NIGERIA: BETWEEN MONIST AND DUALIST STATE

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ABSTRACT

This article seeks to clarify the term treaties and human rights treaties, and analyze the relationship between international law and municipal law in Nigeria. It also seeks to appraise the concept of Nigeria as a dualist state, the monist and dualist theories, the process of domestication of international treaties in Nigeria and the domestication of human rights treaties in Nigeria.

Further, it seeks to find whether implementing a law can transform a treaty into municipal law by mere reference to the treaty and the application of non-domesticated human rights treaties in Nigeria. It found that only the National Assembly with the exclusion of the State Houses of Assembly can ratify international laws.

The paper, therefore, recommended that the items on the exclusive list in the constitution should be reviewed and reduced. It further recommended that the Act be enacted by the National Assembly stating how implementation should be done in addition to an express provision on how treaties can be ratified or domesticated.

Keywords**:** Constitution, Domestication, Human Rights, Nigeria, Treaties, Ratification, Dualist State

INTRODUCTION

Many of the treaties signed by Nigeria have been embedded in the constitution of the Federal Republic of Nigeria as justiciable while others regarded as non-justiciable have been enacted into laws by the National Assembly. The question is does the referral to treaties that have not gone through the process of signing, domestication, and ratification by the National Assembly not make Nigeria a Monist state? Does the frequent and constant military intervention in various civil and political issues in Nigeria not bring to question the domestication of human rights treaties in Nigeria?

Oyebode argues that, in Nigeria, there are two ways to adopt a treaty into Nigeria's municipal law and they are by transmutation by the National Assembly or by reference.[i] He stated that adaptation by reenactment occurs when the National Assembly directly enacts specific provisions of the treaty or the entire treaty into a municipal law of the state while adaptation by reference can be said to be a mere reference to the treaty and contained in either the long and short title of the statute or the preamble of the statute. He further stated that reference to a treaty does not make it an executing statute. However, by Section 254 of the 1999 Constitution of the Federal Republic of Nigeria, it can be construed that the legislature intended to be executing legislation.[ii]

DEFINITION OF TERMS

What is a Treaty?

Treaties are direct agreements that are often in a form of auxiliary law undertaken by states.[iii] They are legal, undertaking both international and domestic law and bear a close similarity to contracts in that the state parties procure obligatory duties for each other.[iv] Nigeria, like several other countries of the world, is a signatory to several treaties and conventions that makes up part of her laws. Once in force, treaties are binding on the parties and become part of international law.[v] It is important to note that international treaties constitute a major source of Nigerian law.

Also, a treaty is any pact reached or made amongst more than one self-governing or sovereign country for the reason that the treaty would add to or be for the benefit of the public good or interest of the citizens in the long run. It is an accord, consensus, commitment, or contract

between two states, countries, or sovereigns which are ratified, approved, agreed to, or endorsed by the same countries in their various countries. It is not a law in the ordinary sense, but an agreement that is binding which stipulates that the treaty will be accorded and endowed with the full force or effect of the law in the various states that signed it. Further, Countries that sign treaties can either sign it privately, that is on their own or among themselves as the case may be, or under an organization. Organizations, where treaties are signed, are the United Nations, African Union, European Union, and others.

Although sometimes a treaty is confused to be the same as a convention as indeed, they are very similar but what differentiates them is that while a treaty is signed between the countries involved in a situation, a convention is an agreement signed under an internationally recognized body. However, regarding this work, treaty and convention will be used to make the same reference or have the same meaning. Finally, it is worthy of recognition that no country is forced to sign a treaty.

What are Human Rights Treaties?

Human rights treaties are simply agreements, contracts, and commitments consented to by different countries to improve the human rights situation in the individual countries.[vi] These human rights treaties contain strictly human rights provisions which may be economical, political, environmental, cultural, developmental, civil, or social in composition.[vii] In other words, they contain only humanitarian rights provisions. Also, It can be referred to as any officially and legally signed indicated and authenticated pact amongst countries that stipulate or spell out explicit human rights guidelines and rules on the way a state will direct its matters on human rights concerns or to improve the human rights conditions in these individual countries.[viii] Further, they are instruments of agreement between countries to endow precise rights to people who are not parties to the agreement but are the reason the agreement was initially made.[ix] This is so because human rights treaties are usually signed by the apex government officials of a country such as a President or when unavoidably absent, a delegate from the President. The people who are not parties to the treaty but are to benefit from it are the citizens and just like any other law or any sort of legislative stipulation, these human rights treaties are subject to explanation or interpretation.[x]

THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW IN NIGERIA

Several scholars have argued on the precise relationship between international law and municipal law, some have stated that the legislation domesticating the international laws was greater than the municipal laws.[xi] This was a result of the Court of Appeals decision in *Abacha v Fawehinmi*[xii] where it was held that the legislations domesticating the international laws were greater than the municipal laws. However, the Supreme Court in *Abacha v Fawehinmi* unanimously stated that domesticated legislations were not superior to municipal laws.[xiii]

The reason for the obvious confusion on the actual relationship between international law and municipal law is not far-fetched. Human rights have been divided into several forms which are: civil and political rights, socio-economic, cultural, and solidarity rights.[xiv] As earlier stated, the Constitution of the Federal Republic of Nigeria further grouped these rights into two: the justiciable rights and the non-justiciable rights.[xv] The justiciable rights are rights that when violated can be adjudicated upon in Court and are contained in Chapter four of the 1999 Constitution of the Federal Republic of Nigeria[xvi] while the non-justiciable rights are rights that cannot be adjudicated upon in Court when violated and are contained in chapter two of the 1999 Constitution.[xvii] Civil and political rights were grouped under the justiciable rights while socio-economic, cultural, and solidarity rights were grouped under the non-justiciable rights[xviii].

Regardless of this division, the African Human rights act stipulates that civil and political rights, the socio-economic, cultural, and solidarity rights are all justiciable for which no derogation is permitted.[xix] A classic example of this glaring disparity is the rights to education codified in Article 17 (1) of the African Charter Act which states that: "Every individual shall have the right to education. Every individual may freely take part in the cultural life of his community. It further provides for the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State".

NIGERIA AS A DUALIST STATE

The concept of dualism posits that a convention or treaty can only be prescribed a domestic legal effect after the process stipulated under the domestic law is implemented and infused into

the domestic laws of the state.[xx] Therefore for international law to have a binding effect in a dualist state, it must be ratified and domesticated.[xxi] This was succinctly stated in *Abacha v Fawehinmi*[xxii]and *Higgs & Anor v. Minister of National Security & Ors.*[xxiii]

Since Nigeria prides itself as a dualist state per the provision of Section 12 (1) of the 1999 Constitution of the Federal Republic of Nigeria, it adopted the dualism order in establishing the inter-relativism of international law and national law. This means that in Nigeria rules of International law will not have a binding effect within the municipal sphere unless it has passed through a transformation[xxiv] into the national corpus of laws as reiterated in '*Registered Trustees of National Association of Community Health Practitioners of Nigeria & Ors. v Medical and Health Workers Union of Nigeria.*'[xxv]

Also, the provision of Section 12 of the Constitution, espouses that treaties after domestication hold the same position with the numerous Nigerian sources; all subject to the grundnorm. However, it is worthy of note that this controversy was seen in the difficulty in the interpretation of Section 12 in *Abacha v Fawehinmi,*[xxvi] where the Supreme Court Justices were at variance on the actual interpretation of section 12. Some justices adopted a liberal approach in the interpretation of section 12 while others adopted a strict approach to interpretation of section 12. The justices who were liberal in their interpretation stated that the legislature did not intend for a municipal law to be above a domesticated treaty unless it had been specifically repealed by the domesticated treaty.[xxvii]

However, one of the justices pointed out that a domesticated treaty is not superior to the municipal laws of the state.[xxviii] It was further stated that it can be repealed or modified by a municipal law neither can it be used to decide the legitimacy of a consequent law if it is in contradiction to the domesticated treaty.[xxix]

Contrarily, the learned justices who adopted the strict interpretation were of a different opinion, they stated that domesticated treaties were at par with the municipal laws of the state and in scenarios where the domesticated treaty was not expressly repealed or modified by a subsequent statute, its provisions will apply.[xxx]

MONIST AND DUALIST THEORIES

Proponents of the monist theory adopt the unitary system of law. They stipulate that in the event of a conflict between municipal law and international law, international law takes precedence.[xxxi]

On the other hand, proponents of the dualist theory stipulate that municipal laws of a state and international laws are distinct and autonomous of one another. For a dualist state, rules and principles of international law cannot function directly in the national laws of the state and must be transmuted into national law before they can affect the rights of individuals.

Nigeria adopts the dualist theory which requires international laws or treaties to be domesticated before application. The domestication of the treaties into Nigeria's legislation connects to the applicability of international law.

THE PROCESS OF DOMESTICATION OF INTERNATIONAL TREATIES IN NIGERIA

There are several ways the domestication of international treaties in Nigeria. One way is the treaties that were signed by the British government and applicable to Nigeria as a result of the colonization of Nigeria by the British.[xxxii] Another way for the domestication of treaties is by reference to the treaties[xxxiii]. This occurs when the treaties are used as a template for national laws such as the child rights act.[xxxiv] Further, the domestication of treaties can be done by the domestication of treaties via subsidiary legislation as in the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007.[xxxv]

The domestication of protocols and pacts is based on the will and consent of sovereign states. Nigeria is a part of the international body and an endorser of a good count of treaties thus, in a position to enter into binding agreements.[xxxvi] The Constitution is a major source for determining how international law interconnects with national rules[xxxvii]. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria gives the National Assembly, the power to create laws as regards the enactment of treaties into Nigerian law and also provides that the consent of two-thirds of the majority is needed before the President can sign a treaty into force in Nigeria.[xxxviii]

The Provisions of section 12, showcases that treaties fail to instinctively become part of our domestic corpus and that the reception of treaties in Nigerian law has to do with a process called "domestication". This legislative process entails that the treaty is sent to the National Assembly as an Executive Bill and then made subject to readings, debated upon, and forwarded to relevant committees who deliberate on the bill before it is passed into law.[xxxix]

Although it can be asserted without a doubt that the process ensures checks and balances, it is trite to also consider that the process is too rigorous for mere domestication of laws that have already been accented to. It seems to me that the legislature rather than considering the impact and essence of the international treaties in the development of Nigeria is only focused on their legislative roles, power, and authority.[xl] Also, there is no detailed information on western jurisdiction in terms of their process of domestication, the only obvious provision is in the implementation of treaties and this, without doubt, has resulted in several issues in courts as regards the implementation of certain international laws or conventions in different cases brought before the court.

TRANSMUTATION OF HUMAN RIGHTS AGREEMENTS IN NIGERIA

The transmutation of any international treaty by Nigerian government is an transnational requirement, which Nigeria is under an obligation to execute based on the *pactasunt servanda* principle by virtue of Article 26 of the Vienna Convention on the law of Treaties, 1969.[xli] A state party to a treaty is not allowed to use its municipal law as a shield for non-compliance with the provision of a treaty. This was succinctly stated in Article 27 of the Vienna Convention on Law of Treaties [VCLT].[xlii] However, Article 46 of the Vienna Convention on the Law of Treaties[xliii] stipulates that:

"A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance".

Furthermore, Article 46[2] of the Vienna Convention on the Law of Treaties states that; "A violation is manifest if it would be objectively evident to any State conducting itself in the matter per normal practice and good faith".

This implies that although Article 27 states that a municipal law cannot be a reason for non-compliance with international law, Article 46 serves as a proviso. This proviso, when its substance is successfully established by Nigeria, can serve as a reason for the non-observance of the particular treaty in question. Therefore, it seems clear that there appears to be a general duty to bring national law in conformity with the obligations of international law.

Nevertheless, it seems that where an international treaty has not been ratified and enforced into law in accordance with section 12 of the Nigerian Constitution, it may not be enforced in Nigerian courts. This was illustrated in the recent case of *The Registered Trustees of the National Association of Community Health Practitioners of Nigeria v. Medical Workers of Nigeria*,[xliv] where the Supreme Court held that "a treaty must have the force of law from the National Assembly for it to be valid and enforceable". In the case of *Abacha v. Fawehimi,*[xlv] it was held that despite the fact that a treaty is of importance to the Nigerian state it will not affect until the National Assembly enacts it also in the case of. Therefore, it is not sufficient to be a signatory to an international Treaty which is why we recommend that the National assembly takes further steps to transform and ratify treaties that have not been ratified.

In *Mhwun v Minister of Health & Productivity & Ors,*[xlvi] the Court of Appeal held "that the provisions of an International Labour Convention cannot be invoked and applied by a Nigerian Court until the same has been re-enacted by an Act of the National Assembly". His Lordship, Muntaka- Coomassie JCA held that:

"There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly. In so far as the ILO convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply...Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria1990, it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts".[xlvii]

One must stress that Nigeria has no express provision for treaties to form part of municipal law except by domestication into national legislation. However, the Nigerian Constitution has

provided limited powers for the executive, legislative, and judicial arms including the power to legislate in the field of Fundamental Objectives and Directive Principles of State Policy. It seems that the essence of section 12 of the Constitution is also to give effect to international treaties to which Nigeria is a party to the treaty. Some of the laws in the 'non Justiciable' clause of the Nigerian Constitution have been domesticated into laws by the National Assembly. An example of such laws are the Child's right act of 2003, and the Price control Act amongst others.

Of utmost importance, is that it is clear that a vast number of treaties have been incorporated into Nigeria's domestic law because they are replicas of such treaties that are codified into domestic law. A case in point is The National Human Rights Commission of Nigeria which was inaugurated by the National Human Rights Act, 1995[xlviii] in agreement with the resolution of the General Assembly of the United Nations,[xlix] which charges all member States to inaugurate Human Rights Organizations for the advancement of human rights.

TRANSFORMATION BY REFERENCE TO A TREATY?

Several scholars have stated that despite the domestication of the African Charter on human and people's rights, it has had a very minimal impact on the national laws in Nigeria. Others have emphasized that the provisions of the African charter are short, vague, and allow for derogation from the rights provided.[l]

The locus classicus case on the question of national application of international treaties in Nigeria is based on the Supreme Court's decision in *Abacha v. Fawehinmi.*[li] In this case the Supreme Court held, "That the provisions of the African Charter on Human and People's Rights has become part and parcel of the corpus of the Nigerian law as same has been re-enacted by the National Assembly".

This can be seen in the domestication authority of the Africa charter which can be seen via the long title which stipulates that, "An Act to enable effect to be given in the Federal Republic of Nigeria to the African Charter on Human and Peoples Rights made in Banjul on the 19th day of January 1981 and for the purposes connected forthwith".

Section 1 of the Ratification and Enforcement Act further emphasizes that:

"As from the commencement of this Act, the provisions of the African Charter on Human Rights Peoples' Rights which are set out in the Schedule to this Act shall, subject as there underprovided, 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 or judicial powers in Nigeria".

The African Charter has also been heavily relied on in the propagation or enforcement of environmental justice in the Niger Delta region of Nigeria. This was seen in the case of *Gbemre v. Shell.*[lii] In this case the applicant sought a relief against Shell oil Company on the issue of flaring of gas. The court held that the persistent flaring of gas was in violation of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the African Charter on Human and Peoples Right.

This was also seen in the recent landmark case of four Nigerian farmers against Shell Nigeria for oil damage, where the Dutch court ordered that compensation be paid to the four Nigerian farmers for major oil spills which caused harmful pollution to their lands.[liii]

It is however important to note that the act of referencing a treaty is not the same as an act of re-enactment. This was succinctly stated in *Mhwun v. Minister of Health & Productivity & Ors*,[liv] where the Court of Appeal held that "the provisions of an International Labour Convention cannot be invoked and applied by a Nigerian Court until the same has been re-enacted by an Act of the National Assembly". Specifically, *Muntaka- Coomassie JCA* stated that:

"There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly... In so far as the ILO convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement Act, Cap. 10, Laws of the Federation of Nigeria, 1990. It becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts". [lv]

However, it is worthy to note that by section 254 of the 1999 Constitution (as amended, 2011), the above decision can no longer stand. It then seems that Nigeria is on the threshold of recognizing international law without domestication as seen in Section 254 which provides that, "Subject to the provisions of any Act of the National Assembly, the President of the National Industrial Court may make rules for regulating the practice and procedure of the National Industrial Court".[lvi]

This implies that the National Industrial Court has been granted exclusive authority to decide any application arising from breaches of employment and apply all Conventions and protocols of the International Labour Organisation. There is a contradiction in the above extract as the Federal Government of Nigeria has not ratified some of these treaties, but has referenced these treaties as international law. Thus, the decision in *Abacha v Fawehinmi,*[lvii] on the application of international treaties in Nigeria can be said to be no longer subsisting or applicable as well as the case of *MHWUN v Minister of Health & Productivity.*[lviii]

NON-DOMESTICATION OF HUMAN RIGHTS TREATIES IN NIGERIA

Although section 12 of the 1999 Constitution stipulates that only domesticated international treaties are enforceable, customary international law binds states automatically without a necessity for domestication into the law.[lix] This was Cleary presented in the Nigerian case of *Trendex Trading Corporation v Central Bank of Nigeria,*[lx] where it was stated that, "Those human rights treaties that have been crystallized into customary international law are precluded from the scope of section 12 of the 1999 Constitution (as amended) and that International treaties are also applied by way of domestication by reference".[lxi]

Several legislations in Nigeria show that Nigeria cannot unarguably claim to be a dualist state as several treaties have been applied in its municipal law by way of domestication by reference and they are:

i. National Human Rights Commission (Amendment) Act
ii. Fundamental Rights Enforcement (Procedure) Rules, 2009
iii. Terrorism (Prevention) Act, 2011
iv. International Convention for the Suppression of the Financing of Terrorism, 1999
v. Anti-Torture Act, 2017

National Human Rights Commission (Amendment) Act

Section 6 (a) of the National Human Rights Commission (Amendment) Act stipulates that:

"Section 5 of the Principal Act is amended by – (a) substituting for paragraphs (a), (d), (e), (g), and (h) with new paragraphs "(a)", "(d)", "(e)", "(g)", and "(h)" - "(a) deal with all matters relating to the promotion and protection of human rights guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration on Human Rights, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, the African Charter on Human and Peoples Right and other International and Regional instruments to which Nigeria is a party (h) Participate in such a manner as it considers appropriate in all international activities relating to the promotion and protection of human rights".

It seems clear that from the above provision, the National Human Rights Commission (Amendment) Act, 2010, has incorporated international treaties as domestic law even though the National Assembly is yet to ratify these treaties. Another case in point is that in 2002, the International Court of Justice (ICJ)[lxii] ruled that the Bakassi, a belt of land between Cameroon and Nigeria, was the territory of Cameroon. The Bakassi peninsula was ceded to Cameroon based on the ruling of the International Court of Justice. It is important to note that neither the ruling nor the Green Tea Agreement was domesticated nor enacted into law by the National Assembly as regardless of the official transfer of Bakassi Peninsula by Nigeria to Cameroon in 2006. However, the region of Bakassi is still associated as one of the 774 local governments in Nigeria as showcased in Part I of the First Schedule, of the 1999 Constitution of the Federal Republic of Nigeria, 1999.

The Fundamental Rights Enforcement (Procedure) Rules, 2009

The 2009 Enforcement Rules broadened the application of civil rights enshrined in Chapter IV of the Nigerian Constitution of 1999 [as amended], and the African Charter on Human and People Rights, 1986. Furthermore, Order 1 Rule 2 of the 2009 Enforcement Rules defines a 'Fundamental Right' cover those listed in the African Charter on Human and Peoples Rights.

The first proactive step of the 2009 rules was to remove the burden and cumbersome procedures established under the 1979 Enforcement Rules. The 2009 Enforcement Rules extirpated common law and rules of court, thus enabling a robust and flexible system of enforcing human rights by the justice system. An action can be commenced by filing an originating process [the leave of court is not required].[lxiii] For the intent of illustrating the novelty incorporated by the 2009 Enforcement Rules.

Paragraph 3 of the Preambles to the 2009 Enforcement Rules are replicated thus:

"The overriding objectives of these Rules are as follows:

(b) to advance but never to restrict the applicant's rights and freedoms, the Court shall respect municipal, regional, and international bills of rights cited to it or brought to its attention of which the Court is aware whether these bills constitute instruments in themselves or form part of larger documents like constitutions.

(ii) the Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations Human Rights System".[lxiv]

The objective of the rules is to abridge accelerate the hearing of human rights cases in the courts. Most fundamental is that the courts should take cognizance of the African Charter on Human and Peoples' Rights and other instruments [including protocols] in the African regional human rights system, and the Universal Declarations of Human Rights and others in the United Nations Human Conventions under the United Nations[lxv]. Although, Nigeria accented to the International Covenant on the Civil and Political Rights and the International Covenant on the Economic, Social and Political Rights in 1993. They have not been enacted into law by the National Assembly[lxvi], yet 2009 Enforcement Rules have by reference made these international Covenants applicable as the international bills of rights.

It is important to note that the 1999 Constitution of Nigeria (as amended) provides for the right to a fair hearing and section 36(6)[lxvii] and provides a list of entitlements that apply to a person who is charged with a criminal offence. These requirements were referenced from Article 14(3) of the International Covenant on Civil and Political Rights[lxviii].

Terrorism (Prevention) Act, 2011

Section 14(2) (b) of the Constitution of the Federal Republic of Nigeria, 1999(as amended) states that, "The security and welfare of the people shall be the primary purpose or responsibility of government".[lxix]

However, the terrorist activities of Boko Haram have situated Nigeria as a haven of death and destruction. This emphasized the need for proactive legislation against terrorist activities. Eventually, it invoked a legal framework for the prevention of terrorism in Nigeria which is principally exemplified in two enactments: the Terrorism (Prevention Act) (TPA) 2011[lxx], and the Terrorism (Prevention) (Amendment) Act 2013.[lxxi]

The legislation that disallows and criminalizes all types of terrorist activity in Nigeria is the Terrorism (Prevention) Act, 2011. Its Explanatory Memorandum states that:

"This Act provides for measures for the prevention, prohibition, and combating of acts of terrorism. The financing of terrorism in Nigeria and for the effective implementation of the Convention on the Prevention and Combating of Terrorism and the Convention on the suppression of the financing of terrorism".

The Act showcases that it applies the international law emanating from the Convention to combat the scourge of terrorism. The OAU Convention on the Prevention and Combating of Terrorism, 1999 is an international agreement by African leaders, based on a shared and mutual vision to situate their countries, both independently and co-operatively, to adopt measures to eliminate international terrorism. Specifically, Article 2 (a) stated that:

"States Parties undertake to review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences".[lxxii]

The International Convention for the Suppression of the Financing of Terrorism, 1999

The preamble of the International Convention for the Suppression of the Financing of Terrorism, 1999, stipulates clearly that, "There is an urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators".[lxxiii]

Further, it calls on States to prevent and suppress the financing of terrorism, by criminalizing the distribution of funds for terrorist activities. Furthermore, it advises states to confiscate the financial resources of individuals convoluted in terrorism.

In Nigeria, the amenability of these Conventions on terrorism gave rise to the enactment of the Economic and Financial Crimes Commission (Establishment, etc.) Act, (EFCC Act) 2002 (repealed), and the EFCC (Establishment) Act 2004**.** In line with the mandate of the OAU Convention on the Prevention and Combating of Terrorism and the International Convention for the Suppression of the Financing of Terrorism, 1999. Specifically, Section*15 (1)* of *EFCC* (Establishment) Act 2004 stated that*:*

"A person who willfully provides or collects by any means, directly or indirectly, any money by any other person with the intent that the money shall be used for any act of terrorism commits an offence under this Act and is liable on conviction to imprisonment for life".

In light of the foregoing, the Money Laundering Act, 2012 prohibits the offence of money laundering and commends punishment for the commission of money laundering.[lxxiv] It is important to note that the Terrorism (Prevention) (Amendment) Act, 2013 also refers to international treaties. This can be in Section 2 which states that:

"The Attorney General of the Federation shall be the authority for the effective implementation and administration of this Act and shall strengthen and enhance the existing legal framework to ensure (a) Conformity of Nigeria's terrorism laws and policies with international standards and United Nations Conventions on Terrorism".[lxxv]

Furthermore, Terrorist acts include, but are not limited to acts that constitute an offence according to the following agreements listed under section 19, which states:

Section 40 of the Principal Act is amended by:

"(g) Inserting after the definition of a terrorist, the following definition-

Terrorist act´, in addition to the provisions of the renumbered section 1 subsection (3) of the Principal Act, means an act which constitutes an offence according to the following agreements

(i) Convention for the Suppression of Unlawful Seizure of Aircraft, 1970,

(ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971,

(ii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons; including Diplomatic Agents, 1973,

(iii) International Convention against the Taking of Hostages, 1979,
(iv) Convention on the Physical Protection of Nuclear Material, 1980,
(v) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1988,
(vi) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988,
(vii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, 1988,
(viii) The International Convention for the Suppression of Terrorist Bombing, 1997,
(ix) The Convention against Terrorist Financing,
(x) Convention on Offences and certain other Acts committed on Board Aircraft, and
(xi) Convention on the Making of Plastic Explosives for Detection".

The above indicates that Nigeria shall give full recognition and apply the above-named Conventions in eliminating terrorism. The principal responsibility is to connect the crimes covered in Terrorism (Prevention) (Amendment) Act, 2013 as international laws that are applicable in Nigeria. Nigeria has referenced these Conventions in their domestic legislations thereby observing and obeying international law.

Anti-Torture Act, 2017

Article 2 (1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 stipulates that, "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

This prompted the Federal Republic of Nigeria to promulgate the Anti-Torture Act, 2017[lxxvi]. However, the Act connotes that Nigeria can apply international law even though it has not been

re-enacted by the national legislature. This was succinctly stated in the preamble of the Act which specifically stated that:

"The Government shall- (b) fully adhere to the principles and standards on the absolute condemnation and prohibition of torture set by the Constitution of the Federal Republic of Nigeria and various international instruments to which Nigeria is a state party".

However, its application in Nigeria has been held to be contrary, take for example the Convention on the Rights of the child, 1990, creation statute is the Child Rights Act, 2003 which does not become automatically enforceable in all states, as matters relating primarily to Children are the domains of the component states.

RECOMMENDATIONS

In order to achieve the easy transmutation of international civil rights in Nigeria the following should be noted:

Having clarified that section 12 of the Nigerian Constitution (as amended) states that only the National Assembly with the exclusion of the State Houses of Assembly can ratify international laws, the National Assembly should be duly encouraged to domesticate the laws. The items on the exclusive list in the constitution should be reviewed and reduced. Due to the pile of legislation to be reviewed and addressed, they do not pay attention to these treaties when ratified. Reducing the contents of the legislative list will give them more room to pay attention to the treaties. It is insufficient that treaties should be ratified and ended there. There must be a reason why it was ratified by the President in the first place and this reason must not be overlooked for any reason. Generally, reducing the items on the list will give more room to attend to matters of general interest and not to be bewildered with issues that could have been resolved by other legislative bodies.

Noting that the issue of late domestication can also be attributed to the fact that Nigeria does not operate true federalism, true federalism should be adopted. True federalism connotes a mode of government where there are a centre and other federating units with these other federating units exercising a large degree of autonomy in their affairs. The United States of America is a good example of a country practising true federalism. In Nigeria, the federal

government has overwhelming power over the affairs of Nigeria, including the making of laws. There are backlogs of laws that need review but are not reviewed because it is under the exclusive list. The National Assembly is bamboozled with too many internal affairs to bother about signing or domesticating any international treaty containing human rights provisions. All of these can be resolved if the Nigerian authorities agree to restrict and reforming of Nigeria to operate true federalism.

Having suggested how to resolve the delay of this domestication by the National Assembly, the next thing to do is to address the delay which flows from the State Houses Assembly. It is important that after the domestication of laws by the National Assembly at the federal stage, each state in Nigeria also needs to domesticate and include these laws into their state laws. This should not take forever to do. Fortunately, the National Assembly has already provided a guideline through their acts on what should be the provisions of the treaties. All the state legislators have to do is either adopt a word for word or make changes where necessary. Any form of selfish reason behind the refusal or delay in domesticating or adopting these treaties after domestication by the states should be addressed. A good example of a selfish reason is the failure of the 11 states in the North from adopting the Child Rights Act. The interest of a child is an objective principle that should be upheld above all.

The late ratification of the treaties by the National Assembly should not be blamed on them alone as it has been found that this fault to a large extent falls on the executives. The National Assembly should always be carried along when treaties are being signed by the presidency or federal foreign agencies. The National Assembly should not only be made aware of such treaties after the agreement has been signed and then brought to them for domestication. In other words, they should not be caught by surprise.

The issue of the implementation of laws should be duly addressed. Noting that the issue is in two forms and the first one is on no stipulation in Nigeria describing how any treaty should be implemented, the National Assembly should make an act stating how implementation should be done in addition to the only express provision on how it can be ratified or domesticated. This will close up the lacuna on the law regarding implementation. By so doing, the Nigerian authorities will have no leeway on implementing the treaties however they deem fit to implement these laws which we know are not always adequate. They will be mandated to comply with the law knowing that any other thing to the contrary will be nullified.

For the second form on the issue of implementation which bothers on the general human rights situation in Nigeria, non-stop violations and abuse of human rights by both citizens and government authorities should be prohibited as there are expressly made provisions under chapter 4 of the amended constitution enforced in Nigeria. This prohibition should be by way of declaring any form of human rights abuse either contained in the constitution or the domesticated law a crime. By doing so, all these daily reports of violent killings, people being treated inhumanely, unwarranted arrests and detention by the law enforcement institutions, infringement of privacy rights, religious intolerance crisis and killings, censorship of the media, causing harm to peaceful protesters, and snatching lands from the poor who cannot do anything will be very much mitigated and reduced. The presence of clear implementation procedures for these rights in the country is enough reason to stop these constant violations of these fundamental rights. The degree of proof in the courts in human rights matters should be addressed by the Supreme Court as there can either be a destruction of evidence, a threat issued to the witnesses, or any other obstacle that can hinder the implementation of these fundamental rights. Doing all these will better the fate of the implementation and enforcement of these rights treaties if the clear provisions of our apex law are constantly obeyed.

There should be a total reform of the Nigerian scenery. The country is too buoyant to be moving in a backward direction in this represent century. Nigeria should be well-known for its strict adherence to laws by the citizens. Everyone should respect the law all the time and not just when it benefits them. With all the endowments of this country, there should not be an issue of a bad implementation of laws. Corruption should be a thing of the past in the country has seen how retrospective it has made us. Laws that are meant to benefit the people should be the priority of the legislature. The country should do away with outdated laws and should constantly update its laws to meet up with the needs of society and keep up with changing times.

CONCLUSION

International law orders the conduct of states at the international level. States who are international actors should observe international law. Nigeria as a member of the international community must observe and enforce international law. The internationalization of the world is about the process of globalization. The era of globalization entails that international law

should be transformed into global public law, thereby developing the sphere of justice from the domestic States, as globalization ushers in the conditions which procure justice to be feasible in both international and domestic spheres. States generally observe and enforce International law by entering into treaties and following the principles laid down by established International Law norms such as the principles of sovereignty, self-determination, territorial integrity, international responsibility, the use of force, and especially the application of human rights. Nigeria is obliged to obey international law in preserving the peace and unity of its territory and in upholding human rights obligations. It is however recommended that Nigeria should review its obligations under international law and its foreign policies to ensure adequacy in observance where necessary. Section 12 of the 1999 Constitution (as amended) should be reviewed to facilitate ratification as the process of recognizing international law.

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