

Obstacles to Nigeria's Ratification and Implementation of International Treaties

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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

The Vienna Convention on the Law of Treaties 1969 [Article 2 of the Vienna Convention on the Law of Treaties 1969] provides a clear criterion on the definition of treaty or

international agreement, Under the said Vienna Conventions on the Law of Treaties, a treaty must be (1) a binding instrument, which means that the contracting parties intend to create legal rights and duties; (2) concluded by States or international organizations with treaty - making power; (3) governed by International law and (4) in writing [The Concise Oxford Dictionary of Current English (8th edn, Clarendon Press, Oxford, 1990), United Nations Treaty Collection, Treaty Reference Guide, 1999, available at <<http://untreaty.un.org/English/guide.asp>>]. In other words, it is defined as 'an international agreement concluded between states in a written form and governed by International law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. [Article 2(1) (a) The Vienna Convention of 1969] A treaty has been comprehensively defined as a consensual engagement which subjects of International law have undertaken towards one another with the intent creating legal obligations under International law. [Schwarzenberger, George, 'International Law as Applied by International Courts and Tribunals', vol. 1, Stevens & Sons, London, 1968, 438. G. Hamid, 'Treaty Making Power in Federal States with Special Reference to the Malaysian, Vol.30 (2003), Journal of Malaysian and Comparative Law (JMCL) 65-88 Position p2] Treaties therefore, are agreements under International law entered into either between states or between states and international organizations. A treaty may sometimes be referred to as 'Convention', 'Protocol', 'Covenant', 'Exchange of Letters', 'Act', 'Charter', 'Concordat', etc [J. Grenville, *The Major International Treaties 1914-1973* Methwen & co. Ltd 1974 London, P.8; M. Shaw *International Law*, 6th Edn. Cambridge University Press (2008)].

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. ¹The 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. ²In 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 Nigeria³.

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 countries⁴, 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 Presidency without the approval of at least two - third majority of the Senate. ⁵The 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 - third of the Senate Present concur. ⁶Notwithstanding 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 Government⁷through 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. ⁸This 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 war⁹. In international law, Heads of State and Government,

¹J. Onyekwere & Y. Ojo, International treaties and domestication challenge, 10th July, 2018 available at <<https://guardian.ng/features/law/international-treaties-and-domestication-challenge/>> accessed 27 February 2022

²R. Dunmoye, P. Njoku and O. Alubo, ‘The National Assembly: Pillar of Democracy, The National Secretariat of Nigerian Legislatures, National Assembly Abuja, (2007)121

³O. Christopher, ‘Nigerian National Assembly and Domestication of Treaties In Nigeria’s Fourth And Fifth Assembly’, (n:108)

⁴The 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

⁵Article II, Section 2 of the United States Constitution,

⁶Section 11(2) of the United States Constitution

⁷I. Nzeh, ‘Appraisal of Ratification and Domestication of Treaties in Nigeria: The Procedural Challenges’ (Thesis, Ahmadu Bello University Zaria Nigeria 2014). I

⁸B. Olutoyin, ‘Treaty Making and Its Application under Nigerian Law: The Journey So Far’ (2014) 3 International Journal of Business and Management Invention.

⁹B. 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 countries¹⁰. Outside this limited category, persons representing states must produce appropriate full powers to represent his country¹¹. While section 12 (2) of the constitution¹² 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 Act¹³ 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) Act¹⁴, 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 constitution¹⁵. 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.¹⁶ 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. Oyeboade, 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 Oyeboade 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.

¹⁰ Vienna Convention on the Law of Treaties, Article 7(2)

¹¹ *ibid*, Article 7(1).

¹² 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.

¹⁶ A Oba "The Sharia Court of Appeal in Northern Nigeria: The continuing crises of jurisdiction" (2004) *The American Journal of Comparative Law* 859 at 859; U Alkali et al "Nature and Sources

or state legislatures are likely to express their reluctance or oppose any attempt to domesticate any treaty not in line with their beliefs and cultural values. Whilst beliefs and cultural values cannot be disregarded, it is crucial that the government and the courts play a more proactive role in ensuring that such beliefs and cultural differences are not used as a cover to justify lack of domestication of treaties. The understanding of certain human rights treaty provisions in Nigeria may vary from the interpretation given by other jurisdictions, especially more developed ones, as a result of the beliefs and cultural values of most Nigerian people. For instance, what would amount to an insensitive and demeaning treatment or punishment of a child would have to be understood in the Nigerian context.¹⁷ In the domestic implementation of human rights in Nigeria, there should be a balance, as there have been examples of resistance to implementation of human rights in certain quarters as a result of the perception that it is contrary to local beliefs and cultural values. For instance, for a long while there was resistance to the Rights of the Child Act. In addition, although the provisions of The Convention for the Elimination of all Forms of Discrimination Against Women¹⁸, a treaty ratified by Nigeria, urges countries to denounce discrimination against women in totality and set in motion policy of eliminating discrimination against women, there are still certain discriminatory practices directed against women and female children that are encouraged by beliefs and culture.¹⁹ In the area of inheritance, for example, there are certain customs that encourage discrimination against women and female children in certain parts of Nigeria. Fortunately, the courts have, in certain cases, struck out some of these customs as being discriminatory and therefore repugnant.²⁰ In the case of *Mojekwu v. Mojekwu*,²¹ for instance, the Court of Appeal struck out an Igbo custom that denied a woman the right to inherit the property of her deceased husband. However, there have also been unfortunate cases, such as the Supreme Court case of *Akinnubi v. Akinnubi*,²² where the court actually upheld a Yoruba custom that regarded a widow, whose husband died intestate, as part of the deceased's estate to be administered

of Nigerian Legal System: An Exorcism of a Wrong Notion" (2014) 5 *International Journal of Business, Economics and Law* 1 at 2.

¹⁷ Section 11(b) of the Rights of the Child Act and arts 37(a) and 16 (1) of the CRC and the ACRWC respectively.

¹⁸ The Convention for the Elimination of all Forms of Discrimination Against Women 1985. Herein after referred to as CEDAW

¹⁹ E. Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria. Vol. 51 Issue 02 (*Journal of African Law*, 2007), pp 249 – 284. Available at http://journals.cambridge.org/abstract_S0021855307000290. Accessed 5 June 2022.

²⁰ *Theresa Onwo v Nwafor Oko & 12 Ors* (1996) 6 NWLR (part 456) 584; *Alajemba Uke & Anor v Albert Iro* (2001) 11 NWLR (part 723) 203. and the Combined Fourth and Fifth Periodic Report of Nigeria to the Committee on the Elimination of Discrimination Against Women Section B, para.1.0 of CEDAW/C/NGA/4-5 (28 April 2003) Available at <http://daccessdds.un.org/doc/undoc/gen/n03/345/65/pdf/n0334565.pdf?OpenElement>. Accessed 17 May 2022.

²¹ (1997) 7 NWLR (Part 512) 28.

²² (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

²³ Women In Law Development in Africa (Nigeria) 'Convention on the Elimination of All Forms of Discrimination against Women daily implementation in Nigeria' (July 2002), available at <http://www.wildaf-ao.org/fr/IMG/pdf/CEDAW_implementation_Nigeria.pdf>

accessed 17 May 2022 and CEDAW "Consideration of reports submitted by states parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: combined fourth and fifth periodic reports of states parties, Nigeria" cedaw/c/nga/4-5 of 28 april 2003, available at: <http://daccessdds.un.org/doc/undoc/gen/n97/267/73/img/n9726773.pdf?openelement>. Accessed 17 May 2022

²⁴ P. Ostein, *Sharia Implementation in Northern Nigeria 1999-2006*, A Sourcesbook, Vol. 1-5 (Ibadan, Nigeria Spectrum Publication Limited, 2007). Available at <<https://www.eupublishing.com/doi/full/10.3366/E09>> Accessed April 2023.

²⁵ WIPO Copyright Treaty, adopted on 20th December 1996 and entered into force on March 6th 2002, available at: <https://wipolex.wipo.int/en/text/295157>, accessed 20th November 2020.

²⁶ WIPO Performances and Phonograms Treaty adopted on 20th December 1996 and entered into force May 20th 2002, available at <<https://wipolex.wipo.int/en/text/295578>> accessed 20th November 2020

²⁷ Beijing Treaty on Audiovisual Performances adopted June 24th 2012 and entered into force April 28th 2020, available at: <https://wipolex.wipo.int/en/treaties/textdetails/12213> accessed 20th November 2020.

²⁸ Marrakesh Treaty on Visual Impairment Signed in June 27, 2013, entered into force September 30, 2016. available at: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_218.pdf, accessed 20th November 2020.

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.)

due toterrorism, 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

³¹ A. Hamzat, Nigeria: Internally Displaced Persons and the Society, available at <<http://www.googlelegmanager.com/ns.html?id>> accessed January 2023.

³² Integrated Regional Information Networks (IRIN) 'Nigeria: over 100 killed in month of violence in Port Harcourt' (10 September 2004). Also amnesty international "Nigeria: are human rights in the pipeline?" (9 November 2004).

³³ Internally Displacement Monitoring Center (IDMC), Global Overview 2011: People Internally Displaced by Conflict and Violence - Nigeria" (19 April 2012) available at <<http://www.refworld.org/docd/4f97fb582b.html>> accessed January 2023.

³⁴ Boko Haram means "Western Education is Forbidden" in Hausa language. The sect was founded in Maiduguri, the northern part of Nigeria over a decade ago. This sect gained prominence in 2009 after launching attacks against the government in several parts of northern Nigeria leaving not less than 800 persons dead. Their demand is for the strict implementation of the sharia law and ideology not widely supported in the country.

³⁵ In areas affected by water, schools and markets were suspended for Months at a time in 2022 flood disaster; some areas were cut off preventing children from attending schools and hindering access to health and other social services. NEMA reported that in 2012 the flood which occurred between July and October a total number of 7.7 million persons were affected by the flood out of these number 2.1 million persons were internally displaced.

³⁶ T. Akpoghome, internally displaced persons in Nigeria and the Kampala Convention, January 2015, available at <<http://www.researchgate.net>> accessed January 2023.

³⁷ A. Adede, 'Domestication of International Obligations 2001'. Available at <<http://www.commonlii.org/ke/other/keckrc/2001/14.html>>

³⁸ S. Eke, Non-Domestication of Treaties in Nigeria as a Breach of International Obligations

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.

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