

A RE-EXAMINATION OF THE REQUIREMENT OF DOMESTICATION OF TREATIES IN NIGERIA *

Abstract

One of the ways of acquiring obligations at international law is by agreeing to the text of the treaty stipulating such obligations. An intention to be so bonded is often evidenced by becoming a signatory to the said treaty. Sometimes though, in addition to being a signatory to a treaty, such a treaty may also have to be domestically incorporated by the state assuming such obligation before her citizens can fully benefit from its provisions. Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is one such instance. It requires that a treaty be domesticated by the Nigerian legislature before it can be admitted in Nigerian Court. This paper examines the intendment of the drafters of the said section of the Nigerian constitution and its draw backs to enforcing treaty obligations. It concludes that the requirement of domestication acts as a shield to some in undermining treaty obligations. It applauds the Third Alteration Act 2010 to the Constitution and recommends that same should be extended to human rights treaties especially those providing for socio-economic rights.

Key words: *Domestication, International treaties, Constitution, Municipal courts, Obligation.*

1. Introduction

International treaties are international agreements 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 their particular designation.¹ They can constitute a major source of a country's law² and bear close resemblance to contracts in a superficial sense in that the parties create binding obligations for themselves.³ When sovereign states come together to negotiate and agree to the text of a treaty, it is implied that the states parties accept the obligation and responsibility arising therefrom. It is therefore an evidence of bad faith to claim inability to do so due to lack of domestication. Indeed, the need for and lack of domestication of treaties in dualist countries, especially third world countries, is often the cloak under which some people hide to avoid obligations arising from treaties to which they are signatories. This is of serious consequence because of the role that treaty plays in international and even municipal law. It is considered the closest analogy to legislation that International law has to offer, and constitutes the major means of entering into agreement at International law. It bears significant implications for national law, national institutions and the nationals of states.⁴ More than that, treaties have ended wars, regulated navigation, pledged troops, and at times encouraged trade.⁵ Nigeria is a member of the International Community and as such has the capacity to enter into international treaties. In fact, she is a signatory to a good number of treaties.⁶

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¹ Article 2 (1)(a) of the Vienna Convention of the Law of Treaties 1969.

²N. C. Okeke, "The Use of International law in the Domestic Courts of Ghana and Nigeria" (2015) 32 No. 2 *Ariz. J. Int'l & Comp. L.* 371

³ E. Egede, "Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria" (2007) 51 *J. Afr. L.* 249.

⁴ B. I. Olutoyin, "Treaty Making and Its Application under Nigerian Law: The Journey So Far" (2014) 3 *IJBMI* 7.

⁵ *Ibid.*

⁶ There are no records for sure on how many treaties Nigeria has signed, however as at 2013, a collation process was underway to determine this. According to Honorable Dayo Bush-Alebiosu, the chairman House committee on Treaties and bilateral agreements, the committee had identified over 200 treaties but at the end of collation there may be well over 400 treaties. The treaties included those that impose financial obligations on the nation, and those that will require domestication according to the treaties act. Business Day of 14 November 2013,

Treaties, however good, do not automatically become law in Nigeria the moment they are signed. Section 12 of the Nigerian Constitution requires that it be ratified before it can be given effect to in municipal courts. This work examines the intendment of the said section of the Nigerian constitution and concludes that the said section constitutes a shield for insincere politicians to undermine treaty obligation. It applauds the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 and recommends that this should be made to include human rights treaties.

2. The Need for Domestication: The Relationship between International Law and Municipal Law

A ready source for determining how the national law of a state interacts with international law is the constitution. Such interaction determines the extent to which individuals can employ international law to enforce their rights within the national legal system.⁷ It is a firm principle of international law that every state is competent to enter into treaty regarding matters that fall within its sovereignty. But at times, to locate the department that is responsible for negotiating and ratifying treaty in Nigeria may not be as easy as expected. According to Nwabueze,⁸ the law and procedure on treaty making capacity is not documented under the Nigerian Constitution. What is visible in the constitution is treaty implementation.⁹ This is unlike what is obtainable in other jurisdictions like the United States of America and the United Kingdom where the position is well spelt out. In the case of the former, power to make treaty resides with the president with the advice and consent of the Senate, and the concurrence of two-thirds of the senator. In the case of the latter, treaty-making capacity is within the prerogative of the crown.¹⁰

Nigeria is a federal state and as such, treaty making is within the jurisdictional purview of the federal government. Nwabueze¹¹ lend credence to this assertion when he posited that:

[T]he President, as the chief executive of the federal government, is designated head of state... As head of state, he represents the country in 'the totality of its international relations, acts for his State in its international intercourse, with the consequence that all his legally relevant international acts are considered to be acts of his State ... It comprises in substance chiefly: reception and mission of diplomatic agents and consuls, conclusion of international treaties, declaration of war, and conclusion of peace.' These powers are not conferred upon the President by the Constitution in explicit terms, but apparently upon the theory

available at <http://businessdayonline.com/2013/11/nigeria-aims-to-benefit-from-economic-treaties/#.Va3UsPIViko> accessed 20 July, 2015.

⁷ Op cit fn 2

⁸ B. O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution*. (London, Sweet & Maxwell, 1985) P. 25.

⁹ The Nigerian Treaties (Making Procedure etc) Decree No 16 of 1992 classifies treaty into three categories and stipulates the conditions which they must satisfy (1) law-making treaties (which affect or modify existing legislation or powers of the National assembly) these must be enacted into law, (2) agreements (which impose financial, political and social obligations or have scientific or technological importance) these must be ratified and (3) those that deal with mutual exchange of cultural and educational facilities and needs no ratification by any legal instrument. Ibid p.256

¹⁰ Op cit fn 7,

¹¹ ibid

that the power is inherent in every independent, sovereign State, and is held on its behalf by its head...¹²

However, the constitutional provision in this regard is not enough. What is expected is a comprehensive law that will spell out who will be responsible for making treaty with other nations where for instance the subject matter borders on the security of the nation. Is it going to be the responsibility of the President and Commander in Chief of the Armed Forces, the Chief of Defence Staff or Minister of Defence? This as noted by Nwabueze, has not been provided for.¹³

Happily, though, the sovereignty of an independent state is recognized at international law, irrespective of whatever municipal deficiencies it might possess. Each state is seen as sovereign and equal in spite of the ever increasing effects of globalization and the interdependence of contemporary international commercial and political societies. This is because, sovereign states, to a reasonable extent, are deemed to be independent at least in principle. Therefore, they can be signatories to international instruments such as treaties. Understandably, international law put simply focuses primarily on relations between states while municipal or domestic law governs the domestic aspect of government and deals with issues between individual and administrative bodies.¹⁴

However, cases abound where international law and domestic or municipal law become interconnected or pursue the same objectives. For instance, in areas such as human rights, environmental and investment law, the same subject could be regulated by both international and municipal law.¹⁵ In addition, obligations undertaken by state in the international sphere may be towards her citizen in which case the citizens of the said state may need to rely on the enabling instrument to benefit or ensure that the state undertaking such obligation fulfils them. Furthermore, relationships and problems which were once domestic, such as economics and environment have become international in scope and as a result, matters, which hitherto were the exclusive preserve of municipal law are now covered by treaties, and sometimes, the real object of the treaty may not be that of affecting state behaviour but that of regulating the activities of individuals and private entities within a state.¹⁶

Long before now, a number of theories have been formulated at international law to describe the relationship between international law and municipal law, the most common being the monist and the dualist theories. To the dualist, international law and municipal law are two systems of law that exist separately, none of which can be said to supersede the other. Therefore, when international law rules are applied in a municipal court, they are applied as part of the municipal law of the state in whose court the application is made and not because of the superior nature of international law in municipal court.¹⁷ The Monist on the other hand, holds a unitary view of law. To them, there exists a logical unity between municipal law and

¹² B. O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution*, cited in C. Nwapi, "International Treaties in Nigerian and Canadian Courts" (2011)19 *Afr. J. Int'l & Comp. L.* 38.

¹³ *ibid*

¹⁴ M. Shaw, *International Law* (6th ed. Cambridge: Cambridge University Press, 2008) p.130

¹⁵ *ibid*

¹⁶ A.O. Enabulele, "Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts?" (2009) 17 *Afr. J. Int'l & Comp. L.* 326.

¹⁷ B. Bazuaye & O. Enabulele, (Benin City, Ambik Press, Nigeria, 2006) p 31.

international law, which results in the existence of a unitary system of law in which international law is supreme in the event of conflict.¹⁸

3. The Requirement of Domestication of Treaties in Nigeria

The provisions on the domestication of treaties in Nigeria are enshrined in section 12 of the 1999 Constitution:

- (1) No treaty between the Federation and any other country shall have the force of law except to the extent 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 for the purpose of implementing a treaty.
- (3) A bill for an Act of the National Assembly passed pursuant to the provisions of sub-section (2) of this section 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.

In Nigeria therefore, by virtue of the above provision of section 12, courts do not have the power to apply the provision of a treaty without prior legislative approval. In addition to being a signatory to a treaty, such a treaty will have to be enacted by the National Assembly¹⁹ before it can have the force of law before the Nigerian Court.²⁰ What this means is that only the National Assembly is empowered to domesticate treaties on matters on the exclusive list.²¹ This was aptly reflected in section 12 above and for emphasis, subsection 2 provides that this power of making laws in respect of implementation of treaties shall also include treaties dealing with issues not included in the exclusive legislative list. In other words, a treaty affecting a matter in the exclusive legislative list will come into force in Nigeria with an enactment of the National Assembly. If the matter falls within the concurrent or residual list, the treaty also requires the approval of the majority of the State Houses of Assembly.²²

In *Abacha v Fawehinmi*,²³ Ogunbare JSC held that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law, it has no such force of law as to make its provisions justiciable before the Nigerian Courts. Half a decade later in *Mhwun v Minister of Health & Productivity & Ors*,²⁴ the Court of Appeal held that the provisions of an International Labour

¹⁸ B. Bazuaye & O. Enabulele, *Teachings on Basic Topics in Public International Law* (Benin City, Ambik Press, 2016) p 72.

¹⁹ Where it involves matters in the exclusive list, or otherwise by the State House of assembly.

²⁰ O. Nwankwo, Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Civil Resource Development and Documentation Centre (CIRDDOC) Nigeria available at www.aacoalition.org/domestic_cedaw.htm accessed 28th May 2015

²¹ This is because, legislative powers in Nigeria are shared between National and State assemblies. The Exclusive Legislative List contains a list of items including implementation of treaties relating to matters on the exclusive legislative list that only the National Assembly may legislate on. The Concurrent Legislative List contains items that both the National and State Assemblies may legislate on while matters that do not fall within these two lists are considered to be within the residual list and the implementation of treaties affecting matters in the exclusive list is on the exclusive legislative list.

²² For a discussion of some challenges presented by this constitutional provision, see C. Nwapi, "International Treaties in Nigerian and Canadian Courts" (2011)19 *Afr. J. Int'l & Comp. L.* 38.

²³[2000] 6 NWLR (pt 660) p 228 at 228

²⁴ [2005] 17 NWLR pt. 953 p. 120.

Convention cannot be invoked and applied by a Nigerian Court until same has been re-enacted by an Act of the National Assembly. His Lordship, Muntaka- Coomassie JCA had this to say on domestic application of International Labour Convention in Nigeria:

.... There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly. In so far as the ILO convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply....Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria 1990, it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts.²⁵

As noted by Oyeboade,²⁶ there are two methods of transforming treaties into domestic law in Nigeria. They are by re-enactment and by reference. According to him, transformation by re-enactment, otherwise known as the force of law technique, is adopted when the implementing statute directly enacts specific provisions or the entire treaty usually in the form of a schedule in the statute. On the other hand, the implementing statute can transform the treaty into domestic law merely by reference to the treaty generally. However, reference to a treaty could be contained either in the long and short title of the statute or in the Preamble or the Schedule, although such a treaty does not appear to be an implementing enactment. It can be considered as such if a comparison of the words of the statute with those of the treaty combined with an acknowledgement of the statute, legislative history or other extrinsic evidence shows that it is intended to be an implementing legislation.²⁷ Nigeria adopts the transformation theory in that no treaty is enforceable in Nigeria unless same is domesticated through a legislative instrument.²⁸

4. The Provision for Domestication of Treaties in Nigeria: The Intention of the Draftsmen
Section 1 (1) of the 1999 Constitution asserts in clear and positive terms, the supremacy of the Constitution and the corresponding nullity of any law inconsistent therewith.²⁹ It is evident from a consideration of section 1 that the purpose of section 12 therein was to reiterate the doctrine of supremacy of the Nigerian constitution. This no doubt arose out of the desire and need to preserve her sovereignty and maintain her territorial integrity. At the same time, it was without doubt, not the desire of the draftsmen to prevent Nigerian citizens from benefitting from what international law has to offer. It was therefore intended to be a sword and not a shield.

²⁵ Ibid, at p.155 – 157.

²⁶A. Oyeboade, "Treaty Making and Treaty Implementation in Nigeria: An Appraisal" Cited in B. Atilola, "National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act" available at [nicn.gov.ng/...](http://nicn.gov.ng/) Accessed 28/05/2015.

²⁷ Ibid

²⁸ For a detailed discussion of the transformation of treaties into domestic law in Nigeria and their status thereafter, see A.O. Enabulele, "Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts?" (2009) 17 *Afr. J. Int'l & Comp. L.* 326; C. Nwapi, "International Treaties in Nigerian and Canadian Courts" (2011)19 *Afr. J. Int'l & Comp. L.* 38; J. A. Dada, "Impediments to Human Rights Protection in Nigeria" (2012) 18 *Ann. Surv. Int'l & Comp. L.* 67 and C. N. Okeke, "The Use of International law in the Domestic Courts of Ghana and Nigeria" (2015) 32 *Ariz. J. Int'l & Comp. L.* 396.

²⁹ Ibid

Furthermore, a close consideration of section 12 of the constitution will reveal that the provision was meant to act as a check on the powers of the executive as is the case with other constitutional provisions that serve as check and balances on the powers of the different arms of government: the power of impeachment granted the legislature,³⁰ the power to veto acts of parliament granted the president--the head of the executive--which makes him part of the law making body,³¹ the power granted the judiciary to declare executive actions as well as laws made by the legislature unconstitutional,³² the legislative endorsement required for some executive acts such as declaration of war,³³ the legislative endorsement of executive nominees³⁴ and budgets,³⁵ the legislative and executive input in the appointment of judges and the exercise of prerogative of mercy,³⁶ granted to the president --the head of the executive. Therefore, if admittedly there is a need for some form of checks in other aspect of the exercise of power on the part of the executive, it should not be difficult to imagine that the same would be true too for situations where the executive take on international obligations on behalf of the federation. The said provision was thus intended to foster cooperation between the executive and the legislature, as the checks and balances envisaged would only be effective in an atmosphere of mutual trust cooperation.

If the above is true, then the intention of the draftsmen has also been defeated. This is because there is an obvious lack of cooperation between the executive and the legislative in the area of treaty ratification and domestication. According to Honourable Dayo Bush-Alebiosu, a member of the House of Representatives and chairman of the House Committee on Treaties and Protocols, the National Assembly cannot state with accuracy the number of treaties that have been signed by Nigeria and the National Assembly had had to issue a letter calling on the Executive to forward treaties to it for domestication. He further stated that several treaties have been entered into without the National Assembly having full knowledge of it.³⁷ This is a sad development for no treaty was supposed to be shrouded in secrecy, as this could never have been the intention of the draftsmen of section 12 of the Constitution. Furthermore, this sad state of affairs has resulted in the non-domestication of treaties which in turn is depriving Nigerians of the benefits that would have accrued from them, as only a few Nigerians that can afford to go abroad to sue will benefit where the suit is founded on an international agreement that is yet to be domesticated in Nigeria.³⁸

Therefore, while it is true that Treaty signing is a function of the executive, as noted by Bush-Alebiosu,³⁹ there should be cooperation with the legislators so that the intention of the constitution can be realized. More so, since the Nigerian Constitution did not empower the National Assembly to initiate the domestication of treaties, the lawmakers will have to wait on

³⁰ See Constitution of the Federal Republic of Nigeria 1999 as amended s. 143 and 188 for the removal of the president and governor respectively.

³¹ *Ibid.*, s. 58

³² *Ibid.*, s. 6

³³ *Ibid.*, s. 5 (4)

³⁴ *Ibid.*, s. 147 (2), s. 154, s. 192 (2) and s. 198.

³⁵ *Ibid.*, s. 81

³⁶ Section 175 and section 212 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

³⁷ Channels Television, *Non-domestication of Treaties Deprives Nigerians of Expected Benefits* — Bush-Alebiosu available at www.channelstv.com/.../non-domestication. Accessed 28 May 2015.

³⁸ Channels Television, *“Non-domestication of Treaties Deprives Nigerians of Expected Benefits”* — Bush-Alebiosu available at www.channelstv.com/.../non-domestication. Accessed 28 May 2015.

³⁹ P. Atuanya, *“Nigeria Aims to Benefit from Economic Treaties”* *Business Day* of 14 November 2013, available at <http://businessdayonline.com/2013/11/nigeria-aims-to-benefit-from-economic-treaties/#.Va3UsPIViko>, accessed 20 July, 2015.

the executive arm of government to begin the domestication process, something that may not happen in the absence of cooperation between the two arms.

5. Domestication of Treaties under the Third Alteration Act 2010

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 is to be applauded. As noted by Bimbo, the ‘Act constitutes a watershed in the history of the National Industrial Court of Nigeria, in that it ushered in a number of radical but positive innovations on the structure, powers, status and jurisdiction of the Court’.⁴⁰ The Act re-establishes the Court as the National Industrial Court of Nigeria and lists it among the superior courts of record in Nigeria. The court among other things, is conferred with exclusive jurisdiction over matters relating to international best practice in labour, application or interpretation of international labour standards and section 254 (c) (2) particularly provides for the application of any international convention, treaty or protocol of which Nigeria has ratified. The section provides thus: “Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with 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”. This provision is unique in that it renders impotent, as far as international labour standards, Conventions or Treaties is concerned, the constitutional requirement that no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.⁴¹ The implication of this provision is that claimants can now invoke, before the National Industrial Court, the relevant provisions of international treaties ratified by Nigeria notwithstanding that same have not been domesticated by an Act of the National Assembly. Thus, the judicial authority of *Abacha v Fawehinmi*⁴² on the question of domestic application of international conventions is no longer a good law as far as international labour conventions or treaties is concerned. In the same vein, the case of *MHWUN v Minister of Health & Productivity*⁴³ will be decided differently under this regime.

This development is applauded because, before the coming into effect of the Third Alteration Act 2010, Nigeria was constantly under the criticisms of the International Labour Organisation (ILO) for failure to domesticate international labour conventions duly ratified. The criticisms were not unfounded given the fact that the principle at international sphere is *pacta sunt servanda*, that is, treaties are binding upon the parties to them and must be performed in good faith. The Third Alteration Act is therefore commendable in that it has successfully removed the ‘constitutional clog’ in the wheel of enforcement of international labour conventions duly ratified by Nigeria. The court is now empowered to invoke and enforce the arrays of international labour conventions duly ratified by Nigeria (but not yet domesticated) and most of which have acquired the force of customary international law recognized by civilized nations of world.⁴⁴ Unfortunately, however, this provision relates only to international conventions or treaties relating to labour, employment, workplace or industrial relations and not to international treaties generally. What this means is that the vast array of human right treaties

⁴⁰ B. Atilola, “National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act” available at, nicn.gov.ng/.../ accessed 28 May 2015.

⁴¹ Ibid

⁴² supra

⁴³ supra

⁴⁴ B. Atilola, National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act, available at, nicn.gov.ng/.../ accessed 28 May 2015

will continue to suffer the constraint of section 12 unless something akin to the third alteration act of 2010 is done in relation to them.

6. Conclusion and Recommendations

International treaties arguably remain a major source of Nigerian law. The fundamental principle of treaty law is undoubtedly the proposition that treaties are binding upon the parties to them and must be performed in good faith. This rule is known in legal parlance as *pacta sunt servanda* and is arguably the oldest principle of international law. Every State, however, has its own rule as regards domestic application of international treaties. While treaty provisions, in some states, automatically acquire the force of law upon ratification, some others insist that such treaty must have been domesticated by a legislative instrument before same becomes enforceable within the municipal legal order.

As we have shown in this work, Nigeria adopts the latter approach and as such, no treaty is enforceable in Nigeria except same has been ‘transformed’ or domesticated via a legislative enactment. However, it would be nothing but insincerity if the readiness to ratify international treaty is only fuelled by the reliance on the ‘shield’ provided by section 12. Furthermore, according to Egede,⁴⁵ the requirement that a treaty must be enacted as a municipal law before it can be enforced in Nigeria appears to be merely a historical incidence and a colonial relic. As a result of the years of being under the colonial domination of Britain, Nigeria, on independence, automatically adopted the British practice requiring a treaty to be transformed into law before it could apply locally. In the Supreme Court of Nigeria case of *Ibidapo v Lufthansa Airlines*,⁴⁶ Wali JSC explained, “Nigeria, like any other Commonwealth country, inherited the English common law rules governing the municipal application of international law.”⁴⁷ It is therefore time for Nigeria to live up to her independent status by shedding this unwarranted traces of colonial heritage, more so as holding on to them does not attune to modern realities.

Again, as we have shown in this work, the intention of section 12 of the constitution was neither to shield insincerity nor act as a cloak under which any should hide to avoid discharging an obligation that was voluntarily undertaken. It was not to be used to deny the average Nigerian the dividend of a truly just and progressive society duly recognized in the international community; instead, it was to be a sword to defend her sovereignty and territorial integrity as enshrined in the principle of the supremacy of the constitution, something that would still be realized if the recommendations made in this work are effected. The need to preserve the supremacy of the Nigerian Constitution and to defend her sovereignty can never be overemphasized. However, it should be noted that the concept of sovereignty in international law is constantly undergoing redefinition such that the notion of sovereignty at the time the constitution was drafted and what it is now will definitely not be the same. Therefore, there is need for an amendment of section 12 or an alteration of same to reflect modern day realities and take advantage of the benefit of globalization, for in the face of the globalization, no country can afford to stand isolated.

While it is true that Nigeria cannot allow her constitution to be overrun by international Treaties, it is also true that it is unfair to deny her citizens some rights that are protected by them. In the light of these warring extremes, there is need for the balance which a re-examination of section 12 of the Nigerian Constitution will achieve. Given the fact that section

⁴⁵ Ibid

⁴⁶ [1997] 4 NWLR (Part 498) 124.

⁴⁷ [1997] 4 NWLR (Part 498) 124 at 150.

12 was intended to ensure cooperation between the executive and the legislature, as evident in the provision for checks and balances encapsulated therein, there is need for a coordination of efforts between the two arms of government. The signing of a treaty should not be shrouded in secrecy. To that end, it is recommended that where possible, the legislature should be informed before an international instrument is signed; such advance knowledge on the part of the legislature will make for commitment in enforcing treaty obligations.

In addition, it is recommended that a similar enactment like Third Alteration Act of 2010 be made in relation to human rights treaties especially ones that provide for social and economic rights which are presently unenforceable under the 1999 Constitution as amended. Again, members of the legal profession in Nigeria should borrow a leaf from what is happening in other jurisdictions like Canada, for instance, that operate the same dualist system, where Nwapi has noted that ‘courts and litigants look to international law to resolve a great range of domestic legal issues,’⁴⁸ unlike the present situation in Nigeria where international law is rarely applied and where there is an unenthusiastic attitude towards it. The attitude of members of legal profession will go a long way in determining the extent to which international laws can be used to enforce the rights of Nigerians in the domestic/municipal courts.

⁴⁸ C. Nwapi, “International Treaties in Nigerian and Canadian Courts” (2011)19 *Afr. J. Int'l & Comp. L.* 38.