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BRINGING RIGHTS HOME: THE STATUS OF INTERNATIONAL LEGAL INSTRUMENTS IN NIGERIAN DOMESTIC LAW

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BRINGING RIGHTS HOME: THE STATUS OF INTERNATIONAL LEGAL INSTRUMENTS IN NIGERIAN DOMESTIC LAW*

Abstract:
This article demonstrates that, although Nigeria has ratified the relevant international conventions and instruments, these conventions and instruments are not binding on Nigeria until they are specifically incorporated into Nigerian law by enabling domestic legislation. However, it is argued that international conventions and instruments can be applied indirectly by the courts as an aid to interpretation. In addition, international instruments and conventions can also apply automatically where they have reached the point of recognition as part of customary international law. It is further argued that the ILO principles on freedom of association, for example, have attained the status of customary international law and should therefore be regarded as part of Nigerian jurisprudence. Overall, this article argues that Nigeria should amend section 12 of the 1999 Constitution to allow all international legal instruments to take automatic effect in domestic law.

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13 LEGISLATIVE PRACTICE REVIEW

I. Introduction

Nigeria has ratified the several international legal instruments which guarantee the protection of various human rights to citizens, such as the ILO Conventions Nos. 87 and 98, the Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW"), the Convention on the Rights of the Child (the "CRC"), the International Convention on the Elimination of All Forms of Racial Discrimination (the "ICERD"), and the International Covenant on Economic, Social and Cultural Rights (the "ICECSR"). In international law, a treaty ratified by a state becomes binding on that state to fulfill all the obligations arising under that treaty. This is in line with the principle of *pacta sunt servanda*, which provides that, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith." Moreover, a party may not invoke the provisions of internal law as a justification for its failure to perform a treaty." Nigeria is therefore under an obligation to respect, protect and fulfill the rights guaranteed under these international legal instruments in strict fidelity to this principle.

However, the question of the domestic application of such international instruments is a different issue altogether. Can individuals invoke international law norms before domestic courts? Can they gain rights under international law which they can enforce within the municipal legal system?

The purpose of this article is to examine the status of international legal frameworks in Nigerian domestic law. The article focuses, first,

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5. Ibid.
on the various international human rights instruments and Nigeria's obligation to obey them. This is followed by a discussion of the international legal framework in Nigerian domestic law. This part establishes that, although Nigeria has ratified the relevant international conventions and instruments, these conventions and instruments are not binding on Nigeria until they are specifically incorporated into Nigerian law by enabling domestic legislation.

However, it is argued that international conventions and instruments can be applied indirectly by the courts as an aid to interpretation. In addition, international instruments and conventions can also apply automatically where they have reached the point of recognition as part of customary international law. It is further argued that the ILO principles of freedom of association, for example, have attained the status of customary international law and should therefore be regarded as part of Nigerian jurisprudence. Overall, this article argues that Nigeria should amend section 12 of the 1999 Constitution to allow all international legal instruments to take automatic effect in domestic law.

2. The International Legal Framework

Nigeria is a member of the international community and party to several international treaties that impose an obligation to respect, protect, and fulfill the human rights. These treaties include the Convention on the Elimination of All Forms of Discrimination Against Women (the “CEDAW”), the Convention on the Rights of the Child (the “CRC”), the International Convention on the Elimination of All Forms of Racial Discrimination (the “ICERD”), the Convention Against Torture and
Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"),12 the International Covenant on Civil and Political Rights (the "ICCPR"),13 and the International Covenant on Economic, Social and Cultural Rights (the "ICESCR").14 These treaties impose on Nigeria the obligation to deter and prevent violations of those rights, and to investigate, prosecute, and remedy their abuses.15

The duty to investigate and punish also derives from the right to a legal remedy that these treaties extend to victims of human rights violations. Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy—including justice, truth, and adequate reparations—after they suffer a violation. Under the International Covenant on Civil and Political Rights (ICCPR), for example, governments have an obligation "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy."16 The ICCPR imposes on states the duty to ensure that any person shall have their right to an effective remedy "determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."17

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14. Ibid.
15. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, NRES/60/147, paras. II (c) and 24. Para. II: "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (c) Access to relevant information concerning violations and reparation mechanisms. Para. 24: "States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access."
16. ICCPR, art. 2(3)(a).
17. ICCPR, art. 2(3)(b). See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, NRES/60/147, principle II.3.(d), "The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below."
At the regional level, the African Charter on Human and Peoples' Rights ("the African Charter") states that every individual shall have the right to liberty and to the security of his person and as such no one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained. 

Furthermore, every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. 

There are also specific obligations on states to prevent and punish torture and disappearances. Thus the African Charter provides that "every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status, and that all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited." 

It is significant to note that the African Charter has not only been ratified by Nigeria but has also been incorporated into Nigerian municipal law. The Charter was ratified by Nigeria on 19 January 1981 and was incorporated into Nigerian domestic law on 17 March 1983 as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983 ("the African Charter Act"). The preamble to the African Charter Act proclaims that it is "necessary and expedient to make legislative provisions for the enforcement in Nigeria of the 

19. Article 7, Ibid.  
20. Article 5, Ibid.  
African Charter by way of an Act of the National Assembly. \(^{23}\) The African Charter Act has not been repealed and is deemed to be an existing law enacted by the National Assembly, the Federal legislative organ of Nigeria. \(^{24}\) The domesticating provision of the African Charter Act states as follows:

"As from the commencement of this Act, the provisions of the African Charter on Human and Peoples' Rights which are set out in the Schedule to this Act shall, subject as thereunder provided have force of law in Nigeria and shall be given full recognition and effect and be applied by all authorities and persons exercising legislative, executive and judicial powers in Nigeria." \(^{25}\)

This provision speaks for itself; it demonstrates Nigeria's commitment to be bound by the letter and spirit of the African Charter. Perhaps more importantly, it also means that the African Charter has the status of domestic law in Nigeria and can actually be invoked before a court of law in Nigeria against any breach of the rights and freedoms guaranteed by the African Charter. In Communication 115/96 SERAC v. Nigeria,\(^ {26}\) for example, the African Commission held Nigeria to be in breach of its regional-international obligations under the provisions of the African Charter relating to right to satisfactory environment? stating that, since Nigeria has incorporated the African Charter into her domestic law, all rights contained therein can be invoked in Nigerian courts including those violations alleged by the complainants."

Nigeria is therefore under an obligation to respect, protect and fulfil the rights guaranteed both under these international legal instruments

\(^{23}\) See the Second Preparatory paragraph to the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983.

\(^{24}\) Section 315 (1) (a) of the 1999 Constitution of Nigeria provides that: "Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be (a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws."

\(^{25}\) See Section 1.


\(^{27}\) See Articles 24 and 16.

and the African Charter in accordance with the principle of \textit{pacta sunt servanda}, which states that, "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith". Moreover, a party may not invoke the provisions of internal law as a justification for its failure to perform a treaty.  

3. The International Legal Framework and Nigerian Domestic Law

As has been mentioned, Nigeria has ratified the relevant international instruments which guarantee the protection of various human rights to citizens. This section considers the question of enforceability and the place of international instruments in Nigerian law.

3.1 Theories of Monism and Dualism

The two principal theories regarding the relationship between international and domestic law are monism and dualism. These theories help to articulate the precise status and role of international instruments in municipal law. Monism is the theory that international and domestic law form part of the "one legal order or system of norms binding states and individuals alike, their rules being interrelated." Although this description suggests no hierarchy between international law and domestic law, some jurists, such as those of the Vienna school," understand monism as involving the ultimate primacy of international

30. Ibid, Article 27.
law over domestic law." For members of the Vienna school all rules of law depend for their validity on the grundnorm, or basic norm. The basic norm is the norm the validity of which cannot be derived from a higher norm. Since international law determines the sovereignty of states international law is the basic norm, leading to the conclusion that it has supremacy over domestic law."

Furthermore, modern monist theory also believes that international law is not by its nature inapplicable to individuals. It recognises individuals as bearers of legal rights and duties of the international legal system. As Morgenthem has noted:

"The essence of the monist view of the relation of international and national law is that rules of law, international and municipal alike, are applicable to individuals, and that international law can thus be directly operative in the municipal sphere. Modern decisions have affirmed that individuals can derive rights directly from treaties."

Consequently, an express act of transformation of each individual rule of international law is not required before it can be applied to legal relations within the state. Municipal courts can therefore invoke and apply rules of international law directly even in matters affecting individual citizens."

38. F. Morgentern, "Judicial Practice and the Supremacy of International Law" (1950) 27 *British Yearbook of International Law* p. 58.
In contrast, dualism holds that international and domestic law are separate bodies of law which exist independently of each other. Dualists point out that these two bodies of law regulate different subject matters: "International law is a law between sovereign states: municipal law applies within a state and regulates the relations of its citizens with each other and with the executive." Although municipal law may provide for the application of certain rules of international law within its jurisdiction, under dualism this merely represents an exercise of the authority of municipal law to incorporate or adopt international law. Such adopted international law applies as part of the municipal law and not as international law. Therefore, where the rules of international law and municipal law are in conflict, municipal law prevails.

The predominance of municipal law is predicated on the notion that a state has a sovereign right to determine which rules of international law are to have effect in the municipal sphere. Therefore, international law may create rights for individual citizens and be applied at the municipal level only if it has been incorporated or transformed into municipal law through a legislative process. Consequently the internal validity and application of international law is conditioned by a positive legislative enactment or judicial adoption.

In dualist countries, two further theories explain how international law can become part of domestic law - the so-called incorporation and transformation theories. Under the transformation theory, international


45. Ibid.


47. Ibid.

48. Ibid.
law and domestic law are separate bodies of law, and international law only becomes part of the domestic law of a state when it is "transformed" by a discretionary act of that state." Transformation takes place if the provisions of an international agreement are reflected in parts of national legislation; or if provisions of a national legislation are amended or repealed to conform to international norms."

The incorporation theory views international law as part of domestic law. There is no element of discretion. Instead, rules of international law automatically become part of domestic law to the extent that they do not conflict with domestic laws. The incorporation theory therefore entails the wholesale enactment, as part of domestic legislation, of an international instrument.

Some jurists, however, consider the monism-dualism debate unhelpful and argue that both theories wrongly assume that there is a common ground in which both domestic and international law can operate. These theorists regard international law as performing a co-ordination role and as not invalidating domestic laws.

49. Ibid. p. 536.
50. Ibid. p. 18.
51. Ibid.
52. Ibid. The incorporation-transformation framework has been criticized in that it only explains the ways international law can be directly applied at a domestic level. According to Walker: "It ignores the ways in which international law may influence domestic law without being directly applicable - by influencing the development of the common law, by influencing constitutional interpretation and by potentially giving rise to administrative law remedies." See Kristen Walker, "Treaties and the Internationalisation of Australian Law" in Cheryl Saunders (ed.), Courts of Final Jurisdiction: The Mason Court in Australia (Australia: Federation Press, 1996), p. 204.
54. Ibid. p. 34. This has led to the call for a harmonization or co-ordination approach, whereby the rules of international law and municipal law are treated as concordant bodies of doctrine, each autonomous in the sense that it is directed to a specific area, and to some extent, an exclusive area of human conduct, but harmonious in the sense that in their entirety the various rules aim at a basic human good. See: D.P. O'Connell, International Law (Oxford: Clarendon Press, 1990) pp. 43-44. As Shearer has noted, "To resolve conflicts of obligations by adhering to a theory that asserts the automatic superiority of the one legal order over the other does not reflect the reality, on the one hand, of legal rules that compel national judges to follow the law commanded by national authority, and on the other hand the leeway of judicial choice open to judges in some circumstances to apply international law as part of national law. What should rather be the approach is to harmonise wherever possible the two competing legal prescriptions so as to avoid a conflict of obligations." See: I.A. Shearer, Starke's International Law (London: Butterworths, 1994), pp. 65-66.
3.2 The Status of the International Legal Framework in Nigerian Law

Nigeria operates a dualist system and therefore the legal position is that provisions of treaties and international instruments to which Nigeria is a party are not automatically part of the Nigerian municipal law unless explicitly incorporated into municipal law. To become part of municipal law, treaties in general require legislative incorporation. They could not in themselves create subjective rights and duties for individuals in the absence of legislation. In this regard, section 12(1) of the 1999 Constitution stipulates 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."

Thus, mere ratification of a treaty does not ipso facto confer binding effect under Nigerian law. There is a further need to explicitly incorporate such a treaty into Nigerian law in order for it to be enforceable.

The requirement that a treaty must be enacted as a municipal law before it can be enforced in Nigeria appears to be a colonial relic influenced by the practice of the English common law. Both countries share a common law tradition. As a result of years of colonial domination by Britain, Nigeria, on independence, automatically adopted the British practice of requiring a treaty to be transformed into law before it can apply locally. Under British law, the doctrine of parliamentary supremacy has long been held to mean that the making of treaty does not change domestic law. Thus, although the Crown

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55. See also items 26 and 310 of the Exclusive Legislative List in the Schedule Two of the 1999 Constitution.
retains the prerogative to negotiate and sign treaties externally, for such treaties to have internal effect they require parliamentary approval. Flu *Ibidapo v. Lufthansa Airlines*" the Supreme Court of Nigeria explained that "Nigeria, like any other commonwealth country, inherited the English common law rules governing the municipal application of international law."61

The Supreme Court of Nigeria affirmed the dualist position of the application of treaties in Nigerian municipal law under section 12 of the 1999 Constitution in *African Reinsurance Corporation v. Abata Fantaye*62 where the provisions of treaties ratified by Nigeria, but not yet incorporated into domestic law, were in issue. The court held that a treaty, though ratified by Nigeria, did not constitute part of the law of the land merely by virtue of its ratification. The court further stated that in Nigeria, by virtue of section 12(1) of the Constitution, treaties will have the force of law only after, or to the extent that, they have been enacted into law by the National Assembly.63

This legal position was further confirmed by the Supreme Court of Nigeria in *Abacha v. Fawehinmi*64 which, *inter alia*, also concerned the status of a treaty under section 12 of the Constitution. The court said:

"Suffice it to say that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly."65

Clearly, therefore, international treaties and human rights instruments ratified by Nigeria are not part of Nigerian law until explicitly incorporated into Nigerian law. Thus, in the present context, although Nigeria has ratified the ILO Conventions and the ICESCR dealing with the protection of the right to strike, these instruments do not

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59. Ibid.
61. Ibid, p. 150.
63. Ibid, p. 834.
64. (2000) 6 NWLR (Part 660) 228.
have direct application in municipal law in the absence of an express and specific incorporation by domestic legislation.

This therefore means that these instruments until incorporated into domestic law cannot create private rights and cannot operate as a direct source of individual rights and obligations."

The further implication of Nigeria's dualist position is that, no matter how beneficial to the country or the citizenry an international treaty to which Nigeria has become a signatory may be, it remains unenforceable if it is not enacted into law of the country by the National Assembly." This clearly reduces the effectiveness of international law in the domestic arena and undermines the central objective of entering into such international agreements, which are to guarantee rights and to protect individuals from abuse."

In view of the importance of international law and its growing influence, it is submitted that Nigeria should incorporate into domestic law all international instruments in line with section 12(1) of the 1999 Constitution in order to strengthen the local application and enforceability of the rights and obligations created by them. An alternative approach would be to amend section 12(1) of the Constitution to the effect that all treaties and international instruments ratified by Nigeria automatically become part of domestic law."

Nigeria must be

66. Indeed, in *Medical and Health Workers Union of Nigeria (MHWUN) v. Minister of Labour and Productivity* (2005) 17 NWLR 120 at 133, the Court of Appeal, relying on the *Abacha case* (see above), held that the International Labour Organisation's Convention Nos. 87 and 98, even though signed by the Nigerian Government, are not binding and not justiciable in Nigerian courts until enacted into law by the National Assembly.


seen as a country that not only signs, but respects and adopts, the full contents and import of conventions and treaties. As Shaw has pointed out, "in the absence of a certain minimum belief that states will perform their treaty obligations in good faith, there is no reason for countries to enter into such obligations with each other." The legitimacy and fairness of treaties voluntarily entered into by Nigeria applying within Nigeria cannot be denied. There is no reason why treaties, such as the ICESCR, the ILO Conventions and principles of freedom of association, cannot be part of the laws of Nigeria.

5. Indirect Ways of Applying Non-Domesticated International Instruments

The fact that the Nigerian legislature is yet to incorporate international instruments providing for the right to strike leads to the question of whether this is the final position, or whether, and if so, under what conditions, the international legal instruments may nevertheless be applied in Nigeria. This section demonstrates that, despite Nigeria's dualist position and the fact that Nigeria seems to be lagging behind in the domestication of the international treaties, there are, however, two indirect ways by means of which non-domesticated international treaties can be applied in Nigeria, such as where the international instruments have reached the point of recognition as forming part of customary international law, and secondly where such international instruments can be employed as an aid to interpretation by the courts.

5.1 Non-Domesticated Treaties as Customary Internationally Law

One of the means by which international treaties can be applied in Nigeria without the need for legislative incorporation into domestic law is if the treaty or parts of its provisions have attained the status of customary international law.

from the practice of states. In Nigeria, customary international law applies automatically without the requirement for incorporation into national law by domestic legislation."

In *Federal Republic of Germany v. Denmark and The Netherlands* (the North Sea Continental Shelf cases), which is authority for the rule that customary international law can emerge from treaty provisions, the ICJ said:

"With respect to the other elements usually regarded as necessary before a conventional rule can be considered to have become a general rule of international law, it might be that, even without the passage of any considerable period of time, a very widespread and representative participation in the convention might suffice of itself, provided it included that of states whose interests were specially affected."77

In this context, the concept of freedom of association, for example, would appear to have attained the status of customary international law.78 The ILO principles on freedom of association have had a seminal influence on the protection of labour rights and have become a general practice accepted and respected by all states. Indeed a survey of the table of ratifications of ILO Conventions on Freedom of Association shows that they have been widely adopted by most states in the world.79 The fact that virtually every other nation in the world has adopted it seems to have made it part of customary international law. Indeed, the ILO Committee on Freedom of Association stated in 1975 that ILO members, due to their membership, are:

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76. 8 ILM 340 (1969).
77. Ibid.
"bound to respect a certain number of general rules. which have been established for the common
good... Among these principles, freedom of
association has become a customary rule above the
Conventions." 80

Significantly, such international instruments, which have crystallized
into customary international law, escape the scope of section 21(1) of
the 1999 Constitution and have automatic domestic application without
the need for incorporation. 81 It is submitted, therefore, that the ILO
principles relating to freedom of association should be considered part
of Nigerian jurisprudence.

5.2 Non-Domesticated Treaties as an Aid to Interpretation
(Domestication by the Judiciary)

Another means through which international treaties can be applied in
Nigeria is as an aid to interpretation." In Fawehinmi v. Abacha." although the Supreme Court of Nigeria held that a treaty not
incorporated into law cannot be enforced, it recognised, however, the
importance of international legal instruments in interpreting local laws.
The Court said:

"However, it is also pertinent to observe that the
provisions of an unincorporated (sic) treaty might have
indirect effect upon the construction of statutes or might
give rise to a legitimate expectation by citizens that the
government, in its acts affecting them, would observe
the terms of the treaty." 84

80. ILO: Committee on Freedom of Association, "Fact-Finding and Conciliation Commission Report:
Chile" (Geneva: International Labour Office, 1975), para. 10.
81. E. Egede, "Bringing Human Rights Home: An Examination of the Domestication of Human Rights
82. U. Waniztek, "Women’s and Children’s Rights in Africa: A Case Study of International Human Rights
and Family Law in Tanzanian Courts" (2008) 11 (1) Recht in Afrika, p. 33; E. Egede, "Bringing Human
84. Ibid, p. 357, per Ejigbunmi, JSC.
The Supreme Court cited with approval the Botswana case of *Unity Dow v. Attorney General of Botswana* in support of an activist stand by the courts in the defence of individual rights. In that case, Aguda IA, who incidentally was a Nigerian serving in Botswana, said:

"I take the view that in all these circumstances a court in this country, faced with the difficulty of interpretation as to whether or not some legislation breached any of the provisions entrenched in chapter II of [the Botswana] constitution which deal with Fundamental Rights and Freedoms of Individuals, is entitled to look at the international agreements, treaties and obligations entered into force before or after the legislation was enacted to ensure that such domestic legislation does not breach any of the international conventions, agreements, treaties and obligations binding upon this country save upon clear and unambiguous language. In my view this must be so whether or not such international conventions, agreements, treaties, protocols or obligations have been specifically incorporated into our domestic law."\(^{86}\)

These dicta of the Supreme Court of Nigeria are greatly significant. In the first place, it shows that the courts are prepared, despite the strict provisions of section 12(1) of the Constitution, to apply non-domesticated treaties indirectly by relying on them to assist in interpreting similar provisions in the Constitution or other municipal legislation. Secondly, it points to the fact that the ratification of treaties by Nigeria gives rise to a legitimate expectation by the citizens that the government keep to the tenets of such treaties as far as the citizens' rights are concerned. There are examples where Nigerian courts have referred to non-domesticated treaties ratified by Nigeria to assist in the interpretation of relevant Nigerian laws. In *Mojekwu v. Ejikeme*\(^{87}\) for example, where the 'Nrachi Nwanyi' custom of a group in Eastern

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86. Ibid, p. 673.
Nigeria had the effect of extinguishing a deceased person's lineage even though he had a female descendant was struck out as being repugnant, Niki Tobi J (as he then was) made reference to the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) in arriving at the decision that the 'Nrachi Nwanyi' custom was repugnant.

In this context, therefore, the ILO principles on freedom of association, for example, can act as an aid to interpretation by the courts. Thus, unless the principles directly conflict with clear domestic law, it is possible to rely on them as an aid to interpretation by the domestic courts. Moreover, whereas under monism treaties will not override domestic law, in dualism it is possible to apply international law which has been ratified, but not yet domesticated, unless there is conflict with domestic law.

Furthermore, according to the "Bangalore Principles on the Domestic Application of International Human Rights Norms" courts may take into account an international treaty or convention which has been ratified, but not yet incorporated into domestic law, in cases in which the domestic law is ambiguous, uncertain or incomplete. This applies to constitutional, statutory and common law alike." Paragraph 4 of the Bangalore Principles stipulates that:

"In most countries whose legal systems are based upon common law, international conventions are not directly enforceable in national courts unless their provisions have been incorporated by legislation into domestic law. However, there is a growing tendency

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89. Between 24 and 26 February 1988, there was a high level Judicial Colloquium of Commonwealth Judges was held in Bangalore, India, on "Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms" The Colloquium was administered by the Commonwealth Secretariat on behalf of the Convener, the Hon. Justice P.N. Bhagwati (former Chief Justice of India). The Colloquium yielded the Bangalore Principles.
BRINGING RIGHTS HOME: THE STATUS OF INTERNATIONAL LEGAL INSTRUMENTS IN NIGERIAN DOMESTIC LAW

for national courts to have regard to these international instruments for the purpose of deciding cases where the domestic law - whether constitutional, statute or common law - is uncertain or incomplete. "91

Furthermore, according to the Bangalore Principles, courts must interpret the law in a way which avoids the violation of international law because legislatures are presumed not to intend to enact laws which violate the state's treaty obligation." On the basis of these principles, therefore, Nigerian courts can apply the international instruments in order to protect the right to strike. There is therefore a clear potential for the use of international treaties ratified by Nigeria, although yet to be incorporated into domestic law.

6. Concluding Remarks

This article has examined the international legal frameworks and their status in Nigerian law. As has been mentioned, Nigeria has ratified several international instruments which guarantee human rights to its citizens, such as the CEDAW, ICCPR, ICESCR and the core ILO Conventions, such as Conventions Nos. 87 and 98. Nigeria is therefore bound by these instruments. However, as has been shown, Nigeria operates dualism which means that the international instruments do not have the force of law in Nigeria until such instruments are specifically incorporated into Nigerian law. Thus, notwithstanding the beneficial effects and values of these international instruments, they do not confer enforceable rights directly on Nigerian citizens.


92. B. Rwezaura, "Domestic Application of International Human Rights Norms Protecting the Rights of the Girl-child in Eastern and Southern Africa" in W. Ncube (ed.), Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa (London: Aldershot, 1998), p. 28. Paragraph 7 of the Bangalore Principles also states that: "It is within the proper nature of the judicial process and well-established judicial functions for national courts to have regard to international obligations which a country undertakes - whether or not they have been incorporated into domestic law - for the purpose of removing ambiguity or uncertainty from national constitutions, legislation or common law."
However, despite the dualist position of Nigeria, it has been argued that international instruments can nevertheless be applied indirectly, if such instruments have attained the status of customary international law, or can be applied indirectly by the judiciary as an aid to interpretation. It has also been argued that indeed the ILO principles on freedom of association have reached the position of customary international law and should be accepted as part of Nigerian jurisprudence. Furthermore, it has also been demonstrated that the Nigerian courts have on occasion made reference to international instruments not yet incorporated thereby underscoring the potential for the application of these instruments. Overall, we call for an amendment to section 12(1) of the 1999 Constitution to the effect that all treaties and international instruments ratified by Nigeria should automatically become part of Nigerian domestic law. Nigeria must be seen as a country that not only ratifies, but respects and implements international legal instruments.
