Phillips who was unable to make it but sent his paper addressing the links between the European Convention on Human Rights and the domestic constitutional system in the United Kingdom, which she read as follows:

I would like in the half hour or so available to look at the way in which the European Convention interacts with all the three branches of the constitutional set-up. First and most briefly, I shall say a few words on the executive and the Convention. Then I would like to give an example of the way in which parliament has dealt with one specific matter, before turning to deal in a little more depth with the issue of how the courts have applied the Convention over the last twenty years. I shall also spend a few moments on the prospects for the future, once the Human Rights Act 1998 enters into force in October of this year.

Traditionally, in United Kingdom law the executive has not required any participation of the parliament in order to make international treaties. This is a purely executive act. But once those treaties are made they do not become part of domestic law unless there is a specific act of parliament incorporating them. The European Convention on Human Rights is the human rights instrument for Europe as the African Charter on Human and Peoples' Rights is for Africa. So, the position of the European Convention is analogous to that of the African Charter in The Gambia. The European Convention has established an enforcement body which is the European Commission on Human Rights. To understand how the executive in the United Kingdom has interpreted its obligation under the European Convention, the following case is illustrative.

In *Burmah Oil v. Lord Advocate (1965)* the Plaintiff company had received £4 million by way of *ex-gratia* compensation for deliberate damage to oil installations in Rangoon in the Second World War. It sued for a further £31 million. The House of Lords found that, in principle, compensation was payable where a subject was deprived of property by a prerogative act in relation to war. The War Damage Act 1965, however, retrospectively removed the common law entitlement to compensation for lawful acts in contemplation of war. The legislation gives rise to particularly clear problems under Article 1 of Protocol No. 1 to the Convention, in that a retrospective removal of the benefits of a judgement is most unlikely to be compatible with the right to peaceful enjoyment of possessions.

The interesting point for our purposes is that it has recently become clear from cabinet papers released under the thirty year rule that the government was well aware of the possible conflicts with the European Convention, and decided not to accept the right to individual petition under Article 25 of the Convention until more than six months had passed from the date of entry into force of the 1965 Act on 2 June. So it was thought that, Burmah Oil would not be able to complain under the European Convention that it had been deprived of its possessions by the legislation. The United Kingdom accepted the right of individual petition on 25 January 1966, just over six months after the 1965 War Damage Act entered into force. In any event, Burmah Oil never made any complaint based on the European Convention

The lesson drawn from this case is that as long as thirty five years ago, although it may have been in a cynical manner, the executive branch was fully aware of its obligations under the European Convention and was taking specific steps to avoid being brought to task at the international level.

More recently, in another case the executive has proved itself more conscious of the European human rights standards under the Convention than parliament has. Over the years, there have been a number of cases in Strasbourg involving the rights of homosexuals. On the whole, the Court and Commission always accepted that society had a legitimate aim in legislating in the area of morals, but that individuals must not be made to bear an excessive burden. Where homosexual acts in private were criminalised, it was sufficient for a person to complain about the legislation and an application brought to Strasbourg.

In 1994 there were extensive debates in Parliament on the question of age reduction. The Conservative government of the day accepted a reduction to eighteen but not sixteen, and the law was changed accordingly. A Mr. Sutherland then complained about the fact that there were different ages of consent in England and Wales for homosexuals, on the one hand, and heterosexuals and lesbians on the other hand. The European Commission which quoted large extracts from the parliamentary debates, noted the absence of any objective justification for the different ages and found that these amounted to a violation under the European Convention. The present government has unsuccessfully attempted to introduce legislation to reduce the age of homosexual consent to 16. However, the executive is keen to settle the case in Strasbourg without the need for a court hearing.

Let us now look at the way in which English Courts deal with the Convention before the Convention is incorporated. All countries with a dualist approach to international law hold the view that "a treaty is not part of domestic law unless and until it has been incorporated into the law by legislation" *(Rayner Ltd. v DTI (1990) HL)*. But there are three broad categories in which the English courts already use the Convention as described below;

(i) To interpret ambiguous legislation consistently with the European Convention: The English courts have accepted since 1973 that they can use the Convention as an aid to the interpretation of statutes. In *R v Miah (1973, CA, HL)* the question was whether penal provisions of the Immigration Act 1971 were retrospective or not. The Court of Appeal referred to the fact that retrospective penal legislation was forbidden by Article 7 of the Convention and Article 11(2) of the Universal Declaration of Human Rights. He also relied on the principle of English law prohibiting retrospective legislation.

(ii) Where common law is uncertain, unclear or incomplete the courts may exercise judicial discretion consistently with the European Convention, as in the case of *Osman* .

(iii) Although the human rights context is relevant to whether public authorities in exercise of their discretionary powers acted reasonably, and had regard to all the relevant considerations, there is no duty under administrative law to exercise such powers consistently with the European Convention.

The legislative history of the Human Rights Act of 1998 dates back to the 1960s and 1970s when there were a number of calls for the incorporation of the European Convention into British law. In 1978, a House of Lords Select Committee recommended incorporation which led to the House of Lords approving a bill to incorporate in 1981. In 1993, the Labour Party called for a new constitutional settlement, and two bills on incorporation failed in 1994 and in 1997. The new government in 1997, published a White Paper known as "Rights Brought Home" and in 1998 enacted the Human Rights Act designed to give "further effect to rights and freedoms guaranteed under the European Convention on Human Rights..."

The Human Rights Act of 1998 includes substantive rights with the exception of Articles 1 and 13. Ordinarily courts are required to interpret legislation in accordance with the European Convention and

take into account judgements of the European Court of Human Rights, but have no power to strike down primary legislation. Public authorities are also to act in a manner compatible with the European Convention.

To conclude, dualism has not prevented effective consideration of the Convention in the U.K. Occasionally, courts in the United Kingdom go further than the European Court of Human Rights, see *Derbyshire CC v. Times Newspapers (1992)*. Ultimately, judicial attitudes are more important than the act of incorporation.

Professor Osita Eze

All protocols observed, I would like to continue from where the moderator stopped. As a law teacher, I have come to believe that theories have ceased to be of any significant utility. The pertinent question is, what is the state practice? Because it is from the conduct of states that we get an idea of precedents that represent the source of international law as authoritatively rendered under Article 38 (1) of the International Commission of Jurists statute.

Secondly, judgements of courts in Nigeria and other Commonwealth jurisdictions, rarely dwell on the distinction between monist and dualist theories, but scrutinise the law and available precedents before reaching a decision. Thirdly, originally, individuals were not recognised as subjects in international human rights law. Today, both states and individuals are key players in international human rights law and international human rights conventions reserve a special place for domestic courts to interpret and apply human rights conventions. Under the African Charter, individuals are expected to exhaust local remedies in domestic courts before lodging complaints with the African Commission. In respect of the subject matter we see the Commission regulating the conduct of both individuals and states thereby diminishing the distinction between monist and dualist theories.

International human rights conventions also govern both the space at the state level and the transnational level so that the individual is now a subject of international law and has the capacities to bear rights and duties as well as enforce the same. It therefore becomes apparent that the monist-dualist controversy has become inconsequential to international law practice today. A theory that is not extracted from practice is invalid, as seen from the foregoing illustrations which are indicative of a unified system of international human rights law.

The smooth application of international human rights law in domestic courts is hampered by the prevailing lack of familiarity with international law by both judges and lawyers in our respective jurisdictions. Many judges and lawyers are not trained in international human rights law, a factor that considerably impedes the effective protection of human rights at the national level. In view of the rapid developments in international human rights law, we must endeavour to keep ourselves abreast of these changes.

To situate human rights within the context of international law, I will attempt to define international law. Prior to 1945, international law was defined as a set of rules and principles that regulates state relations. Presently, the international law definition is broad as to accommodate diverse subjects such as international organisations, and individuals as subjects of international law. International law is now defined as that body of rules and principles that governs relations between subjects of international law which include states as primary subjects, international organisations and persons recognised as such who have capacity to enjoy and enforce rights under international law.

Treaties in Nigeria have to be incorporated before they can become part of domestic law, but we should go beyond this practice bearing in mind that human rights are universal, and not limited to the state's

exclusive jurisdiction. As far as human rights are concerned we should remove all obstacles to the implementation of human rights treaties within domestic jurisdictions.

To conclude, we should not be dragged back in time by invalid theories but look at state practice, treaty law, customary international law, general principles of law recognised by civilised nations, and law determining agencies such as courts and tribunals. We should also encourage the study of international law in law faculties at the universities. As a human rights lawyer, good grounding in international law is essential particularly because of the possibility of litigating cases internationally where local remedies fail. Human rights are universal despite variations in cultural environments, so we should liberally borrow from other jurisdictions with better developed jurisprudence in order to enrich human rights jurisprudence locally.

Session II
Thursday 29th 2000, Afternoon
Obligations of the Judiciary in Applying International Human Rights Law

The second session of the day was moderated by Bola Carrol who introduced the eminent panellists as Justice Hassan Jallow of the Supreme Court of The Gambia, Justice Sandile Ngcobo of the Constitutional Court of South Africa and Professor Osita Eze. The session provided participants with insights into different judicial approaches to the application of international human rights law.

Justice Hassan Jallow

Thank you Mr Chairman. May I say that I share the dream of Mr Bora Carrol. That someday all established and universally accepted principles and rules of public international law relating to human rights will be practised without the need for incorporation. It is important that the gap between domestic law and international law is bridged through judicial application of international human rights rules within the domestic sphere. We can not pin all our hopes on the State apparatus to respect all obligations at the international level. This ought to be supplemented by the ability of the judicial institution having direct recourse to universally accepted principles of human rights law.

There are obstacles in realising this goal particularly for those jurisdictions that operate within common law traditions. In The Gambia, the Constitution is the supreme law of the land and defines laws that are applicable in the country. It makes no reference to the application of international law save with regard to human rights within the context of directive principles of state policy. However the Constitution makes it explicit that the said provisions do not confer rights of an economic and social nature, which in effect renders them non-justiciable. One can not fail to notice the incompatibility of the Gambian Constitution with the provisions of the African Charter on Human and Peoples' Rights which recognises economic and social rights as justiciable.

There are several ways in which the courts have been able to apply international human rights law within commonwealth jurisdictions. International human rights law does not become part of domestic law unless the relevant treaty is incorporated through legislation in most common law jurisdictions. However, rules of customary international law are applicable within national jurisdictions which provides a window of opportunity for the application of international human rights law. It can be argued therefore, that the Universal Declaration of Human Rights which has earned the status of customary international law and considered part of common law would be applicable in The Gambia. Another way in which human rights

law is applied in commonwealth jurisdictions is where there exists an ambiguity in the domestic law. In such an instance, domestic courts are permitted to apply international human rights law. In addition, where a gap exists in the local law, courts may have recourse to the international legal regime either through treaties or rules of customary international law.

Some of the constraints mentioned in the application of international human rights law are peculiar to common law systems only. In France, the United States of America (in some respects), and in the Democratic Republic of Germany treaties are automatically incorporated after ratification. In Scandinavian countries such as Denmark, Sweden and Norway, the European Charter of Human Rights is regarded as a source of domestic law. From these examples the situation in Commonwealth jurisdictions may not be insurmountable after all.

What does one do when domestic law is inconsistent with established international law principles? Ordinarily, human rights issues are determined within domestic jurisdictions in accordance with domestic law. But there has been a shift from this position and human rights issues within states are no longer the exclusive domain of national law, and in fact are determined by international law. The previous position might have been influenced by the fact that common law was more advanced in protecting civil liberties and caution had to be exercised in allowing a state to enter into treaties that were likely to threaten civil liberties recognised by local law. Therefore the mechanism of incorporation of treaties helped guard against gains made locally within common law systems.

International human rights law is richer in protecting human rights, and there is no risk of it derogating from locally enshrined liberties. Bold measures have to be taken in discarding traditional practice and legal concepts. These obstacles as we have seen do not exist in other jurisdictions, so there is no reason why we cannot take a similar position to achieve the goal of directly applying international human rights law.

In The Gambia, a judge swears to uphold the Constitution which makes no mention of international law. Appreciating that human rights are inherent would imply that we do not need legislative provisions for their protection, and so judges should not be prevented from applying international human rights law. When a state undertakes international obligations, it signs and ratifies treaties with the intention of making them applicable locally. On signing a treaty, a state is obliged not to act inconsistently with the objects and purpose of the treaty, and after ratification, to scrupulously observe treaty obligations. The judiciary has a duty to ensure that a state lives up to its international obligations. Courts could presume that in passing a law the state has no intention to act contrary to its treaty obligations. Rules of international law such as *jus cogens* are well established and states should not derogate from them. In the event that these rules are violated, the judiciary should not legitimise such violations.

The establishment of international tribunals for Rwanda and Yugoslavia has made it possible for individuals to be punished for violations of international human rights law. This would imply for instance that the judiciary in Rwanda should be able to apply international law rules on genocide and crimes against humanity in prosecuting the perpetrators. Despite obstacles these can be overcome by changing judicial attitudes to view municipal law and international human rights law as reinforcing each other.

Justice Sandile Ngcobo

As a sitting judge and I think it is true of all lawyers, it is a rich and rewarding experience for us to take a break from the daily demands of our judicial commitments and reflect on some of those issues involved in the process of adjudication. In particular critical issues such as the fundamental responsibility of the

judiciary to administer justice and in line with that, the responsibility to promote and advance human rights for all. I am supposed to look at the constitutional obligation of the judiciary in South Africa to apply international law, and also examine how the judiciary has construed its constitutional obligation to apply international law.

The advent of constitutional democracy in South Africa has brought about an enhanced role for international human rights law in domestic law. This can be attributed to three factors. First, the South African Bill of Rights was inspired by international human rights conventions. Second, the Constitution expressly directs the courts to consider international law when interpreting the provisions of the Bill of Rights. Third, the Constitution expressly recognises international law as a source of rights and duties.

To contextualise the present situation, it is necessary to look at the weight given to international human rights law during the apartheid era. It is ironic that in 1945 South Africa became a party to the United Nations Charter which in Art 55 and 56 obliged members to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language and religion, yet no steps were taken by the South African Government to incorporate these provisions into South African law. In 1948 when the Nationalist Party came into power it abstained from voting on the General Assembly's Universal Declaration of Human Rights. Not surprisingly the apartheid government subsequently refused to be party to any human rights treaty.

However, this did not mean that South African courts were not prevented from invoking principles of human rights law. Customary international law has always been part of South African common law unless inconsistent with a statute. Thus, in the case of *Nduli and Another v The Minister of Justice & Others (1978)*, the Appellate Division which was the highest court of the land at the time accepted that customary international law was, subject to its not being in conflict with any statutory or common municipal law, directly operative in the national sphere. This case concerned two South Africans who were kidnapped in Swaziland by South African police and other persons, and brought to South Africa. Once in South Africa, they were arrested and charged under the infamous Terrorism Act, 1967 and the Suppression of Communism Act, 1950. The issue was whether the court had jurisdiction over persons who had been abducted from a foreign country. The court held that because the abduction had not been authorised by the South African government, the subsequent arrest on South African soil of those abducted did not violate international law. The court held that it had jurisdiction over those who had been arrested. The acceptance by the court in *Nduli's case* of the rules of customary international law as part of South African domestic law shows that courts were at liberty to apply norms of human rights law that had acquired the status of custom unless these were in conflict with statute.

Although the apartheid legal order was premised on racism and thus violated every conceivable legal right recognised in the Universal Declaration of Human Rights, where legislation was silent there was scope for the application of international customary law. It was also open to South African Courts to invoke international human rights conventions and declarations not binding on South Africa as a guide to judicial policy in the formulation of the rule of law. Thus in *S v Khanyile & Another (1988)* the provincial court referred to, amongst other things, the International Covenant on Civil and Political Rights and the European Convention on Human Rights to enunciate a rule of law that an indigent person might not be sentenced to a substantial jail term without counsel, though on appeal the higher court rejected this argument. But the lower court does demonstrate that the South African courts even under apartheid had the opportunity to invoke international human rights conventions. But in contrast the industrial court which is a court that resolves labour disputes, demonstrated an inclination to seek guidance from unincorporated conventions and recommendations of the International Labour Organisation to give content to what is an unfair labour practice in the context of a dismissal.

Apartheid did not provide an environment in which human rights were promoted. Seminars of this kind were rare and if held it was merely for propaganda purposes. The few lawyers and activists who had an interest in human rights law were harassed by the state and some were killed by the police as the revelations before the Truth and Reconciliation Commission have now established. Sadly though, the judiciary failed to invoke international human rights norms in circumstances where no statute stood in their way. On occasions, the judiciary even demonstrated a willingness to sacrifice the human rights of the majority South Africans on the altar of racism.

Under the new legal order, international law has a great role to play and in particular in the field of human rights. Indeed South Africa stands on the threshold of a new era of constitutional jurisprudence in which international law and comparative law will play a greater role. The Constitution directs the courts to have regard to international law. In post apartheid South Africa we have had two constitutions. In 1993 we had the interim constitution adopted in that year. It was to remain in force until the final constitution, the present one, was in place. The present constitution was adopted in 1996 and came into operation on the 4th February 1997.

Under the interim constitution, the authority to apply international law was derived from section 35 (1). The equivalent provision in the present constitution is section 39 (1). Despite variations in language and emphasis, both are aimed at enhancing the role of international law as an interpretative guide. They require courts, tribunals and other fora to use international law as an interpretative guide in the determination of the contents in the bill of rights. Courts are required to consider international law where the provisions of the bill of rights under scrutiny have an equivalent in international law, and where it is a relevant consideration. It would be a relevant consideration where it is not inconsistent with the constitution or statute. Sec 39(1) (b) does not compel courts to apply international law norms but requires them to consider such norms in interpreting the provisions of the Bill of Rights. Upon ratification of the various human rights conventions, these acquire an additional force. Once they are enacted into law by national legislation, courts will be obliged to apply them as they would any ordinary statute. So far, the democratic government of South Africa has ratified more than twenty human rights conventions.

The injunction to consider or have regard to international law when interpreting provisions of the Bill of Rights must be seen against the background that the South African Bill of Rights was inspired by international human rights conventions and constitutions of other countries. It draws heavily on the language and structure of these conventions. Even if there was no such injunction, South African courts would have been obliged to turn to international human rights law for guidance. In this regard, it is worth noting that courts in Canada, Zimbabwe and Namibia where the Bill of Rights contains no express injunction to consider international law, have not hesitated to seek guidance from international human rights conventions and decisions of international and regional tribunals. In *S v Ncube; S v Tshuma; S v Ndhlovu (1988); and State v A Juvenile (1990)* the Supreme Court in Zimbabwe invoked the decision of the European Court of Human Rights in *Tyre v United Kingdom (1979-80)* to support its finding that corporal punishment in Zimbabwe was unconstitutional. A similar approach was adopted by the Supreme Court in Namibia in *Exparte Attorney General, Namibia: In re Corporal Punishment by Organs of State (1991)*. In doing so, these courts have relied on the presumption in favour of compliance with international law, the similarity between the domestic provision and those in international human rights law, or the legislative history of the bills of rights.

The Constitution of South Africa expressly recognises the important role of international law. In terms of section 231 (4) of the present Constitution, an international agreement binds South Africa once ratified by

Parliament. Self executing provisions of an agreement automatically become law in South Africa while customary international law automatically forms part of South African law unless it is inconsistent with the Constitution or a statute. The injunction to courts to consider international law in the context of section 39 (1) (b) of the present Constitution would include the use of both binding and non-binding treaties as interpretative guides.

To sum up, the South African Constitution not only recognises international law but further directs courts to consider international law as a tool in the interpretation of the rights contained in the Bill of Rights. In addition it requires courts to apply international law when interpreting any legislation.

Professor Osita Eze

First of all Nigeria as a party to the African Charter on Human and Peoples' Right is bound by the provisions of the African Charter. When one further examines the provisions of the African Charter, Nigeria has made some undertakings. One of the first undertakings that Nigeria has made is to ensure that the African Charter on Human and Peoples' Rights is secured within her domestic jurisdiction by law or any other means. Failure to do so is tantamount to Nigeria breaching its contractual obligation under the African Charter. Though I would argue that the provision urging conformity by states with the African Charter is unnecessary because, if the treaty is intended to benefit those residing in Nigeria, the obligation to ensure that it is applied within the domestic jurisdiction exists even without any express undertaking.

The second undertaking is that Nigeria guarantees the right to every person in Nigeria to have his case heard before an impartial and independent tribunal or court that conforms with the rules of legality and all the rules of due process. In effect, Nigeria undertakes that courts in Nigeria would interpret and apply the African Charter within her domestic jurisdiction.

The third undertaking is one by Nigeria of the confirmation of the obligation under the treaty. The enabling act referred to as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria 1990 provides in section 1 that;
"As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have the force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial power in Nigeria".

It is apparent that Nigeria's obligation under the African Charter is unequivocal by bringing the African Charter into force within the domestic jurisdiction. The Constitution under section 12 (1) states that for a treaty to become law there would be an act of the National Assembly that would say so. The Constitution is also the supreme law of the land and any law that is inconsistent with the Constitution is void to that extent. Through this illustration, the dualist controversy becomes evident.

Economic and social rights which are expressed as directive principles of state policy in the Constitution of Nigeria are non-justiciable. It would be argued that these provisions of the Constitution are incompatible with the provisions of the African Charter, which recognises economic and social rights as justiciable. A right is not only infringed when a state organ acts in a manner that is inconsistent with the treaty but enacts legislation which impedes the actualisation of that right as is the case with the Constitution of Nigeria.

Are there limitations to meeting obligations under the African Charter? Yes. In so far as it contradicts the provisions of the Constitution. Nigeria cannot implement the African Charter in its jurisdiction but that is not without prejudice to its obligations at the international level. However, judges in Nigeria have made some gains particularly where there has been ambiguity in the law, they look at international human rights jurisprudence as a guide, and have also accepted the Bangalore Principles as affirmed in various countries that permit liberal borrowing from other comparative jurisdictions to guide the interpretation of human rights law. But where the law is explicit, judges are largely guided by the supremacy of the Constitution. Generally, the practice in Nigeria reveals an urgent need for the legislature and the executive to be persuaded to remove obstacles to human rights conventions becoming part of domestic law.

Session III
Thursday 29th June 2000, Evening
Recent Practice from around the Commonwealth in the Application of International Human Rights Law

The moderator for the final session of the day was Ms. Rhoughi Thomasi who began by apologising on behalf of the Attorney General and Solicitor General for their absence at the opening ceremony. She explained that they were held up in court for most of the day. She then introduced Professor Eze who was the panellist during this session. This session enabled participants to have a broader understanding of how various Commonwealth jurisdictions have applied international human rights law through the critical analysis of recent court decisions.

Professor Osita Eze

The reason why the cases of *Abiola v Abacha* and *Fawehinmi v Abacha* have been selected is because the lawyers appearing for the parties pleaded the provisions of the African Charter on Human and Peoples' Rights.

Abiola v Abacha
The facts of the case stated briefly concern the detention and arrest of Chief Moshood Abiola who contested for the presidency in Nigeria's elections and got elected. When the elections were subsequently annulled, and Chief Moshood Abiola's attempts to revoke the annulment proved futile, he went to a popular place in Nigeria and declared himself the President of Nigeria and Commander-in-Chief of the Armed Forces. The police arrested him at his residence soon after. The application before the court was for wrongful dismissal, violation of freedom of movement, the right to liberty *et alia*. The court accepted that both the arrest and detention was a violation of his rights under the African Charter on Human and Peoples' Right. However, the facts based on similar circumstances were the subject of a matter before the Court of Appeal. Since the matter was *subjudice*, the High Court could not proceed to determine the matter conclusively. It is nevertheless worthy of note that the court acknowledged that provisions of the African Charter had been violated.

Fawehinmi v Abacha
The facts of the case are as follows; The Applicant, a legal practitioner was arrested without a warrant at his residence on Tuesday January 30th 1996 at about 6.00a.m., by six men who identified themselves as operatives of the State Security Service (hereinafter referred to as SSS) and policemen, and taken away to the office of the SSS at Shangisa where he was detained. At the time of his arrest the respondent was not informed of, nor charged with any offence. He was later detained at the Bauchi prisons. In consequence, he

applied *ex-parte* through his counsel, to the Federal High Court, Lagos pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979 for the following reliefs against the four Respondents;

- A declaration that the arrest of the applicant at his residence constitutes a violation of the applicant's fundamental rights guaranteed under sections 31, 32, and 38 of the 1979 Constitution and Articles 4, 5, 6 and 12 of the African Charter, and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act , Cap 10 Laws of the Federation;
- A declaration that the detention and continued detention was also a violation of the said rights;
- A mandatory order compelling the respondents whether through themselves, or other officers, their servants, agents or privies to forthwith release the Applicant, alternatively;
- An order of mandamus compelling the respondents to forthwith arraign the applicant before a properly constituted court as required by section 33 of the Constitution of Nigeria;
- A claim of Ten Million Naira as damages for the unlawful and unconstitutional arrest and detention of the applicant.

The basic issue for determination by the court was the alleged violation of the applicant's fundamental rights under the Constitution and the African Charter. To enable the court reach a decision, it had to address itself to the status of the African Charter in Nigeria, and in addition, a decree of the Military Government which purported to have ousted the jurisdiction of the court. In Nigeria, while under military rule, the military would pass a decree known as the *grund norm* which amended and incorporated the Constitution. This in effect abolished the legislature and created new structures. It also limited the application of fundamental rights provisions by precluding courts from hearing cases based on fundamental rights. The ouster provision was silent on the African Charter. Only the Supreme Court was able to discern the mischief of the ouster clause and uphold the supremacy of the African Charter.

At the High Court, the learned judges held that the court cannot question the legitimacy of the arrest and detention, because the ouster clause precluded the court from dealing with the matter. Secondly, any provisions of the African Charter on Human and Peoples' Rights which are inconsistent with Decree 107 are void to the extent of the inconsistency. Decree 107 amended the Constitution and therefore became part of the Constitution. The court's final argument in this respect was that the African Charter on Human and Peoples' Rights has no legs to stand on under Nigerian law, and that it could not be enforced as a distinct law but remained subject to domestic law and ouster decrees. On this basis, the High Court declined that it had jurisdiction to entertain the application.

The Court of Appeal on the status of the African Charter held that the African Charter was a law *sui generis, it* did not belong to the hierarchy of laws in Nigeria and could not be superseded by a decree or an ouster. But on the other hand maintained that the right of the Inspector General of Police exercised under the decree that allowed him to detain the applicant could not be challenged, thereby depriving the applicant the right to sustain a claim against the respondent. The trial judge ultimately, made a finding that the applicant moved the court through inappropriate procedure, and therefore could not hear the matter. Unfortunately, the Court of Appeal failed to address the question of the supremacy of the Constitution in relation to the African Charter.

The Supreme Court held that the African Charter was a special law, but if it came into conflict with the Constitution, the Constitution would override it. Nothing prevents the legislature from removing the African Charter from the domestic system. As far as the impropriety of procedure was concerned, the Supreme Court was of the view that though rules of court must be applied, they however should not operate oppressively. The Supreme Court further added that the lower court ought to have exercised

flexibility and not imposed procedural obstacles in respect of the enforcement of the provisions of the African Charter. The Supreme Court also noted that Decree 107 makes mention only of the ouster of jurisdiction in respect of fundamental rights in the Constitution but was silent on the provisions of the African Charter. Thus, we see the Supreme Court adopted an approach that gave wide latitude to the courts.

To conclude, realising that central to human rights is the worth and dignity of the individual everywhere, there is need to enhance the essence of rights by making international human rights conventions more applicable at the national level. It would also be in the best interests of everyone to expeditiously promote the establishment of the African Court of Human and Peoples' Rights which would serve as a form of appellate jurisdiction for individuals whose cases fail at the domestic level.

DAY TWO
Friday 30th June 2000 Morning
Session III (Continued)
Recent Practice from around the Commonwealth in the Application of International Human Rights Law

This morning session was a continuation of the previous day's final session, and illuminated on the application of international human rights law by courts in South Africa and Tanzania. Mr Emmanuel Joof, the moderator during the session introduced the panellists who were Justice Sandile Ncobo and Ms. Jennifer Miano of the GreenBelt Movement in Kenya.

Justice Sandile Ngcobo

I will discuss two cases this morning. The first will demonstrate how the Constitutional Court of South Africa views its obligations under the Constitution to apply international law in respect of the interpretation of the Bill of Rights. The other case deals with the obligations of the judiciary to prefer a statutory interpretation which is inconsistent with international law whenever they interpret any statute. Since its early jurisprudence, the Constitutional Court has shown a willingness to consider international law in interpreting the Bill of Rights.

In the case of *S v Makwanyane 1995*, the Court had to determine amongst other things whether the death sentence constituted a cruel, inhuman and degrading treatment and thus a violation of section 2 of the interim constitution. This was the first case to consider the implications of section 35 (1) of the interim constitution on the interpretation of provisions of the Bill of Rights. The Court made the following observations about the place of international law in South African domestic law:

- international law and foreign authorities are of value because they provide guidance on comparative provisions;
- they must be considered because section 35 (1) of the interim constitution requires the courts to have regard to them;
- in the context of section 35 (1), public international law includes both binding and non-binding international law;
- international agreements and customary international law provide a framework within which the rights contained in the Bill of Rights can be evaluated and understood, and for that purpose, decisions of tribunals dealing with comparable instruments may provide guidance as to the correct interpretation of particular provisions of the Bill of Rights;
- comparative Bill of Rights jurisprudence is important during the early stages of the transition when there is no developed indigenous jurisprudence on human rights law on which to draw; and
- while the courts can derive assistance from public international and foreign case law, they are in no way bound to follow it.

However, while recognising the role of international human rights law in the interpretation of the provisions of the Bill of Rights the court has nevertheless stressed that it is not bound to follow it. In this context the court in *S v. Makwanyane* said; " .... we can derive assistance from public international law and foreign case law, but we are in no way bound to follow it."

Yet the court has equally stressed that international human rights law cannot simply be ignored as noted by the Court in *S v Williams and Others 1995*, a case involving the constitutionality of the sentence of juvenile

whipping. The Court went on to say however that it was required to give a purposive approach to the Constitution, and that such an approach should be informed by the particular context of South African society.

Again in *S v Makwanyane*, the Court also emphasised that while international law may be of assistance, it must always be remembered that the South African Constitution is a unique document, designed for the specific circumstances of South Africa.

In ultimately holding that the death sentence is a cruel, inhuman and degrading punishment in *S v Makwanyane*, the Constitutional Court was heavily influenced by international human rights law and foreign authorities. In determining the issue of the constitutionality of the death sentence, the Court had regard to the International Covenant on Civil and Political Rights, the decisions of the United Nations Committee on Human Rights, the European Convention and the decisions of the European Commission on Human Rights among other foreign decisions.

Similarly, in finding that the sentence of juvenile whipping was unconstitutional in *S v Williams*, the Court was influenced by the international consensus against juvenile whipping, international instruments and legislatures of various countries.

In more recent cases such as the *South African National Defence and Armed Forces Union v Ministry of Defence*, and *State v Baloi*, the Constitutional Court in construing its obligation to consider international law under Section 39 (1)of the new constitution, has continued to seek guidance from international instruments. In the former case, the Court considered conventions and recommendations of the International Labour Organisation, and the Convention on the Elimination of all forms of Discrimination against Women in the latter case.

An analysis of the jurisprudence of the Constitutional Court shows that, while the Court regards itself as bound to consider international human rights law when interpreting the provisions of the Bill of Rights, it also shows that the Court does not always consider itself bound to follow international human rights law. This is so because the provisions of the Bill of Rights must be construed in the light of our own history and circumstances. However, despite these reservations, international human rights law has persuasive authority in South African domestic human rights law.

The promotion of human rights is an obligation that rests with all lawyers, legal practitioners and judges alike. Lawyers must raise human rights issues before the courts because in so doing they compel the courts to confront these issues. Courts would find it difficult to ignore these issues once raised since judges are obliged to consider every compelling argument presented in court. It is in the articulation of the reasons for upholding or rejecting the arguments that international human rights law will flourish within domestic jurisdictions. This seminar will therefore be judged more by the success it achieves in stimulating debate for the future in the context of international human rights law.

Ms. Jennifer W. Miano

I will analyse the Tanzania High Court (Dodoma) case of *Peter Ngomongo v Gershon Mwangwa & the Attorney General*. The reason why I have decided to focus on this particular case is because it serves as a rich illustration of where judicial application of international human rights conventions and comparative jurisprudence has resulted in progressive judicial pronouncement.

The case originates from the High Court of Tanzania in Dodoma. The plaintiff challenged the constitutionality of a statutory provision that required an individual to first seek consent from the Ministry of Justice before filing suit against a public servant. Briefly the facts are, the Plaintiff who was a tutor at a government teachers college, sued the Principal of the college claiming the sum of Shs 2,201,762.00 as damages for malicious prosecution and defamation. The Attorney General was joined as a co-defendant in the case by virtue of the fact that the principal was a public servant.

A preliminary objection was raised by counsel for the Attorney General on grounds that the lack of ministerial consent rendered the suit nugatory under the Government Proceedings Act of No. 16/1967. The plaintiff responded by arguing that the ministerial fiat was an infringement on his constitutional right to a fair hearing, the right of access to court and the right to be protected by the law as enshrined in the Constitution of Tanzania.

The arguments advanced by counsel for the Attorney General revolved around the issue of public interest. The counsel argued that the contested provision under the Government Proceedings Act was necessary because the government would otherwise be greatly hampered in the smooth running of its business if all manner of vexatious and frivolous litigants were permitted to drag the government to court. In addition, he argued that the procedural requirement did not violate the constitutional guarantees as alleged by the plaintiff, but failed to further substantiate. The plaintiff maintained his core argument and contended that the provision was indeed a violation because it was not until the consent was issued could a claimant proceed. He also noted that the ministerial power to grant consent was also subject to arbitrariness.

There were two questions for determination before the court. One of them was whether, the Constitution did recognise the right of free access to court and the second was whether the said right was indeed infringed upon by the requirement of ministerial consent.

Before arriving at a decision, the Learned Judge was guided by international human rights instruments and other comparative jurisprudence. He stressed that though Tanzania may not have incorporated international human rights conventions into domestic law, it was nevertheless obliged to bring its domestic laws into conformity with its contracted international commitments. He further reinforced this argument by referring to the Harare Declaration of Human rights issued at the close of a judicial colloquium of Commonwealth judges in 1989 where national courts were urged to have regard to international human rights norms for purposes of resolving ambiguities in national constitutions and legislation. The learned judge also noted that in respecting the universality of human rights it was necessary to transcend local precedent and seek comparative jurisprudence elsewhere especially where similar points of law were better developed.

In considering the first question, the judge cited international and regional instruments which Tanzania has ratified and provide for the right of free access to the courts without any impediments. These are the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights. He also drew on the jurisprudence of the European Court of Human Rights where the court held in the case of *Golder v United Kingdom 1975* that the right to be heard also includes the right to have free access to the courts to file a suit for a remedy. The interpretation given to the right of free access by the United Nations Human Rights Committee in the case of *Wight v Madagascar 1982* also influenced the judge in determining the second issue. The committee held that a right of access to courts in not only infringed when a person is denied the right to file a suit, but also when restrictions are imposed so as to render the right illusory.

Based on the foregoing, the learned judge made a finding that the provision of a ministerial fiat under the Government Proceedings Act was arbitrary and oppressive. Ultimately, he ruled that the ministerial consent was in fact an infringement on the constitutional right to free access to court recognised in the Constitution of Tanzania and was therefore void.

To sum up, this case illustrates that judges may choose not to be unduly encumbered by local precedent and theories that determine incorporation and instead be guided by judicial practice. It is also evident that a fair degree of familiarity with international human rights law by judges can advance the cause of human rights and also influence judicial attitude towards ensuring effective protection of fundamental rights. Finally, as has been earlier mentioned, the case reveals an urgent need for a more enlightened legal fraternity to ensure that there is no lost opportunity for the application of international human rights law.

Session IV
Friday 30th 2000 Mid-Morning
Appraisal of Judicial Practice in The Gambia relative to Commonwealth Precedents and Prospects for the Application of International Human Rights Law in The Gambia

This session sought to illustrate judicial practice in The Gambia in relation to the application of international conventions and comparative jurisprudence through case law from The Gambia, and finally recommended a way forward for the judiciary in The Gambia. The moderator, Mr Alpha Fall introduced the panellists who were Amie Bensouda, a Legal Practitioner and Justice Hassan Jallow.

Amie Bensouda

The Gambia is party to most of the international conventions on human rights. Both the 1970 and 1997 constitutions have comprehensive fundamental rights provisions and the courts are charged with the responsibility of enforcing these provisions. I will discuss the case of *Momodou Jobe v Attorney General & Others 1980* mainly because it goes into the annals of history as a major setback for the development of our human rights jurisprudence after the partial reversal of the decision by the Privy Council.

The case arose from the introduction of a Special Criminal Court Act intended to address the state of misappropriation of public finds at the time. The offensive provisions of the act concerned bail. Bail under the said statute would not be granted to an accused person unless one could prove exceptional circumstances that would warrant the granting of bail. An additional condition to granting bail under the act required that thirty percent of the amount alleged to have been misappropriated be deposited in court. Technical rules of evidence were dispensed with and the trial magistrate had authority to freeze the accused person's accounts and also seize any property in his possession or that of a third party believed to belong to the accused person.

Momodou Jobe was charged with stealing about half a million dalasi from the Commercial Bank, a state institution. He was remanded in custody and because he could not fulfil bail conditions, he remained in custody for over one year. His lawyer challenged his incarceration alleging that it constituted a violation of various provisions of the 1970 Constitution. The High Court rejected the defence attorney's argument and failed to find any violation. The matter proceeded to the Court of Appeal where the Lordships held that the bail conditions were onerous and excessive, and did contravene provisions of the Criminal Procedure Code. They also held that the provisions violated the accused person's constitutional right to protection by the law. The learned judges also found a violation of the accused person's property rights through the seizure of his property. His Lordship Justice Annan relied on international human rights conventions to which The

Gambia was a party as a basis for the interpretation of the provisions of the Special Criminal Courts Act in order to uphold the rights of the individual under the constitution.

The Privy Council upheld the constitutionality of most of the provisions of the Special Criminal Courts Act save for that provision which shifted the burden of proof on the third party, to the extent that the third party had to prove that property seized from him in relation to an accused person belonged to him, and failure to do so amounted to an offence. Since the partial reversal of the decision, the courts in The Gambia have not placed much reliance on the case.

Following a military take over in The Gambia in 1994, the constitution was suspended by Decree No 1 which did not suspend the fundamental rights provisions. In the case of *Sainabou Dibba v State*, once again the Court of Appeal had to determine whether the provisions of the Special Crimes Act were inconsistent with fundamental human rights provisions, in addition to whether the court's jurisdiction had been ousted in this regard. Sainabou was the wife of a detainee who was detained pursuant to Decree No. 1. The decree created offences in relation to economic crimes. A person detained under the provision had to be brought before a court of competent jurisdiction within thirty days. The act was applied retroactively and its provisions were to prevail over those of the Criminal Procedure Code.

The appellant brought an application within the thirty day period seeking bail for her husband. On a preliminary objection, the state contended that the court had no jurisdiction to entertain the application. The High Court judge sustained the argument and disallowed the application. On appeal in the Court of Appeal, the court held that the jurisdiction of the court could not be ousted by implication or mere inference by decree. Since there was no specific provision explicitly ousting the jurisdiction of the court under the Special Crimes Act, the Court of Appeal therefore held that the court had jurisdiction to entertain cases touching on fundamental rights. Undoubtedly, the above is an exceptional case of judicial activism.

There are other cases such as that of Pa Sallah Jagne, a former Inspector General of Police, who was detained under a retroactively validated decree where the Court of Appeal lost the opportunity to apply the law creatively and international human rights law for the protection of fundamental rights. The applicant moved the court on grounds that his arrest and detention was a violation of his fundamental rights as guaranteed under the constitution of The Gambia. The Court of Appeal held that there were no human rights in The Gambia following the promulgation of Decree 31 which suspended provisions of the Constitution relating to fundamental rights, and therefore they could offer no remedy to the applicant.

Despite the new 1997 Constitution, there are a number of decrees still in force which whittle down the fundamental rights of citizens. There are a few cases that have been brought before the courts in The Gambia challenging the constitutionality of these decrees, but there has been no judicial pronouncement yet on any of them.

Among some of the factors that have prevented the judiciary in The Gambia from nurturing judicial activism, are contractual judicial appointments, ambiguous provisions on the tenure of judges, and a dearth of information resources on international human rights law. Finally, the onus leans heavily on lawyers to ensure that they rely on international human rights norms in arguing their cases.

Justice Hassan Jallow

The prospect of the application of international human rights law in The Gambia has been impeded by a number of factors as has already been discussed. Despite The Gambia's impressive record of ratification of treaties it has failed to bring its domestic legislation in harmony with the ratified treaties. We should therefore urge the legislature to embark on the process of incorporation. Like the case in some countries, the Constitution of The Gambia could make provision for the automatic incorporation of ratified treaties. In addition, the independence and authority of the judiciary ought to be respected, to ensure that the rule of law is upheld and that the judiciary is not constrained in the application of international human rights norms.

Other than an enabling environment, both the judges and lawyers need to be equipped with the necessary information resources for the effective protection of human rights. As already noted, the legal profession has the prime responsibility of making the judiciary rise to the challenge of responding appropriately to violations of human rights. If these measures are taken, we anticipate more progressiveness in the development of our human rights jurisprudence.

Friday 30th June, Afternoon
Evaluation

Appendix I: List of Participants

No.	NAME	JOB TITLE	ORGANISATION / FIRM
1.	Omar M. M. Njie	Barrister & Solicitor	Omar M. M. Njie Chambers
2.	Bakary Fansu Conteh	State Counsel	Attorney General's Chambers
3.	Joseph Wowo	Principal State Counsel	Dept. State for Justice
4.	Awa Bah	State Counsel	Attorney General's Chambers
5.	Gloria Atiba-Davies	Ag. Director of Prosecutions	Dept. State for Justice
6.	Francois G.R.M.	Judge/ Chairman Law Reform Commission	Law Reform Commission
7.	Almami I. F. Taal	State Counsel / Human Rights Desk Officer	Attorney General's Chambers
8.	Nguie Mboob Janneh	Magistrate	Judiciary of The Gambia
9.	G. C. Ihekire	Hon. Justice	High Court
10.	Timothy A. Kabalata	Judge	High Court
11.	Haddy Cecilia Roche	Principal Magistrate	Judiciary of The Gambia
12.	Ida M. E. Jallow	Legal Practitioner	Fajara Chambers
13.	Mary Abdoulie Samba-Christensen	Legal Practitioner	
14.	Lamin K. Mboge	Private Legal Practitioner	Mari-Bantang Chambers
15.	Yakubu Gowan Magaji	State Counsel	Dept. of State for Justice
16.	Aisatou Jallow-Sey	Legal Practitioner	Gambia Civil Aviation Authority
17.	Penda Dibba	Company Lawyer/Secretary	Gamtel
18.	Abubacar King	Magistrate	Judiciary of The Gambia

19.	Kumba Semega-Janneh	Magistrate	Judiciary of The Gambia
20.	Baboucarr Y. Camara	1st Class Magistrate	Judiciary of The Gambia
21.	Esther A. Ota	Senior Magistrate	Judiciary of The Gambia
22.	Sheikh Tijan Hydara	State Counsel	Attorney General's Chambers
23.	George Gelaga King	Justice of Appeal	Judiciary of The Gambia
24.	Babou O. Jobe	Magistrate	Judiciary of The Gambia
25.	Musa Batchilly	1st Class Magistrate	Kanifing Magistrate Court
26.	Lamin George	1st Class Magistrate	Kanifing Magistrate Court
27.	Samba Jangum	Assistant Registrar	Dept. of State for Justice
28.	Ebironke Semega-Janneh		Attorney General's Chambers
29.	Omar D. Mbye	Legal Practitioner	Bella's Chambers
30.	Omar Jawara	State Counsel	Dept. of State for Justice
31.	Fafa E. Mbai	Legal Practitioner	Fana Fana Chambers
32.	Sheriff Marie Tambadou	Legal Practitioner	
33.	Abubacarr Marie Tambadou	Legal Practitioner	
34.	Isatou Combeh Njai	Judicial Secretary	Judiciary of The Gambia
35.	Amie Joof	Legal Practitioner	Ida D. Drammeh's Chambers
36.	Ousman A. S. Jammeh	Master of the Supreme Court	Judiciary of The Gambia
37.	Naceesay Sallah Wadda	State Counsel	AG's Chambers
38.	Therese Sarr		AG's Chambers
39.	Dr. Aboubacar Abdullah Senghore	Research Officer	ACDHRS
40.	Modou Drame	Solicitor & Barrister	Ecowas Chambers

41.	Janet Ramatoulie Sallah-Njie	Legal Adviser	Central Bank of The Gambia
42.	Ida D. Drameh	Legal Practitioner	I.D. Drameh & Associates
43.	Sydney Winston Riley	Barrister-at-Law	Sidney's Chambers
44.	Lamin A. K. Touray	Magistrate Class I	Judiciary of The Gambia
45.	Sam H. A. George	Legal Practitioner	Sam H.A. George & Co.
46.	Ann Rivington	Legal Practitioner	Fajara Chambers
47.	Nova A. Avan	Public Prosecutor	AG's Chambers
48.	Lamin Jabbi	Barrister	Amie Bensouda Chambers
49.	Michael F. Lana	Barrister	Amie Bensouda Chambers
50.	Howsoon Semega-Janneh	Senior Legal Draftsman	AG's Chambers
51.	Haddi Jatou Kah	State Counsel	Dept. Of State for Justice
52.	Tebalo P.J. Makati	Legal Practitioner	18, Picton Street, Banjul
53.	Justice Gelaga King	Judge	Court Of Appeal
54.	Gibril Semega Janneh	Judge	High Court of The Gambia
55.	Mrs Fatou B. Bensouda	Legal Practitioner	
56.	Junaidi Jallow	Deputy Ombudsman	Office of the Ombudsman
57.	Justice Mam Yassin Sey	Judge	High Court of The Gambia
58.	Sam J.O. Sarr	Ombudsman	Office of the Ombudsman
59.	Mrs Johanna Mbye	Deputy Ombudsman	Office of the Ombudsman
60.	Mrs Hannah Forster	Documentalist	African Centre for Democracy & Human Rights Studies

Appendix II: Resource Persons

Justice Ngcobo, Judge of the Constitutional Court of South Africa

Prof. Osita Eze, Director, Democracy and Development Studies at the Institute for Peace and Conflict Resolution, Nigeria

Bola Carrol, Legal Practitioner, Carrol Chambers and Vice-President of the Gambia Bar Association

Emmanuel Joof, Legal Officer with the African Society for International and Comparative Law, Gambia Chapter.

Amie Bensouda, Legal Practitioner, Amie Bensouda Chambers, The Gambia

Hassan B. Jallow, Judge of the Supreme Court of The Gambia

Roughie Thomasi, Principal State Counsel at the Attorney General's Chambers, The Gambia

Appendix III: Organisers

Julia Harrington
Executive Secretary
Institute for Human Rights and Development

Alpha Fall
Programme Director
Institute for Human Rights and Development

Fatou Jagne
Programme Assistant
Institute for Human Rights and Development

Fatou K. Ceesay-Cole
Bilingual Secretary / Administrative Assistant
Institute for Human Rights and Development

Jennifer W. Miano
Lawyer
Green Belt Movement, Kenya