SECTION 12 OF THE 1999 CONSTITUTION OF NIGERIA AND TREATY IMPLEMENTATION: A LEGAL CRITIQUE*

Abstract
No country can survive without some form of cooperation and collaboration with other States. Nigeria's participation in the international arena is effectuated through the instrumentality of treaties which could be bilateral or multilateral. Under the Vienna Convention on the Law of Treaties, the ratification of a treaty binds a state party and the principle of law has been that no State shall be allowed to plead domestic law to evade its obligation under a treaty. Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) subordinates the legal bindingness of all treaties to which Nigeria is a party to their domestication in Nigeria through an Act passed by the National Assembly. Section 12 of the 1999 Constitution can only operate to the international obligations of Nigeria that are to be implemented domestically and not to those possessing international or trans-boundary character. The section is unnecessarily restrictive and inhibits the implementation of progressive treaty rights in Nigeria. It is recommended in this paper amongst others that there is need for the amendment of section 12 of the 1999 Constitution in order to make directly enforceable the provisions of treaty obligations assumed by Nigeria under international law, and that Nigeria can use the mechanism of reservation, non-ratification or non-adoption to evade or postpone treaty obligations she does not intend to implement within the foreseeable future rather than blanket refusal to implement her treaty obligations under the guise of section 12 of the 1999 Constitution.

Keywords: Section 12 of 1999 Nigerian Constitution, Treaty Obligation, Implementation, Ratification, Domestication

1. Introduction

Nigeria is a member of the international community. As a member of the international community, she has been involved in the process of negotiating, signing and ratification of many international treaties. Most of these treaties have great influence on domestic laws of States including Nigeria. For example, provisions of the International Covenant on Civil and Political Rights and that of the Economic, Social and Cultural Rights of 1966 respectively have all permeated all the constitutions of Nigeria which have always included two chapters devoted to the economic, social and cultural rights and civil and political rights.[1] Ironically, Nigeria is always overzealous in negotiating and signing of treaties at the international scene and pays less attention to the domestication of such treaties at the home front. It is only when a treaty is domesticated and the rights provided, expressed or recognised in it enforced within municipal or domestic courts of a State that those rights can be protected.[2] Treaties entered into by Nigeria do not automatically form part of her domestic laws unless specifically domesticated by way of enactment into laws by the National Assembly of Nigeria. This affects the applicability of treaties in the country. Over the years, the National Assembly of Nigeria has shown little interest in discharging its function in this regard by not performing this important constitutional function hence, many of the treaties to which Nigeria is a party are yet to be domesticated in the country after many years of their ratification.

There has been increasing need for treaties because the world's interdependence has intensified.[3] Therefore, one can submit that treaties remain the bedrock of contemporary international law. The importance of treaties within the realm of international law cannot be underestimated. The rise in regional operations, increase in the number of sovereign States /nations as well as international organisations have led to increase in the number of treaties today.[4] One of the major incidents of sovereignty is the power or ability of a sovereign State to enter into binding agreement at the international level which is usually by way of negotiating, signing and ratification of treaties. This right of a sovereign State to enter into treaties has been recognised through the provision of the 1933 Montevideo Convention on the Rights and Duties of States. Treaties entered into by sovereign States can be either bilateral or multilateral. It is said to be bilateral when entered into between two State Parties only and multilateral when there are three or more parties entering into it.

Generally, ratification is the way parties to a treaty declare their intention to be bound by the provisions of a treaty they had signed. In the case of a bilateral treaty, it becomes effective on ratification while a multilateral treaty usually awaits ratifications of the required number and, possibly, a stipulated time thereafter. Ninety days are usually adopted in many treaties. A sovereign State can still become a party to treaty it is not a signatory. This is done through the process of accession. Parties who had not signed a treaty can only accede or adhere to it once it has become operative. Hence, accession or adhesion has the effect of signature and ratification on a treaty.

The executive power of the Federation is vested in the President. This power extends to the proper execution and maintenance of the Constitution being the supreme law of the land and every other law made by the National Assembly of the Federal Republic of Nigeria and every matter with respect to which the National Assembly has power to make law.[5] This constitutional provision seemingly vests the power to negotiate, sign and ratify treaties in the Executive Arm of Government on behalf of the country. In practice, individual Ministries, Departments and Agencies (MDAs) with active participation in most cases of the Federal Ministry of Justice and Ministry of Foreign Affairs discharge this responsibility on behalf of the Government of the Federation. Therefore, upon successful conclusion and signing of a treaty, a Council Memorandum is expected to be prepared by the focal MDA for presentation to the Federal Executive Council for consideration and subsequent approval.

There are two main theoretical approaches that determine the way international law relates with national or municipal legal system of a State. These are monism and dualism. There is a total adherence to the dualist approach by Nigeria. This is a common practice to most

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[1] Chapters II and IV of the Constitutions of Nigeria; E Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' [2007] 51 (2) *Journal of African Law;*249 <http:// journals.cambridge.org/JAL> accessed 17 March 2020.
[2] E A Oji and Others, 'The Relevance of International Labour Organisation Conventions to Promote Rights of Workers and Fair Labour and Industrial Practice in Nigeria' [2016] (7) (1) *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)*;65.
[3] 'Australian Government Department of Foreign Affairs and Trade' <http://www.dfatgov.au/treaties/making/ making1/html> accessed 17 March 2020.
[4] J A S Grenville, *The Major International Treaties 1914-1973* (Mathewn and Co. Ltd, London 1974) 1.
[5] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 5(b).

common law countries.[6] This suggests that treaties to which Nigeria is a party and had ratified do not have automatic transformation into the domestic laws of Nigeria except there has been a kind of legislative intervention by way of specific enactment of such treaties into law by the National Assembly in line with the provision of section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Not until that is done such treaties cannot be regarded as laws nor have the force of law in the country. This is worrisome as the relevance of treaties to the development of a country like Nigeria on the specific areas covered therein cannot be overemphasised. Treaties are also capable of filling the gaps in the Nigerian legal system and knowledge on the areas they cover. Unfortunately, the National Assembly of Nigeria is yet to show any serious commitment in transforming treaties to which the country is a signatory into laws by way of domestication as required by the Constitution. A treaty does not have the force of law in Nigeria no matter how important or useful it provision may be. This position has been pronounced upon by the Supreme Court of Nigeria in the case of *Abacha v Fawehinmi*,[7] where the apex court held per Oguntade JSC (as he then was) that treaties not domesticated have no force of law.

Pursuant to the provision of the Vienna Convention on the Law of Treaties 1969, treaties bind a State party once ratified. The practice in Nigeria as it relate to the effectiveness of treaties remains a serious hindrance to the enjoyment of the benefits derivable from the provisions of treaties to which Nigeria is a signatory as section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) like other previous ones requires treaty to which the country is a signatory to be first enacted into law by the National Assembly through the process of domestication before it can have the force of law. This constitutional provision is a total disregard to the general principle of international law that a country is not allowed to plead its domestic law as a ground or reason for its failure or refusal to carry out its obligation under international law as created by the treaty. The provision of section 12 of the Constitution also conflicts with the provision of section 19 (d) of the same Constitution which provides to the effect that one of the foreign policy objectives of the country shall be respect for treaty obligations and international law. It also amounts to disregard to the principle of *"pacta sun servanda*". This section of the Constitution inhibits the implementation of progressive treaty rights. Nigeria can decide to be selective in domestication of treaties choosing the ones she likes mostly where such treaties do not impose many obligations on her and abandons others that would have been more beneficial to every Nigerian by virtue of this constitutional provision.

2. Clarification of Terms

Treaty
A treaty has been described as means of concluding an international agreement between States and usually in written form as well as governed by international law, it could either be embodied in a single instrument or in two or even more related instruments as well as whatever its particular description.[8]

Treaty Obligations
Treaty obligations are duties that must be carried out by parties to it as according to a treaty they have entered into. State parties to treaty are encouraged to always carry out their treaty obligation. The best way of doing this is by ensuring its implementation at their home fronts. The Vienna Convention on the Law of Treaties discourages States from defeating the object as well as purpose of a treaty even before such treaty enters into force.[9]

Ratification
It is the final process of establishing consent to be bound by the provisions of a treaty by all the parties to it.[10] It is seen as an international act whereby a State Party to a treaty signifies its intention to be bound by its provisions. It defines the international act whereby a State clearly indicates its consent to be bound to a particular treaty if the parties intended to show their consent by such an act. In the case of bilateral treaties, the act of ratification is generally accomplished through the exchange of the requisite instruments, while in the case of multilateral treaties the normal procedure is for the depositary to collect the ratifications of every State, keeping all parties informed of the situation.

Domestication
This is the transformation of treaties into municipal law.[11] It is the subjection of treaties made on behalf of the Federation at the international scene to the legislative process, as is the case with other municipal legislation. 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.[12] Domestication of treaties is affected by the approaches of monism and dualism.[13]

3. Scope of Section 12 of the 1999 Constitution
The scope of the provision of section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) dealing with treaty domestication is examined in this segment. The section provides the mode by which a treaty might be made a part of Nigerian law. What this means is that any treaty to which Nigeria has chosen to bind itself internationally and under which it has rights, that to attain a local enforceability status such a treaty must be subjected to a process; to wit: through an Act of the National Assembly.[14] However, it is argued that notwithstanding this clarity, an element of uncertainty is hovering over this aspect of Nigerian jurisprudence. In a word,

[6] C A Okenwa, 'Has the Controversy between the Superiority of International Law and Municipal Law been Resolved in Theory and Practice?' [2015] (35) *Journal of Law, Policy and Globalization*; 116.
[7] (2000) FWLR (pt 4) 553 at 586.
[8] Vienna Convention on the Law of Treaties 1969, art 2(1)(a).
[9] *Ibid*, art 18.
[10] A Garner (ed), *Black's Law Dictionary* (8th edn, West Publishing Co., Minnesota 2004) 1540.
[11] M N Shaw, *International Law* (4th edn, Cambridge University Press, New York 1997) 105.
[12] H J Steiner and P Alston, *International Human Rights Law in Context: Law, Politics and Morals* (2nd edn, Oxford University Press, New York 1988) 36.
[13] *Ibid*.
[14] A Olawale, 'Domesticating International Treaties' *The Nation* (Lagos, 19 September 2013) 1.

arguments are being advanced that whether or not a treaty might be taken advantage of in Nigeria is a matter not exclusively a matter for section 12(1) of the 1999 Constitution. It suffices to say that the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, more particularly, section 254(c) thereof, and arguments along lines of indirect and/or implied domestication by reference are at the centre of this argument.[15] The legal effect of a treaty in Nigeria is determined by the fact that it has been enacted into law as required by the provision of the 1999 Constitution thus: (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".[16] Therefore, by virtue of this provision of the Constitution, Nigerian courts do not have the power to apply the provision of a treaty that has not been enacted into law as it is this legislative approval that makes it enforceable in the country.

4. Power of the National Assembly with Respect to Treaty Implementation

The power of the National Assembly in the domestication of treaties in Nigeria is not only primary, but also an exclusive one. Thus, the 1999 Constitution of Nigeria gives the National Assembly the power to enact every treaty to which Nigeria is a signatory into law before such treaty can have the force of law.[17] It is very obvious from this constitutional provision that the National Assembly of Nigeria is the only legally recognised organ of government responsible for the implementation of treaties in the country. The reason for this argument is that the National Assembly is the only body empowered by the Constitution to carry out the function of law making on behalf of the Federal Government. It would result to usurpation of the legislative powers of this entity if treaties made by the executive automatically have the force of law in the country without the intervention of the National Assembly.[18] The power of the National Assembly has to enact laws in Nigeria for the purpose of treaty implementation is not limited only to matters contained in the Exclusive Legislative List as well as the Concurrent Legislative List of the Constitution, rather it also extends to matters listed under the Residual List.[19] Hence, the Constitution provides that "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."[20] This empowers the National Assembly to carry out the function of law making for the Federation of Nigeria or any part thereof concerning matters in the Concurrent Legislative List as well as residual matters for ensuring the implementation of a treaty.[21]

The process involved in the enactment of a treaty into law by the National Assembly in Nigeria is similar to the process involved in the enactment any other bill into law by the same body.[22] Although, a bill for an Act of the National Assembly for the implementation of a treaty with regard to matters not included in the Exclusive Legislative List is not to be presented to the President of the Federal Republic of Nigeria for assent.[23] It has been argued that it is not visible why this provision of the Constitution is limited to bills relating to matters outside the Exclusive Legislative List. Therefore, every bill for Act of the National Assembly for implementation of treaties ought not to be presented to the President of the country for assent, as such treaties were signed as well as ratified by the Executive arm of Government from the onset.[24]

5. Legislative Competence of National Assembly on Treaty Matters not included in Exclusive Legislative List

The process of treaty implementation with respect to matters not contained in the Exclusive Legislative List of the 1999 Constitution of Nigeria takes different steps. The law requires that a bill for an Act of the National Assembly or implementation of a treaty concerning matters outside the Exclusive Legislative List of the Constitution can only be enacted into law where it is ratified by a majority of State Houses of Assembly in Nigeria.[25] This is a way of ensuring the contribution of State Houses of Assembly to the implementation of treaties in the country as benefits of treaties affect every state.[26] However, it has been argued that this constitutional requirement amounts to a clog in the wheel of the legislative power of the National Assembly as well as in the area of domestication of treaties. This argument is based on the fact that is it a difficult task to secure ratification of a majority of all the States Houses of Assembly in the country.[27] Therefore, this paper will be making a case for an amendment of the 1999 Constitution in order to relax this procedure.

6. Ramification of Majority of States within Nigeria

The practice with regard to treaty implementation in Nigeria is that for a bill for an Act of the National Assembly for purposes of implementation of a treaty concerning matters not within the Exclusive Legislative List as contained in the 1999 Constitution can only be enacted into law if it is ratified by a majority of all the State Houses of Assembly in the country.[28] As noted earlier, by this arrangement, State Houses of Assembly which otherwise have exclusive legislative power over matters designated as residual under the Constitution, and equally share in the performance of legislative power with the National Assembly over matters contained in the Concurrent Legislative List, have a say in the process of treaty implementation that will definitely affect their respective states.[29] This constitutes a challenge to domestication of treaties in Nigeria as it is not an easy task securing ratification of a majority of all the States Houses of Assembly in Nigeria. This has been described as a process that is even more difficult than a simple majority of two-thirds (2/3) of States

[15] *Ibid*.
[16] (n5), s 12(1).
[17] *Ibid*, s 12(1).
[18] C E Okeke and M I Anushiem, 'Implementation of Treaties in Nigeria: Issues, Challenges and The Way Forward' [2018] 9 (2) *Nnambi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)*;219 <https://www.ajol.info/index.php/naujilj/article/view/168850> accessed 20 April 2021.
[19] *Ibid*.
[20] (n5), s 12(2).
[21] Okeke and Anushiem (n18).
[22] (n5), s 58; *Ibid*.
[23] *Ibid*, s 12(3).
[24] Okeke and Anushiem (n18).
[25] (n5), s 12(3).
[26] Okeke and Anushiem (n18) 220.
[27] *Ibid*.
[28] (n5), s 12(3).
[29] Okeke and Anushiem (n18) 220.

Houses of Assembly required for the amendment of the Constitution,[30] It is argued that it is ideal for a bill for the domestication of a treaty be passed into law by the National Assembly alone while it only comes into force at the state level through domestication by the State Houses of Assembly. This will ensure easy domestication of treaties in Nigeria. This line of argument is similar to what was recognised as the practice under the provision of section 74 of the Constitution of the Federal Republic of Nigeria 1963 where similar bill was only operational in a region only when the Governor consent to its having effect in the region.

7. Section 12 and Municipal Enforcement of Treaty Obligations within Nigeria

Generally, international law does not allow municipal law to avoid treaty obligations, international law restrains municipal law in relation to the acquisition of treaty rights and obligations.[31] While section 12 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) works to separate municipal from international law, certain principles of treaty interpretation as well as application operate to render or cause such separation ineffective. In the context of section 12 of the CFRN 1999, one of the most important of these principles came up in the land and maritime boundary case between Cameroon and Nigeria. That is, in the case of *Cameroon v Nigeria,*[32] where the plaintiff filed a suit on dispute bordering on the quest of sovereignty over the Bakassi Peninsula. The plaintiff later extended the subject of the dispute in 1994 to include question relating to sovereignty over her territory in the area of Lake Chad as well as the frontier between her and defendant from Lake Chad to the sea. In the determination of the case, the ICJ considered the argument by Nigeria that a treaty entered into by the two States; the Maroua Declaration of 1975 was not valid. The defendant assailed the validity of the 1975 treaty on the ground that it "was never approved by the Supreme Military Council in contravention of Nigeria's constitutional requirements."[33] The Supreme Military Council was the Federal law-making body in 1975 just as the National Assembly today. This argument was rejected by the ICJ that the treaty in issue could be subject to Nigerian Constitutional law. The international court emphasised the provision of the VCLT to the extent that a State may not "invoke the provisions of its internal law as justification for its failure to perform a treaty."[34] By the 1975 Nigeria's constitutional arrangement, it was demanded that obligations should not arise in relation to the Maroua Declaration. Nevertheless, international law as demonstrated by relevant provision of the VCLT as well as others negated the position of Nigeria's constitutional law and as the same time confirmed the treaty obligations that defendant had accepted by signing the Maroua Declaration.

It is a rule of international law as recognised under the VCLT that if a rule of internal law is objectively evident and also of fundamental importance then the violation of such rule may invalidate the consent to be bound by a treaty.[35] Therefore, it is appealing to make the erroneous argument that section 12 (1) of the CFRN 1999 is of essential importance and that it should be objectively evident to other States negotiating treaties with Nigeria.[36] In disagreeing with the argument of the defendant, the ICJ held that inter alia that there is absence of general legal obligation for every State to keep itself informed of legislative as well as constitutional developments in other States so long as such developments are or may become important for the international relations of these States.[37] The matter took many years of hearing before the ICJ finally delivered judgment on 10/10/2002. The case was decided in favour of the plaintiff with the international court holding that the boundary between the two countries is delimited by the Anglo-German agreement of March 11, 1913. Once a state becomes a signatory to a treaty, that state is bound by its provisions. Where there is conflict between the domestic law of that state and the international treaty signed, the state is bound by the provisions of international treaty.[38] Section 12 of the CFRN 1999 remains a barrier to the enforcement of treaty obligation in Nigeria as it prevents the observance and application of treaties in the country except they have been enacted into law by the National Assembly by way of domestication.

8. Treaty Making under the 1999 Nigerian Constitution

It is a well established principle of international law that all States are competent to enter into treaty concerning matters that fall within its sovereignty,[39] but at times, to locate the department that is responsible for the negotiation and ratification of treaty in Nigeria may not be easy. Under the Nigerian Constitution the law and procedure on treaty making capacity was not documented. What is visible in the constitution is treaty implementation.[40] However, Nigerians Treaties (Making Procedure etc) Decree No 16 of 1999[41] classifies treaty into three basic categories and conditions which they must satisfy. They are: (a) law-making treaties which affect or modify existing legislation or powers of the National assembly; these must be enacted into law (b) agreements which impose financial, political and social obligations or have scientific or technological importance, these must be ratified (c) those that deal with mutual exchange of cultural and educational facilities need no ratification. Emanating from the above, therefore, it is submitted that treaty making under Nigerian constitution is not enough. It has been submitted that a comprehensive law that will spell out who will be responsible for making treaty with other nations is needful.[42] In the United States of America, for example, the position is well spelt out. The power to make treaty resides with the president with the advice and consent of the Senate, and the concurrence of two-thirds of the senators.[43] The 1999 Constitution addresses the issue of treaty making and its implementation under Section 12 thereof. This refers to the process of

[30] (n5), s 8.
[31] E O Okebukola, 'The Application of International Law in Nigeria and the Façade Of Dualism' [2020] (11) (1) *NAUJILJ*;26.
[32] (2002) ICJ 303.
[33] *Ibid*, 109.
[34] (n8), art 27.
[35] *Ibid*, art 46.
[36] (n32), 427 at para 258.
[37] *Ibid*, 131 at para 266.
[38] B Abegunde, 'Issues in the Application and Enforcement of International Treaties before a National Court: Nigeria and Selected Jurisdictions in Perspective' [2019] (2) (3) *Journal of Law and Judicial System*;40.
[39] *Britain and Others v Germany (The Wimbledon Case)* (1923) PCIJ Series A No 1.
[40] (n5), s 12.
[41] Now Cap T16, Laws of the Federation of Nigeria 2004; B I Olutoyin, 'Treating Making and Its Application under Nigerian Law: The Journey So Far' [2014] 3 (3) *International Journal of Business and Management Invention*;8 <www.ijbmi.org> accessed 20 September 2020.
[42] B I Olutoyin, 'Treating Making and Its Application under Nigerian Law: The Journey So Far' [2014] 3 (3) *International Journal of Business and Management Invention*;8 <www.ijbmi.org> accessed 20 September 2020.
[43] Constitution of the United States of America, s 11(2); L Henkin, 'Restatement of the Foreign Relations Law of the United States (Revised)' [1980] (74) *American Journal of International Law* (*AJIL)*; 954.

domesticating a treaty in Nigeria. The Constitution does not make provision for who and under what circumstances would a treaty be entered into. It equally fails to make provision for the arm of government that is responsible for entering into treaty on behalf of the government of the Federal of the Federal Republic of Nigeria at the international level.

10. Enforcement of Treaty under 1999 Constitution

Nigeria has ratified many international treaties on a wide range of subjects; some of them have been domesticated thereby guaranteeing their domestic application or enforcement before Nigerian Courts. Some others even though ratified are yet to be domesticated in Nigeria, thereby casting a big doubt on their enforcement before a Nigerian court, in view of the provisions of section 12 of the 1999 Constitution. Nigeria subscribes to the dualist school of thought in application of treaty in the country. By this, it is meant that international conventions or treaties are not self enforcing in Nigeria's municipal legal system even as the country is signatory to them.[44] Rather, to be applicable, they are required to be enacted by parliament as part of the municipal laws of the country. Section 12(1), (2) and (3) of the 1999 Constitution fully sets out the procedure for transforming an international convention or treaty into a municipal law of Nigeria. The section provides to the effect that a treaty between Nigeria and other country can only be applicable as well as enforceable in Nigeria when enacted into law by the National Assembly of Nigeria.[45] The National Assembly of Nigeria is empowered by the 1999 Constitution of Nigeria to make laws concerning matters not included in the Exclusive Legislative List thereof for the purpose of ensuring the implementation of a treaty.[46] A bill to give effect to this can only be enacted when ratified by a majority of all the Houses of Assembly in the country.[47]

The provision of section of the 1999 Constitution has been interpreted judicially in Nigeria by Supreme Court in the case of *Abacha v Fawehinmi*.[48] In that case, the Supreme Court held that an international treaty entered into by the Government of Nigeria only becomes binding when enacted into law by the National Assembly. Continuing further, the court also held that an international law has no force of law capable making its provisions justiciable or enforceable in Nigerian courts before its enactment into law by the National Assembly. The court also made certain clarification to the extent that such a treaty even when enacted into law is subordinate to the Nigerian Constitution and could be repealed just like any ordinary legislation in spites of its international flavour.[49] In the enactment of an Act to implement a treaty ratified by Nigeria, the National Assembly does not need to involve the states at all where the subject matter of the treaty is in respect of matters within the legislative competence of the federal government as contained in the Exclusive Legislative List shown in the Second Schedule, Part I of the 1999 Constitution. Furthermore, where an Act of the National Assembly is passed to transform a treaty which subject matter is in respect of a matter falling within the Concurrent Legislative List contained in the Second Schedule Part II of the 1999 Constitution without the ratification of the states, such a legislation is not applicable in any state except the Federal Capital Territory of Nigeria.

The above is submitted to be the implication of section 12 (2) and (3) when read together. Since section 12(2) confers power on the National Assembly to make laws with regard to matters not included in the Exclusive Legislative List for the purpose of ensuring the implementation of a treaty, it impliedly means that the power extends to making laws with respect to matters in the Concurrent Legislative List and matters which are otherwise residual for the states, not being listed in the exclusive or concurrent lists. As section 12(3) requires the ratification of such law made by the National Assembly pursuant to section 12(2), it means that without such ratification by the Houses of Assembly of the states, the law is inoperable since section 12(3) prohibits its enactment. Therefore, the provision of the 1999 Constitution in Nigeria on the enforceable hinders the enjoyable of the provisions of undomesticated treaties in Nigeria. It has been submitted that it is in the course of the enforcement of international law (treaty) within the municipal courts of a country that those rights of individuals, as expressed and protected in the relevant international law can be protected.[50]

11. Conclusion and Recommendations

This paper investigated the extent and ramification of section 12 of the 1999 Constitution vis-à-vis Nigeria's obligations under international law. It found out that section 12 can only operate to the international obligations of Nigeria that are to be implemented domestically and not to those possessing international or trans-boundary character. Therefore, the section is unnecessarily restrictive and inhibits the implementation of progressive treaty rights in Nigeria. The role of treaties in the development of the legal system of Nigeria cannot be overstated. Domesticated treaties in Nigeria are capable of filling the gaps in knowledge in the area of their coverage. A good example is the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 2004 which makes some provisions of Chapter II of the Constitution justiciable. The Constitution also hinders the full enjoyment of this domesticated treaty in Nigeria as the economic, social and cultural rights are placed under the non-justiciable provisions of the Constitution "Chapter II" by virtue of the provision of section 6 (6) (c) and the civil and political rights under Chapter IV which are justiciable. Undomesticated treaties have no force of law in Nigeria as envisaged in section 12 of the CFRN, yet they play very important role in the enthronement of a viable domestic legal system in the country. Undomesticated treaties also constitute persuasive authority for Nigerian domestic courts. They serve as guides in the interpretation of statutes in Nigeria. They also provide guidance to the National Assembly in law-making process mostly in the area of human rights law hence, the urgent need for amendment of the provision of section 12 of the 1999 Constitution.

The following measures may be helpful. First, section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be amended in order to make directly enforceable the provisions of treaty obligations assumed by Nigeria under international law. Second, Nigeria should use the mechanism of reservation, non-ratification or non-adoption to evade or postpone treaty obligations

[44] M Chiam, 'Monism and Dualism in International Law'<www.oxfordbibliographies.com/view/document/obo 97 80199796953/obo-9780199796953-0168.xml> accessed 25 September 2020.
[45] (n5), s 12(1).
[46] *Ibid*, s 12(2).
[47] *Ibid*, s 12(3).
[48] (2000) FWLR (pt 4) 533 at 585-586.
[49] *Ibid*.
[50] E A Oji and Others, 'The Relevance of International Labour Organisation Conventions to Promote Rights of Workers and Fair Labour and Industrial Practice in Nigeria' [2016] (7) (1) *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)*;65-72.

she does not intend to implement within the foreseeable future rather than blanket refusal to implement her treaty obligations under the guise of the constitutional provision. Third, the Treaties (Making Procedure, Etc) Act, Cap T20, Laws of the Federation of Nigeria, 2004 should be amended to pave ways for proper consultations with necessary Committees of the National Assembly in the procedure for treaty-making in Nigeria. Finally, some treaties should be categorised as self-executing. Human rights treaties should be made to fall under this category so as to allow Nigerians enjoy the rights recognised and protected by such treaties without waiting for the rigorous process of domestication which has been a serious challenge over the years. It is always unfortunate for Nigeria to participate in the process of negotiation and adoption of such treaties with reasonable and beneficial provisions without further step aimed at facilitating their application at the home front.