THE STATUS OF A TRANSFORMED TREATY IN NIGERIAN DOMESTIC PLANE: A CRITIQUE OF THE SUPREME COURT DECISION IN *FAWEHINMI V ABACHA**

Abstract

In Fawehinmi v. Abacha,[1] the Supreme Court of Nigeria decided that treaties are (with the exception of the Constitution) of a higher status than other Municipal Laws. The dissenting Judgement of Achike JSC in the Abacha's Case is that 'a treaty which has been incorporated into the body of Municipal Laws ranks at par with the Municipal Law.' This work however preferred the dissenting Judgement of Achike JSC to the view expressed by Ogundare JSC in the lead Judgement. It is worrisome that section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended which deals with the implementation and application of treaties in Nigeria does not state the status of the transformed treaty, therefore leaving it to the whims and caprices of the courts. No wonder there is conflict in reasoning of the Justices in the case of Fawehinmi v. Abacha. The research for this work is mainly through primary and secondary sources. The research found that despite the domestication of treaties in Nigeria by the National Assembly in accordance with the Constitution, the status of the transformed treaty is yet unknown. This work therefore examines the lapses in the Constitution with respect to the status of a transformed treaty in Nigeria including the pitfalls in Abacha's case and proffers suggestions.

Keywords: Status, transformation, treaty, domestication, Supreme Court.

1. Introduction

No doubt, treaties Constitutes the major means of entering into Agreement at International Scene. The Legislature nay the National Assembly in Nigeria plays a vital role in ensuring that treaties so made by the Executive are transformed and applied in Nigerian Courts. It is unarguably that it is the Executive arm of Government; the President of the Federal Republic of Nigeria that makes treaties on behalf of the people of Nigeria, while the National Assembly domesticates the treaty. This is why section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended provides thus: 'No treaty between the Federation and other Country shall have the force of law except to the extent for which any such treaty has been enacted into law by the National Assembly.' It is worrisome that the Constitution only provides for the process through which a treaty has to pass before it is applicable in Nigeria, it does not state about the status of the transformed treaty therefore leaving it to the whims and caprices of the courts. This study is a critique of the Supreme Court's decision in *Fawehinmi v. Abacha*.[2] Courts all over the world including the Supreme Court of Nigeria have the duty to interpret provisions of a piece of legislation.[3] Even though the Supreme Court's decision is final, its decision should be consistent with reason and common sense.

2. Treaty

Treaty is an International Agreement concluded between States in written form and governed by International Law whether embodied in a single Instrument or in two or more related Instruments irrespective of its particulars designation.[4] It is pertinent to state that a treaty is an Agreement between two Countries irrespective of the form and nature of it. The term 'treaty' itself is the one most used in the context of international Agreements but there are a variety of names which can be, and sometimes are used to express the same concept such as protocol, act, charter, covenant, pact and concordat.[5] They each refer to the same basic activity and the use of one term rather than another often signifies little or more than a desire for variety of expression. In International Law States are expected to uphold their treaties. 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.[6] This rule is termed *Pacta Sunt Servanda* and it is arguably the oldest principle of International Law[7] it was reaffirmed in Article 26 of the Vienna Convention on the Law of Treaties, 1969. In the Absence of *Pacta Sunt Servanda*, there is no reason Countries should enter into treaty obligations with each other. Treaty being an International Agreement must be obeyed by Parties to it and no conflict should exist between them.

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[1] (2000) FWLR) (Pt 4) p.533
[2].(2000) FWLR (Pt 4)
[3]. *Eze v. Gov, Abia State* (2010) 15 NWLR (Pt 1216) p.324
[4]. Article 2 of the Vienna Convention on the Law of Treaties, 1969.
[5].M N Shaw, *International Law* (United Kingdom: Cambridge University Press, 2014) 665.
[6].References to good faith are provided in Articles 26, 31, 46 and 69 of the Vienna Convention on the Law of Treaties, 1969
[7].M N Shaw, *International Law, op cit* at p.655

3. Transformation and Incorporation

The doctrine of transformation holds that before any rule or principle of International law can have any effect within a country, it must be converted into Municipal Law by specific adoption.[8] International treaties do not automatically become part of national law, it therefore, requires a legislation to be made by the Parliament for the Implementation of International Law in Nigeria.[9] This is called the process of transformation. Transformation of treaties into municipal law entails clothing them domestically by making them part of the statutes of the country but does not entail subjecting treaties to the vicissitudes of municipal politics.[10] In Nigeria, section 12(1) of the 1999 Constitution provides 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.' This Constitutional prohibition on Executive law making means that any treaty concluded by the Federal Republic of Nigeria would be regarded *eo nomine* as source of domestic law, until such has been transformed in accordance with the provision of the Constitution. In *The Registered Trustees of National Association of Community Health Workers Union of Nigeria & Ors v. Medical and Health Workers Union of Nigeria,*[11] the Supreme Court of Nigeria held that the International Labour Organization Convention, having not been domesticated in Nigeria had no binding effect in Nigeria.

Transformation may be achieved through two methods; by re-enactment and by reference.[12] Transformation by re-enactment or 'force of law' is when the implementing statute directly enacts specific provisions of the entire treaty usually in the form of a schedule to the Statute, whereas transformation by reference is usually contained either in the long and short titles of the Statutes or in the Preamble or Schedules.[13] The rationale behind domestication of treaty by legislatures according to a Learned Writer is to afford them an opportunity of providing a prominent role, even domineering role in the treaty making process.[14] Since the making of a treaty is within the jurisdictional provisions of the Executive, the Legislature sees the domestication process as a means of checking the activities of the Executive, apparently because law making function is that of the Legislature and not that of the Executive.

The doctrine of Incorporation postulates that International law should apply directly within a country without the need for transformation.[15] The positivists argue that the rules of International Law can only be applied within the Municipal area by a process of 'Specific adoption' or Incorporation', for they are separate systems. For treaties, there must be a transformation into domestic law, a substantive requirement that validates the application of treaty provisions to individuals.[16]Lord Denning made a fine distinction between Incorporation and Transformation in the case of *Trendtex Trading Corporation v. Central Bank of Nigeria,*[17] where he held thus: 'By Incorporation, the rules of International Law are incorporated into English Law automatically and considered to be English Law unless they are in conflict with an Act of Parliament while in Transformation, the rules of International law are not to be considered as part of English Law except in so far as they have been already adopted and made part of our law by the decisions of Judges or by Act of Parliament or by established custom'. According to Lord Denning in that case,[18] 'under the doctrine of Incorporation, when the rules of International Law change, our English Law changes with them, but under the doctrine of Transformation, the English Law does not Change, it is bound by precedent.' Consequently, Lord Denning gave a judgement that was in accordance with a developing customary rule of International Law but in conflict with *English stare decisis.* It is to be noted that in the case of *Trendtex Trading Corporation v. Central Bank of Nigeria,*[19] Lord Denning was of the view that transformation can take place in tripartite ways: decisions of Judges, Act of Parliament and established Custom. In Nigeria by virtue of the Constitution, there must be a transformation of a

[8].Anzitotti, II *Diritto Internationale nei Giudizi Inteni* (1950) p.177
[9]B I Olutoyin, '*Treaty Making and its Application under Nigerian Law: The Journey So Far',* (2014)(3) International Journal of Business and Management Invention, p.14
[10].*Ibid*
[11].(1996) 8 ECLR 1015
[12].B I Olutoyin, '*Treaty Making and its Application under Nigerian Law: The Journey So Far', op cit*
[13]A O Oyebode, '*Of Norms, Values and Attitudes: The Cogency of International Law'* (2011) An Inaugural Lecture delivered at the University of Lagos.
[14]M Mwagiru, *'From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Practice'* (2011)(3) Journal of Language, Technology Entrepreneurship in Africa No. 1, p.140
[15]M N Shaw, *International Law*, *op cit* at p.655
[16].U O Umozurike, *Introduction to International Law* (Ibadan: Spectrum Law Publishing, 2005) 30
[17].(1997) QB 529 (CA) pp.553-554
[18].*Ibid*
[19].Supra

treaty via Act of Parliament before same is applied as part of the Nigerian law.[20] Decision of Judges and established Custom no doubt are part of the sources of law but they cannot override the provisions of the Constitution. Nigeria is bound by the provisions of the Constitution which is the *grundnorm*.[21] His Lordship; Lord Denning in that case,[22] stated the advantages and disadvantages of the doctrine of Incorporation and Transformation as applied under English Law which the later can only be applied in Nigeria in accordance with the provisions of the constitution.

4. Crux and Facts in *Fawehinmi v Abacha*

The relationship between treaty and Nigeria Law became the subject matter for examination before the Nigerian Supreme Court in *Fawehinmi v. Sani Abacha.*[23] In that case,[24] the Applicant (Chief Gani Fawehinmi), a Legal Practitioner was arrested without warrant at his residence by Men of the State Security Service (SSS) and Policemen. He sought to enforce his fundamental right pursuant to the Fundamental Rights (Enforcement Procedure) Rules 1979 and in accordance with Article 4, and 12 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act. The Respondent argued that the various Decrees of the then Federal Military Government ousted the Jurisdiction of the court. While the trial court upheld the ouster clause, both the Court of Appeal and the Supreme Court rejected the clause. The area that became source of worry was the court's decision Per Pats Acholonu JCA when he posited that: '… by not merely adopting the African Charter but enacting it into our Organic Law, tenor and intendment of the Preamble and section seem to vest that (ie African Charter) with a greater vigour and strength than mere Decree for it has been elevated to a higher pedestal.' The question that readily comes to mind is by which court and by what law was it so elevated? The position adumbrated by Pats-Acholonu JCA was seriously criticized by a learned writer[25] that the decision could not stand the test of time and therefore advocated the need for a revisit of the decision by the Apex Court on this decision of utmost legal importance. Ogundare JSC varied the matter differently when he held that:

> No doubt Cap 10 is a statute with International flavour. Being so, therefore, I would think that if there is conflict between it and another Statute, its provisions will prevail over those of other statutes for the reason that it is presumed that the Legislature does not intend to breach an International obligation. To this extent, I agree with their Lordships of the court below that the Charter possesses a greater vigour and strength than any other domestic statute. But that is not to say that the Charter is superior to the Constitution.

The position of law is true in part and that is in respect of the supremacy of the Constitution. The Constitution provides for its bindingness over all persons and authority throughout the Federal Republic of Nigeria.[26] Where there is a conflict between the Constitution and any other law (including transformed treaty) such law shall subject to its inconsistency be void.[27] The dissenting opinion of Achike JSC is however preferred to the view expressed by Ogundare JSC in the Lead Judgement. Achike JSC held:

> The general rule is that a treaty which has been incorporated into the body of the Municipal Laws ranks at par with the Municipal Laws. It is rather startling that a law passed to give effect to a treaty should stand on higher pedestal above all other municipal law without more in the absence of any express provision in the law that incorporated the treaty into municipal law.[28]

This view was lauded as the correct position of the law by Enabulele when he submitted that the view expressed by Ogundare JSC that treaty-implementing legislation stands on higher pedestal than other laws is Unconstitutional and therefore preferred Achike's view.[29]

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[20].Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.
[21].Section 1, *Ibid*
[22].*Trendtex Trading Corporation v. Central Bank of Nigeria*, *supra*
[23].(2000) FWLR (Pt 4) P.533
[24].*Ibid*
[25]I O Babatunde, *'International Law before Municipal Tribunal: Has the Last Been Said by the Nigerian Supreme Court?'*(2005) (3) Igbinedion University Law Journal, pp. 91-99. The author was of the opinion that the lead Judgement by Ogundare JSC could not have been law but preferred the view of the dissenting, Judgement of Achike JSC where His Lordship held that indeed, in enacting the African Charter 'as an Act of our Municipal Law and as a Schedule to the only two sections of the Act is Cap 10 LFN 1990, a close study of that Act does not demonstrate, directly or indirectly, that it had been elevated to the highest pedestal in relation to other Municipal legislations.' The writer concluded that the Supreme Court of Nigeria need to revisit the matter and straighten the record in the interest of the development of International Law.
[26].Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended
[27].Section 1(3), *Ibid*
[28].*Fawehinmi v. Abacha*, *supra* at p.613
[29]A O Enabulele, '*Implementation of Treaties in Nigeria and the Status Questions; Whither Nigeria Courts'* (2009) (17.2) *African Journal of International and Comparative Law*, p.32

It is argued that the basis of the Supreme Court's decision regarding the position of treaties in the hierarchy of norms in Nigeria *vis-a-vis* other municipal statutes remain controversial. The court's decision was based on the premise that statutes with International flavour possesses 'a greater vigour and strength' than other domestic statutes. This premise was not predicated on any provision of the Constitution or any other Statute for that matter. Moreover, the reasoning apparently ignores the fact that under prevailing system at the time of Judgement, the 'Decree of the Federal Military Government Constituted the Fundamental Laws of the land having been elevated above the position of the Constitution as it were amongst the hierarchy of laws in Nigeria,[30] and could not have been fairly described as a mere Decree.'[31] With respect therefore, it is considered that the premise of the decision is a contradiction to the dualist characterization of Nigeria and inconsistent to the position that a treaty enjoys equal status with an Act of Parliament.[32] Furthermore, it is difficult to appreciate the basis for presuming that the legislature does not intend to breach an international obligation when the intention of the legislature was not the issue as the Statutes under Consideration were clear and unambiguous.[33] While in some countries,[34] the position occupied by treaties in the hierarchy of norms is expressly stipulated in the Constitution, the Nigerian Constitution is silent on the issue. However, section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended which portrays Nigeria as a dualist State by providing for the domestication of all treaties before they can apply within the country, implies that treaties, after domestication should occupy the same place occupied by other Nigerian Statutes; all being subject to the Nigerian Constitution. The confusion as to the position of treaties in Nigerian hierarchy of laws lies not in the adequacy or inadequacy of the Constitutional provision on treaties, but in the interpretation given to this provision by the Nigerian Courts.

5. Domestication and Application of Treaties in Nigeria

It is regrettable that the Constitution of the Federal Republic of Nigeria, 1999 as amended does not provide for treaty making power. Instead, the issue has usually been approached by the way of treaty implementation.[35] As a dualist State, International and Municipal Laws exist in Nigeria. There is supremacy of municipal legislation over International Laws, hence the need to domesticate treaties before their application within Nigeria. Once a treaty has been domesticated, it forms part of the body of the laws in Nigeria and it is therefore, irrespective of its international flavour, subject to the *grundnorm* within the Nigerian Legal Order.[36] This is confirmed by section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended which provide thus: 'No Treaty between the Federation and other Country shall have the force of law except to the extent for which any such treaty has been enacted into law by the National Assembly.' The side explanatory note of section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended along with item 31 of the Exclusive Legislative List makes it clear that the National Assembly's legislative role is limited to the implementation of treaties. According to Nwabueze,[37] section 12(1) of the Constitution reflects the inherited Common Law position that treaty-making is a purely Executive act that requires subsequent implementation within the country by way of legislation enacted by the Legislature. He explains that treaty-making and its implementation are two separate functions; the former for the Executive and the latter for the Legislature.[38] It is submitted that where a treaty made by the Executive is not municipalized by the National Assembly, it will apply internationally and still bind the whole Federation including the Legislators themselves. It will not have the force of law in Nigeria as same was not domesticated by the Legislature by virtue of Section 12(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. It is further submitted that implementation of treaties has the practical reasonableness because if the Legislature were to make treaties, it will be difficult if not impossible for the Legislature to go through the process of legislation[39] before a treaty can be made. The ratification and implementation of a treaty culminates in its application. Where a treaty is not applied the entire process is defeated. In view of this, the application of treaties is closely monitored by the United Nations through its

[30].Decree No. 1 of 1993

[31].This was the Description of Pats-Acholonu JCA in his Judgement.

[32]O E Nwebo, *Contemporary Issues in International Law and Diplomacy* (Owerri: Zubic Infinity Concept, 2020) p.133

[33].*Ibid*

[34]Such as the Republic of Senegal 2001 (Articles 96 and 98) and Benin 1990 (Articles 146 and 147)

[35]A O Oyebode, '*Treaty Making Powers in Nigeria in A Oyebode (ed) International Law and Politics: An African Perspective* (2003) Lagos: Bolabay Publishers, p.118

[36].Section 1 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

[37]B O Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (London: Sweet & Maxwell, 1983) pp. 255-256

[38].*Ibid*

[39]Note that a Bill requires First Reading, Second Reading, Committees Stage, Third Reading and Presidential Assent before it is passed into law. See Sections 58, 59 and 60 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Treaty Bodies.[40] These Bodies monitor the progress in the application of treaties basically through reports received from State Parties to treaties. It is through Treaty Reporting that the United Nations knows how States have fared in the implementation and application of respective treaties. Contained in most Treaties is an undertaking by State Parties to submit reports on the measures they have adopted and the progress made in achieving the objectives of the treaty.[41]

6. Dualism and Monism

On the relationship between International Law and Municipal Law, there are two major concepts; Dualism and Monism. Dualists view International and Municipal Legal Orders as mutually exclusive, each possessing its sources, subjects and subject matter.[42] According to the Dualists, International Law and Municipal Law are two distinct legal systems, so distinct that conflict between them is impossible. The Chief exponents of the dualist view are Triepel[43] and strupp[44] both of the positivist school of thought. Dualism is largely based on the concept of the State as sovereign and the 'highest good in society.'[45] Elucidating on this, Mohr explains that while the domestic legal Order was a reflection of the sovereign will be expressed inwardly, the International Legal Order represented a synthesis of the wills of various sovereigns manifested in the International Plane.[46] According to the Dualists, International Law can only apply within the sphere of Municipal law after domestication. Furthermore, they conclude that if ever there is a conflict between International Law and Municipal Law, the courts are to apply the latter.[47] Going by the proposition of dualism, treaties should be non-self-executing.[48] The position of the Dualists on the superiority of municipal law over International Law is in conflict with the holding of the Supreme Court of Nigeria in the case of *General Sani Abacha v. Gani Fawehinmi,*[49] where His Lordship; Justice Ogundare JSC stated that 'if there is a conflict between the African Charter on Human and People Rights (Ratification and Enforcement) Act 1990; a Statute with International flavour and another Statute, its provision will prevail over those of that other Statute for the reason that it is presumed that the Legislature does not intend to breach and international obligation.' It is to be noted that the Lead Judgement of Ogundare JSC in that case[50] is vehemently criticized in this work as the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act being a transformed treaty enjoys equal status with an Act of Parliament even though same is not provided by the Constitution.

Monism, on the other hand considers law as a whole with hierarchies: International law being regarded as superior to municipal law. Monists argue that law, whether municipal or International, has the same elements and is thus the same.[51] A leading proponent of the concept of Monism is Hans Kelsen. Kelsen viewed law as an 'Integrated United system of laws.'[52] According to him:

> International Law and national law cannot be different and mutually independent norms if the norms of both systems are considered to be valid for the same space and at the same time. It is logically not possible that simultaneously valid norms belong to different, mutually independent systems.[53]

[40]Such as the Committee Against Torture (CAT), the Committee on the Rights of the Child and the Human Rights Committee (HRC)

[41]For instance, Article 62 of the African Charter provides that 'each State Party shall undertake to submit every two years from the date the present charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedom recognized and guaranteed by the present charter.

[42]H Mohr, 'Treaties and the Legal Order' Paper Presented at the Graduate Seminar on Legal Research, Policy and Reform at Osgoode Hall Law School, New York University Canada, 1981, p.7

[43]H Triepel, *Volkerrecht Und Landesercht, Berlin, 1899 and A Conte, Human Rights in the Prevention and Punishment of Terrorism; Commonwealth Approaches: The United Kingdom, Canada, Australia and New Zealand* (London: Springer Heidelberge Dordrecht, 2010) 91

[44].R Struup, *Elements of International Law* (Berlin: 1930) p.47

[45].H Mohr, *Treaties and the Legal Order, op cit*

[46].*Ibid*

[47]R Higgins, *Problems and Process: International Law and How We Use It* (London: Oxford University Press, 1994) 205 in C Nwapi, '*African Journal of International and Comparative Law,'* March (2011) (19) No.1 at pp.38-65

[48].A O Enabulele, *'Implementation of Treaties in Nigeria and the status Question: whither Nigerian Court'? op cit*

[49].(2000) FWLR (Pt 4)

[50].*Ibid*

[51].M N Shaw, *International Law, op cit*

[52].H Mohr, 'Treaties and the Legal Order', *op cit*

[53].*Ibid*

Kelsen further argues that Municipal Law derives its validity from the International Legal Order.[54] According to Kelsen, since States are composed of individuals hence, individual human beings are the subject of both Legal Orders. The Monists thus conclude that where there is a conflict between both Legal Orders, the Courts are to apply International Law. Furthermore, International law is to be immediately applicable within the Municipal Legal Order without the need for transformation. Therefore, monism believes in self-executing treaties.[55]

While Civil Law Countries are traditionally monists in approach, Common Law Countries are traditionally dualists.[56] Nigeria is a dualist nation as can be garnered from the provisions of section 12 of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Based on this provision of the Constitution, the Supreme Court held in *Registered Trustees of National Association of Community Health Workers of Nigeria & Ors v. Medical and Health Workers Union of Nigeria,*[57] that the International Labour Organization Convention, not having been domesticated in Nigeria cannot therefore be applied in Nigeria. It is pertinent to state that International Law and Municipal Law are two separate laws as each operate on different planes. Treaty which is part of International Law can only be part of the Municipal Law if it has undergone the process of transformation. Treaty is a subject in International Law as it is between two or more States.

6. Conclusion and Recommendations

Treaties should be accorded its primus position in the affairs of a State within the Municipal System. The making and implementation of treaty is governed partly by International Law and Partly by the Municipal Law though the two systems regulate different aspects.[58] Treaties do not automatically have the force of law in Nigeria. Nigeria, being a dualist country requires treaties to be transformed into municipal law by the legislative arm of government before they can be enforced in Nigeria.[59] When treaties are so transformed, they occupy the same status as other Municipal laws save the Constitution which supersedes all other laws in Nigeria[60] The Constitution[61] of the Federal Republic of Nigeria, 1999 as amended only specifies the process through which a treaty has to undergo before it is applicable in the municipal plane, it does not state anything about the status of the transformed treaty thereby leaving same to the whims and caprices of the Nigerian Courts.[62] The Constitution ought to state the ranking of the transformed treaty,[63] whether it is above, at par or below the domestic law. The relationship between International Law and Nigerian Law should be well entrenched in the Constitution as it will solve the problem of status once and for all. Customary International Law should be incorporated in Nigeria's municipal plane as obtains in other jurisdictions.[64] There is the need for the Supreme Court of Nigeria to revisit the decision in *Abacha v. Fawehinmi*[65] because it was observed that the lead Judgement cannot be the correct position of the law. This is in view of the dissenting opinion of the same Court.[66] The revisitation of the decision by the Supreme Court will straighten the record in the interest of the development of International Law.

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[54].M N Shaw, *International Law, op cit*

[55].A O Enabulele, *'Implementation of Treaties in Nigeria and the Status Questions: whither Nigerian Court'? op cit.*

[56]J E A Abugu, *A Treaties on the Application of International Labour Organization Convention in Nigeria* (Lagos: University of Lajos Press, 2009)10

[57].(1996) 8 ECLR 1015

[58].E O Nwebo, *Contemporary Issue in International Law and Diplomacy, op cit*.

[59].Section 12 (1) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

[60].Section 1(3), *Ibid*

[61].Section 12(1), *Ibid*

[62]*Fawehinmi v. Sani Abacha, supra*, *Oshevire v. British Caledonia Airways Ltd* (1990) 7 NWLR (Pt 163)

[63]For Example, Article 59 Paragraph 2 of the German Basic Law provides that treaties have the rank of an ordinary statute. Section 231(4) of the Constitution of the Federal Republic of South Africa provides that any International Agreement becomes Law in the Republic when it is enacted into Law by National Legislation. Both Constitutions make treaty to be at par with domestic legislations.

[64]For Example, section 232 of the Constitution of the Republic of South Africa provides that Customary International Law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

[65](2000) FWLR (Pt4) p.533

[66]Note that the dissenting opinion of Achike JSC is that "a treaty which has been incorporated into the body of the municipal laws ranks at par with the municipal law. This is contrary to the lead Judgement of Ogundare JSC which held that the same treaty shall stand on a higher pedestal above all other municipal laws.