Obstacles to Nigeria's Ratification and Implementation of International Treaties

R. Brajpuriya
Amity University Haryana, Gurgaon, Haryana, India

Abstract: The rapid development and advancement of any nation as a result of transnational agreements cannot be over emphasized. No nation can effectively succeed independently without requiring the assistance of other nations and it is on this ground international agreements are made. Treaties constitute the major means of entering into agreement at International law. They are considered the closest analogy to legislation that International law has to offer [D. Harris, 'Cases and Materials on International Law', (6th edn, Sweet & Maxwell, London, 1998)]. In recent years, Nigeria, as a nation has actively partaken in quite a lot of treaties while plethora of them are yet to be domesticated. In spite of the enormous legal and constitutional powers in the making of treaties, frequent feud between the Executive and the National Assembly, external political influence, excessive politicization of treaty bills, ideological differences among legislators, financial considerations, religious differences, cultural biases and lack of political will among legislators have impacted negatively on the fortune of treaties' ratification and domestication in Nigeria. Hence some of the problems that this work seeks to address.

Keywords: Treaty, Domestication, Ratification, Executive, National Assembly

1. Introduction

Nigeria is noted to have full participation in international agreement and indeed a member of the International Community [Nigeria became an independent country on 1st October 1960 and later a Republic on 1st October, 1963. With the acquisition of the Independence and Republican status in 1960 and 1963 respectively, Nigeria became a member of the Committee of Nations after satisfying the requirements of Article 1 of the 1933 states] and consequently has the capacity to enter into treaty. Treaties between Nigeria and other subjects of International law do not automatically transform into domestic laws, unless they are ratified and specifically domesticated by the National Assembly. [Section 12 of the Constitution of the Federal Republic of Nigeria, 1999(as amended)] in accordance with the constitution of the Federal Republic of Nigeria, [Section 12(1) of the Constitution of The Federal Republic of Nigeria, 1999] before they can have the force of law. The constitution [ibid] requires the treaty so ratified to be transformed by the Nigeria legislature into domestic legislation before it can be applied in Nigeria’s court. In Nigeria, treaty - making have been confronted with a lot of challenges posed not only by our laws but bureaucracy. This has persisted for a longer time because no attempts have been made to address it. The emphasis on treaty implementation in the constitution of the Federal Republic of Nigeria without any serious consideration for the making of the treaty to be implemented, is inadequate. Unless a treaty is properly formulated, its implementation no matter how excellent will be of little benefit. The Treaty (Making Procedure etc) Act, 2004 has completely failed to provide any guidance on the processes and procedures for making treaties.

2. Definition


3. Challenges in the Ratification and Domestication of Treaties in Nigeria

The method of treaty practice in Nigeria determines not only the way the State relates to international law but, more importantly, the treaties they have signed and ratified and
the relationship among the different Arms of government in treaty making [O. Christopher, ‘Nigerian National Assembly And Domestication Of Treaties In Nigeria’s Fourth And Fifth Assembly’, Vol. 2, Socialscientia Journal of the Social Sciences and Humanities (2017) Available at <http://www.journals.aphriapub.com> accessed 30 January 2022]. This explicitly demonstrates the status accorded to treaties in Nigeria. For treaties to become legally binding within the country, the National Assembly must take a further step to domesticate such instruments. Once treaties are domesticated, however, they automatically enjoy the same legal force as other Acts enacted by Parliament because signature alone may not confer any legal force to an international instrument. [D. Ogunniyi, The Challenge of Domesticating Children’s Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children’ Journal of African Law] Unfortunately, the inability of Nigeria to domesticate some important treaties hinders the satisfaction of the rights such treaties impose on her citizens. 1 The Executive Arm of Government literally is in charge of negotiating a treaty through the Ministry of Foreign Affairs. The National Assembly also plays a crucial role. 2 In spite of the enormous legal and constitutional powers of the National Assembly in the making of treaties, frequent feud between the Executive and the National Assembly, have impacted negatively on the fortune of treaties ratification and domestication in Nigeria. 3

Another major challenge of poor implementation of treaties in Nigeria is the non-participation of the legislature during the negotiation of treaties. The National Assembly is not carried along by the Executive in the negotiation of treaties because neither the Constitution nor the Treaties ACT provides any role to the National Assembly in respect of treaty-making in Nigeria. Usually, the National Assembly becomes aware of the existence of most treaties many years after their ratification or when they are brought before them for domestication. It must however, be observed that non-consultation with the legislature in treaty-making is a common practice in dualist countries, 4 because of the fact that treaties are not incorporated into domestic laws without post-ratification approval of the legislature. This could be contrasted with what is applicable in monist countries where legislative approval is usually a pre-ratification issue. In the United States for example, no treaty can be ratified by the President without the approval of at least two-thirds of the Senate. 5 The United States Constitution also provides that the president has power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senate Present concur. 6 Notwithstanding that it may amount to a double legislative task if the National Assembly is allowed to participate in the treaty-making process in addition to its constitutional role of enacting treaties into domestic laws, yet it is very desirable that relevant Committees of the National Assembly are duly consulted during the negotiation of any treaty by the Ministries, Departments and Agencies. This will not only engender wider consultations, but will also ensure that ratified treaties are easily domesticated. Interestingly, the National Assembly has started taking steps to ensure that she is duly consulted during the negotiation of treaties.

The treaty - making process in Nigeria is insufficient, for instance, it did not streamline the institutions or government representatives responsible for treaty negotiations. It tacitly allowed several government institutions and persons to negotiate and enter into a treaty for the government. Section 1 (2) of the Act provides thus: ‘All treaties to be negotiated and entered into for and on behalf of the federation by any ministry, governmental agency, body or person…’ The prevailing standard in the country is for treaty negotiations to be undertaken by the Executive Arm of the Federal Government through technocrats in the Ministries of Foreign Affairs, and Finance. However, other ministries, departments, and agencies can enter into treaty for Nigeria, pursuant to the provisions of Section 1 (2) of the Treaties (Making Procedure, Etc) Act, 2004. As a result, following up of the treaties entered into by Nigeria could be difficult as most of them end up being hindered by bureaucratic bottlenecks. 7 This non-streamlining and non-provision of clear steps to be taken in negotiating, entering into, and ratifying of treaties by the Constitution and the Treaties (Making Procedure) Act lead to a number of issues such as legislature’s lack of awareness of the existence of certain treaties, which leads to unnecessary delays in their domestication. Furthermore, the provisions of the Act inadvertently nominated those who can negotiate and enter into a treaty for Nigeria. Meanwhile the Act fails to acknowledge the power of the President with regards to entering into treaties for the country. The Executive power which includes the execution of laws of the land, is vested on the President who may exercise such powers directly or through the Vice President, Ministers or officers in the public service of the federation. Treaty making certainly falls into this ambit of the President’s power. Nigeria is a federation headed by a President. The President, as the Chief Executive is designated the Head of State and all his legally relevant international acts are considered to be acts of the State, including the conclusion of treaties and declaration of war. 8 In international law, Heads of State and Government,

---

3 O. Christopher, ‘Nigerian National Assembly and Domestication of Treaties In Nigeria’s Fourth And Fifth Assembly’, (n:108)
4 The dualist doctrine proceeds from an assumption that international law and domestic law are quite different from each other; both in their character. The Monist on the other hand, contends that international law and domestic law belong to one system, and asserts the supremacy of international law over domestic law in case of conflict
5 Article II, Section 2 of the United States Constitution
6 Section 11(2) of the United States Constitution
9 B. Nwabueze, Federalism in Nigeria under the Presidential Constitution (London, Sweet Maxwell 1983), p255-256. In Britain, treaty making power is part of the royal prerogative over foreign
Foreign Ministers, Heads of Diplomatic Missions and Accredited Representatives to International Conferences have powers to represent their countries. Outside this limited category, persons representing states must produce appropriate full powers to represent his country. While section 12 (2) of the constitution authorized the National Assembly to legislate on treaties for the entire federation whether the subject is on the Exclusive or Concurrent Legislative Lists, section 1 (1), Treaties Act limits treaty-making to matters on the Exclusive Legislative List. Section 1 (1), Treaties Act cannot limit section 12 (2) the Constitution.

The respect Nigeria has for international law has necessitated the allowance of its implementation of treaties through its Section 12 of the constitution but without stating in clear terms, who are entitled to commit the country by way of treating - making as well as the status of such transformed treaties. The constitution did not adequately provide for the various procedures to be adopted in negotiating, signing, ratifying and implementing treaties, it is only concerned with the enforceability of treaties. However, this poses a major drawback and would be nothing but insincerity if the readiness to ratify and domesticate treaty is only powered by the reliance on the ‘shield’ provided by Section 12. Thus, the Treaties (Making Procedure, etc) Act, would appear to have been enacted to fill in the gap. The aim of Section 12 of the constitution was not to be used to deny the average Nigerian the dividend of a truly just and progressive society duly recognized in the international community. Instead, it was to be a shield to defend her sovereignty and territorial integrity as enshrined in the principle of the supremacy of the constitution. The need to preserve the supremacy of the Nigerian constitution and to defend her sovereignty can never be overemphasized. Therefore, it is unfair to deny her citizens some rights that are protected by them.

Cultural and socio-economic factor also contribute to impede treaty implementation in Nigeria. Undoubtedly, apart from being the most populous African country, Nigeria ranks among the most ethnically diverse states in the world. Representatives of such cultures in the national assembly affairs which the queen may exercise without parliamentary involvement. In Canada the power resides with the Governor-general. See Attorney-General for Canada v Attorney-General for Ontario (1937) AC 326,327. Also Attorney-General of the Federation v. Attorney-General Abia State & 35 Ors [2002]16.1, WRN.1. Oyebode, A Treaty Making power in Nigeria in (ed) International Law and Politics: An African Perspective (Bolaby Publishers 2003), 118. The reason for this according to Oyebode includes avoidance of conflict and discordance in the area of foreign policy, the need for single identity, as a unified foreign policy forms part of the attractions of federalism. Vienna Convention on the Law of Treaties, Article 7(2)

section 12 (2) of the 1999 constitution the Federal Republic of Nigeria
13 Treaties Act 2004
14 Cap T.20, Laws of The Federation of Nigeria, 2004
15 S. 1 of the Constitution of the federal republic of Nigeria.

The Convention for the Elimination of all Forms of Discrimination Against Women 1985. Herein after referred to as CEDAW


(1997) 2 NWLR 144.
or inherited by the deceased’s family. 23 Also, in the Safiyatu Hussaini’s case, the party was convicted for offences involving extra marital sexual relations contrary to Sharia criminal laws. This showed discrimination against women based on beliefs and culture. 24

Nigeria is a party to the World Intellectual Property Organization (WIPO) Internet Treaties, made up of the WIPO Copyright Treaty25 and WIPO Performances and Phonograms Treaty. 26 This is a special agreement under the Berne Convention which deals with the protection of works and rights of authors in the digital environment although ratified, but have not yet been domesticated. The Beijing Treaty on Audiovisual Performances27 and the Marrakesh VIP Treaty28 are not left out. Some of these treaties were signed not only to facilitate access to published works for persons who are blind, visually impaired or print disabled29 but also for the advancement of intellectual property sector in Nigeria.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa is a treaty of the African Union that addresses internal displacement caused by armed conflict, natural disasters and large-scale development projects in Africa30. In the last few years, millions of people across Nigeria have been affected due to terrorism, banditry, government policies31, inter-communal violence, environmental degradation32, political violence33 and boko haram sect attacks,34 counter insurgency operations and natural disaster.35 Despite the large number of displacements in Nigeria and the challenges confronting them, the country is yet to domesticate the Kampala Treaty on Internally Displaced Persons after more than a decade of its adoption, which will give a clear sense of legality to the recovery, rehabilitation and upholding human rights of displaced persons. This among other salient issues, have been signed at international level for many years but not domesticated in the country.36

4. Conclusion and Recommendations

Nigeria has ratified several treaties which include treaties on human rights, environment, violence, trades and others. On the other hand, some of these treaties are not operating in the country because they have not been domesticated37. Treaties will continue to be mere documents in countries that are signatories to them if their significance is not felt by the people. It is not enough for a sovereign State to ratify a treaty in the international community framework; it is more important for such a State to adopt it into her domestic legal system, integrate the treaty into her national standard and make it a domestic law. The inability of a country to domesticate a treaty causes unreasonable hardship on other member - States, as the provisions of the treaty cannot be enforced in the domestic courts of the States. 38 It does not only discourage corporate migration and investment into


29 ibid Marrakesh Treaty.

30 The Convention was adopted at the Special Summit of the African Union held in Kampala on the 22nd day of October, 2009. As at 2015, it has been signed by 40 and ratified by 24 of the 54 member States of the African Union.)
affected states, it also stunts the growth of the law in the defaulting State.

The constitutional provision and the Treaties (Making Procedure, Etc.) Act are seen to be insufficient on matters that bothers on treaties in Nigeria, therefore, an urgent reform is needed. A more robust treaty law should be enacted to provide comprehensive processes and procedures for making treaties in Nigeria. The Act should create an independent body in the character of a Commission with members drawn from the Judiciary, Ministry of Foreign Affairs, National Assembly, Nigerian Bar Association and Academia. This body will assume the depository of all international treaties, continuously interrogate and follow up all treaties to which the country is party to and advise appropriately. More so, where, for example, the subject matter of the treaty will affect some of the constituent states of the federation or some local governments, the entities that will be affected by the outcome of the treaties should partake in its making. Furthermore, there should be adequate training of Judicial officers on conventions on treaties. In addition, supervisory bodies or agencies be set up, to create awareness - raising and educational activities, to encourage capacity development activities, monitoring the progress in the application of treaties, participation in exerting more efforts in ensuring the rapid domestication of treaties in Nigeria. Reasonable and specific timelines should be given and stiffer penalties imposed to discourage misconducts geared at defeating the objectives of treaties. These supervisory bodies or agencies should also be empowered by the government through allocation of funds and resources required to make such work efficient, speedy and relevant.

References

[17] The United States Constitution
[20] Rights of the Child Act
[22] Theresa Onwo v Nwafor Oko & 12 Ors (1996) 6 NWLR (part 456) 584;
[27] T. Akpoghome, internally displaced persons in Nigeria and the Kampala Convention, January 2015,