APPRAISAL OF RATIFICATION AND DOMESTICATION OF TREATIES IN NIGERIA: THE PROCEDURAL CHALLENGES

BY

Ikechukwu Emmanuel NZEH

M.A/LAW/33504/2012-2013

BEING A LONG EASSY PROJECT SUBMITTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAW DEGREE – M.A LAW

SEPTEMBER, 2014

DECLARATION

I solemnly declare that this work is the product of my personal endeavour and it has not been presented to the best of my knowledge, anywhere before. All ideas from previous writers have been duly acknowledged, I remain solely responsible for all views expressed and errors therein.

…….
Ikechukwu Emmanuel NZEH
M.A/LAW/33504/2012-2013
September, 2014

CERTIFICATION

This project/long essay titled: "Appraisal of Ratification and Domestication of Treaties in Nigeria: The Procedural Challenges," by Mr. Ikechukwu Emmanuel NZEH meets the regulation governing the award of degree of M.A.L of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

…….. ……

DR. A. I. BAPPAH — DATE

Chairman, Supervisory Committee

……. ……..

DR. IBRAHIM SHEHU — DATE

Member, Supervisory Committee

…… ……..

DR. K. M. DANLADI — DATE

H.O.D, Public Law

……... ……

PROF. A. A. JOSHUA — DATE

Dean, Post Graduate School

DEDICATION

This Long Essay is dedicated to God my creator for His grace, mercy and enablement to successfully complete this programme.

ACKNOWLEDGEMENT

I am very indebted to the various people who helped me in one way, or the other, to see that this long essay became a reality.

First, are my project supervisors, Dr. Abubakar I. Bappah and Dr. Shehu Ibrahim whose fatherly advice, guidance and consistent encouragement made the writing of this research work possible.

I am equally indebted to my parents, Ide & Mrs. Nelson Nzeh, my wife, Mrs. Josephine Akpaego Nzeh and Alhaji Mohammed M. Hussani of A.B.U. Zaria for their moral support.

.

Ikechukwu Emmanuel NZEH

M.A/LAW/33504/2012-2013

September, 2014

ABSTRACT

Treaties represent an important instrument by which States undertake and accept responsibilities in the international arena. Nigeria has in furtherance of its international relations entered into a number of multi-lateral and bilateral treaties. Nigeria has by its constitution expressly provided for the treaty making procedure and how treaties can acquire the force of law in Nigeria. It is however, apposite to note that the applicability of a treaty is dependent on a number of factors beyond the signing ceremonies that usually attend the process of signifying consent to be bound by the provisions of the treaty in question. Ratification and Domestication, which are the central focus of this work, are integral part of that procedure.

This work, therefore, examines how treaties acquire the force of law, the inter-relationship between the Executive and Legislative Arms of Government in treaty making, Procedure for ratification and domestication and its challenges for Nigeria.

BACKGROUND TO THE STUDY

A great number of laws that make up the Nigerian body of laws emanates from treaties. Consequently in Nigeria, treaties do not automatically have force of law or becomes applicable and enforceable unless enacted into law by the National Assembly. Hence, Section 12(1) of the Constitution provides as follows:-

No treaty between the Federation and any other country shall have the force of law except to which any such treaty has been enacted into law by the National Assembly.

This Section further provides that where the subject-matter of a treaty falls outside the Exclusive Legislative List, a bill for an Act of the National Assembly to give the treaty the force of law must be ratified by a majority of all the Houses of Assembly in the Federation before it is enacted into law and assented by the President. It follows, therefore, that until a treaty has been domesticated in Nigeria, it cannot be applied within the country.

Treaties are governed by international law embodied in the Vienna Convention on the Law of Treaties signed on 23rd May, 1969 and entered into force on 27th January, 1980. Treaties are known by different names which include conventions, protocols, declaration, charter, covenant, pact, act, statute, agreement, concordat, modus vivendi, exchange of notes (or letters), process verbal, final act and general act.

Article 2 (1)(a) of the Convention provides:

For the purposes of the present Convention; Treaty means an international agreement concluded between States in 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…

Every State is competent to enter into treaties regarding matters that fall within its sovereignty. This capacity in itself is an attribute of statehood as prescribed in the Montevideo Convention which provides as follows:

The State as a person – i.e. subject of international law should possess the following qualification:-

a) a permanent population;

b) a defined territory;

c) government;

d) capacity to enter into relation with other States.

Treaties may be bilateral or multilateral and have formed an important basis for the determination of rights and obligations of States that are Party to them. According to Prof. M. T. Ladan; "one of the characteristics of the law of treaty is that the treaty construction is frequently used not only for the conduct of international transaction of various kinds, but it is also used to impose binding rules of precision and details in various areas of international law (eg human rights, environment and humanitarian law)".

Treaties are usually negotiated by accredited representatives. Under Article 7(2) of the Convention, a Head of State, Head of Government or Foreign Affairs Minister is not required to furnish full powers before negotiating for his State. Similarly, a Head of Mission need not produce full powers before adopting a treaty between his own State and his Host State. Same applies to a representative of international conference or organization. Although under Article 27 of the convention, a Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Article 46 of the Convention provides good cause for invalidating a treaty where a representative acted in manifest violation of the provisions of domestic law.

However, the Vienna Convention lays down rules for the adoption of the text of treaty under Article 9. There are different ways in which States can express their will to be bound by the contents of a treaty. Whichever way that is applicable depends on what is agreed upon in the treaty itself. The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

By ratification, Parties declares their intention to be bound by a treaty they had signed. A bilateral treaty becomes effective on ratification but a multilateral one usually awaits the required number of ratifications and, perhaps, a stipulated time thereafter. Ninety days has been adopted in many treaties. On the other hand, accession (or adherence) is the method by which a State becomes a party to a treaty it is not a signatory. Once a treaty becomes operative, it can only be adhered or acceded to by Parties that had not signed it. Thus, adhesion or accession has the effect of signature and ratification combined. Some treaties come into force by accession only, for example, the General Act for the Pacific Settlement of International Dispute, 1928 and the Convention on the Privileges and Immunities of the UN, 1946.

In Nigeria, it takes several processes for a treaty (bilateral or multilateral) to be ratified, accepted, approved or acceded to. In some cases, after ratification, the law requires some treaties to be domesticated before they can have force of the law.

Pursuant to the provisions of the second schedule to the Nigerian Constitution, external affairs, which necessarily involve treaty making power form item number 26 and fall squarely within the

Exclusive Legislative List. By virtue of the Constitution, only the National Assembly to the exclusion of the State Assemblies is empowered to legislate on matters within the Exclusive Legislative List.

Furthermore, the Constitution provides that "the executive powers of the Federal Government shall be vested in the President and shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being, power to make laws."

This provision seemingly vests in the Executive Arm of Government the power to negotiate, sign and ratify treaties on behalf of Nigeria. In practice, however, individual Ministries, Departments and Agencies (MDAS) with active participation in most cases of the Federal Ministry of Justice and Ministry of Foreign Affairs discharges this responsibility on behalf of the Government of the Federal Republic of Nigeria. Thus, after a treaty had been concluded and signed, a Council Memorandum is expected to be prepared by the focal MDA for presentation to the Federal Executive Council for consideration and approval. Once approved, appropriate instrument is prepared and sent through diplomatic channel to the relevant State in case of bilateral treaty or to the depository in case of multilateral treaty.

1.2 RESEARCH PROBLEM:

By virtue of Section 12(1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) before any treaty can have the force of the law and becomes applicable and enforceable, that treaty must first of all be domesticated even though ratified.

This provision is problematic in a number of ways:-

1) the provision assumes that all treaties must first be domesticated before they can become enforceable and applicable in Nigeria;

2) it disregards the fact that some treaties, that is to say, self-executory treaties do not require domestication and would necessarily create international obligation and become binding on the country upon signature and ratification;

3) it disregards the general principle of international law that a country cannot be allowed to plead its domestic law as a reason for its failure to carry out its international obligation validly created by a treaty;
4) it did not take into account treaties made between the Federation and other International Organizations;
5) conflicts with Section 19(d) of the Constitution on Fundamental Objectives and Directive Principles of the State Policy dealing with respect for international law; and
6) it disregards the principle of "pacta sunt servanda"

1.3 AIMS AND OBJECTIVES

1) To examine the ratification and domestication of treaties in Nigeria, highlighting the procedural challenges (if any);
2) To ascertain the role of the executive as well as the legislature in the ratification and domestication of treaties in Nigeria; and

3) To identify whether there is indeed conflict between the provisions of Section 12 of the Constitution and Section 3 of the Treaty (Making Procedure Etc.) Decree.

1.4 METHODOLOGY

Doctrinal and Teleological methods will be employed principally in examining and analyzing the topic as well as the relevant laws and work of some authors.

1.5 SOME OF THE MAJOR FINDINGS

1. Treaty making has been confronted by a lot of challenges posed not by our law but by bureaucracy.

2. Treaty relating to residual matters, the Act of the National Assembly must be sanctioned by majority of the States before it can have the force of law.

1.6 SOME OF THE RECOMMENDATIONS

1. Treaties that require legislative action for its implementation must receive the approval of the National Assembly.

2. There must be synergy between the Executive and the National Assembly.

TABLE OF STATUTES

LOCAL STATUTES:

1. African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. A9, Laws of the Federation of Nigeria, 2004 …….. Page 32
2. Carriage by Air (Colonies, Protectorate and Trust Territories) Order, Laws of Nigeria, 1990 …….. Page 24
3. Constitution of the Federal Republic of Nigeria, 1999 as amended:

   Sections: 12 (1) …….. Pages 1,5,11,19,20,24,27,29 & 30

   6 (2) ……. Page 4

   5 (1) (b) …… Page 5

   1 ……Page 22

   230 ……. Page 28

   12 (2) & (3) …… Pages 38 & 56

   254 (2) & (c) ……. Page 42
4. Treaties (Making Procedure etc.) Act, Cap T20, Laws of the Federation of Nigeria, 2004

   Section: 3 (1) (a), (b) & (c) …….. Pages 11,13,28 & 30

FOREIGN STATUTES:

1. CONSTITUTIONS:

   i) Republic of Benin; Articles 146 & 147 …… Page 20

   ii) Republic of France; Article 52 ……. Page 41

   iii) Republic of Senegal; Articles 96 & 98 ……. Page 20

   iv) Republic of South Africa; Article 231 (3) ……. Page 40

FOREIGN STATUTES CONTINUED

v) United States of America; Articles 4 & 6 …… Page 41

2. CONVENTIONS:

i) African Charter on Human and People's Rights …….

Articles 15, 16 & 17…… Page 43

ii) Convention Against Torture, inhuman and other cruel Act (CAT)

Articles 27 & 28…… Page 30

iii) Montevideo Convention on Rights and Duties of States

Article 1…….. Page 2

iv) Vienna Convention on Law of Treaties:

Sections:-

2(1) (a) …….. Page 2

7(2), 27 & 9 …… Page 3

11…….. Pages 4 & 12

46 & 47 …… Page 8

62(1)(a), 49,50,51 & 52 …… Page 10

2(b) & 14 …….. Page 30

TABLE OF CASES

1) LOCAL CASES:

i) Abacha vs. Fawehimni (2000) 4SCNJ p. 400……Pages 21, 24, 26, 32,38 & 56

ii) Capital BANCORP Ltd vs. Shelter Savings & Loans Ltd (2002) All F.N.L.R [Pt.440] at p.684 ……..…….. Page 23

iii) Chief J.E Oshevire vs. British Caledonia Airways Ltd (1990) N.W.L.R. [Pt. 160] at p.507 ……..…….. Page 24

iv) Medical Health Workers Union of Nigeria vs. Ministry of Labour & Productivity (2004) N.W.L.R. [Pt. 953] at p.1 …… Page 34

v) Murmansk State Steamship line Ltd vs. The Kano Oil Millers Ltd (1974) 52 SC at p.1…… Page 22

vi) Oloruntoba Oju vs. Dapamu (2008) All F.N.L.R [Pt. 411] at p. 810 ……. Page 23

vii) Registered Trustees, C.S.ST. vs. C.E.O. Kogi State (2006) All F.W.L.R. [Pt. 299] at p.549……..…….. Page 23

viii) Registered Trustees of National Association of Community Health Practitioners of Nigeria & ors vs. Medical & Health Workers Union of Nigeria (2008) 2N.W,L.R. [Pt. 1072] at p. 575 …….. Page 20

ix) Republic of Cameroon vs. Federal Republic of Nigeria I.C.L.Q (52) 2003 at 788…….…… Page 12

UNREPORTED CASES:

i) Kehinde Odebunmi vs. Ojo Oyetunde Suit No. CA/EK/EPT/1/2010 delivered on 29/11/2012 …….. Page 33

ii) Mrs. Floranin Oreke Maiya vs. The Incorporated Trustees of Clinton Health Access Initiative Nigeria & ors Case No. NIC/ABJ/13 delivered on 11/11/2011 …… Page 43

iii) NASU vs. University of Agriculture Abeokuta, Suit No. NIC/LA/15/2011 delivered on 21/02/2012 …… Page 43

FOREIGN CASES:

i) Attorney-General for Canada vs. Attorney-General for Ontario (1973) at p. 326…….. Page 36

ii) Great Britain vs. Spain 2R.I.A.A 615 at p. 714 Translated (1925)…….. Page 9

iii) Lockerbie case I.C.J. Report (1992) p. 3…… Page 38

TABLE OF CONTENTS

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Study

1.2 Research Problem

1.3 Aims and Objectives

1.4 Significance of the Research

1.5 Methodology

1.6 Scope of the Study

1.7 Literature Review

1.8 Structure of the Study

CHAPTER TWO

2.1 CONCEPTUAL CLARIFICATION OF KEY TREMS

2.2 Dualism and Monism

2.3 Place of Treaties in the hierarchy of Norms in Nigeria

CHAPTER THREE

RATIFICATION AND DOMESTICATION OF TREATIES IN NIGERIA

3.1 Appraisal of the Relevant Laws

3.2 Ratification process in Nigeria

3.3 Domestication process in Nigeria

CHAPTER FOUR

PROCEDURAL CHALLENGES IN THE RATIFICATION AND DOMESTICATION OF TREATIES IN NIGERIA

4.1 Practice of States

4.2 Assessing the Role of the Legislature

4.3 List of some of the Treaties ratified and Domesticated in Nigeria

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 BACKGROUND TO THE STUDY

A great number of laws that make up the Nigerian body of laws emanates from treaties. Consequently in Nigeria, treaties do not automatically have force of law or becomes applicable and enforceable unless enacted into law by the National Assembly. Hence, Section 12(1) of the Constitution provides as follows:-

No treaty between the Federation and any other country shall have the force of law except to which any such treaty has been enacted into law by the National Assembly.[1]

This Section further provides that where the subject-matter of a treaty falls outside the Exclusive Legislative List, a bill for an Act of the National Assembly to give the treaty the force of law must be ratified by a majority of all the Houses of Assembly in the Federation before it is enacted into law and assented by the President. It follows, therefore, that until a treaty has been domesticated in Nigeria, it cannot be applied within the country.

Treaties are governed by international law embodied in the Vienna Convention on the Law of Treaties signed on 23rd May, 1969 and entered into force on 27th January, 1980. Treaties are known by different names which include conventions, protocols, declaration, charter,

[1] Constitution of the Federal Republic of Nigeria, 1999 (as amended)

covenant, pact, act, statute, agreement, concordat, modus vivendi, exchange of notes (or letters), process verbal, final act and general act. [2]

Article 2 (1)(a) of the Convention[3] provides:

For the purposes of the present Convention; Treaty means an international agreement concluded between States in 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…

Every State is competent to enter into treaties regarding matters that fall within its sovereignty. This capacity in itself is an attribute of statehood as prescribed in the Montevideo Convention which provides as follows:

The State as a person – i.e. subject of international law should possess the following qualification:-

e) a permanent population;

f) a defined territory;

g) government;

h) capacity to enter into relation with other States. [4]

[2] Umozurike U. O., "Introduction to International Law" (1993) p.183
[3] Vienna Convention on Laws of Treaties, 1969
[4] Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933

Treaties may be bilateral or multilateral and have formed an important basis for the determination of rights and obligations of States that are Party to them. According to Prof. M. T. Ladan[5]; "one of the characteristics of the law of treaty is that the treaty construction is frequently used not only for the conduct of international transaction of various kinds, but it is also used to impose binding rules of precision and details in various areas of international law (eg human rights, environment and humanitarian law)".

Treaties are usually negotiated by accredited representatives. Under Article 7(2) of the Convention [6], a Head of State, Head of Government or Foreign Affairs Minister is not required to furnish full powers before negotiating for his State. Similarly, a Head of Mission need not produce full powers before adopting a treaty between his own State and his Host State. Same applies to a representative of international conference or organization. Although under Article 27 of the convention [7], a Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Article 46 of the Convention [8] provides good cause for invalidating a treaty where a representative acted in manifest violation of the provisions of domestic law.

However, the Vienna Convention lays down rules for the adoption of the text of treaty under Article 9. There are different ways in which States can express their will to be bound by the contents of a treaty. Whichever way that is applicable depends on what is agreed upon in the treaty itself. The consent of a State to be bound by a treaty may be expressed by signature,

[5] Ladan, M. T., "Materials and Cases on Public International Law A.B.U Press Ltd Zaria (2007) pg 50
[6] Vienna Convention on Laws of Treaties, 1969
[7] Ibid
[8] Ibid

exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed. [9]

By ratification, Parties declares their intention to be bound by a treaty they had signed. A bilateral treaty becomes effective on ratification but a multilateral one usually awaits the required number of ratifications and, perhaps, a stipulated time thereafter. Ninety days has been adopted in many treaties. On the other hand, accession (or adherence) is the method by which a State becomes a party to a treaty it is not a signatory.[10] Once a treaty becomes operative, it can only be adhered or acceded to by Parties that had not signed it. Thus, adhesion or accession has the effect of signature and ratification combined.[11] Some treaties come into force by accession only, for example, the General Act for the Pacific Settlement of International Dispute, 1928 and the Convention on the Privileges and Immunities of the UN, 1946.

In Nigeria, it takes several processes for a treaty (bilateral or multilateral) to be ratified, accepted, approved or acceded to. In some cases, after ratification, the law requires some treaties to be domesticated before they can have force of the law.

Pursuant to the provisions of the second schedule to the Nigerian Constitution[12], external affairs, which necessarily involve treaty making power form item number 26 and fall squarely within the Exclusive Legislative List. By virtue of the Constitution,[13] only the National Assembly to the exclusion of the State Assemblies is empowered to legislate on matters within the Exclusive Legislative List.

[9] Ibid, Article11
[10] FriedMann, Lissitzyn et al, "International Law – Cases and Materials" (1969) p. 315
[11] Umozurike U. O , op. cit p.165
[12] 1999 Constitution of the Federal Republic of Nigeria (as amended)
[13] Ibid,, Section 6(2)

Furthermore, the Constitution provides that "the executive powers of the Federal Government shall be vested in the President and shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has for the time being, power to make laws."[14]

This provision seemingly vests in the Executive Arm of Government the power to negotiate, sign and ratify treaties on behalf of Nigeria. In practice, however, individual Ministries, Departments and Agencies (MDAS) with active participation in most cases of the Federal Ministry of Justice and Ministry of Foreign Affairs discharges this responsibility on behalf of the Government of the Federal Republic of Nigeria. Thus, after a treaty had been concluded and signed, a Council Memorandum is expected to be prepared by the focal MDA for presentation to the Federal Executive Council for consideration and approval. Once approved, appropriate instrument is prepared and sent through diplomatic channel to the relevant State in case of bilateral treaty or to the depository in case of multilateral treaty.

1.2 RESEARCH PROBLEM:

By virtue of Section 12(1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) before any treaty can have the force of the law and becomes applicable and enforceable, that treaty must first of all be domesticated even though ratified.

This provision is problematic in a number of ways:-

[14] Ibid, Section 5(1)(b)

7) the provision assumes that all treaties must first be domesticated before they can become enforceable and applicable in Nigeria;

8) it disregards the fact that some treaties, that is to say, self-executory treaties do not require domestication and would necessarily create international obligation and become binding on the country upon signature and ratification;

9) it disregards the general principle of international law that a country cannot be allowed to plead its domestic law as a reason for its failure to carry out its international obligation validly created by a treaty;

10) it did not take into account treaties made between the Federation and other International Organizations;

11) conflicts with Section 19(d) of the Constitution on Fundamental Objectives and Directive Principles of the State Policy dealing with respect for international law; and

12) it disregards the principle of "pacta sunt servanda"

1.3 AIMS AND OBJECTIVES

4) To examine the ratification and domestication of treaties in Nigeria, highlighting the procedural challenges (if any);

5) To ascertain the role of the executive as well as the legislature in the ratification and domestication of treaties in Nigeria; and

6) To identify whether there is indeed conflict between the provisions of Section 12 of the Constitution and Section 3 of the Treaty (Making Procedure Etc.) Decree.

1.4 SIGNIFICANCE OF THE STUDY

The significance of this study lies not only in the enormous importance of treaties in international law but also in the challenges being presently encountered in the implementation and effective application of some treaties.

1.5 METHODOLOGY

Doctrinal and Teleological methods will be employed principally in examining and analyzing the topic as well as the relevant laws and work of some authors.

1.6 SCOPE OF THE STUDY

International law can broadly be divided into two categories – classical and contemporary. Classical international law deals with international customs while contemporary international law deals essentially with treaties. The main focus of the research is contemporary international law by examining and analyzing the procedural challenges in our treaty making procedure. Therefore, the proposed research will be limited to the provisions of the relevant statutory and case laws governing treaties, ratification and domestication in Nigeria. Some textbooks on international law will be consulted. Little comparative analysis may be provided particularly from other common law jurisdiction.

1.7 LITERATURE REVIEW:

It is a general principle of international law that States must respect the obligations imposed on them by international treaties they are signatory to. To this end, no State is allowed to renege from such obligation by invoking its internal legislation.

Section 46 of the Convention[15] provides as follows:-

"(1) A State may not invoke the fact its consent to be bound by a treaty has been expressed in violation of a provision of its internal law..."

On the other hand, Section 47[16] provides inter alia:-

"If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe the restriction may not be invoked as invalidating the consent expressed by him unless the restriction was notified to the other negotiating States prior to his expressing such consent."

The summary of the provisions cited above points to the general concept that State Parties are not to rely on their internal legislation to renege from their treaty obligations. However, these sections did not take cognizance of the fact that internal bureaucracy could affect entry into force of such treaties and, thus, affects compliance by such State which this study intends to do.

Commenting on the need for international law to concern itself with the State's manifestation externally of its will on the international plane to be bound after taking care of its internal bureaucracy, D. J Harris[17] in his work said ; "International law leaves to each State the determination of the organs and procedures by which its will to conclude treaties is formed, and is itself concerned exclusively with the external manifestation of this will on the international plane…in consequence, if an agent, competent under international law to commit the State, express the consent of the State to a treaty through one of the established procedures, the State is held bound by the treaty in international law…"

[15] Vienna Convention of 1969
[16] Ibid
[17] Harris J. D., Cases and Materials on International Law, (1973) p599

Also in his work, U.O.Umozurike[18] said;

a party may not invoke its internal law in justification for non-performance unless such violation is manifest. Municipal law may prescribe the process for carrying the treaty in force but this, strictly speaking, is not the concern of international law.

On the other hand, Prof M. T. Ladan[19] while contributing to the debate put it this way;

… responsibility exists even in situations where actions are directly contrary to orders given by superior authorities, the State concern cannot take refuge behind the notion that, according to the provisions of its legal system, those actions or omissions ought not to have occurred or ought to have taken different form…

Vienna Convention provided for grounds upon which a State could invalidate its treaty obligation. Be that as it may, invalidity cannot be successfully pleaded unless facts constituting the ground had been communicated to the other party before he expressed his consent to be bound. [20] Some of the grounds provided by the Convention includes; Fraudulent Conduct[21], Corruption of a representative[22], Coercion of a representative[23], and treaty procured by threat or use of force in violation of the principles of the UN Charter.[24]

[18] Umozuike U. O., Op. Cit p.166
[19] Ladan M. T. Op Cit p.49
[20] Vienna Convention of 1969, Article 62 (1)(a)
[21] Ibid, Article 49
[22] Ibid, Article 50
[23] Ibid, Article 51
[24] Ibid, Article 52

The essential principle inherent in the notion of an illegal act as Prof. M. T. Ladan[25] aptly put it is that: reparation must, as far as possible, eliminate all the consequences of the illegal act and restore the situation which would, in all probability, have existed if that act had not been committed.

However, would a constitutional provision calling for ratification only with the advice and consent of the Legislature be relevant to the international validity of an agreement?

The traditional view is that a treaty made in disregard of constitutional prescribed limitations and procedures or by an incompetent State organ, is for that reason void or voidable at the option of the State in whose behalf the treaty was concluded. Unfortunately, there is lack of precedents of such invalid treaties.

Commenting on this issue, FriedMann; Lissitzyn and Pugh[26] said:

the fact is conspicuous, however, that no treaty has been found that has been admitted to be invalid or held by an international tribunal to be invalid, because concluded by a constitutionally incompetent authority or in an unconstitutional manner, either by an individual government in bilateral relations, or by an international organization, like the League of Nations…

Because of lack of precedents in which "constitutional theory" has been applied to invalidate a treaty, coupled with the need to protect international transactions, what therefore, shall be Nigeria's argument in the event it reneges from its treaty obligation having recourse to Section

[25] M. T. Ladan, Prof. Op. cit. Pg 48

[26] FriedMann, Lissitzyn et al Op cit. pg43

12(1) of the constitution[27] which is somewhat not similar with Section 3 of the Treaties (Making Procedure, Etc.) Act,[28]but not inconsistent whatsoever.

The "constitutional theory" has been subjected to one or more qualification which are as follows:-

1. A State may be deemed to have waived its rights to assert the invalidity of a treaty if it knowingly neglects over a period of time to repudiate the agreement or if it accepts benefit thereunder. The foregoing rule is sometimes regarded as a corollary of the principle of good faith or as an instance of estoppel. This is the one of the grounds upon which International Court of Justice ceded Bakassi Peninsular to the Republic of Cameroon.[29]
2. A State seeking to repudiate an agreement on the ground of its having been concluded in disregard of relevant constitutional provisions must answer in damages to the other Contracting Party if the latter did not know and had no reason to know of the limitations imposed upon the organs of the State; and
3. A treaty concluded in disregard of relevant constitutional provisions may be binding if the constitutional provisions in question are not "notorious" in the international community.

It could be observed that the literatures quoted above tries to underscore the fact that countries who are State Parties to a treaty cannot rely on their domestic law to invalidate it save for the circumstances adumbrated in the Convention. In Nigeria treaty making has been confronted with

[27] 1999 Constitution of the Federal Republic of Nigeria (as amended)
[28]Cap. T20, Laws of the Federation of Nigeria, 2004
[29] Republic of Cameroon vs. Federal Republic of Nigeria, ICLQ (52) (2003) 788 - 797

a lot of challenges posed by our law and it has persisted because no attempts have been made to address it either by way of amendment to the relevant laws or judicial pronouncements putting to rest the conflict that seemingly exist.

1.8 STRUCTURE OF THE STUDY

This work is divided into five chapters. Chapter one contains an introduction to the law of treaties and the research.

Chapter Two contains definition of terms that reoccur in the body of the work, a brief discussion on Dualism and Monism and also an analysis of the place of treaties in the hierarchy of norms in Nigeria.

Chapter Three discusses the appraisal of Sections 12 of the 1999 Constitution as well as Section 3 of the Treaties (Making Procedure, Etc.) Act. Furthermore, the Chapter discusses the role of executive in ratification and the role of legislature in domestication.

Chapter Four discusses the position of international law on ratification and domestication, the practices from other states. In the same vein, the judicial opinions on the subject-matter as well as treaties ratified and domesticated by Nigeria.

Chapter Five concludes the study and contains recommendations aimed at proffering solutions to the challenges identified.

CHAPTER TWO

2.0 CONCEPTUAL CLARIFICATION OF KEY TERMS

The aim of this chapter is to define, describe and explain some of the key terms used in this research work which the writer considered to be technical in nature so that the reading public could understand them better. Some of these terms are as follows:-

Transformation: The doctrine of transformation stipulates that before any rule or principle on international law can have effect within a country, it must be converted into municipal law by specific adoption.[30]

Incorporation: This doctrine, on the other hand, states that international law should apply directly within a country without the need for transformation.[31]

Ratification: This is the final establishment of consent to be bound by a treaty, by the parties to the treaty.[32] According to U. O. Umozurike[33] "Ratification is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty". Ratification is usually an act of the Executive arm of government. A bilateral treaty becomes effective on ratification but a multilateral one usually awaits the required number of ratifications and, perhaps, a stipulated time thereafter.

[30] Shaw, M. N. International Law, (1976) p.105
[31] Ibid
[32] Black's Law Dictionary, 7th ed, p. 1269
[33] Umozurike U. O., Introduction to International Law, Spectrum Law Publishers (Ibadan) (1993) pg 165

Domestication: This is the transformation of treaties into municipal law. According to P. T. Akper[34], "it is the process of subjecting treaties made on behalf of the Federation to the legislative process, as is the case with other municipal legislation."

Accession or Adhesion: This is the declaration of a State's intent to be bound by a treaty it had not signed.[35] Once a treaty becomes operative, it can only be adhered or acceded to by parties that had not signed it. Thus, adhesion or accession has the effect of signature and ratification.

Reservation: This is a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provision of the treaty in their application to that State.[36]According to U. O. Umozurike[37], "in a bilateral treaty, it has the effect of a counter-offer which has to be accepted by the other party for the treaty to take effect. The situation is more complicated in a multi-lateral treaty since the reservation may be accepted by some States but not by others."

High Contracting Parties or Contracting Parties: When treaties are concluded between Heads of State, the parties are referred to as "High Contracting Parties". On the other hand, where the treaties are concluded between States or governments, the parties are referred to as "Contracting Parties".[38]

Application of treaties: This relates to the enforcement of treaty provisions within a country.[39]

---

[34] "Domestication of Treaties" a paper presented to the PGDLD/LLM Students in Legislative Drafting of the Postgraduate School, Nigeria Institute of Advance Legal Studies, Lagos. Pg 7
[35] Umozurike U. O., Op. Cit. pg 165
[36] Section 2(1)(1) of the Vienna Convention, 1969
[37] Umozurike U. O. op. Cit. pg 165
[38] Grenville J.A.S, The Major International Treaties 1914 – 1973 Methwen& Co Ltd London (1974) pg 12
[39] Oyebode A.B, Treaty Making and Treaty Implementation in Nigeria: An Appraisal (A Dissertation submitted to the Faculty of Graduate Studies of York University in partial fulfillment of the requirement for the degree of Doctor of Jurisprudence, 1988) pg. 322

Implementation of treaties: This is the process of giving treaties the force of law within a country. In Nigeria, this is usually done by enacting an enabling statute.

In Nigeria, ratification of a treaty by the Executive is insufficient to give a treaty the force of law domestically. It is the legislative approval of the treaty in the form of an enabling statute that actually "opens the door" for its implementation.[40] The duty to implement treaties is firmly rooted in the international law principle of pacta sunt servanda.Although this duty originates from international law, the form and procedure for implementing treaties is governed by municipal law.[41] A. B. Oyebode is of the opinion that:

> More often than not it is the Constitution of a State that provides the
> the guidelines for treaty implementation either by specifying the location
> of treaties within the hierarchy of sources of the domestic law or by
> establishing the relationship between international law and domestic law.[42]

Therefore, in a discussion on the ratification and domestication of treaties in Nigeria, it is necessary to not only locate the position of treaties in the hierarchy of norms in Nigeria but also establish the nature of the relationship between international law within the country.

[40] Ibid, pg 324
[41] Ibid, pg. 286
[42] Ibid,

2.1 DUALISM AND MONISM

On the relationship between international law and municipal law, there are two major[43] theories; Monism and Dualism.

Dualism view international and municipal legal orders as mutually exclusive, each possessing its sources, subjects and subject matter.[44] According to the Dualists, international law and municipal law are two distinct legal systems, so distinct that conflicts between them are impossible. The chief exponents of the Dualist view are Triepel[45] and Strupp,[46] both of the positivist school of thought. Dualism is largely based on the concept of the State as sovereign and the "highest good in society".[47]

Elucidating on this, H. Mohr explains that,

> whilst the domestic legal order was a reflection of the sovereign will expressed inwardly, the international legal order represent a synthesis of the wills of various sovereign manifested in the international plane.[48]

On the other hand, the Dualists identified two differences they considered fundamental between international and municipal laws. Firstly, they argue that whilst the subjects of municipal law are individuals, the subjects of international law are States. Secondly, while municipal law derives

[43] Apart from these major theories, other theories such as the delegation and harmonization theories exist.
[44] Mohr H."Treaties and the Legal Order" paper presented at the Graduate Seminar and Legal Research, Policy and Reform at Osgoode Hall Law School, York University, Canada, 1981, pg. 7
[45] H. Triepel, Volkerrecht and Landesrecht, Berlin, 1899 in MN Shaw, ibid, pg.100 and Conte Human Rights in the Prevention and Punishment of Terrorism; Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand (2010), Springer Heidelberg Dordrecht London Newyork PG. 91 FN41
[46] Strupp R., 47 HR, pg389 in M. N. Shaw, ibid, pg.100. See also Strupp, Elements 2nd Ed, (1930) in Conte, ibid.
[47] Mohr H., ibid
[48] Ibid

its source from the will of the State itself, international law has its source rooted in the common will of States.

Oppenheim opines that:

> Whereas the sources of domestic law are to be found in home-grown customs and the domestic statutes, those of international law are to be found in the customs of the community of States and treaties.[49]

Another proponent of Dualism, Anzilotlis, approaches this argument from another perspective. According to him, municipal law operates on the fundamental principle of pactasuntservanda. He therefore concludes that the two systems are so distinct that they cannot conflict with each other. The Dualists thus concluded that since neither legal order can operate in the sphere of the order, international law can neither bind individuals nor confer rights on them directly. International law can only apply within the sphere of municipal law after domestication. Furthermore, they conclude that if there is a conflict between international law and municipal law, the courts are to apply the latter.[50] Going by the dualist theory, treaties should be non-self-executing.[51]

Monism, on the other hand, considers law as a whole with hierarchies; international law being regarded as superior to municipal law. Monists argue that law, whether municipal or international, has the same elements and are thus the same.[52] A leading proponent of the Monist

---

[49] Ibid

[50] Higgins R., Problem and Process: International Law and How We Use It, Oxford University Press (1994), pg. 205. In Nwapi C. African Journal of International and Comparative Law, Mar, 2011, Vol. 19, No.1, pp. 38 – 65, at pg.44

[51] Enabulele A.O "Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts? African Journal of International and Comparative Law, 2009, Vol. 17, pp. 326 – 241, at pg. 328. See fn 5.

[52] Shaw M.N, Ibid, pg.101

theory is Hans Kelsen. Kelsen viewed Law as an "integrated united system of law."[53] According to him,

> International law and national law cannot be different and mutually independent norms if the norms of both systems are considered to be valid for the same space and at the same time. It is logically not possible that simultaneously valid norms belong to different, mutually independent systems.[54]

Kelsen further argues that municipal law derives its validity from the international legal order.[55] In reaction to the distinguishing factors between both legal orders highlighted by the Dualists, Kelsen argued that like municipal law, international law governs individuals as States are composed of individuals. Hence, individual human beings are the subject of both legal orders. In the same vein, there was no difference in the subject matter over which both legal orders could legislate. According to him, Since every matter is or can be regulated by national law is open to regulation by international law as well…it is…impossible to substantiate the pluralistic view.[56]

The Monists thus, conclude that where there is a conflict between both legal orders, the courts are to apply international law. Furthermore, international law is to be immediately applicable within the municipal legal order without a need for transformation. The Monist theorists thus, believe in self-executing treaties.[57]

[53] Mohr H, Ibid, pg. 6
[54] Ibid, pg. 8
[55] Shaw M.N., Ibid, pg. 42
[56] Mohr H., Ibid, pg.9
[57] Enabulele A.O., ibid, pg. 327

While civil law countries are traditionally Monist in approach, common law countries are traditionally Dualists.[58] Nigeria is a dualist nation as can be observed from the provisions of Section 12 of the 1999 constitution. Based on this provision of the constitution, the Supreme Court held in **Registered Trustees of National Association of Community Health Practitioners of Nigeria &ors vs. Medical and Health Workers Union of Nigeria**,[59] that the International Labour Organization Convention, not having been domesticated in Nigeria cannot therefore be applied in Nigeria.

2.2 PLACE OF TREATIES IN THE HIERARCHY OF NORMS IN NIGERIA

Whereas the general rule with regard to the position of municipal law within the international sphere is that, "a State which has broken a stipulation of international law cannot justify itself by referring to its domestic legal situation."[60] The position of international law within the sphere of municipal law varies from State to State. In Great Britain a distinction is made between rules of customary international law and treaties. The courts do not treat the former as foreign law for the purpose of evidence. Thus, rules of customary international law are for the purpose of evidence considered as part of the law of the land although subject to Acts of Parliament and prior judicial decisions.[61] On the other hand, treaties, in most cases,[62] undergo domestication before they are applied in Great Britain.

[58] Abugu J.E.A., "A Treatise on the Application of ILO Convention in Nigeria" University of Lagos Press, Lagos (2009) pg. 10; Enebulele A.O., ibid.
[59] (2008) 2NWLR (Pt 1072) 575 at pg. 623
[60] Shaw, M.N, ibid, pg. 102; Article 27 Vienna Convention, 1969
[61] Ajomo, M.O. "Development in International Law and International Relations" in the Challenge of the Nigerian Nation (ed) Aguda, T.A. (Nigerian Institute of Advance Legal Studies, Lagos, (1985) pg. 197; A. B. Oyebode, Treaty Making and Treaty Implementation in Nigeria: An Appraisal (Bolabay Publications, Ikeja Lagos, 2003) pg. 289.
[62] Oyebode, A.B., (dissertation) Ibid, pg. 291

Whilst in some countries[63] the position occupied by treaties in the hierarchy of norms is expressly stipulated in the Constitution, the Nigerian Constitution is silent on the issue. However, Section 12 of the 1999 Constitution, which portrays Nigeria as a Dualist State by providing for the domestication of all treaties before they can apply within the country, implies that treaties, after domestication, should occupy the same place occupied by other Nigerian statutes; all being subject to the Nigerian Constitution.

The confusion as to the position of treaties in the Nigerian hierarchy of laws lies not in the adequacy or inadequacy of the Constitutional provision on treaties but in the interpretation given to this provision by the Nigerian courts.

In the much debated case of **Abacha vs.Fawehinmi**[64] where the issue of the supremacy of the Constitution over the African Charter on Human and People's Rights came up for consideration, the Supreme Court, per Ogundare, JSC held:

> No doubt Cap. 10 (The African Charter on Human and People's Rights (Ratification and Enforcement) Act 1990 is a Statute with international flavor. Being so therefore, I would think that if there is a conflict between it and another Statute, it provision will prevail over those of that other Statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. To this extent, I agree with their Lordships of the court below that the Charter possesses "a greater vigour and strength' than any other domestic Statutes. But that is not to say that the Charter is superior to the Constitution as erroneously, with respect, was submitted by Mr. Adegboruwa, learned counsel for the Respondent. Nor can its international flavor prevent the National Assembly or the Federal Military Government to remove

[63] Such as the Republic of Senegal 2001 (Articles 96 and 98) and Republic of Benin 1990 (Articles 146 and 147). See Enabulele, A.O., Ibid, pg. 328. See fn6

[64] (2001) 51WRN pg. 29

it from our body of municipal laws simply repealing Cap. 10, nor
also is the validity of another Statute necessarily affected by the mere
fact that it violates the African Charter or any other treaty for that matter

This position of the Supreme Court has been criticized for different reasons. Some[65] have based their criticism of this decision on the principle of international law governing the position of municipal law within the international sphere. To wit; that a State cannot plead its municipal law in breach on international law. They contend that until the sovereign power of a State "is exercised to repeal or denounce an international treaty, it means its international flavor and hovers above all municipal laws including the Constitution.[66]

This criticism is, with respect, misguided. In view of the fact that Nigeria is a dualist State, believing also in the sovereignty of the State and the supremacy of municipal legislation over international laws. Hence, the need to domesticate treaties before their application within Nigeria. Once a treaty has been domesticated, it forms part of the body of laws in Nigeria and, is therefore, irrespective of its international flavor, subject to the grund norm within the Nigerian legal order.[67] It is pertinent to note that it is the statute enacted in the implementation of the treaty that serves as a source of law and not the treaty per se.[68]The argument that "the idea that a government could assume an obligation at the international level but remain free to breach it at the national level seems legally unattractive and morally reprehensible; it paints a picture of an irresponsible government"[69] is one based on the tenets of morality than on the principles of law.

Having examined the above criticism of the Supreme Court's decision in Abacha's case, attention will now be paid to the decision itself which, with respect, has fanned the embers of

[65] Such as Abugu, J.E.O., ibid, pg. 15
[66] Ibid, pg. 16
[67] See Section 1, Constitution of the Federal Republic of Nigeria, 1999
[68] Murmansk State Steamship Line vs. The Kano Oil Millers Ltd (1974) 252 S.C 1at pg.2
[69] R.F. Oppong, 'Re-Imaging International Law: An Examination of Recent Trends in the Reception of International Law into National Legal Systems in Africa' (Fordham Inter'l L.J. 2007) 173 IN J.E.O Abugo, ibid, pg.15 fn5

confusion regarding the position of treaties in the hierarchy of norms in Nigeria by creating a special position between the Constitution of the Federal Republic of Nigeria and other municipal legislation for statutes with international flavor. This decision was based on the premise that statutes with international flavor possess "a greater vigour and strength" than other domestic statutes. This position of the Supreme Court is unsupported by the Constitution of the Federal Republic of Nigeria and by established principles of law in Nigeria regarding the position of statutes in relation to one another.[70] Thankfully, the Supreme Court in **Oloruntoba-Oju vs. Dopamu**[71] held per Oguntade JSC, that "any provision of an existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency". This pronouncement underscores the supreme position occupied by the Nigerian Constitution in the hierarchy of laws.

In the same vein, in **Registered Trustees, C.S.ST vs. C.O.E., Kogi State**[72] the Court of Appeal, per Omage JCA at pg. 1562 para C-D, stated the position of the law explicitly, as follows:-

> It is settles law that the jurisdiction of the 1999 Constitution supersedes any other Nigerian legislation not exempted or accepted by it. See Section 1 of the 1999 Constitution which subscribes and produces the supremacy of the provisions of the 1999 Constitution throughout the Federal Republic of Nigeria. Therefore any other view which inconsistent with its provision is void, and the provision of the Constitution will prevail. In the light therefore of the Constitution provision, when there is a binding law, there cannot exist any law in Nigeria, which unfolds to be inconsistent with the Constitution. The 1999 Constitution itself contains its corrective mechanism.

[70] See Capital BANCORP Ltd vs. Shelter Savings and Loans Ltd (2007) All FWLR [Pt. 440] 684 where it was held that 'the Constitution of Nigeria and its provisions are supreme'
[71] (2008) All FWLR [Pt. 411] 810
[72] (2006) All FWLR [Pt.299] 1549

On the relation of treaty enabling statutes to other municipal laws, A. O. Enabulele[73] put it aptly thus:

> Since statutes implementing treaties are Acts of the National Assembly, they must maintain parity with all other Acts of the National Assembly. If Cap. A9 is not an Act of the National Assembly, then it is simply a treaty, and if it is a treaty, no Nigerian court can take cognizance of it; it will remain an obligation between independent States

The above opinion of A. O. Enabulele is in line with the dissenting opinion of Pat Acholonu JCA, in Abacha's case, where the Learned Justice of the Court of Appeal opined that 'the general rule is that a treaty which has been incorporated into the body of the municipal laws ranks at par with the municipal laws'

According to A. O. Enabulele,[74] there are three modes which treaties can be made applicable in Nigeria. They are:-

> a) Treaties entered into by the British Government and extended to Nigeria by the same government in exercise of her Colonial Power. An example of this is the Warsaw Convention made by the Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953.
> b)Treaties which are applicable as Nigerian law-these are treaties which provisions are enacted into Nigerian Statutes as Nigerian law without necessarily making reference to the mother treaty. Example is Carriage of Goods by Sea Act.
> c) Treaties that are applicable through Nigerian law- those in this category are holistically made applicable to Nigeria through an enabling Act. Example is Cap.A9

In **Chief J.E. Oshevire vs. British Caledonian Airways Ltd**,[75] the treaty under consideration was the Warsaw Convention on International Carriage by Air enacted into Carriage by Air (Colonies, Protectorates and Trust Territories) Order,[76] which is a treaty that falls under the first category of mode of implementation of treaties in Nigeria as opined by A. O. Enabulele, the Court held that:

---

[73] A. O. Enabulele 'Implementation of Treaties in Nigeria and the Status Question: Whither Nigeria Courts? Op. cit pg. 330
[74] Ibid, pg. 332
[75] (1990) NWLR [Pt.160] pg. 507
[76] Laws of Nigeria, 1990

> An international agreement embodied in a Convention or treaty is autonomous, as the high contracting persons have submitted themselves to be bound by its provisions which are above domestic legislations. Thus, any domestic legislation in conflict with the Convention is void

In delivering this decision, the court completely ignored or failed to avert its mind to the provisions of Section 12 of the 1999 Constitution which provided for domestication of treaties before their application within Nigeria. Going by this provision, a treaty which has not been domesticated cannot have the force of law in Nigeria except it falls under the first category of treaties as enumerated above by A. O. by Enabulele. The first category of treaties as enumerated by Enabulele deals with treaties that operate in Nigeria by virtue of the doctrine of succession to treaties.[77] Furthermore, this decision is unsupported by the 1999 Constitution as no treaty, regardless of its mode of coming into operation in Nigeria is given a special status above other municipal laws. It has been rightly said that elevating treaty enabling statute over other municipal legislation not only defeats the aim of dualism but also 'diminishes a country's sovereignty and undermines her independence.[78]

Another flaw with this decision lies in the difficulty that may arise in identifying treaty implementing statutes in cases where the treaty enabling statute does not expressly refer to the Convention it seeks to domesticate but only incorporates it by inference.[79]

According to C. Nwapi,[80] a solution to this problem would be:

> To invoke the principle that the legislature is presumed to intend to legislate in compliance with international law, and to ignore the determination of whether or not the Act is implementing legislation,

[77] The doctrine of succession to treaties provides that 'a new State inherits the international obligations that its predecessor has made' Nigeria follows the doctrine of succession. See 'State Succession and the Nyrere Doctrine' at <http;//www.unep.org/doc/onlinemanual/compliance/Resource/tabid/594/Default.aspx>. Accessed 12th July, 2014

[78] Enabulele, A.O. Op. Cit. pg. 341

[79] Nwapi, C. 'International Treaties in Nigeria and Canadian Courts' African Journal of International and Comparative Law, March, 2011, Vol. 19.No.1 pp. 38–65 at pg. 47

[80] Ibid

once it is shown that the provision in question, wittingly or unwittingly, substantially complies with a treaty obligation incurred by Nigeria. (Emphasis mine)

The first defect in this proffered solution is the issue of what amounts to substantial compliance. How many provisions in a treaty would a municipal law have to comply with to be regarded as a statute with 'international flavor'? Apparently, it would be sufficient if just one or a few provisions in the statute relate to a treaty in view of the example, given by C. Nwapi, of the Canadian Criminal Code. The said Criminal Code was amended in 1985 to create the offence of torture in implementation of the Convention Against Torture, 1984. Adopting the above solution of 'substantial compliance' would lead the Nigerian courts to elevating so many statutes passed by the National Assembly as there would be instances where more than one statute comply with the provisions if a particular treaty. The country would end up having a sizeable portion of its federal laws being placed over and above other federal laws. This proffered solution is distinguished from the Second category of treaties as enumerated by E. A. Enabulele. This category covers obvious cases, such as the Child Rights Act and the Convention on the Rights of the Child which it apparently domesticates.

In spite all criticisms against it, the position of the law in Nigeria as it relates to the position of treaties, in the hierarchy of norms in Nigeria is, pending its overrule, as decided in the case of **Abacha vs. Fawehinmi**[81] to wit: that treaties are, with the exception of the Constitution, of a higher status than other municipal laws. Going by this decision, it would be logical to conclude that even at the State government levels, statutes with 'international flavour' would supersede other State legislation. Hence, the Child's Rights Laws being passed by some States are to supersede other State laws in the event of a conflict.

[81] Op. Cit.

CHAPTER THREE

3.0 RATIFICATION AND DOMESTICATION OF TREATIES IN NIGERIA

In this chapter, the writer endeavoured to take a look at the relevant laws such as Section 12 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Treaty (Making, Procedure etc,) Act CapT.20 Laws of the Federation of Nigeria, 2004 with a view to finding out their relevance to the study. This chapter also examined the ratification and domestication processes in Nigeria.

3.1 APPRAISAL OF THE RELEVANT LAWS

In Nigeria and by virtue of section 12 of the Constitution, before any treaty can have the force of the law and becomes applicable and enforceable, that treaty must first of all be domesticated even though ratified. Section 12 of the Constitution provides as follows:-

> 1) No treaty between the Federation and any other country shall have The force of law except to which any such treaty has been enacted into law by the National Assembly.
>
> 2) The National Assembly may make laws for the Federation or any part Thereof with respect to matters not included in the Exclusive Legislative List of the purpose of implementing a treaty.
>
> 3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not been acted unless it is ratified by a majority of all the House of Assembly in the Federation[82]

The effect of this Constitutional provision, according to Peter T. Akper,[83] is that the treaty-making power for Federation is shared between the President who is vested with Executive

[82] 1999 Constitution of the Federal Republic of Nigeria

[83] Akper, P.T, paper presented to the PGDLD/LL.M students in Legislative Drafting of the Postgraduate School, Nigeria Institute of Advance Legal Studies, University of Lagos campus, Akoka., pg 13

Power and the National Assembly comprising of the Senate and the House of Representatives. It further means that the National Assembly may in certain circumstances exceed their Powers by legislating on matters that are not within their legislative competence to the extent that the exercise of that power is for the purpose of implementing treaty.

It will suffice to state here that prior to the coming into effect of the 1999 Constitution on the 29th May, 1999,[84]the Treaties (Making Procedure, Etc.) Decree[85] was the effective law governing treaty making in Nigeria. The Decree under section 3(1) classified treaties into:-

a) law-making Treaties being agreements constituting rules which govern inter-State relationship and cooperation in any area of endeavour and which have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly;

b) agreements which impose financial, political and social obligations on Nigeria or which are of scientific or technological import;

c) agreements which deal with mutual exchange of cultural and educational facilities.[86]

To become applicable, the Decree has under section 3(2) provided for the treaty making procedure for the various category of treaties. The effect of the procedure can be summed up as follows:-

a) all treaties that come within paragraph (a) of subsection (1) must be enacted into law;

b) all treaties that come within paragraph (b) of subsection (1) must be ratified;

c) all treaties that can be grouped under paragraph (c) of subsection (1) need not be ratified.

What is the relationship between the Treaties (Making Procedure, Etc.) Decree and the Constitution? Are there material differences between the Decree and the Constitution as far as

[84] See Section 230 of the 1999 Constitution of the Federal Republic of Nigeria
[85] No. 16 of 1993
[86] See Section 3(1) (a)(b)(c) of Decree No. 16 of 1993, Now CapT,20 Laws of the Federation of Nigeria, 2004

treaty making is concerned? We are of the view that while it is clear that the Constitution is emphatic that 'no treaty' between the Federation and any other Country shall have the force of law except it has been enacted into law by the National Assembly, the Decree merely categorizes treaties into three and goes further to state those that are required to be enacted into law, ratified or need not be ratified.

There appears to be a difference in the treatment of treaties by the Constitution and the Decree. However, this difference may not be material depending on the interpretation given to the provisions of Section of the Constitution vis-à-vis Section 3 of the Decree. The Constitution by the express provisions of Section 12 (1) applies only to treaties made between the Federation and other States thereby exempting treaties made between the Federation and other International Organizations such as the United Nations and its agencies, the African Union, ECOWAS etc., from the mandatory requirement of domestication. If this interpretation is correct, as we think it is then, it can be surmised that the provision is in line with the Decree, which makes such treaties merely subject to ratification.[87]

3.2 RATIFICATION PROCESS IN NIGERIA

The foregoing discussion has clearly shown that a treaty between the Federation and any other State or International Organization must not only be ratified but also domesticated before it can be applicable. The pertinent question that arises therefore is, what is ratification and which arm of government has the responsibility to negotiate and ratify treaties on behalf of the Country?

[87] This interpretation accords with State Practice on the issue as agreements with such international organizations are usually not subjected to local legislation

The Vienna Convention of the Law of Treaties states that 'ratification' means in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.[88]

Ratification is usually accomplished by depositing instruments of ratification as provided for in the treaty. Whether a treaty requires ratification or not is determined by the treaty itself and this is normally stated in the treaty.[89] The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984 for instance, provides that it is subject to ratification.[90]

In Nigeria like many other democracies, the power to negotiate and ratify treaties is vested in the Executive arm of government. Although, not expressly provided by the Constitution or the Treaties (Making Procedure etc.) Decree,[91] the President of the Federal Republic of Nigeria in whom the executive powers of the Federation are vested has being exercising this power as part of the external affairs function of the government.[92]

Although, treaty making is an executive function, the Constitution has limited the extent to which the President can internally bind the country without the approval of the National Assembly.[93] The import of the Constitutional provisions relating to treaty making is that the National Assembly has an active role to play in the implementation of treaties entered into by the President. The process of subjecting treaties to the scrutiny of the National Assembly for purposes of incorporating such treaties into Nigerian law is what is known as Domestication.

---

[88] Article 2(b)

[89] Article 14 of the Vienna Convention on the Law of Treaties, 1969

[90] See Articles 27 and 28 of CAT

[91] See Decree No. 16 of 1993

[92] The Constitution of the Federal Republic of Nigeria, 1999 external affairs, Diplomatic, Consular relations, Police and other Government Security services established by law, Military (Army, Navy, Air-force) under Exclusive Legislative List. Depending on the nature of the treaty, it could be negotiated and signed by the Head of State, Ministers or Heads of Departments or specialized agencies charged with the day-to-day responsibility over the subject matter the treaty would regulate.

[93] Section 12 Constitution of the Federal Republic of Nigeria

3.3 DOMESTICATION PROCESS IN NIGERIA

The concept of domestication in the context of international treaties refers simply to the process by which a State party to a treaty achieves the incorporation of the treaty (whether multilateral or bilateral) into its municipal law. The concept is best understood against the backdrop of the historical development of international law.[94]Domestication of treaties is affected by the already discussed approaches of monism and dualism.

In monist jurisdictions, the legal system of the country is considered to include treaties to which the State has consented to be bound. Thus, treaties in these jurisdictions are regarded as self-executing, i.e. upon acceptance by signature, ratification or accession (or any other means so recognized by the Vienna Convention of the Laws of Treaties) they become part of the municipal law of the jurisdictions and do not require any subsequent legislation to give them force of law. This means that once accepted, a treaty in a monist jurisdiction is looked upon by all governmental bodies including courts of law within that State as a source of law.

In dualist jurisdictions (to which group belong all commonwealth countries by reason of the shared British legal cultural legacy), treaties are regarded as part of a separate legal system, distinct from the domestic legal system. As such, the mere act of contracting by treaty does not render the treaty part of domestic law. It is required that the State enact appropriate legislation to give it force of law domestically.

Thus, in Nigeria the same legislative procedure is observed as the treaty is sent to the National Assembly as an Executive Bill. It is subjected to readings, debated and sent to the relevant committees and their report is considered before such a Bill is passed into law. The effect of domestication is that the relevant treaty is passed as a local legislation and therefore becomes

[94] Steiner. H.J & Alston, P., International Human Rights Law in Context: Law, Politics and Morals, 2nd ed. New York: Oxford University Press (1988) pg. 36

part of the body of law of the country. As P.T. Akper aptly put it, 'this process no doubt ensures checks and balances necessary in a democratic system where there is separation of powers.'[95]

It follows, therefore, that unless a treaty is domesticated in Nigeria, it cannot be enforced. The National Assembly is involved in treaty domestication irrespective of the subject matter. Where the subject matter is outside of the legislative competence of the Federal Legislature, a majority of the State House of Assembly must ratify the bill meant for the ratification of the treaty. The Supreme Court decision in the all-important case of **Abacha vs. Fawehinmi**[96] affirms two things: that domestication by the National Assembly is crucial for a treaty to become enforceable and that once domesticated the legislature incorporating the treaty enjoys superior hierarchy over non-treaty legislations.

In the case, Fawehinmi of blessed memory was arrested without warrant by the then military authorities and detained. At the time of the arrest he was not informed of, nor charged with, any offence. In consequence, he applied for his release unconditionally, citing among others, provisions of the African Charter on Human and People's Rights (Ratification and Enforcement) Act.[97] The authorities argued that the Act and the Charter were contrary to the Decree empowering it to so arrest and detain people.

The Supreme Court held that a treaty only becomes binding when it becomes part of Nigerian law i.e when it has been enacted into law by the National Assembly pursuant to the aforesaid constitutional provision and that the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990,[98] become binding on the

[95] Akper, P.T., 'Domestication of Treaties' op. cit. pg.9
[96] (2001) 4S.C.N.J. 400
[97] At the material time Cap. 10 Laws of the Federation of Nigeria, 1990 but now Cap. A9 Laws of the Federation of Nigeria, 2004
[98] Now Cap. A9 Laws of the Federation of Nigeria, 2004

Nigeria Courts. According to the Court, the implication of this act of domestication was that the rights and obligations enshrined in the Charter were enforceable. In the view of the Court:

> Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts…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 (hereinafter referred to simply as Cap. 10), it becomes binding and our courts must give effect to it like all other laws falling within the judicial power of the Courts. By Cap.10 the African Charter is now part of the law of Nigeria and like all other laws the Courts must uphold it. The Charter gives to citizens of Member States of the Organization of African Unity rights and obligations, which rights and obligations are to be enforced by our Courts, if they must have any meaning.

As mentioned above, the domesticated treaty enjoys priority over other legislations but is not superior to the Constitution. In the words of the Court:

> No doubt Cap.10 is a statute with international flavor. Being so therefore, I would think that if there is a conflict between it and another statute, its provisions will prevail over those of that other statute for the reason that it is presumed that the legislature does not intend to breach an international obligation. To this extent, I agree with their Lordships of the Court below that the Charter possesses 'a greater vigour and strength' than any other domestic statute.[99] But that is not to say that the Charter is superior to the Constitution…nor can its international flavor prevent the National Assembly, nor the Federal Military Government before removing it from our body of municipal laws by simply repealing Cap.10. Nor also is the validity of another statute to be necessarily affected by the mere fact it violated the African Charter or any other treaty.

In **Kehinde Odebunmi vs. Ojo Oyetunde**,[100] the Court of Appeal held that the right of fair hearing and right to appeal contained in the domesticated African Charter would not trump the provision of the Constitution limiting the time within which such case or appeal can be entertained to 60 days.

[99] See also JSF International Ltd vs. Brawal Line Ltd & The Owners & Charterers of the MV Ndoni River,1, 25 judgment accessed at easylawonline.files.wordpress.com/…/jfs-investment-limited-v-brawal-line-limited-2-ors.pdf on 17 August, 2014

[100] Suit No. CA/EK/EPT/1/2012, 29th day of November, 2012

In **Medical Health Workers Union of Nigeria vs. Minister of Labour and Productivity**,[101] the Court of Appeal, relying on the judgment in **Abacha vs. Fawehinmi**,[102] held that the International Labour Organization Convention, although it was signed by the Nigerian Government, had not been enacted into law by the National Assembly and that it was inapplicable in Nigeria.

In conclusion, while it is clear that the Constitution is emphatic that 'no treaty' between the Federation and any other Country shall have the force of law except it has been enacted into law by the National Assembly, the Treaties (Making Procedure etc,) Act merely categorizes treaties into three and goes further to state those that are required to be enacted into law, ratified or need not be ratified.

In Nigeria like many other democracies, the power to negotiate and ratify treaties is vested in the executive arm of government. Although, not expressly provided by the Constitution or the Treaties (Making Procedure etc,) Act, the President of the Federal Republic of Nigeria in whom the executive power of the federation are vested has being exercising this power as part of the external affairs function of the government. Although, treaty making is an executive function, the Constitution has limited the extent to which the President can internally bind the country without the approval of the National Assembly. This limitation which in some instances may impose certain administrative bottleneck in the treaty making procedure poses some challenges and this work will in the next chapter endeavour to examine some of these challenges. See appendix A for the list of some of the treaties ratified and domesticated by Nigeria.

[101] (2004) NWLR [Pt. 953] pg. 1 at pg. 23 - 24
[102] (2001) 4S.C.N.J pg. 400

CHAPTER FOUR

4.0 PROCEDURAL CHALLENGES IN THE RATIFICATION AND DOMESTICATION OF TREATIES IN NIGERIA

The aim of this chapter is to discuss succinctly the procedural challenges (if any) in the ratification and domestication of treaties in Nigeria as well as comparing our procedure with other countries with similar legal system with a view to finding out. The chapter also assessed the role of the legislature in the domestication process viz-a-viz its powers under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

As has been noted in the previous chapter, the process of domestication ensures checks and balances necessary in a democratic system where there is separation of powers. But the process is fraught with certain danger. For instance, what is the extent of legislative scrutiny that may be exercised by the National Assembly where a treaty has already been negotiated and assented to by the Executive arm? Is the National Assembly bound to pass an Act to give the necessary legislative backing to all the treaties negotiated and signed on behalf of the Federation by the President? If the answer to the second question is in the negative, can the default of the National Assembly excuse the country from its international obligations under a treaty ratified by the President?

The answers to these questions are no doubt difficult to provide given the complexities of the workings of government and the fact that treaty making on the international scene is governed by international law. While it is conceded that the National Assembly has the competence to scrutinize all treaties made on behalf of the Federation by the Executive, in practical terms, there

appears to be limitation as to how far they can go. This is because any changes they propose to make in wordings of the treaty would amount to a renegotiation of the treaty, which was concluded before it was signed in the first place. It appears that the only feasible by the Executive in form of a Bill or to reject it in its entirety.

The answer to the second question is also not easy to find especially in absence of a direct authority on the issue in Nigeria. However, the issue can be resolved by reference to other jurisdictions with similar approach like Nigeria. In other jurisdictions with similar procedure of giving parliamentary approval to law making treaties, the Parliament is not bound to pass an enabling legislation to give effect to a treaty that requires parliamentary assent through legislation. In Canada, for instance, the courts have upheld this position. Thus, in the case of **Attorney-General for Canada vs. Attorney-General for Ontario**[103], Lord Atkin explained the law as follows:-

> "Within the British Empire, there is a well-established role that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, require legislative action. Unlike some other countries, the stipulation of a treaty duly ratified does not within the Empire, by virtue of the treaty alone, have the force of law. If the national executive, the government of the day, decide to incur the obligations of a treaty, which involve alteration of law, they have to run the risk of obtaining the assent of parliament of the necessary statute or statutes."

[103] (1973) A.C. pg 326

The Law Lord further stated that once the obligations are created in a treaty, they bind the State as against the other contracting parties but parliament is free to refuse to give its assent, therefore, leaving the State in default.[104]

It is our view that the position summed up in the above case, also applies to Nigeria. It is, therefore, submitted that there may well be instances when the National Assembly may refuse to endorse the action of the President in his relations with other countries comprised in a law making treaty thereby leaving Nigeria in breach of its international obligations. This is more so, as the National Assembly does not exist to rubber stamp the actions of the President no matter how altruistic they may be.

The National Assembly in a democracy is the institution that really aggregates the views and interests of the populace and therefore must be independent enough to question and /or examine executive actions in the light of the overall interests of the people. Thus, where it is of the considered view, that the implementation of a particular treaty may be injurious to the collective interest of the people; it may refuse as part of its functions to give legislative backing to such treaty.

However, going by the state of international law on the issue, this fact alone will not excuse the country from the obligations already accepted by a treaty signed by the President. In this respect, Article 27 of the Vienna Convention on Law of Treaties provides that "a party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty." A situation such as above could engender protests from other State Parties that may seek redress for such

[104] Ibid

default in the international arena. Thus, the absence of an enabling legislation required to enable State Party to discharge its obligations under a treaty cannot excuse the party from blame.[105] Judge Shahabuddeenn affirmed this principle in the Lockerbie case[106] to the effect that inability under domestic law to act was no defence to non-compliance with international obligation.

Another important point to note is that Nigeria operates a federation system of government, where powers are divided between the different tiers of government. The implementation of a treaty may require legislative action, which may not be within the legislative competence of the Federal Government, which made the treaty but with State Governments, which did not. What the Constitution has done is to allow the federal government to implement a treaty relating to any matter on the Exclusive List by an Act of the National Assembly. However, where a treaty relates to a residual matter, the Act of the National Assembly must be sanctioned by a majority of the States before it can have the force of law. This is because States cannot by themselves enter into treaties.[107]

It has also been argued that, even where an approval is given to a law making treaty by an enabling legislation, the status of such legislation in relation to other domestic legislation is not very clear. For instance, will the treaty as domesticated rank higher than other municipal legislation? In the case of Abacha vs. Fawehinmi,[108]the Supreme Court appeared to have acknowledged that a statute passed for the purpose of domesticating a treaty should have a

[105] Alabama Claims Arbitration cited in Shaw op. cit. at p 102
[106] ICJ Reports (1992) p.3
[107] See Section 12 (2) (3) of the 1999 Constitution, which provides that the National Assembly may also make laws on any matters not included in the exclusive legislative list for the purpose of implementing a treaty. Bills for an Act of the National Assembly made pursuant to this provision shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all Houses of Assembly in the Federation.
[108] (2000) 4SCNJ at 422-423

higher strength at the same time said that it should not rank higher than any other statute just because it is a treaty. This appears confusing to say the least. Perhaps the development of jurisprudence on the matter in future may help to clarify the issue.

We are however of the view that the ratification of a treaty which imposes obligations on the country that are contrary to any existing legislation signifies an intention by that country to be governed by a new legal order as provided by the treaty. Thus, such a treaty that has been domesticated should rank higher than any other existing law and the provisions of such a law that is inconsistent with the treaty should be declared null and void to the extent of the inconsistency.

4.1 PRACTICE OF STATES

A survey of the federal systems shows that a majority of their constitutions explicitly grant the entire legislature a participatory role in treaty making.[109] In Commonwealth States, the decision to make a treaty clearly rests with the executive branch of the government that represents the State abroad. Additionally, in some federal States, such as Australia, Canada and Nigeria, and quasi-federal States such as the United Kingdom since 1998, there is also no legal requirement for the executive branch of the central government to involve the elected regional assemblies, or their executive bodies, in the treaty-making process.

[109] The countries are: the Argentine Republic, the Commonwealth of Australia, the Federal Republic of Austria, Belgium, Brazil, Canada, the Federal Islamic Republic of Comoros, the Federal Democratic Republic of Ethiopia, the Federal Republic of Germany, the Republic of India, Malaysia, the United Mexican States, the Federated States of Micronesia, the Federal Republic of Nigeria, the Islamic Republic of Pakistan, the Russian Federation, St. Kitts and Nevis, South Africa, Spain, the Swiss Confederation, the United Arab Emirate, the United States of America, the Bolivarian Republic of Venezuela, and the Federal Republic of Yugoslavia

In South Africa, the country's constitution stipulates that international agreements of a technical, administrative or executive nature, or agreements that do not require ratification or accession by the executive branch, are binding without the need for parliamentary approval.[110] As Joanna Harrington notes "treaty-making in South Africa is thus a shared responsibility between the national executive and both Houses of Parliament, with all bilateral treaties of significance and virtually all multilateral treaties subject to an 'approval by both houses' rule of constitutional status."[111] Both Houses of Parliament have the opportunity to give their input as to the approval or rejection of a treaty at "a stage that matters in terms of that treaty's binding nature vis-a-vis South Africa," and retain the power for the enactment of legislation in giving domestic effect to international treaties. Harrington observes that the greater role accorded to Parliament in treaty making by the new constitution has not hampered the country's treaty-making efforts.

Belgium's Constitution, after the 1993 significant amendment, suggests that all treaties concluded by the King require parliamentary approval before having domestic effect.

Germany's basic law provides that relations with foreign States lie within the jurisdiction of the Federation's executive branch has been given the dominant position in foreign relations. However, "the Federal Government is held responsible by Parliament for the foreign policy it pursues and hence the treaties it concludes."[112] The foreign affairs committees of both chambers meaningfully and actively engage in discussions concerning treaty policy.

[110] Constitution of the Republic of South Africa, 1996, No. 108 of 1996, s. 231 (3)

[111] "Scrutiny and Approval: The Role for Westminister-Style Parliaments in Treaty-Making" (2006 55 I.C.L.Q 121 at 146

[112] A.V. Dicey, Introduction to the Study of the Law of the Constitution, 10th ed. (London: MacMillian, (1959) 424; A. W. Bradley & K.D. Ewing, Constitutional and Administrative Law, 13th ed. (London: Longman, 2003)at 246-50, 309

The Russian Federation adopted a new constitution in 1993, under which, the President has the power to negotiate international treaties and to sign such treaties and instruments of ratification. Treaty ratification largely follows ordinary legislative procedure, i.e., the State Duma adopts a federal law on ratification that must also be approved by the Federation Council before the President signs the instrument of ratification.

Article 2 of the U.S. Constitution states that the President "shall have Power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." The framers considered treaty making, with its concomitant responsibilities of diplomacy and negotiation with foreign sovereigns, to be an aspect of the executive branch. The Senate was seen as a guardian of States' interests and a council-like body that was acting in an executive, as opposed to a legislative, capacity.[113]

In France, the ratification of treaties is constitutionally vested in the President of the Republic, but the French constitution also requires that all categories of important treaties must receive the prior assent of the National Assembly.[114] The French constitution thus gives treaties a status superior to national legislation.

4.2 ASSESSING THE ROLE OF THE LEGISLATURE

If ratification is largely an act of the executive, domestication is decidedly the province of the legislature. In exceptional countries, like the USA, where the legislature plays some role in

[113] Arthur Bestor, "Advice" from the Very Beginning , "Consent" When the End is Achieved, In Foreign Affairs and the U.S. Constitution 6, 14 (Louis Henkin et al. eds., 1990), Treaties in a Constitutional Democracy, 10 Mich. J. Int'l L. 406, 409-10 (1989).

[114] 1958 Const., Art. 52, online: Legifrance<http://www.legifrance.gouv.fr/html/constitution/constitution.htm>

ratification, such ratification is the only action that there is to make the treaty applicable in the municipal courts of such countries.

The US Senate plays well its advisory and consent role. An example that readily comes to mind is the 1997 Kyoto Protocol on the Convention on Climate Change. Under the Kyoto Protocol industrialized countries agreed to reduce their greenhouse gas emissions by an average of 5.2 per cent by 2012 based on 1990 levels. The agreement entered into force in 2005 after being ratified by 127 countries. Just a few months before the UN Climate Change conference in Kyoto, Senators in the US Congress unanimously adopted a resolution stating that the US should be a signatory to it because it would harm the US economy.

In other countries, the democratic participation is reserved for a later stage of domestication. If Nigeria is taken as an example, ratification is in theory and practice solely an act of the executive while there seems to be confusion in both theory and practice with regard to whether domestication is reserved only to the legislature. According to Section 12 (1) of the 1999 constitution, no treaty shall have a force of law except such has been domesticated by the National Assembly. But Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 at Section 254 (2) (c) qualifies this general statement by empowering the National Industrial Court to adjudicate on "any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith."In essence, the legislature no longer has any input whatsoever on treaties relating to labour matters. At last count, Nigeria has ratified not less than thirty –three (33) labour treaties and conventions. And this is not only theoretic as the National Industrial Court has indeed adjudicated on no less than

five (5) cases. The National Industrial Court of Nigeria in the case of **Mrs. Floarin Oreke Maiya vs. The Incorporated Trustees of Clinton Health Access Initiative Nigeria & ors**[115] has referred to the Discrimination [Employment and Occupation] Convention, 1958 {No. 111} in considering a claim of unlawful termination of employment on the basis of pregnancy. The Court stated that the commitment of non-discrimination was heightened by the Nigerian obligations to the comity of nations which also forbids such practices and, to this end, referred to those obligations under Convention No. 111.

Until recently, the legislature in Nigeria has also faired merely averagely regarding domestication of treaties. The legislature operates in an environment where the executive signs and ratifies treaties without reservations. For instance the Convention for Elimination of Discrimination against Women (CEDAW) was signed and ratified without reservation. But the House of Representatives though domesticated it have subjected it to the expected scrutiny to reflect our socio-cultural setting. It is awaiting the Senate's concurrence.

Another example is the Banjul African Charter which was ratified and domesticated without reservation. The Charter under Articles 15, 16 and 17 respectively provided for citizen's rights to work, health and education. Although these rights are recognized under the Nigerian Constitution they are legally unenforceable in Courts of law. Only few months' ago, Professor Viola Onwuliri, Minister of State for Foreign Affairs condemned the high rate of obligations accruing to the Federal Government due to the consequences and implications of international treaties

[115] Case No. NIC/ABJ/13/2011; 11 November, 2011, Abuja Division, NASU vs. University of Agriculture, Abeokuta Suit No. NIC/LA/15/2011/Delivered 21/02/2012

negotiated without the knowledge and consent of the Federal Ministers of Justice and Foreign Affairs.[116]

If the Constitution has validly restricted the role of the legislature in domesticating labour-related treaties, another Act of the National Assembly being dangled by the executive as justification for not seeking domestication of the treaties is the Treaty (Making Procedure, Etc.) Act which classified treaties into three: law-making treaties, treaties that impose financial, political and social obligations on Nigeria, and treaties relating to cultural or educational exchange. The law goes on to provide that only law-making treaties require domestication, and that the other two do not.

[116] "FG Cautions MDAs against Int'l Treaties" accessed at http://scannewsnigeria.com/news/fg-cautions-mdas-against-int'l-treaties/Accessed on 9 July, 2014.

CHAPTER FIVE

5.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS

The important point to note here is that Nigeria operates a federation system of government, where powers are divided between the different tiers of government. The implementation of a treaty may require legislative action, which may not be within the legislative competence of the Federal Government, which made the treaty but with State Governments, which did not. What the Constitution has done is to allow the Federal Government to implement a treaty relating to any matter on the Exclusive list by an Act of the National Assembly. However, where a treaty relates to a residual matter, the Act of the National Assembly must be sanctioned by a majority of the States before it can have the force of law. This is because States cannot by themselves enter into treaties.[117]

It has also been argued that, even where an approval is given to a law making treaty by an enabling legislation, the status of such legislation in relation to other domestic legislation is not very clear. For instance, will the treaty as domesticated rank higher than other municipal legislation? In the case of **Abacha vs. Fawehinmi**[118] the Supreme Court was in a dilemma as to where to place a Statute passed by the National Assembly for the purpose of domesticating a treaty. Whether such a Statute should rank higher than other municipal legislation or it should be regarded as any other law. The Court appeared to have acknowledged that a Statute for the

[117] See Section 12 (2)(3) of the 1999 Constitution, which provides that the National Assembly may also make laws on any matters not included in the exclusive legislative list for the purpose of implementing a treaty. Bills for an Act of the National Assembly made pursuant to these provisions shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.

[118] (2000) 4SCNJ 400 at 422 - 423

purpose of domesticating a treaty should have higher strength at the same time said that it should not rank higher than any other Statute just because it is a treaty,. This appears confusing to say the least, perhaps the development of jurisprudence on the matter in future may help to clarify the issue.

We are however of the opinion that the ratification of a treaty which imposes obligations on the country that are contrary to any existing legislation signifies an intention by that country to be governed by a new legal order as provided by the treaty. Thus, such a treaty that has been domesticated should rank higher than any other existing law and the provisions of such a law that is inconsistent with the treaty should be declared null and void to the extent of the inconsistency.

The logical inference to be deduced from the foregoing discussion and the constitutional provisions already examined is the important role of the legislature in the implementation of treaties. While it is true that the President can constitutionally negotiate and sign treaties that are binding on the country in relation to her dealings with other countries or the international community at large, for such treaties to enjoy the force of law in Nigeria, he must receive the approval of the National Assembly. This is especially true where such treaties require legislative action for its implementation.

The net effect of this situation is that the National Assembly must be carried along in the treaty making process to avoid the ugly event of default that may occur where international obligations under a treaty acceded to by the President are not given the necessary legislative backing for their applicability in Nigeria, as the country may suffer an adverse consequences.

It is therefore, apposite to examine the utility of seeking legislative approval in the treaty making process. Is the practice desirable or should it be discarded? Is it required for the protection of the greater interest of the populace or is it just in furtherance of the principles of separation of powers?

It would appear that the present procedure is mainly to ensure that the President does not usurp the law making powers of the legislature. While this reason cannot be faulted in a Presidential System of Government, it also has the possibility of exposing the country to ridicule where legislative approval is not secured, especially where the National Assembly is unreasonably hostile to the Executive.

To prevent the risk associated with the present arrangement, some form of co-operation is required between the President as Head of the Executive arm of Government and the National Assembly in the negotiation and eventual ratification of treaties. While it may be unwieldy to involve all the members of the National Assembly in the treaty making process, the Treaties and Protocols Committees and the relevant Committees of both Houses should be involved or at least, properly briefed and sensitized and where necessary, their approval obtained on major principles of the treaty during negotiations before it is eventually signed.

Where the above recommendation is carried out, it would then be the responsibility of the relevant committees who were already part of the process, to defend and explain the utility of the provisions of the treaty to their members and colleagues. Given the beauty of the Committee system in the National Assembly, the Bill for an Act to give effect to such treaties will usually be

referred to the Committee on Treaties and Protocol of both Houses, who will naturally pass it without or minimal delay or amendment.

Finally, the study relied on Laws of the Federal Republic of Nigeria especially the Constitution of the Federal Republic of Nigeria 1999 (as amended), other municipal statutes, certain international conventions such as the Vienna Convention of Treaties of 1969 as well as case law.

The study revealed amongst other things that in Nigeria treaty making have been confronted with a lot of challenges posed not by our law but bureaucracy and this has persisted because no attempts have been made to address it holistically in order to nip it in the bud.

BIBLIOGRAPHY

BOOKS:-

1. Ajomo, M.O. "Development in the International Law & International Relations in the Challenge of the Nigerian Nation (ed.) T. A. Aguda, Nigerian Institute of Advance Legal Studies, Lagos (1985)
2. Black's Law Dictionary, 7th ed.
3. Bradley A. W. & Ewing K.D: "Constitutional and Administrative Law" 13th ed. (London: Longman, 2003)
4. Dicey A. V., "Introduction to the Study of the Law of the Constitution" 10th ed. (London: Macmillan, 1959)
5. FriedMann, Lissitzyn & Pugh: "International Law – Cases & Materials, West Publishing Coy, (1969)
6. Greenville J.A.S., "The Major International Treaties, 1914 – 1973, Methwen & Co Ltd London (1974)
7. Harris D. J., Cases & Materials on International Law, Sweet & Maxwell Publishing Coy N. Z Ltd, Wellington (1973)
8. Higgins R., "Problems and Processes: International Law and How We Use It" Oxford University Press (1944)
9. Ladan M.T., "Materials and Cases on Public International Law" A.B.U. Press Ltd Zaria (2007)
10. Shaw M.N., International Law, 4th ed. Cambridge University Press UK (1977)

11. Steiner H. J. & Alston P., International Human Rights Law in Context: Law, Politics and Morals, 2nd ed. New York, Oxford University Press (1988)

12. Umozurike U. O., "Introduction to International Law", University Press Ibadan, (1983)

JOURNALS (unpublished)

Akper P.T., "Domestication of Treaties" a paper presented to the PGDLD/LLM Students in Legislative Drafting of the Postgraduate School, Nigerian Institute of Advance Legal Studies, Akoka, Lagos

Mohr H., "Treaties and the Legal Order" paper presented at the Graduate Seminar and Legal Research Policy and Reform at Osgoods Hall Law School, York University, Canada, 1981

Oyebode A.O., "Treaty Making – Treaty Implementation in Nigeria: An Appraisal (A Dissertation submitted to the Faculty of Graduate Studies of York University in Partial fulfillment of the requirement for the Degree of Doctor of Jurisprudence, 1988)

BELECTRONIC/WEB CITATIONS:-

FG Cautions MDAs against Int'l Treaties" accessed at http://scannewsnigeria.com/news/fg-cautions-mdas-against-int'l-treaties/Accessed on 9 July, 2014.

1958 Const., Art. 52, online: Legifrance<http://www.legifrance.gouv.fr/html/constitution/constitution.htm>

See also JSF International Ltd vs. Brawal Line Ltd & The Owners & Charterers of the MV Ndoni River,1, 25 judgment accessed at easylawonline.files.wordpress.com/…/jfs-investment-limited-v-brawal-line-limited-2-ors.pdf on 17 August, 2014

ee 'State Succession and the Nyrere Doctrine' at <http;//www.unep.org/doc/onlinemanual/compliance/Resource/tabid/594/Default.aspx>. Accessed 12th July, 2014

APPENDIX "A"

LIST OF SOME OF THE TREATIES RATIFIED AND DOMESTICATED BY NIGERIA

SERIAL NO.	NAME OF INSTRUMENT	DATE SIGNED
1	INSTRUMENT OF ACCESSION TO THE SECOND PROTOCOL TO THE HAGUE CONVENTION OF 1954 FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT. (HAGUE, 26th March ,1999)	26th MARCH, 1999
2.	INSTRUMENT OF RATIFICATION OF THE CONVENTION ON WETLANDS OF INTERNATIONAL IMPOTANCE ESPECIALLY AS WATERFLOW HABITAT.(Amended 21st December, 1975).	30TH DECEMBER 1999
3.	INSTRUMENT OF RATIFICATION OF THE CONSTITUTION OF THE INTERNATIONAL TELECOMMUNICATION UNION (GENEVA, 1992).	10TH DECEMBER 1999
4.	INSTRUMENT OF RATIFICATION TO THE TRADE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF NIGER. (Niamey, 19th August 1993).	18TH MARCH 1999
5	INSTRUMENT OF RATIFICATION OF THE REGIONAL CONVENTION ON FISHERIES CO-OPERATION AMONG AFRICAN STATES BORDERING THE ATLANTIC OCEAN.(Dakar, 5th July 1991).	18TH MAY 1999
6	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON THE ESTABLISHMENT OF LOCAL BILATERAL COMMITEES FOR CO-OPERATION IN THEIR BORDER AREAS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF NIGER.(Maiduguri, 18th July, 1990)	Not yet signed.
	INSTRUMENT OF RATIFICATION OF THE PROTOCOL ON CONDITIONS COVERING APPLICATION OF THE COMMUNITY LEVY.(Abuja, July 1999)	4TH JANUARY 2000

7	INSTRUMENT OF RATIFICATION OF THE AFRICAN NUCLEAR WEAPON FREE ZONE TREATY (THE TREATY OF PELINDABA).	20TH APRIL 2000
8	INSTRUMENT OF RATIFICATION OF THE ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT (PIC) PROCEEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN THE INTERNATIONAL TRADE.	20TH APRIL 2000
9	INSTRUMENT OF RATIFICATION OF THE CONSTITUTION AND CONVENTION OF THE AFRICAN TELECOMMUNICATION UNION (CATU) (CAPE TOWN, 1999). (Cape Town, 7th December, 1999).	20TH APRIL 2000
10	INSTRUMENT OF RATIFICATION OF THE ECOWAS PROTOCOL ESTABLISHING THE VALUE ADDED TAX IN THE ECOWAS MEMBER STATES. (Abuja, 27th July, 1996)	20TH NOVEMEBER 2000
11	INSTRUMENT OF RATIFICATION OF ECOWAS CONVENTION ON EXTRADITION. (Not yet Signed)	20TH NOVEMBER 2000
12	INSTRUMENT OF RATIFICATION OF ECOWAS SUPPLEMENTARY PROTOCOL A/SPI/7/93 AMENDING ARTICLE 1 OF THE PROTOCOL RELATING TO THE CONTRIBUTION BY MEMBER STATES OF THE BUDGET OF ECOWAS. (Cotonou, 24th July, 1993)	20TH NOVEMBER 2000
13	INSTRUMENT OF RATIFICATION OF ECOWAS PROTOCOL RELATING TO THE COMMUNITY PARLIAMENT. (Abuja, August 1994)	14TH JANUARY 2000
14	INSTRUMENT OF RATIFICATION OF THE DESCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958. (Geneva, 25th June 1958)	31ST DECEMBER 2001
15	INSTRUMENT OF RATIFICATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD. (Addis Ababa, Ethiopia, 11th July, 1990).	23RD JULY 2001
16	INSTRUMENT OF RATIFICATION OF THE PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, THEIR PARTS AND	20THDECEMBER 2005

	COMPONENTS AND AMMUNITIONS, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME. (UN General Assembly, 31st May 2001)	
17	INSTRUMENT OF RATIFICATION OF THE PROTOCOL TO PREVENT, SUPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME. (UN. General Assembly, 15th November, 2000).	20TH APRIL 2001
18	INSTRUMENT OF RATIFICATION OF THE PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA, AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME.(UN. 15th November 2000).	23RD JULY 2001
19	INSTRUMENT OF RATIFICATION OF THE CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETENTION. (Montreal, 24th February, 1988).	31ST DECEMBER 2001
20	INSTRUMENT OF RATIFICATION OF THE PROTOCOL ON THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, SUPPLEMENTARY TO THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION. (MONTREAL, 23RD SEPTEMBER, 1971.)	23RD JULY 2001
21	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON THE TECHNICAL AIDS CORPS SCHEME BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA.(Abuja, 23rd November, 2000).	31ST DECEMBER 2001
22	INSTRUMENT OF RATIFICATION OF THE BILATERAL TRADE AGREEMENT (BTA) BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA. (Abuja, 27thJune 2001)	31ST DECEMBER 2001

23	INSTRUMENT OF RATIFICATION OF THE PATENT LAW TREATY OF THE WORLD INTELLECTUAL PROPERTY ORGANISATION (WIPO). (Geneva, June 2000).	31ST DECEMBER 2001
24	INSTRUMENT OF RATIFICATION OF THE AMENDMENTS TO THE CONSTITUTION AND CONVENTIONS OF THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU) (Switzerland, 22nd December,1992).	23RD JULY 2001
25	INSTRUMENT OF RATIFICATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME.(UN General Assembly, 13th December, 2000).	29TH MARCH 2001
26	INSTRUMENT OF RATIFICATION OF THE INTERNATIONAL COFFEE AGREEMENT 2001. (UN. Headquarters, November 2000)	31ST OF DECEMBER 2001
27	INSTRUMENT OF RATIFICATION OF THE BILATERAL AIR SERVICES AGREEMENT (BASA) BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF REPUBLIC OF CONGO.(Abuja, 8th February 2001).	31ST OF DECEMBER 2001
28	INSTRUMENT OF ACCESSION TO THE CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONANEL LANDMINES AND ON THEIR DESTRUCTION. (Abuja, 1st March 1999)	23RD JULY 2001
29	INSTRUMENT OF RATIFICATION OF THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR. (Montreal, 28th May,1999)	31ST DECEMBER 2001
30	INSTRUMENT OF RATIFICATION OF THE PROTOCOL RELATING TO THE AMENDMENT TO ARTICLE 45 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. (Chicago, 7th December, 1944).	31ST OF DECEMBER 2001
31	INSRUMENT OF RATIFICATION OF THE STATUTE OF THE INTERNTIONAL CRIMINAL COURT	23RD ULY 2001
32	INSTRUMENT OF RATIFICATION OF THE CULTURAL AND EDUCATIONAL COOPERATION AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF CONGO. (Abuja, 7th February, 2001).	31ST OF DECEMBER 2001
33	INSTRUMENT OF DENUCIATION OF THE CONVENTION ON DAMAGES CAUSED BY FOREIGN AIRCRAFT TO THIRD PARITES ON THE SURFACE. (Rome, 7th October,	31ST OF DECEMBER 2001

	1952).	
34	INSTRUMENT OF RATIFICATION OF THE PROTOCOL RELATING TO THE AMENDMENT TO ARTICLE 50 (9) OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. (Montreal, 26th October 1990).	31ST OF DECEMBER 2001
35	INSTRUMENT OF RATIFICATION OF THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIME BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE UNITED STATE OF AMERICA. (Washington DC, 13th September 1989).	31ST OF DECEMBER 2001
36	INSTRUMENT OF RATIFICATION OF THE PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA, AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSANTIONAL ORGANISED CRIME.(un. General Assembly, 15th November, 2000)	23RD JULY 2001
37	INSTRUMENT OF RATIFICATION OF THE AMENDMENTS TO THE CONSTITUTION AND CONVENTION OF THE INTERNATIONAL TELECOMMUNICATIONS UNION (ITU) (GENEVA, 22nd December 1992)	20TH APRIL 2001
38	INSTRUMENT OF RATIFICATION OF THE CONVENTION ON THE INTERNATIONAL RECOGNITION OF RIGHTS IN AIRCRAFT. (Geneva, 19th June 1948)	31ST OF DECEMBER 2001
39	INSTRUMENT OF RATIFICATION OF THE INTERNATIONAL COCOA AGREMENT. (UN. Hdqtrs, 1st May, 2001)	31ST OF DECEMBER 2001
40	INSTRUMENT OF RATIFICATION OF THE MERCHANT SHIPPING AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF CONGO. (Abuja, 7th February, 2001)	31ST OF DECEMBER 2001
41	INSTRUMENT OF RATIFICATION OF THE PROTOCOL ON THE AUTHENTIC QUINQUELINGUAL TEXT OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. (Chicago, 30th September, 1977)	31ST OF DECEMBER 2001
42	INSTRUMENT OF RATIFICATION OF THE PROTOCOL RELATING TO THE AMENDMENT TO ARTICLE 56 OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. (Montreal, 6th October, 1989).	31ST OF DECEMBER 2001
43	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON CULTURE, EDUCATION AND SOCIAL DEVELOPMENT OF COOPERATION BETWEEN THE GOVERNMENT OF THE FRDERAL REPUBLIC OF NIGERIA AND THE GOVERBNMENT OF THE REPUBLIC OF NAMIBIA. (Abuja, 23rd November, 2000)	31ST OF DECEMBER 2001
44	INSTRUMENT OF RATIFICATION OF THE OF THE PROTOCOL RELATING TO THE AMENDMENT TO ARTICLE 83 6.5 OF THE CONVENTION ON	31ST OF DECEMBER 2001

	INTERNATIONAL CIVIL AVIATION.(Montreal, 6th October, 1980).	
45	INSTRUMENT OF RATIFICATION OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD. (Ethiopia, 11th July, 1990).	23RD JULY 2001
46	INSTRUMENT OF RATIFICATION OF THE TREATY ON MARITIME BOUNDARY DE-LIMITATION BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF NIGERIA AND THE REPUBLIC OF CUBA. (equatorial Guinea, 23rd September 2000).	31ST OF DECEMBER 2001
47	INSTRUMENT OF RATIFICATION OF THE BILATERAL TRADE AGREEMENT BETWEEN THE FREDRAL RELPUBLIC OF NIGERIA AND THE REPUBLIC OF CUBA. (Havana, 12th July, 2000)	23RD JULY 2001
48	INSTRUMENT OF RATIFICATION OF THE BILATERAL AIR SERVICES AGREMENT (BASA) BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF TUNISIA. (Abuja, 27th June, 2001)	31ST OF DECEMBER 2001
49	INSTRUMENT OF RATIFICATION OF THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT. (Rome, July 1998)	20TH APRIL 2001
50	INSTRUMENT OF RATIFICATION OF THE CONSTITUTIVE ACT OF THE AFRICAN UNION. (OAU in Togo, July 2000)	29TH MARCH 2001
51	INSTRUMENT OF RATIFICATION OF THE MINIMUM AGE CONVENTION, 1973. (General Conference of the International organization, 26th June 1973)	31ST OF DECEMBER 2001
52	INSTRUMENT OF RATIFICATION OF THE COMPREHENSIVE NUCLEAR – TEST – BAN TREATY. (UN. General Assembly, 1996)	23RD JULY 2001
53	INSTRUMENT OF RATIFICATION OF THE TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE DEMOCRATIC REPUBLIC OF SAO TOME AND PRINCIPLE ON THE JOINT DEVELOPMENT OF PETROLEUM AND OTHER RESOURCES IN RESPECT OF AREAS OF THE EXCLUSIVE ECONOMIC ZONE OF THE TWO STATES. (Abuja, 21st February 2001).	23RD JULY 2001
54	INSTRUMENT OF RATIFICATION OF THE PROTOCOL RELATING TO THE AMENDMENT OF ARTICLE 93 BIS OF THE CONVENTION ON INTERNATIONAL CIVIL AVIATION. (UN. 1994)	31ST OF DECEMBER 2001
55	INSTRUMENT OF RATIFICATION OF THE CONVENTION AND OPERATING AGREEMENT ON THE REGIONAL AFRICAN SATELLITE COMMUNICATIONS ORGANISATION (RASCOM) (Abidjan, 27th May, 1992.)	31ST OF DECEMBER 2001

56	INSTRUMENT OF RATIFICATION OF THE DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION 1958. (Geneva, 25th June 1958).	31ST OF DECEMBER 2001
57	INSTRUMENT OF RATIFICATION OF THE BILATERAL TRADE AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE ISLAMIC REPUBLIC OF IRAN. (Iran, 11th January, 2001)	23RD JULY 2001
58	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON EDUCATIONAL COOOPERATION BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA.(South Africa, 26th April 2000.)	14TH FEBRUARY 2001
59	INSTRUMENT OF RATIFICATION OF THE LONDON, COPENHAGEN AND MONTREAL AMENDMENTS OF THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER. (Montreal, 4th June, 1998)	23RD JULY 2001
60	INSTRUMENT OF RATIFICATION OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE; 1969 (1969 LIABILITY CONVENTION) AND ACCESSION TO THE PROTOCOL OF 1992 TO THE 1969 LIABILITY CONVENTION.(Nigeria, 27th November, 1992).	2001
61	INSTRUMENT OF RATIFICATION OF THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS BETWEEN THE FEDERAL REPUBIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (	14TH FEBRUARY 2002
62	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON IMMIGRATION MATTERS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA.(	30TH NOVEMBER 2002
63	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NGIERIA AND THE KINGDOM OF THE NETHERLANDS ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (RPPI), 1992. (Abuja, 2nd November 1992)	31ST DECEMBER 2002
64	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF ROMANIA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (RPPI) 1998.(Bucharest, Romania, 18th December, 1998)	31ST DECEMBER 2002
65	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL	31ST DECEMBER 2002

66	REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (RPPI) (Paris, 27th February 1990) INSTRUMENT OF RATIFICATION OF ROTTERDAM CONVENTION ON PRIOR INFORMED CONSENT (PIC) PROCEDURE FOR CERTAIN HARZARDOUS CHEMICALS AND FESTICIDES IN INTERNATIONAL TRADE. (Rotterdam, 10th September 1998	
67	INSTRUMENT OF RATIFICATION OF THE CARTAGENA PROTOCOL ON B50 SAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY. (Montreal, 29th January, 2000)	30TH NOVEMBER 2002
68	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON IMMIGRATION MATTERS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF IRELAND. (Nigeria, 29th August 2001)	30TH NOVEMBER 2002
69	INSTRUMENT OF RATIFICATION OF THE TREATY ESTABLISHING THE GULF OF GUINEA COMMISSION. (Guinea)	23RD AUGUST 2002
70	INSTRUMENT OF RATIFICATION OF THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA. (South Africa, 28th March, 2002).	30TH NOVEMBER 2002
71	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMWENT OF THE REPUBLIC OF KOREA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (RPPI) (Romania, 18th December, 1998).	31ST DECEMBER 2002
72	INSTRUMENT OF RATIFICATION OF THE CONVENTION ON INTERNATIONAL INTERESTS IN MOBIL EQUIPMENT. (South Africa, 16th November 2001)	13TH MAY 2002
73	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLICV OF NIGERIA AND THE OVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS, (RPPS). (China, 27th August 2001)	31ST DECEMBER 2002
74	INSTRUMENT OF ACCESSION TO THE PROTOCOL ON THE PRIVILEGES AND IMMUNITES OF THE INTERNATIONAL SEABED AUTHORITY. (Jamaica, March	30TH NOVEMBER 2002

	1998)	
75	INSTRUMENT OF RATIFICATION OF THE TREATY ON TRANSFER OF OFFENDER AND COOPERATION IN THE ENFORCEMENT OF PENAL SENTENCES BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND. (Thailand, 16th January 2002)	30TH NOVEMBER 2002
76	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS, (RPPI). (Cairo, 20th June 2000)	31ST DECEMBER 2002
77	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVETSMENTS, (RPPI) 2000.	31ST DECEMBER 2002
78	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON IMMIGRATION MATTERS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC. (Italy, 12th September 2000)	30TH NOVEMBER 2002
79	INSTRUMENT OF RATIFICATION OF THE PROTOCOL RELATING TO THE ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT (EBID). (Darkar, 21st December, 2001)	23RD AUGUST 2002
80	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON DEFENCE COOPERATION BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (South Africa, 15th March2001)	14TH FEBRUARY 2002
81	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA (Nigeria, 29th April 2000)	14 FEBRUARY 2002
82	INSTRUMENT OF RATIFICATION OF THE PROTOCOL ON DEMOCRACY AND GOOD GOVERNANCE SUPPLEMENTARY TO THE PROTOCOL RELATING TO THE MECHANISM FOR CONFLICT PREVENTION, MANAGEMENT, RESOLUTION PEACE-KEEPING AND SECURITY (PROTOCOL A/SPI/12/02). (Dakar, 21st December, 2001)	21ST AUGUST 2002
83	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON IMMIGRATION MATTERS BETWEEN THE	30TH NOVEMBER

	GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN. (Nigeria, 12th November, 2001)	2002
84	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON COOPERATION IN THE FIELD OF ARTS AND CULTURE BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (Nigeria & South Africa, 15th March, 2001)	14TH FEBRUARY 2002
85	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPULIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS (RPPI). (Abuja, Nigeria 8thOctober, 1996)	31ST DECEMBER 2002
86	INSTRUMENT OF RATIFICATION OF THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, (USA, 26th August, 2000)	31ST DECEMBER 2002
87	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON TRADE BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (Nigeria, 29th April 2000)	14TH FEBRUARY 2002
88	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON COOPERATION IN THE FIELD OF MINING, GEOLOGY EXPLORATION AND BENEFICATION OF MINERALS AND ENRGY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (Pretoria, 29th April, 2000)	14TH FEBRUARY, 2002
89	INSTRUMENT OF RATIFICATION OF THE PROTOCOL ON THE IMPLEMENTATION OF ARTICLE 6 (2) OF THE TREATY BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF EQUATORIAL GUINEA CONCERNING THEIR MARITIME BOUNDARY, (23rd September, 2000)	19TH JUNE 2002
90	INSTRUMENT OF RATIFICATION OF THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (South Africa, 29th April, 2000)	14TH FEBRUARY 2002
91	INSTRUMENT OF RATIFICATION OF THE SUPPLEMENTARY PROTOCOL AMENDING THE PROTOCOL ON THE ESTABLISHMENT OF AN ECOWAS BROWN CARD LIABILITY INSURANCE (PROTOCOL A/SP.12/12/01). (Dakar, 21st December, 2001)	23RD AUGUST 2002

92	INSTRUMENT OF RATIFICATION OF THE INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE: 1969 (1969 LIABILITY CONVENTION) AND ACCESSION TO THE PROTOCOL OF 1992 TO AMEND THE 1969 LIABILITY CONVENTION. (London, 27th November, 1992)	13TH MAY 2002
93	INSTRUMENT OF RATIFICATION OF THE CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITED ON BOARD AIRCRAFT, 1963 (USA, 26th August 2000)	31ST DECEMBER 2002
94	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON INTITUTIONAL COOPERATION IN THE FIELD OF AGRICULTURE BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE REPUBLIC OF SOUTH AFRICA. (Abuja 11th-15th March,2001)	14TH FEBRUARY 2002
95	INSTRUMENT OF RATIFICATION OF THE AGREEMENT ON IMMIGRATION MATTERS BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA.(South Africa, 28th March 2002)	30THNOVEMBER 2002
96	INSTRUMENT OF RATIFICATION OF THE TREATY ON EXTRADITION BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA. (South Africa, 28th March 2002)	30TH NOVEMBER 2002
97	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDRAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FOR THE RECIPRCAL PROMOTION AND PROTECTION OF INVESTMENTS, (RPPI), (Abuja, 28th March 2000)	31ST DECEMBER 2002
98	INSTRUMENT OF ACCESSION TO THE CONVENTION FOR THE SUPPRESION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION 1971. (Nigeria, 26th August, 2000)	31ST DECEMBER 2002
99	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE AFRICAN EXPORT-IMPORT BANK AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA ON THE LOCATION OF THE ABUJA BRANCH OFFICE OF THE AFRICAN EXPORT-IMPORT BANK. (Abuja, 29th March 2001)	31ST DECEMBER 2002
100	INSTRUMENT OF RATIFICATION OF THE AGREEMENT BETWEEN THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE GOVERNMENT OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS. (RPPI) 1996, 11th November, 1996.	31ST DECEMBER 2002

99	INSTRUMENT OF ACCESSION TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, 1970. (Nigeria/US, 26th August 2000)	31ST DECEMBER 2002
100	INSTRUMENT OF RATIFICATION OF THE AFRICA-CARIBBEAN-PACIFIC-EUROPEAN UNION (ACP-EU) PARTNERSHIP AGREEMENT. 2000 (Cotonou, 23rd June, 2000.)	23RD AUGUST 2002