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NIGERIAN NATIONAL ASSEMBLY AND DOMESTICATION OF TREATIES IN NIGERIA'S FOURTH AND FIFTH ASSEMBLY

Christopher Ochanja NGARA
National Institute for Legislative Studies, National Assembly, Maitama, Abuja, NIGERIA.

Abstract
This paper assesses the role of the 4th and 5thNational Assembly in the domestication of treaty instruments in Nigeria. Using both primary and secondary data, it argues that treaty making was an important means by which the National Assembly participated in foreign policy in the 4th and 5th Assembly. However, frequent discord between the executive and the National Assembly, external influence on the Assembly, politicization of treaty Bills and the lack of political will on the part of the legislators were important drawbacks that impacted on the performance of the National Assembly in domesticating treaties. It is recommended that since treaties are indispensable instruments in formalising external relations, the executive should improvise the involvement of the National Assembly at negotiation levels in order to close knowledge and communication gaps between the two arms of government. In the same vein, the National Assembly should expand the scope of public consultation and participation in the process of legislating treaty Bills so that treaties domesticated can be more acceptable to the people.

Key Words: Domestication of Treaties, Foreign Policy, National Assembly, Nigeria.

Introduction

A treaty is like a contract which expresses agreement between states and between states and other actors in the international system that creates legally binding rights and obligations for its parties (Harrington 2005). Treaties are usually concluded with the expectation that parties to the treaty would faithfully observe its obligations in good faith. In international law, this is expressed in the Latin maxim *pacta sunt servanda*, as codified in article 26 of the *Vienna Convention on the Law of Treaties,* 1969. However, due to increasing global interrelationship and interdependency, treaties have not only become an important source of law, but indispensable means by which states formalize their external relations.

Nigeria is a signatory to the *Vienna Convention on the Law of Treaties,* 1969, and in pursuit of her foreign policy have since independence been a signatory to a number of international treaties. The 1999 Constitution (as Amended) locate treaty making powers within the jurisdictional purview of the Federal Government. As Nwabueze rightly notes the President, as the Chief Executive of the Federal Government is designated head of state… with the consequences that all his legally, relevant international acts are considered to be acts of his state… it comprises in substance chiefly; reception and mission of diplomatic agents and consults, conclusion of international treaties, declaration of wars (Olutoyin 2014, p. 9).

Without prejudice to the powers of the Executive, the 1999 Constitution (as Amended) provides that the treaty so entered by the chief executive cannot take effect in local courts except it is ratified by an Act of the National Assembly. The approving and/or disapproving powers of the National Assembly is one of the key areas where the federal legislature participate in foreign policy. Since Nigeria's return to democracy in 1999 and more specifically, between 1999 and 2007, the National Assembly participated in Nigeria's foreign policy, especially, with respect to domestication of treaties. This paper examines the role of the National Assembly in the domestication of treaties in the period under review.

Background to International Treaties in Nigeria

Nigerian pre-colonial societies in their interactions with one another were known to have practised and contracted international agreements such as trade agreements, military alliance, and friendship pacts, among others, for the purposes of furthering their mutual interests. However, treaty in its modern form, had it first appearance in Nigeria through the imperial activities of Britain. Apart from the brute force used by the Britishin conquering and subduing indigenous people, she also employed other non-violent means in acquiring territories. One of such means was the use of treaties. Thus, the British gained control of Nigeria using both force and treaties.

Most of the treaties were concluded without the native people comprehending the terms of the treaty. The medium of communication was through local interpreters who were not adequately educated and the leaders themselves usually do not have clear knowledge of the implication of the treaties they signed. These treaties were used by the British as justification for using force against local people on grounds that some clauses of the treaties were breached. More often than not, the terms of these treaties were difficult to keep. An example of such a treaty read thus: "the Chiefs of… agree and promise to refrain from entering into any Correspondence, Agreement, or Treaty with any Foreign Nation or Power except with the knowledge and sanction of Her Britannic, Majesty's Government" (Hertslet 1967, p.120). Similarly, another extract read:

> The Chiefs of… hereby engage to assist the British Consular or other officers in the execution of such duties as may be assigned to them; and further, to act upon their advice in matters relating to the administration of justice, the development of the resources of the country, the interest of commerce, or in any other matter in relation to peace, order, and good government, and the general progress of civilisation (Hertslet 1967, p.120).

Perhaps, even more revealing is the extract of the treaty which the British forced King Dosunmu of Lagos to sign after he was defeated in a war. The treaty reads as follows:

> I, Dosunmu, do with the consent and advice of my Council, give, transfer, and by these presents grant and confirm unto the Queen of Great Britain, her heirs and successors forever, the port and the island of Lagos, with all the rights, profits, territories and appurtenances whatsoever thereunto belonging (and as well the profits and revenue and the direct, full and absolute dominion and sovereignty of the said port, island, and

premises, with all the royalties thereof, freely, fully, entirely, and absolutely) (Okeke 1997, p. 327).

This treaty led to the colonization of Lagos in 1861 and the subjection of the indigenous people to many forms of oppression, exploitation and subjugation. Similarly, the conquest of Lagos and other coastal areas like Calabar, Bonny etc., served as a window to open the way for the British to further explore the hinterlands. It was such adventure that led to the discovery of Ibadan, Ekiti, Ijesha, Ijebu, Ife, Egba and the consequent peace intervention that ended the arduous 15-Year-Ekitiparapo war between the alliance of Ekiti, Ijesha, Egba, Ijebu and Ife against Ibadan. The British treaty which ended the war, led to the occupation of Ijebuland in 1892, and opened the door to total colonization of those societies. According to Inyang and Bassey (2014, p. 1946):

> Treaties defined the character of the British penetration in such a way that when, in 1900, political control was formally established over the Nigerian area, it took the tripartite form of three autonomous administrations – The Colony and Protectorate of Lagos; the Protectorate of Southern Nigeria; and the Protectorate of Northern Nigeria. These three region-like protectorates became subsequently amalgamated in 1914 to form the Nigerian state.

Over time, the series of treaties led to the effective colonization and control of the entire Nigeria. The British used "treaties of protection' or 'cession' treaties as a smoke-screen to facilitate infiltration which steadily advanced until effective occupation was achieved (Okeke, 2007). Many of the treaties of protection were obtained by the British through intimidation, fraud, force, mistake or ignorance. Such treaties were sealed without mutual consent or real understanding of the terms by indigenous people. By current standard based on the Vienna Convention on the Law of Treaties 1969, those treaties would be adjudged illegal (Okeke, 2007).

However, the post Second World War international political and economic climate and the subsequent achievement of independence by Nigeria on 1st October, 1960, changed the nature and character of treaty relations not only between Nigeria and Great Britain, her erstwhile colonial overlord, but also between other nations of the world. Whereas, the British used international treaties in relations to pre-colonial and colonial Nigerian societies as instruments of oppression, exploitation and subjugation, today's treaties have greater ingredient of mutual consent. The Independence Constitution of 1960, and the subsequent ones till the 1999 Constitution (as Amended) offer significant participation of Nigerian citizens in treaty making through their representatives in parliament. This constitutional engineering guarantees, for instance, that Nigeria citizens would not be bound by a treaty that is concluded even by a duly elected executive except such a treaty is ratified through an Act of the National Assembly.

It is noteworthy that even today, some multilateral and bilateral treaties, particularly between the advanced countries of the West and Third world countries like Nigeria have been crafted to advance the interest of the former. Although, most Third world countries are aware of the implications of such treaties, they are forced to sign them due to their relatively weak, economic and political bargaining powers vis-à-vis their counterparts in the advanced world.

Thus, one can say that modern treaties between nations do not always and necessarily lead to mutual benefits of the parties involved; yet, they stand out as a reliable means of formalizing international agreements with higher expectation that parties would, in good faith, be bound by the terms. This has made it an important source of international law and an indispensable means of international relations.

Approaches to Domestication of International Treaties

The manner of treaty practice of individual states determines not only the way the state will relate to international law but, more importantly, to the treaties they had signed and ratified. Treaty practices which are usually spelt out in the constitution also prescribes the guiding principles which shapes the relationship between international and domestic laws, on the one hand, and the relationships among the different arms of government in treaty making, on the other hand. This is important to the extent that it specifies the roles of each arms of government in the treaty making process from negotiation, ratification to interpretation. Traditionally, there are two main theoretical approaches on how international law relates with municipal or national legal system. These are monism and dualism.

Doctrine of Monism Monists considers international and national law as part of a single, legal order (Brownlie 1990; Okeke 1997; Okene 2009; and Mwagiru 2011). This suggests that there is no hierarchy between international law and domestic law. This perspective regards international law as superior to municipal law, therefore, international law is directly applicable in the national, legal order. This implies that there is no need for any domestic implementing legislation: international law is automatically applicable within domestic jurisdiction. In other words, municipal law must be consistent with international for it to be considered a good law because international law is founded on natural law. Monism is practised in countries like the USA, France, Holland, Switzerland, many Latin American and some Francophone African countries (Bangamwabo 2008). Accordingly, the process by which international law is municipalized is through the methodology of incorporation. That means that treaties that a state has ratified are automatically part of municipal law, and are automatically binding (Mwagiru 2011).

The monists argue that the fear of the dualist, that the adoption of monist doctrine will diminish the role of the parliament in treaty making is unrealistic and unnecessary. They held that even where monism is in practice, the parliament still plays the role of scrutinizing the treaties and can vote in favour or against the ratification of such a treaty by the executive. However, the monist admitted that the only thing that would be taken away from the parliament is the ability to scrutinize the treaty from a purely domestic perspective (Mwagiru 2011).

Doctrine of Dualism In contrast, dualism which is advanced by legal positivist, is based on the legal belief that international and domestic laws are disparate bodies of laws which exist independently of each other with each competent in its own domain. The dualist argue that international law is not necessarily superior to national laws as such national or municipal law must not necessarily conform to international law. This assumption is predicated on the idea that states are sovereign entities and have the right to decide which international law they wish to incorporate into their municipal law. For international law to be applicable in the national, legal order, it must be received through domestic legislative measures, the effect of which is to transform the international rule into a national one. It is only after such a transformation that

individuals within the state may benefit from or rely on the international – now national – law (Bangamwabo 2008, p. 167). According to Mwagiru (2011, p. 146):

> The dualist school is supported by the methodology of transformation. In that methodology, treaties do not become automatically binding on states unless they have first been transformed into municipal law. The methodology of transformation requires that the legislature which makes laws domestically, must first of all transform treaties into municipal law. The transformation of treaties into municipal laws entail clothing them domestically, by making them part of the statutes of the country.

Exponents of dualism fear that the adoption of monist doctrine by applying international laws automatically to municipal setting without passing through the parliament takes away the law making powers of the parliament in treaty making; and compromises the principle of separation of powers (Mwagiru 2011). It should be noted that international law does not have any rule that compels a state to adopt any of the aforementioned approaches to domestication of treaties. Any of the methods adopted is a prerogative of the ratifying state (Bangamwabo 2008). The only difference between states, in this respect, is whether their treaty practice is *adhoc*, or whether they have structured it in the form of a constitutional law (Mwagiru 2011, p. 145).

The National Assembly and Domestication of Treaties in Nigeria's Fourth Republic

The executive, normally leads the process of negotiating a treaty through the Ministry of Foreign Affairs, but the National Assembly also plays a crucial role (Dunmoye, Njoku and Alubo 2007). Constitutionally, treaty making is one important area where the National Assembly participates in foreign policy making. This is because the National Assembly is in a decisive position of approving or disapproving treaty entered into by the executive on behalf of the country. Furthermore, the National Assembly is also strategic in treaty making, because "when approving treaties, it has larger scope for suggesting changes in the text - for the executive to negotiate afterward" (Dunmoye et al 2007, p. 121). Nigeria operates a dualist system and by implication, provisions of treaties to which Nigeria is a party is not self-executing or automatically part of the Nigerian municipal law, except it is expressly incorporated into the municipal law by an Act of the National Assembly as provided in Section 12(1), (2), and (3) of the 1999 Constitution. Section 12(1), (2), and (3) state thus:

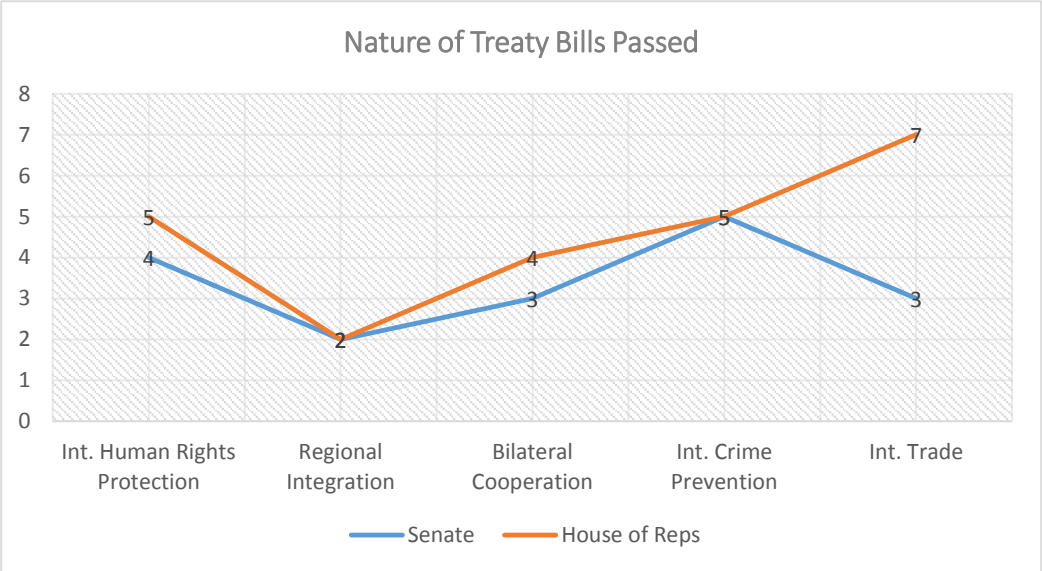
> No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly"; (2) "The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative list for the purpose of implementing a treaty"; and (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation (CFRN, 1999).

These provisions clearly depict that the mere ratification of a treaty by the executive does not *ipsofacto* confer binding effect, under Nigerian law (Okene 2009). For a treaty concluded

between Nigeria and any other country to have the force of law, it must be enacted into law by the National Assembly. Such a treaty necessarily requires to be explicitly incorporated into national law, through an Act of the National Assembly in order for it to be enforceable(Okeke 1997; and Okene 2009).These constitutional provisions has been affirmed by a Supreme Court's decision. In the case of Abacha v Fawehimi, the Supreme Court of Nigeria held that:

> An international treaty entered into by the Government of Nigeria does not become binding until enacted into law by the National Assembly. The court further held that where the treaty is enacted by the National Assembly, as was the case with the African Charter which is incorporated into municipal law by the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act of 1983, it becomes binding on Nigerian courts to give effect to it like all other laws falling within the judicial powers of the court (Emelonye 2014, p. 12)

Figure 1: NATURE OF THE TREATY BILLS PASSED BY THE NATIONAL ASSEMBLY, 1999 - 2007

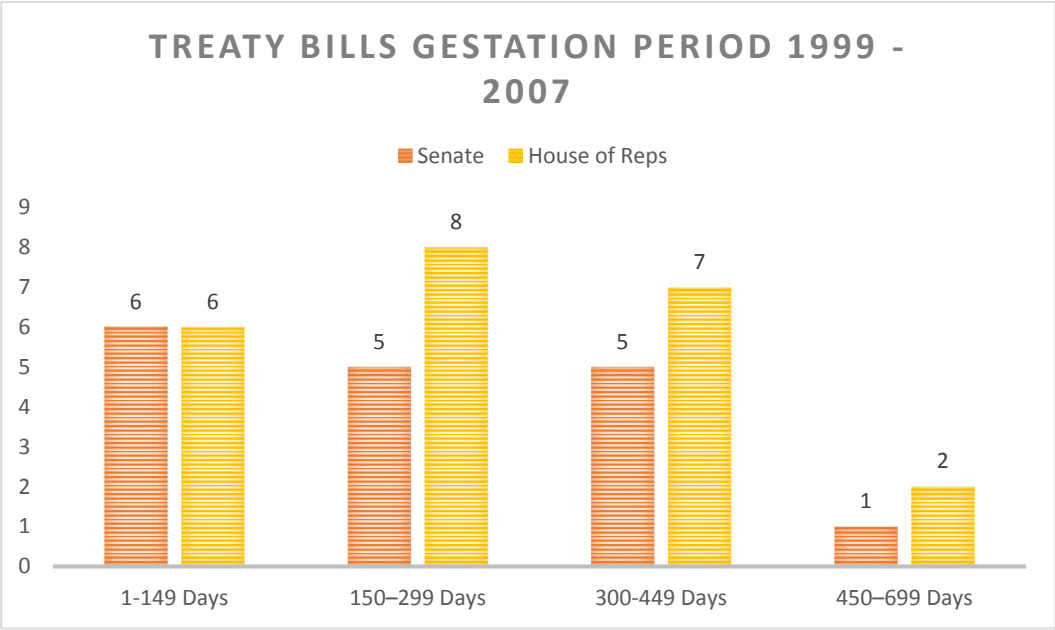


Source: *Author*

Nigeria is a signatory to many international conventions and treaties. A sizeable number of these instruments impose obligations on the country on a variety of matters (Omoregie 2015) According to Akpabio (cited in Alli 2014), during its first Assembly, 1999-2003, the National Assembly debated critical issues including the World Court Judgement on Bakassi Peninsula, the Extradition Treaty between Nigeria and South Africa, Treaty between Nigeria and South Africa on Mutual Legal Assistance in Criminal Matters. Others include the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Harzadous Chemicals and Pesticides in International Trade and the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Distribution. The treaties also discussed include the Rome Statute of the International Criminal Courts, Treaty to Establish African Union, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and

Children, Supplementing the United Nations Convention against Transnational Organised Crime, Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment; and Others (Dunmoye 2004, p. 233). See the nature of the treaty Bills is above

FIGURE 2: GESTATION PERIOD FOR TREATY BILLS PASSED BY THE NATIONAL ASSEMBLY; 1999 -2007



Source: *Author*

Despite the strategic importance of these treaties and international instruments, many of them are not actionable in Nigeria mainly because they are yet to scale the huddles of domestication by the National Assembly. Although, Alli (2014), has argued that the domestication of treaty is particularly a major challenge to the legislature in Nigeria as it appears that the legislators has not shown much interest in ensuring that treaties ratified are domesticated in good time. This is evident in the fact that 63 percent of the treaty bills passed by the National Assembly (both Senate and the House of Representatives)between 1999 and 2007 has gestation period of 150 to 499 days(which is about 5 to 17 months). Only 30 percent of the treatybills were passed within 150 days(i.e., within 5 months from the date of the introduction of the Bill). See figure below:

Akanle (2011), attributed these poor performance to the selfish motives and pecuniary interests of the national legislators. He observed that this selfish motives partly explain why the national legislators frequently increase their salaries and allowances with much ease while they find it difficult to do same for law making and constituency responsibilities. Akanle (2011, p. 120) explain that the "if the relative ease, speed and commitment with which the legislators settle personal benefit are extended into performance of other important roles, they would have made better impacts on the nation."

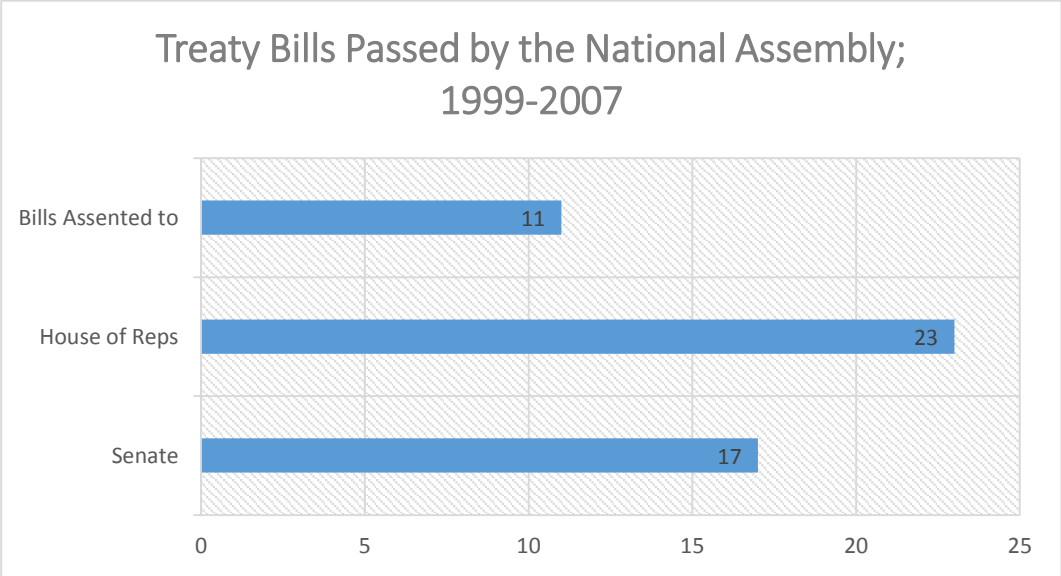
Akanle's (2011) position contrast sharply with that of the federal legislators. The Senate Order Paper (2014), for instance, shows that the problem of non-domestication of treaty is largely due to the failure of the executive to layTreaties, Protocols and Conventions to which

Nigeria is a signatory before the National Assembly. This claim is supported by the views of Bugaje (2015), Mudashiru (2015); Enang (2016) and Zakari (2015) who alluded that non-domestication of treaties are caused by the unwillingness or reluctance of the executive, particularly, the Federal Ministry of Justice to submittreaties ratified by the executive for legislative action to the National Assembly. Bugaje (2015) and Mudashiru (2015) noted that the executive does not carry the National Assembly along in the process of negotiating treaties or international agreements.

For Bugaje (2015), ineffective communication between the executive and the National Assembly have always created a fundamental knowledge gap for the legislators, who may have to engage consultants or conduct public hearings in order to educate members on a specific treaty matter before it can undertake legislative action. Six treaties, for instance, were referred to the House of Representatives Committee on Foreign Affairs in 2003. The Committee consequently set up an Ad-hoc Committee to study the treaties together with the House Committee on Justice to consider the referrals on the following Bills: a) A Bill for an Act to Ratify and Enable Effect be Given in the Federal Republic of Nigeria to the Extradition Treaty Between the Government of the Federal Republic of Nigeria and the Government of South Africa (Ratification and Enforcement) Bill 3003 (HB.I); and b) A Bill for an Act to Ratify and Enable Effect be Given in the Federal Republic of Nigeria and the Republic of South Africa to the Treaty on Mutual Assistance in Criminal Matters Between the Government of the Federal Republic of Nigeria and the Government of South Africa (Ratification and Enforcement) Bill 2003 (HB.II) (Annual Report 2003/2004, p. 16).

For the House Committee on Foreign Affairs to acquaint its members on the above treaties, the Committee organized a one-day-Public Hearing on 14th January, 2004, and invited officials of the Ministry of Foreign Affairs and experts to clarify and advice on the observation raised on the treaties (Annual Report 2003/2004). Between 1999 and 2007, the Senate passed only 17 treaties, while the House of Representatives passed 23. Whereas there was concurrence on 17 of the treaties, there was, however, non-concurrence on 6 of the treaties by the Senate as at the time the 5th National Assembly was dissolved in June 2007. See table below:

Figure 3: TREATY BILLS PASSED AND ASSENTED TO BY THE PRESIDENT 1999 – 2007



Source: *Author*

Although 17 and 23 Treaty Bills were passed by the Senate and the House of Representatives respectively between 1999 and 2007, however, only 11 of these treaties were signed into law by the President. The treaties are listed, see table 5.3 below:

While many legislators blamed the executive for delaying referrals of treaties to the National Assembly for domestication, others are due to excessive local politicization of the issues and undue external influence on the National Assembly. A good example is the Child Rights Act which was promulgated in 2003. Nigeria was a signatory to the Convention on the Child Rights of 1989. However, the process of the domestication of the Act proved extremely difficult due to religious and cultural issues arising from the very definition of what a child means which in the Convention is a human being below the age of 18 years. This Bill was misconstrued particularly in some parts of Northern Nigeria as an attempt to impose Western cultural values on them especially in relation to marriageable age of 13 years under Sharia law-which is within residual powers (Omoregie 2015).

Table 4: TREATIES DOMESTICATED BETWEEN 1999 AND 2007

S/No.	Title of Treaty	Date Assented To
1.	Treaty to Establish African Union (Ratification and Enforcement) Act, 2003	24th December, 2003
2.	Treaty to Establish African Economic Community Relating to the Pan-African Parliament (Accession and Jurisdiction) Act, 2004	28th February, 2005
3.	Extradition Treaty Between the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004	6th January, 2005
4.	Treaty on Legal Mutual Assistance in Criminal MatterBetween the Government of the Federal Republic of Nigeria and the Government of the Republic of South Africa (Ratification and Enforcement) Act, 2004	28th February, 2005
5.	The International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004	30th June 2004
6.	Treaty to Establish Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemical and Pesticides in International Trade (Ratification and Enforcement) Act, 2005	22nd June, 2005
7.	United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act, 2005	17th August, 2005
8.	Treaty Between the Federal Republic of Nigeria and the Democratic Republic of Sao Tome and Principe on the Joint Development of Petroleum and other Resources in the Area of the Exclusive Economic Zone of the Two States (Ratification and Enforcement) Act, 2005	28th February, 2005

9.	International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act, 2006	22nd December, 2006
10.	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 as Amended (Ratification and Enforcement) Act, 2006	22nd December, 2006
11.	International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act, 2007	11th April, 2007

Source: *Senate Order Paper (2014).*

Citing inconsistencies of the bill with Islamic values, majority of the members of the National Assembly from Northern Nigeria objected to the bill. Among other reasons advanced for their objection was setting of 18 years as the minimum age for marriage which is contrary to Islamic injunction .Islamic law allows girls to be married out at a much younger age, in which case the consent of the bride is immaterial and subsumed into family preferences(Emelonye 2014). Bodies like the Supreme Council for Shari'a in Nigeria (SCIAN), not only opposed the Bill but also pressured states in Northern Nigeria that are implementing Sharia Law to keep their representatives in both the Senate and the House of Representatives from supporting the Draft Bill. These, among other factors led to the failure of the National Assembly in passing the Child Rights Bill against widely held expectations that Nigeria would join other signatories to domesticate the Convention.

In the case of the Green Tree Agreement [(GTA)- negotiated by Nigeria and the Republic of Cameroon for the implementation of the International Court Justice verdict on the disputed Bakassi Peninisula], the document reached the National Assembly in late 2006 barely few months to the end of the Obasanjo's administration. Due to the recurrent feud and conflict between the President Obasanjo's government and the National Assembly, the Presidency never deemed it necessary to consult or seek the opinion of the national legislature on the matter. Although the Nigerian and Cameroonian authorities signed the GTA in late 2006,no legislative measure was taken on the matter before the 5th National Assembly ended because of its late arrival at the National Assembly.

According to Enang (2016), "even if the GTA was submitted to the National Assembly in time, the Assembly could not have acted on it because it was not a legislative proposal or treaty Bill and thus required no action. The GTA was only informing the Assembly of the ICJ judgement and you cannot convert a judgement into a treaty". Similarly, Egba (2006) and Sondangi (2016) maintained that the GTA is not a treaty, it is a document of consent that Nigeria has submitted itself to the jurisdiction of the ICJ in order to enforce peace between her and Cameroon.

Conclusion

Treaties are important instruments for external relations, therefore, no nation can meaningfully achieve her foreign policy objectives without considering the contraction of one form of treaties or the other. Since Nigeria is a dualist state whatever treaties so entered into by the executive must be domesticated by an Act of the National Assembly before it can take the force law or

become enforceable in the local courts. This constitutional requirement makes the National Assembly an indispensable institution in the making of treaties in Nigeria.

In spite of the enormous legal and constitution powers of the National Assembly in the making of treaties, frequent feud between the executive the National Assembly, constitutional requirements especially the roles of the federating states, external political influence on the National Assembly, excessive politicization of treaty Bills as well as lack of political will among legislators have impacted negatively on the fortune of treaties domesticated in Nigeria during the life of the 4th and 5th National Assembly.

Since treaties are indispensable instruments in formalising external relations, the executive should improvise the involvement of the National Assembly at negotiation levels in order to close knowledge and communication gaps between the two arms of government. In the same vein, the National Assembly should expand the scope of public consultation and participation in the process of legislating treaty Bills so that treaties domesticated can be more acceptable to the people.

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Biographical Notes

Christopher Ochanja NGARA is a staff of the National Institute for Legislative Studies, National Assembly, Plot 2824 Danube Street, off IBB Way, Maitama, Abuja, NIGERIA. Email: cossychris@yahoo.com