

THE IMPACT OF INTERNATIONAL INSTRUMENTS ON DOMESTIC LAWS IN NIGERIA.

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INTRODUCTION

The complexities surrounding the signing of international treaties/agreement have raised concerns about the impact and enforceability of international agreements and treaties in Nigeria. Particularly, the recent quagmire surrounding the SAMOA Agreement have surfaced on the virtual space as well as in everyday conversations. It is worth noting that Nigeria has signed numerous treaties and bilateral agreements over the years. However, the nudging question is: to what extent can international instruments operate in a country, vis a vis domestic laws and policies. This Article will discuss and analyze the concept of international law/treaties, its legal tenability in Nigeria, sources, areas of impact, mechanisms for incorporation and the challenges and controversies surrounding international treaties.

Definition of International Laws/Agreements.

The term "International Law" was coined by the English philosopher Jeremy Bentham. The concept as the name connotes, is a set of rules, norms, and standards that States and other actors are obligated to obey, and generally do obey, in furtherance of their mutual relations. International laws are established norms for States across a broad range of domains, including war and diplomacy, economic relations, and human rights. International Agreement as it is otherwise called are international standards that govern the relationship between Nations and its participants like international organizations and individuals.

Historically, International Law has relatively faced challenges due to inadequate enforcement mechanisms on the part of the international community and organizations and adherence by sovereign states. International laws are ethical commitments or general standards of practice that member states are expected to uphold.

Lassa Oppenheim defined it in his treatise as "a law between sovereign and equal states based on the common consent of these states" Additionally, one of the cornerstones of Nigeria's foreign policy goals, as stated in Section 19(d) of the 1999 Constitution as amended, is respect for international treaties and laws. Juxtaposing the aforementioned viewpoint with topic under discourse, the crux of this research is, among other things, to clarify how international law impacts the general principles guiding government's management of public affairs; how international laws regulate bye-laws; to provide a principle or code of behavior/conduct, etc. for the general public and government in Nigeria.

SOURCES OF INTERNATIONAL LAW IN NIGERIA.

The sources of international law recognized by the International Court of Justice (ICJ) by virtue of Article 38(1) of the Statute of the International Court of Justice are: international conventions, international custom, the general principles of law recognized by civilized nations, and judicial decisions and the teachings of the most highly qualified publicists of various nations. Regardless of the sources listed above, this article will focus on International Conventions otherwise referred to as Treaties.

Treaty is an umbrella term used to describe various international instruments, including conventions, agreements, arrangements, protocols, covenants, charters, and acts. According to the Vienna Convention on the Law of Treaties of 1969, "treaty" means an international agreement or by whatever name called, e.g. Act, Charter, Concordant, Convention, Covenant, Declaration, Protocol or Statute, 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.

Furthermore, the Supreme Court in **Abacha v. Fawehinmi (2000) 6 NWLR (Pt. 660) 239** Per Achike, J.S.C. while elaborating on the import and purport of a 'treaty' gave an exhaustive and overarching analysis of the term, which was captured in the following words:

'The term treaty has been variously identified. Suffice it to say that a treaty is a compact, an agreement or a contract - bilateral or multilateral - between sovereign states (two or more) whereby they establish or seek to establish a relationship between themselves governed by international law. A treaty, therefore, in a broad sense, is similar to an agreement under the civil law. The difference between an ordinary civil contract (or agreement) and a treaty is that while the former is an arrangement between individuals and derives its bindingness from municipal or domestic law of a state, a treaty on the other hand, derives its binding force and effect from international law...'

Treaties are generally divided into bilateral and multilateral treaties. Bilateral treaty is an agreement between two parties/nations and mostly contractual, e.g. the Trade and Investment Framework Agreement (TIFA) entered into by Nigeria and the United States in 2000 to enhance trade and investment between the two countries. Multilateral treaties involve more than two nations, mostly entered under the auspices of an international organization like the United Nations, African Union etc. An Example of a multilateral treaty is the Universal Declaration of Human Rights (UDHR) drafted in 1948 and ratified by all 193 members of the United Nations.

MECHANISM FOR THE INCORPORATION OF INTERNATIONAL LAW IN NIGERIA.

The mechanisms for incorporating international law into domestic laws

and policies often involve two doctrines: Monism and Dualism. Nigeria's approach will be examined in light of these concepts.

Monism, to begin with, suggests that international treaties become part of domestic law simply by being signed. This means that an international law gains binding status in a signatory country without requiring additional ratification procedures. Monist states accord special status to international law above the domestic laws. Examples of countries with a monism approach are France and the Netherlands.

Conversely, the doctrine of Dualism posits that international treaties do not directly apply domestically. Instead, the treaty must be translated into national legislation before it becomes applicable in domestic policies. **Section 12** of the **1999 Constitution of the Federal Republic of Nigeria** appears to establish Nigeria as a Dualist State. While affirming the President's executive power to sign treaties and agreements, it stipulates that these instruments only gain binding force domestically after ratification by the National Assembly. **Subsection 1** of the said section captures this position in the following words:

S.12(1) "No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly."

In furtherance of the above provisions Subsections 2 and 3 emphasize that the National Assembly must pass laws to domesticate international instruments, requiring ratification by a majority of all the House of Assembly of the Federation and shall not be presented to the President for assent. This contrasts with the process for domestic statutes, which require presidential assent before becoming law. This process is exemplified in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Although Nigeria became a signatory to the African Charter on Human and Peoples' Rights in 1981, the Charter only came into force as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act in Nigeria 1983, after the National

Assembly passed the Act.

The preamble and of the Act reads:

“WHEREAS a Charter entitled the 'African Charter on Human and Peoples' Rights' has been duly adopted by diverse States in Africa and Nigeria is desirous of adhering to the said Charter; AND WHEREAS it is necessary and expedient to make legislative provision for the enforcement in Nigeria of the said Charter by way of an Act of the National Assembly:”

Furthermore, Section 1 of the Act, which guarantees its enforcement, reads as follows;

“As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided, have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria.”

Perhaps it is important to discuss the effect and enforceability of international treaties under Nigerian jurisprudence in this section. The question of the extent to which an international law can influence a nation's domestic law is relevant, particularly in situations where there is a conflict between the two. As explained earlier, the general rule with regards to adherence or enforcement of an international legal instrument is that it must first be domesticated to gain binding effect. This principle of law was reverberated in the court's ruling in the locus classicus case of **Fawehinmi v. Abacha** where the Supreme court, Per Ejiwunmi, J.S.C. held unequivocally that:

“...It is therefore manifest that no matter how beneficial to the country or the citizenry, an international treaty to which Nigeria has become a signatory may be, it remains unenforceable if it is not

enacted into the law of the country by the National Assembly. This position is generally in accord with the practice in other countries.... Where an international treaty entered into by Nigeria is enacted into law by the National Assembly... it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts.”

Flowing from the above legal provisions, it can be said that upon domestication, an international instrument gains the force of law within the polity and must be enforced by courts, however it is not accorded superior value over the constitution or any other statute operative within the jurisdictions. Where a country is only a signatory and is yet to domesticate a treaty, the treaty can only be applicable and not binding, in the sense that, it could be used as aid in interpretation and courts must refrain from any construction that may lead to breach of any principle of international law of which it is a signatory. This position is akin to the judicial position in the case of **Dow v. A. G Botswana (1999)**

Two words making a striking point with regards to enforcement of treaties are ratification and signatory. While being a signatory to a treaty does not guarantee that the treaty is accorded automatic binding effect, especially in dualist State, it is worthy of note that under bilateral agreements, the treaty becomes binding upon parties' appending their signature. This is expressed by the legal doctrine of 'pacta sunt servanda' (agreement must be kept). The foregoing legal principle was accorded credence in the case of **Cameroon v. Nigeria: Equatorial Guinea Intervening (2002)** when the court, despite recognizing the two step procedures involved in enforcing a treaty, held the bilateral agreement between the military government of Nigeria and the government of Cameroon to be binding upon the appending of signatures by the parties.

The court was of the opinion that it cannot accept the argument that the Maroua Declaration was invalid under international law because it was signed by the Nigerian Head of State of the time but never ratified. Thus while in international practice, a two-step procedure consisting of signature

and ratification is frequently provided for in provisions regarding entry into force of a treaty, there are cases where a treaty comes into force immediately upon signing. Both customary international law and the Vienna Convention on the Law of Treaties leave the procedure to be adopted to States.

Under the Maroua Declaration, “the two Heads of State of Cameroon and Nigeria agreed to extend the delineation of the maritime boundary between the two countries from Point 12 to Point G on the Admiralty Chart No. 3433 annexed to this Declaration”. In the Court’s view, that Declaration entered into force and became binding immediately upon it being signed.”

The general rule regarding when an international instrument is in conflict or contravenes the constitution as restated in the case of **Kanu v. F.R.N(2024) 11 NWLR (Pt. 1949) 281** is that the Constitution by virtue of its supremacy guaranteed under S. 1(3) ranks above any international law, hence when there is conflict between the international instrument and the Constitution, the Constitution shall prevail. Furthermore, on the status of international law vis a vis domestic statute, the position of the court in the instant case is that where the constitution is silent pertaining the status of incorporated international laws the incorporated international laws are deemed to rank at par with ordinary laws. In other words, international laws are equal in status to the domestic laws and can be modified or even abrogated by a domestic law.

CASE STUDIES

International law plays a significant role in shaping the domestic legal systems of countries worldwide, including Nigeria. As a member of the international community, Nigeria is bound by various international treaties, conventions, and customary international law. These international legal instruments have, over time, influenced the Nigerian domestic law across various sectors, including human rights, environmental protection, and economic regulation. This discussion examines how international law has

impacted Nigerian domestic law through specific case studies in the areas of human rights, environmental law, and economic law.

1. Human Rights: International laws on freedom of expression, fair trial and International human rights law, particularly as enshrined in instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples' Rights, has significantly influenced Nigerian domestic law, particularly in the areas of freedom of expression and fair trial rights.

One notable example is the case of **Sowore v. Federal Government of Nigeria (2020)**. Omoyele Sowore, a Nigerian journalist and activist, was arrested for organizing protests against the government. His arrest and prolonged detention raised questions about the right to freedom of expression and fair trial under both the Nigerian law and international human rights law. The case attracted international attention, with human rights organizations calling on the government of Nigeria to uphold its international obligations. The Nigerian courts, in considering the Sowore case, had to balance domestic laws, such as the Nigerian Constitution and the Public Order Act, with international legal principles. Ultimately, the court's decision to grant bail was seen as a partial compliance with Nigeria's obligations under international human rights law, particularly the ICCPR and the African Charter, which Nigeria has domesticated as part of its laws.

Another significant case is the **Oluwadamilola Ayodele v. Federal Republic of Nigeria (2018)**, where the right to a fair trial was at the forefront. The case dealt with the prolonged detention of the plaintiff without trial which was a clear violation of both Nigerian law and international human rights standards. The court, in its ruling, emphasized the importance of adhering to fair trial principles, drawing on provisions from the African Charter, which mandates a prompt and fair trial. This case highlights how international human rights norms integrated into the Nigerian legal system have influenced judicial decisions and thus helped in enhancing the protection of

fundamental rights.

2. Environmental Cases: Oil pollution and climate change environmental law is another area where international law has significantly impacted Nigerian domestic law. Nigeria, as one of the largest oil producers in Africa, has faced numerous environmental challenges, particularly oil pollution in the Niger Delta region. International environmental law, through conventions like the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, as well as various human rights instruments, has played a role in shaping Nigeria's approach to environmental protection.

A landmark case that exemplifies this influence is the **Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. (2005) case**. The plaintiffs, representing the Iwherekhan community in the Niger Delta, sued Shell for gas flaring. They argued that gas flaring violated their right to life and dignity under both Nigerian law and international human rights law. The Nigeria Federal High Court, drawing on international environmental standards and human rights law, ruled that the continuous gas flaring was a violation of the community's rights and ordered Shell to desist the practice. This case marked a significant moment in Nigerian environmental law, as it was one of the first instances where a Nigerian court directly applied international human rights principles to protect the environment. The court's decision was influenced by international instruments, such as the African Charter on Human and Peoples' Rights, which guarantees the right to a healthy environment.

Another significant case is **SERAP v. Federal Republic of Nigeria (2010)**, where the Socio-Economic Rights and Accountability Project (SERAP) sued the Nigerian government for failing to address the adverse effects of oil pollution in the Niger Delta. SERAP relied on international environmental and human rights law, particularly the obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR), to argue that the Nigerian government had failed to protect the environment and the rights of the affected communities. The case underscored the importance

of international law in shaping Nigeria's environmental policies and the protection of citizens' rights.

3. Economic Cases: The influence of international law on Nigerian domestic law is also evident in the realm of economic law, particularly in trade disputes and investment arbitration. Nigeria's participation in international trade and investment agreements has necessitated the incorporation of international legal principles into domestic law. One prominent example is the **P&ID v. Federal Government of Nigeria (2017) case**, which involved a dispute between the Nigerian government and the Process and Industrial Developments (P&ID), a foreign investor. The case revolved around a failed gas processing contract, leading P&ID to seek arbitration under the rules of the London Court of International Arbitration (LCIA). The tribunal ruled in favor of P&ID, awarding them significant damages. The Nigerian government's response to the arbitration award has highlighted the tension between international arbitration awards and domestic legal principles.

While Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which obligates Nigeria to recognize and enforce international arbitration awards, the government contested the award, citing issues of fraud and corruption. The P&ID case underscores the challenges that arise when international law intersects with domestic legal systems, particularly in the area of investment arbitration.

Another significant case is the **ECOWAS Court of Justice v. Federal Republic of Nigeria (2019)**. A case was instituted against the federal republic of Nigeria at the ECOWAS Court of Justice over Nigeria's imposition of import restrictions on certain goods. The plaintiffs argued that Nigeria's actions violated the ECOWAS Trade Liberalization Scheme (ETLS) and the African Continental Free Trade Area (AfCFTA) agreement. The ECOWAS Court ruled against Nigeria, ordering it to comply with its international trade obligations. This case illustrates how international economic law can directly impact domestic law, particularly in the context

of regional integration and trade agreements.

The impact of international law on Nigerian domestic law involves a complex interplay between the global legal frameworks and the domestic legal system. This interplay brings about various challenges and controversies that are significant in shaping Nigeria's legal landscape. These challenges and controversies can be categorized into three main areas: conflicts between international and domestic law, issues of sovereignty and national interest, and capacity and resource constraints in implementing international law.

CHALLENGES IN IMPLEMENTING INTERNATIONAL LAW

1. Conflicts Between International and Domestic Law

One of the most significant challenges in the relationship between international law and Nigerian domestic law is the potential for conflicts between the two legal systems. International law, which comprises treaties, conventions, and customary international law, often imposes obligations on states that may conflict with existing domestic laws or practices. In Nigeria, such conflicts can arise in several ways:

a. Supremacy of Domestic Law: Nigeria follows the dualist approach, where international law does not automatically become part of the domestic legal system without legislative incorporation. This means that even when Nigeria ratifies an international treaty, it must be domesticated through specific legislation before it can have any effect in Nigeria. However, there have been instances where international obligations have conflicted with existing Nigerian laws. For example, Nigeria's obligations under human rights treaties like the International Covenant on Civil and Political Rights (ICCPR) can conflict with domestic laws related to freedom of speech, assembly, and even the death penalty. In such cases, Nigerian courts have sometimes struggled to reconcile the conflicting norms, leading to legal uncertainty.

b. Judicial Interpretation: The judiciary in Nigeria plays a crucial role in resolving conflicts between international and domestic law. However, there have been controversies over the extent to which Nigerian courts should apply international law when it conflicts with domestic law. While some judges have adopted a more progressive approach, giving primacy to international human rights norms, others have been more conservative, upholding domestic laws even when they are inconsistent with international obligations. This inconsistency in judicial interpretation has led to uncertainty and controversy, particularly in cases involving human rights and criminal justice.

c. Legislative Inaction: Another source of conflict is the failure of the Nigerian legislature to domesticate international treaties promptly. For example, Nigeria has ratified several international treaties on environmental protection, but the lack of corresponding domestic legislation has led to conflicts between international obligations and local environmental laws. This gap between international commitments and domestic implementation often leaves Nigeria in breach of its international obligations, raising concerns about the country's commitment to international law.

2. Issues of Sovereignty and National Interest

The interaction between international law and Nigerian domestic law also raises important questions about national sovereignty and the protection of national interests. Sovereignty, the principle that states have the ultimate authority within their territories, can sometimes be perceived as being undermined by international law. This tension manifests in several ways:

a. Perception of External Interference: In Nigeria, there is often a perception that international law represents an imposition of external values and norms that may not align with local customs, traditions, or national interests. This perception is particularly pronounced in areas such as human rights, where international standards may conflict with cultural practices or religious beliefs. For instance, international pressure to abolish

the death penalty or to recognize same-sex marriages has been met with resistance in Nigeria as the practice is widely seen as contrary to the country's moral and cultural values. Perception of external interference has led to controversies and debates about the extent to which Nigeria should comply with international norms that are perceived as being at odds with national identity and sovereignty.

b. National Interest and International Obligations: There are instances where international obligations may conflict with Nigeria's national interests, particularly in areas such as trade, security, and foreign policy. For example, Nigeria's commitments under international trade agreements may require the country to open its markets to foreign competition, which could harm local industries. Similarly, international human rights obligations may require Nigeria to refrain from certain security practices that are deemed necessary for national security. Balancing these international obligations with national interests has been a source of significant controversy, particularly when compliance with international law is seen as potentially compromising Nigeria's sovereignty or security.

c. Influence of Powerful States and International Organizations: Nigeria, like many developing countries, often face pressure from powerful states and international organizations to conform to international legal norms. This pressure can come in the form of diplomatic pressure, economic sanctions, or conditions attached to foreign aid. The influence of these external actors can sometimes lead to a perception that Nigeria's sovereignty is being eroded, as decisions that should be made domestically are instead being driven by external forces. This has led to debates about the extent to which Nigeria should prioritize its international obligations over its sovereign right to make decisions in the best interests of its citizens.

3. Capacity and Resource Constraints in Implementing International Law

Implementing international law in Nigeria is also challenged by capacity and resource constraints. These challenges can hinder the effective domestication and enforcement of international legal norms, leading to a

gap between Nigeria's international commitments and their actual implementation.

a. Legal and Institutional Capacity: Nigeria's legal system faces significant capacity challenges that affect its ability to implement international law effectively. These challenges include a shortage of trained legal professionals, limited access to legal resources, and a lack of specialized knowledge in international law. These capacity constraints are particularly evident in the judiciary, where judges may lack the necessary expertise to interpret and apply international law effectively. Additionally, the legislative process for domesticating international treaties can be slow and cumbersome, further complicating the implementation of international law.

b. Financial and Resource Constraints: Implementing international law often requires significant financial and material resources, which can be a challenge for Nigeria. For example, compliance with international environmental agreements may require substantial investment in environmental protection infrastructure, while implementing international human rights standards may require reforms in the criminal justice system, which can be costly. Nigeria's limited financial resources can therefore hinder its ability to comply fully with its international obligations, leading to gaps in implementation and enforcement.

c. Administrative Challenges: The administrative capacity to implement international law is also a significant challenge in Nigeria. This includes challenges related to coordination between different government agencies, lack of data and information for effective monitoring, and bureaucratic inefficiencies. For example, implementing international trade agreements requires effective coordination between customs authorities, trade regulators, and other relevant agencies, which can be difficult to achieve in a context of limited administrative capacity. These challenges can result in delays or failures in implementing international law, undermining Nigeria's compliance with its international obligations.

CONCLUSION

The impact of international law on Nigerian domestic law is profound and multifaceted. International law, through various sources such as treaties, customary law, and international judicial decisions, has significantly shaped Nigeria's legal landscape, particularly in areas like human rights, environmental protection, and economic regulation. The mechanisms of incorporation, whether through direct application or transformation, have allowed these international norms to influence domestic courts and legislation. However, the interplay between international and domestic law also presents challenges, including conflicts over sovereignty and the practical difficulties of implementation. Moving forward, Nigeria's continued engagement with international law will require balancing these international obligations with national interests, alongside strengthening the legal and institutional frameworks for better integration and enforcement of international standards.

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