SPECIAL EDITION

NIALS DIGEST

THE NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

Apr - Jun. 2021 VOL 2: No 2

NIALS DIGEST
Vol. 2 No. 2

Editor-In-Chief

Prof. M.T. Ladan, PhD

Editorial Crew

Agwu Ijeoma Joyce
Godwin Atsu
Abdullahi Habiba Trisha
Naomi Echor
Jude Anisha
Nwosu Ahunna
Ebong Ndifreke
Edna Nwosu
Prosper Ettoh

NIALS DIGEST
Vol. 2 No. 2

MOTTO
Knowledge that makes the Difference.

MISSION
To be the nucleus and hub of legal research and advanced studies in law in Nigeria.

OUR VISION
To be a world class institution that is the primary source of information, training and advice at the highest level of policy formulation on legal matters, effectively impacting on local and international institutions in the development of law.

NIALS ENABLING ACT
Commencement
Establishment of the Nigerian Institute of Advanced Legal Studies

(1) There is hereby established an institute to be known as the Nigerian Institute of Advanced Legal Studies (in this Act referred to as "the Institute") which shall have the functions assigned to it by this Act.

(2) The Institute shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

Membership of the Council, etc.

(1)There shall be established for the management of the affairs of the Institute a body to be known as the Nigerian Institute of Advanced Legal Studies Council (in this Act referred to as "the Council")

(2)The Council shall consist of the following members, that is – (a) a Chairman to be appointed by the President; (b) a representative of the Federal Ministry of Justice, c) a representative of the Federal Ministry charged with responsibility for higher education; (d) six Deans or Heads of Faculties, or other formations

of Nigerian Universities offering degree courses in law at not less than post-graduate level, to be appointed by the President; the Director-General of the Nigerian Law School; one member of the Judiciary nominated by the Chief Justice of Nigeria; the President of the Nigerian Bar Association; five persons of whom one shall be a woman to be appointed by the President; and the Director-General of the Institute.

(3) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

Functions of the Council

(i) Council shall be responsible for the determination of the overall policy of the Institute and in particular for the financial and operational programmes of the Institute and for ensuring implementation of such policies and programmes.

(ii) Without prejudice to the generality of subsection of this section, it shall be the duty of the Council to approve the research and training programmes of the Institute, determine the fees to be paid for research, consulting, training and any other services that may be offered by the Institute and promote or undertake any other activity that in the opinion of the Council is calculated to help achieve the purposes of the Institute.

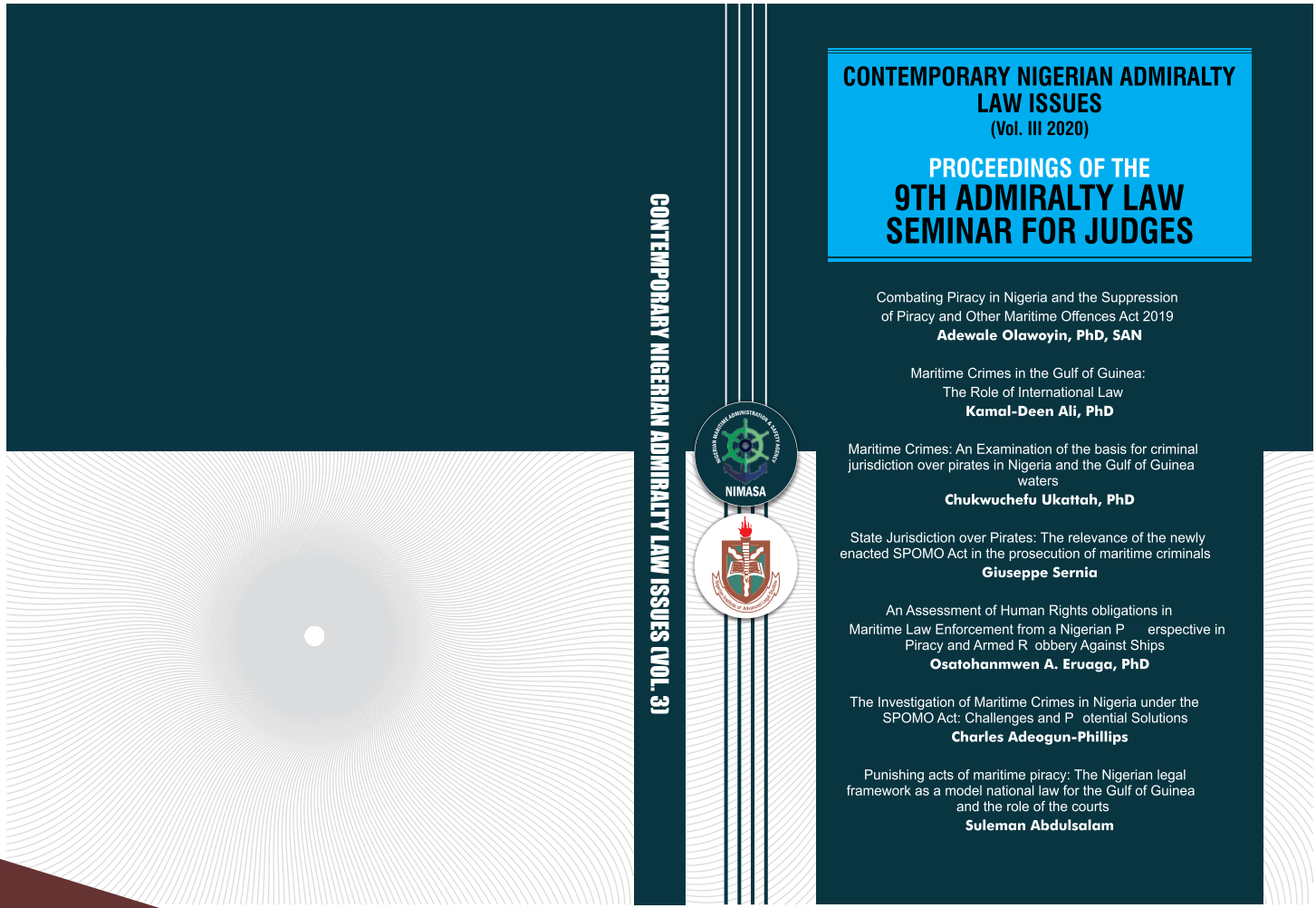
NIALS ANTHEM

Ever questioning,
Ever Probing,
Nigerian Institute of Advanced Legal Studies!
Vision foretold by founding fathers,
Ideas nurtured by patriotic fervor,
Urging us to make the difference,
And be the nucleus of legal studies,
With passion and hope our mandate deliver,
And be the best that we can be,
A truly world class institution,
Nigeria's law abode!

NIALS DIGEST
Vol. 2 No. 2

Friday April 6, 2021

E-copy latest 9th NIALS/NIMASA publication unveiled. The E-copy of the latest NIALS/NIMASA 9th publication on Admiralty/ Maritime Law seminar proceedings, 2020, Volume 3 was unveiled at Victoria Island Lagos in February, 2020. The event had in attendance the Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD, some NIALS Research Fellows and other stake holders.



NIALS DIGEST
Vol. 2 No. 2

Felicitations

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD on Tuesday, the 6th April, 2021 felicitated with some staff members of NIALS on National Assignments. They include;

1. Professor Bolaji Owasanoye SAN, Chairman, Independent Corrupt Practices Commission (ICPC).
2. Professor Animi Awah-Pepple, Chairperson, Nigerian Copyright Commission.
3. Associate Professor Fatima Waziri-Azi, Special Assistant to the President on Rule of Law/ Vice President's office.
4. Dr Fatima Bello, Coordinator, Work Stream on Legal, Policy and Regulatory Framework, National Action Committee on the Implementation of African Continental Free Trade Area (AfcFTA) in Nigeria/ Federal Ministry of Industry, Trade and Investment (FMITI).
5. Mr Jacob Kajo, the longest serving personal secretary to three (3) Solicitor Generals of the Federation, Federal Ministry of Justice.
6. Dr Taiwo Donatus, Legal Officer at the Organization of the Petroleum Exporting Countries (OPEC), Vienna, Austria.
7. Other Research Fellows at the Human Rights Commission (HRC) and Presidential Advisory Committee against Corruption (PACAC).

The Director General, on the other hand welcomed back two (2) distinguished Professors; the immediate past Vice Chancellor of Lagos State University (LASU), Professor Lanre Fagbohum and immediate Past Edo state Attorney General/Commissioner for Justice, Professor Yinka Omorogbe.

In a related development, the Director General congratulated Professor Peter Akper on his nomination to serve as an International Bar Association (IBA) and International Criminal Court (ICC) Moot Court Judge.

NIALS DIGEST
Vol. 2 No. 2

April 13, 2021

NIALS DIRECTOR GENERAL'S *Intervention*

One very important area of concern that is very fundamental to the administration of Professor Muhammed Twafiq Ladan PhD as the Director General of Nigerian Institute of Advanced Legal Studies is the wellbeing and welfare of staff. To this end, the Director General on Tuesday, the 13th of April, 2021 urgently approved the installations of ceiling fans in Lagos office, even before the release of the 2021 capital budgetary allocation.



In a similar development, on Wednesday, 28th April, 2021, he approved the refurbishment of eleven (11) dysfunctional toilet facilities also in Lagos office that were unattended to, for years.

These interventions are aimed at creating conducive working environment for staff members of the Institute.





NIALS DIGEST
Vol. 2 No. 2

Friday 16 April

10th NIMASA/NJI/NIALS
Admiralty/ Maritime Law Colloquium

Nigerian Institute of Advanced Legal Studies in collaboration with Nigerian Maritime Administration and Safety Agency and National Judicial Institute held their 10th NIMASA/NJI/NIALS Admiralty/ Maritime Law Colloquium for Justices of the Court of Appeal & Federal High Court at Radisson Blue Hotel, Victoria Island, Lagos on Friday, 16th April, 2021. At the event, certificates were presented to participating Justices/Judges by the Director Generals of the Nigerian Maritime Administration and Safety Agency (NIMASA) and Nigerian Institute of Advanced Legal Studies (NIALS).







NIALS DIGEST
Vol. 2 No. 2

Thursday 16 April

IUCN Global Youth Summit 2021

Engr. Jauda Istifanus on Thursday, 16th April, 2021 participated and hosted five (5) sessions in the International Union for Conservation of Nature (IUCN) Global Youth Summit 2021 as a Technical support officer on whova & zoom platforms on different topical issues.

IUCN is a membership union composed of both government and civil society organizations. It's a Democratic Union that brings together the world's most influential organizations and top experts in a combined effort to conserve nature and accelerate the transition to sustainable development.



The event had a lot of people from diverse cultures and communities across the globe.

Wed. 21 April

ROUNDTABLE ON REFORM OF THE CRIMINAL JUSTICE SYSTEM OF NIGERIA

The National Institute of Legislative and Democratic Studies (NILDS) in partnership with Prisoners Rehabilitation and Welfare Action (PRAWA) organised a roundtable on Wednesday, 21st April, 2021 at Senate Hearing room one (1), seeking to entrench an effective criminal justice system through law reforms to prevent overlaps in our criminal justice system which delays justice delivery.

In his opening remarks, the Senate President represented by the Chairman Committee on Justice stated that no society grows without an effective criminal justice system. He commended the organisers of the roundtable for choosing the topic at when the country is faced with challenges of insecurity.

During the presentations, Dr Shuaibu Danwanka and Dr Jake Dan Azumi discussed on the Lead Topic*: Overview of Desk Review –Criminal Justice System in Nigeria: Areas for Legislative Action.* The presenters stated that despite the sincere commitments in law making through the enactment of Administration of Criminal Justice (ACJA 2015), the Anti-Torture Act, 2017 and several other judicial reforms in the first, second, third and fourth Constitutions Alteration Acts, the National Assembly is still on course in facilitating effective reforms of the criminal justice system.

In their recommendations, they advised on the following to help facilitate effective reform of the criminal justice system; the need to expedite actions by sponsors of Bills awaiting second reading to enhance their organisations and particularly PRAWA should collaborate with relevant committees preferably Justice, Judiciary, Human Rights and Legal matters in the Senate and Justice, Judiciary, Human Rights and Women Affairs in the House of Representatives to facilitate speedy considerations of ongoing proposals. The National Assembly's relevant committees on constitutional reviews should be requested to include this subject matter within the scope of their review, PRAWA and NILDs working in partnership with other stakeholders should develop specific guidelines that will facilitate effective reform of the existing criminal justice laws in accordance with the Constitution and global human rights norms among others.

Nigerian Institute of Advanced Legal Studies in their contribution discussed on the need for a legislative intervention on military *operation safe corridors* or deradicalization as obtainable in some climes, and also the need for the Attorney General of the Federation and Minister for Justice to give fiat to the Attorney General and Commissioner for Justice of states to prosecute terrorism matters to reduce the number of detainees at the correction centres.

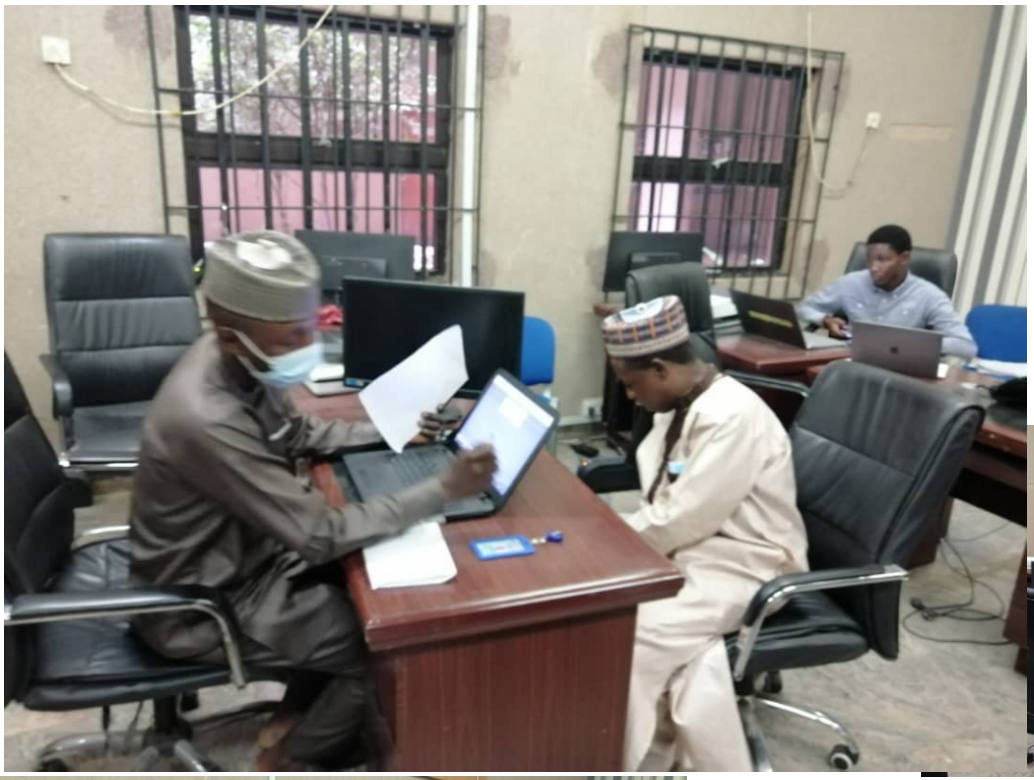
The meeting had the presence of many organisations among others during its discussion; representative of the Senate President, representative of the Speaker of House of Representative, representative of German Agency for International Cooperation (GIZ), Country Director of Amnesty International, the Director General NILDS, the Executive Director Prisoner's Rehabilitation and Welfare Action (PRAWA), Director General of Law Reform Commission, Representative of the Chairman of National Human Rights Commission, Representative of Director General of NIALS, Secretary to the Presidential Committee on Prison decongestion, representative of Legal Aid Council, Representative of the Chairman EFCC, Representative of the Chairman ICPC , members of the press and Civil Society Organisations.

NIALS DIGEST
Vol. 2 No. 2

28 April, 2021

2021 IPPIS VERIFICATION EXERCISE

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD and other staff of the Institute participated at Integrated Payroll and Personnel Information System (IPPIS) Bio-metric verification exercise held on Wednesday, 28th April, 2021.









22nd April, 2021

NIALS STAFF PARTICIPATION IN DIRECTOR GENERAL'S APPROVED WEBINARS/ROUNDTABLES 2021



In his quest to meet the yearnings of staff welfare, Development and advancement, the Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD graciously nominated, approved and fully sponsored the following members of staff of the institute to participate in the following webinars, Roundtables and other events. These include; Laura Ani, Professor Anyaogu Uluocha, Izuoama Egeruoh-Adindu and Nnenna Joy Eboh.

22nd April, 2021

AFrIPI Capacity Building Workshop on GIZ

Laura Ani, a Senior Research Fellow of the Institute attended the Africa Intellectual Property Rights and Innovation (AFrIPI) Capacity Building Workshop on Geographical Indications for Public Sector/ Policymakers in Nigeria. The workshop was held on Thursday, 22nd April 2021 and was centered on issues bordering, developing a framework for Geographic Information System (GIS) on Agri-goods. The event was timely in view of developing 'rules of origin' for trade under the African Continental Free Trade Area (AFCFTA).



NIALS DIGEST
Vol. 2 No. 2

Friday 14 May, 2021

NATIONAL LIBRARY ASSOCIATION ANNUAL CONFERENCE 2021



Professor Anyaogu Uluocha, the Institute Librarian attended the National Library Association Conference/Annual General Meeting. The event which held in Kano State on Friday, May 14th 2021 had in attendance the Executive Governor of Kano State, His Excellency Addullahi Umar Ganduje OFR, and other stake holders in the sector.

Prof Anyaogu Uluocha

23rd -26th May, 2021

Nigerian Bar Association SPIDEL Annual Conference

Izuoam Egeruoh-Adindu and Nnenna Joy Eboh, Research Fellows of the Institute attended the Nigerian Bar Association Session on Public Interest and Development Law (SPIDEL) Annual Conference held at Jogor Events Centre, Ibadan, Oyo State from 23rd - 26th May, 2021. The theme of the Conference was *"The Role of Public Interest in Governance in Nigeria,"* this was carefully selected to address issues and challenges on governance especially issues bothering on insecurity plaguing the nation.



The event had in attendance three (3) state governors, one former governor, Senators, members of House of Representatives, Justices and Judges of superior courts, members of the Bar, the Academia, civil society organizations and other critical stakeholders which served as lead speakers at the conference, addressing some topical issues on the imperatives of Public Interest in governance in Nigeria.

NIALS DIGEST
Vol. 2 No. 2

DIRCTOR GENERAL's LECTURE

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD delivered a lecture on *Rule of Law and Internal Security* to participants of Executive Intelligence Management course organized by the National Institute for Security Studies (NISS) on Monday, 4th May, 2021.







NIALS DIGEST
Vol. 2 No. 2

Tuesday, 18th May, 2021

THE DIRECTOR GENERAL OF NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES SPEAKS ON LEGISLATIVE INTERVENTION OF GENDER BASED VIOLENCE ON NIGERIAN TELEVISION AUTHORITY NEWS EXTRA

The United Nations listed Nigeria among eighty nine countries that made legislative interventions to stem the tide of violence against women and children with states institutionized action plan. The UN Convention on the elimination of all forms of discrimination against women, *Violence Against Persons Act, 2015 (VAPP) which prohibits all forms of violence against people in public and private life, section 1(4) VAPP mandates that a register of sexual offenders be maintained and accessible to the public, NAPTIP Acts 2015 prohibits Human Trafficking especially women and children both within and outside the country* and *The Child Rights Acts 2003 section 3(1) & (2) provides for life imprisonment for sexual intercourse with a child* are among legislations on gender protections in Nigeria.

Despite these numerous Legislative interventions on Gender Based Violence in Nigeria, it is surprising that, there is an alarming increase in Gender Based Violence in the country, with the perpetrators walking freely on the streets while the victims are left to suffer in stigmatization and psychological trauma as a result of the abuses. This has raised a lot of concerns among stakeholders, hence Viera Chunwuba, a correspondent with Nigerian Television Authority (NTA) sought to know why the applications of these legislations have not substantially curbed the menace.

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD, speaking during an interview on the 18th of May, 2021 with NTA News Extra, said, *It is always very difficult to get evidence to eventually pin down such accused persons before they can be convicted. In many instances when dealing with sexual /Gender Based Violence, the victims always find it very difficult to come forward.*

Victoria Awomolo, SAN in her submission said *another factor for the seemingly non implementation of our laws is the political will perhaps by the makers of the law to make the law work.*

The Director General of National Agency for Prohibition of Trafficking in Persons (NAPTIP) Imaan Sulaiman-Ibrahim under whose desk the bulk of the work lies in terms

of implementation said the Agency is employing a multi-sectorial approach to addressing the issue. *She said, the Agency is looking at reviewing her operations to strengthen her legal framework to ensure that it is fit for purpose. She further said the Agency is looking at the ways to strengthen her response having dealt with the consequences and also emphasis on dealing with causes and the need to strengthen her international cooperation.*

If the narrative on increasing Gender Based Violence in Nigeria must change, a holistic approach involving all stakeholders such as traditional rulers, religious bodies, women rights group, families and the law enforcement Agencies are required to tackle the menace.

Wednesday, 26th May, 2021

NIALS INTERNAL *TRAINING*

In his quest to enhance staff productivity and efficiency, the Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD approved a One (1) day in-house training for staff members of Administration, Bursary and Audit Department. The training was held on Wednesday 26th May, 2021 in Abuja office for staff members on CONTISS 13 to 14, while the session for Lagos office took place on Wednesday, 23rd June, 2021 for staff on CONTISS 07 to 12 at the Professor Ayo Ajomo Auditorium.



NIALS DIGEST
Vol. 2 No. 2

Monday 31st May, 2021

NIALS/MacArthur Partnership

The John D and Catherine T MacArthur Foundation has been providing support to the project on the Implementation of the Administration of Criminal Justice Act 2015 (ACJA) as part of the Foundation's on Nigeria Grant program since 2015.

The Project Implementation Team of the Nigerian Institute of Advanced Legal Studies/MacArthur Foundation had its maiden meeting to kick start the second phase of the project on *Strengthening the Criminal Justice System in Nigeria (2021-2023)*" on Monday 31st May, 2021 in Abuja.

Picture taken with the DG NIALS, Professor Muhammed Tawfiq Ladan middle & our partner institutions :the National Judicial Institute Representative/ Ag. Head of Research/Deputy Director Gilbert & President of National Association of Law Teachers (NALT)/ Dean of Law, BUK/Prof U M Shuaib flanked by NIALS Prof P Akper, Prof A Adewopo and Prof E Okon.





NIALS DIGEST
Vol. 2 No. 2

Wednesday, June 2- Friday, June 4, 2021

1st AFRICAN UNION JUDICIAL RETREAT

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD participated in the First African Union Judicial Retreat on the African Union (AU) Institutional Reform and its possible impact on the African Human Rights Courts based in Arusha, Tanzania from Wednesday June 2nd to Friday, June 4th, 2021. The event was organized by the African Human Rights Courts, and was attended by over hundred high level African jurists, policy and decision makers, Civil Society Organizations, RECS, Bar Associations and the academia.

In his presentation, Professor Ladan sought to know why AU is interested in Institutional reforms within the system, and he listed five (5) focal tagged areas from the Report submitted and adopted by the Assembly of Heads of sStates as reasons for AU Institutional reforms, and keys for transforming the African Union requiring urgent attention;

1. Continental priorities
2. Institutional realignments
3. Connecting of Africans as the key stake holders
4. Operational effectiveness inefficiency
5. Sustainable financing.

He had opined on the questions asked to address as panel of section three (3) by the organizers which he framed in form of question one (1).
Is there any possible impact of the AU reform on the judicial Human Right and Legal organs?
The Director General in his view mentioned the AU has several organs to oversee Judicial Human Rights and legal matters on behalf of the African Unions its member states and African citizens. The main organs are; African Court on Human and Peoples Right, African Commission, African Committee on Export and Rise of Welfare of the Child, AU Commission on International Law, AU Advisory body on corruption, and the extra ordinary African chambers. These are the clustered AU Judicial Human Right and Legal organs that the organizers asked us to look at any possible impact on their existence and performance of activities.

In determining the factor of any possible impact of the AU reform on these Judicial Human

Right organs, Professor Ladan said, it lies in the following questions that prompted the reform agenda itself;

1. Are the judicial or human right organs highly fragmented with too many focus areas?
2. Are these judicial and human right organs mentioned earlier having complicated structures, limited managerial capacity leading to inefficient working methods, leading to poor decision making, leading to lack of accountability in Human Right Judicial and Legal organs ?
3. Are the judicial human right a legal option of AU as at today, are they financially independent, self-sustaining or relying on partner funding for much of their financing?
4. Is coordination between AU judicial human right and legal organs and their counterparts at the regional community level in their collaboration, coordination and cooperation of activities?

His response to these questions was that first of all, the African Court is the main judicial organ of the AU charged with the protection of human rights on the continents with fifty-two (52) signatories out of fifty-five (55) states, and as at May 2021, the protocol establishing the court had been rectified by thirty (30) member states of the AU out of which only nine (9) have deposited the declaration required on Act 34C of the protocol accepting the competence of court to receive cases directly from individual courts .

Also, African courts as at today from its success stories and its limitations in terms of role of member states in relationship with the court, and also the need for sustainable funding. Within these limitations, and some level of frustrations of the court, the Director General strongly believes that records of performance of the court has shown that the court is operating for value for money, but the court is faced with many challenges that needs to be addressed. For instance, it is on record that since 2006 operational point, the African Court has received over three hundred and fifty (350) cases and fourteen (14) request for advisory opinion, it has surrendered over one hundred and six (106) judgments' and rulings , issued about ninety (90) orders and finalized twelve (12) for advisory opinion. This is a success story. However, the court is faced with many challenges, and therefore in his view, the court need to be sustained, empowered, strengthened and have a robust cooperation from member states, citizens, civil society organizations and from other AU organs within the structure. Professor Ladan is convinced that the court will continue to grow and deliver more judgments, and it will continue to impact as a mechanism for the advancement of human right, good governance and rule of law in Africa because it is apparent from its activities, its records of performance and also from its efforts to even establish an over reached or outreach programs to reach member states and other

stake holders.
The Director General is certain that in order to access the effectiveness of the courts and other decision organs, there is need for effectiveness criteria to access them with. The first element of criteria is *Utility,* that is, value addition to the subject matter or its usefulness to the African Human Rights system. This first element of criterion must have been made from its records of performance, and therefore the African Court on Human Rights in his view has actually met the first criterion, and it is of a utility or value to the African Human Rights system and the African Union itself.

The second element of the criterion is *Responsiveness* to the needs of Africans and African institutions. Responsiveness in the Director General's view is key as an element of the effectiveness criteria to be accessed of any institution (responsiveness to conflicting social interest, regional interest, human needs, etc). He believes that in the last fifteen (15) years, the African Court will at least be given a pass mark for satisfying this second element of effectiveness criteria of Responsiveness.

The third element of the criterion is *Compliance monitoring*: This is an element which seeks to provide for improved human right observant results where human rights policies are complied with. It is also another element to determine the effectiveness of any system or institution where the compliance re-enforces credibility of human right protective effort for the advancement above human right in the legal system in the African continents. This particular element may be one of the weakest link of the court because it is not a creation of the court for the member states to comply with its ruling, orders or judgments of decisions. For the court to be effective, member states, civil society organizations must be urged to trigger more commitment on the part of member states to ensure compliance with court judgments, its rulings and orders. *Enforcemen*t of court orders is also another element of effectiveness criteria. It is the responsibility of the court to ensure compliance and also the enforcement of those decisions.

The Director General is of the opinion that AU mechanisms should put sanctioning strategies on member states so that enforcement can be keyed. There must be objective criteria to assess the court with.

Finally *Implementation* of decisions and orders of the court is another element of effectiveness criteria. For any effectiveness of the court, orders rulings and judgments' must be implemented. The last three (3) elements of effectiveness criteria are essentially not the responsibility of the African Court, but the responsibility of AU organs outside the judicial and legal organs, decisions of member states and civil society organizations that must continue to actually trigger these

clauses in effectiveness criteria so that member states, citizens, CSO's must live up to their expectations in terms of compliance monitoring, enforcement, and implementation.
In his submission, Professor Muhammed Twafiq Ladan PhD posed another question from the panel for discussion: *Is the future of African Court in jeopardy?*

He (said) that there is actually a worry trend which seems to be emerging where courts have actually rendered a judgment against some state of its states, begin or threaten to withdraw article 4(6) declarations. So far, it has been observed that four (4) states have withdrawn their declaration; Rwanda in February 2017, Tanzania in 2019, Benin in March 2020, Cote dÍvoire in April 2020. This trend is a troubling trend and actually puts the court in jeopardy.

The second trend which is also very disturbing is the non-depositing of declaration required by article 4(6) by large number of member states that not only signed to rectify the treaty. They are about thirty (30) of them.

Finally, there is also a third disturbing trend that is decimal compliance and perceive lack of cooperation by some member states which Agenda 2063 on the Africa we want is contrary to African index commitment to the AU. The AU Human Right Agenda decade plan of action 2017-2027. In all these AU instruments and documents, there is a commitment to respect human right, to promote good governance, and to respect compliance of the judgments of the AU judicial organs including the courts.



NIALS DIGEST
Vol. 2 No. 2

Tuesday 1st June, 2021

NAILS RE-SWAP ASSIGNMENTS/ POSITIONS

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD directed and reassigned of some management staff as follows; Dr N U Udombana move to the Department of African and Comparative Law as the Acting Head of Department while Dr Anyebe is moved to the Post Graduate School as the Deputy Director PGS.

Friday 4th June, 2021

McPherson- SMITH VISITS NIALS LIBRARY

The Nigerian Institute of Advanced Legal Studies Library Department on Friday, 4th of June 2021 received a Researcher, Oliver McPherson- Smith who is currently studying for his Doctorate degree at the University of Oxford England.



NIALS DIGEST
Vol. 2 No. 2

Thursday, 10th June, 2021

2020 STAFF PROMOTION EXERCISE OF
Nigerian Institute of Advanced Legal Studies

The Governing Council of Nigerian Institute of Advanced Legal Studies at her 48th meeting held at Rockview Hotels Royale, Abuja on Thursday 10th June, 2021 ratified all the approvals earlier given by the Chairman /Chief Justice of Nigeria, Justice Tanko Muhammed during its Council meeting of Tuesday 20th April, 2021. A total number of twelve out of eighteen Academic staff and seventy two out of seventy eight Non Academic staff were successfully promoted.

The meeting was well attended by a good number of Council members; amongst which are the Chief Justice of Nigeria/ Chairman of Council, Honourable Justice Tanko Muhammed, Nigeria Bar Association (NBA) President, Mr Olumide Akpata, Chief A Awomolo, SAN, Mr Sanusi IIlo SAN, Deans of Laws of University of Nigeria, Nsukka, Dr Samuel I Nwatu, University of Maiduguri, Professor Yusuf M Yusuf, Amadu Bello University, Zaria, Professor Abubakar M Madaki, University of Jos, Professor Sylvester Shikyil SAN, Professor Abubakar R Matazu, Director General of Law School, Professor Isa H Chiroma, and Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Twafiq Ladan PhD, Professor Ige O Bolodeoku, Dean of Law, University of Lagos, Professor O. Okene, Dean of Law, Rivers State University of Technology, Mr Bernard Hom, SAN, and Mrs Ibirobo Tamuno-Adekola SAN joined virtually.

The Director General of the Institute, Professor Muhammed Twafiq Ladan PhD, had directed the Institute Secretary to sign and release the letters to the newly promoted staff.



Director-General with Institute Secretary & NIALS Admin & Bursary Staff that supported during the meeting



Director-General NIALS with CJN

NIALS DIGEST
Vol. 2 No. 2







Council Members that joined virtually from Lagos including Mrs Ibirobo Tamuno-Adekola SAN



Pictures of Council Members & support staff on 10th June 2021 at the 48th NIALS Governing Council meeting held at Rockview Hotel Royale, Abuja





Picture showing Council Chairman with Chief Adeboyega Awolomo SAN and the Council in session

NIALS DIGEST
Vol. 2 No. 2

POLICY BRIEF N0. 1, JUNE 10 2021

NATIONAL PRACTICE ON DOMESTICATION OF TREATIES IN NIGERIA (1960-2021):- WHICH METHOD FOR AfCFTA??

BY
PROF. MUHAMMED TAWFIQ LADAN
(HUBERT HUMPHREY FELLOW, USA)
DIRECTOR-GENERAL, NIALS, ABUJA, NIGERIA.

Email: - mtladan@gmail.com

INTRODUCTION

Domestication of a treaty or international agreement is a process of incorporating or transforming the provisions of a (signed and ratified) treaty into the domestic law of a given country, thereby given it the needed force of law m the national legal system, including enforceability of its provisions by domestic courts.

The domestication of treaties should be viewed against the background of the principle found in most legal systems that the status of international law or treaties in national legal systems is determined by national constitution/law and not by international law itself.

In Nigeria, the trend of case law suggest two things: - that an undomesticated treaty (though ratified) has no force of law whatsoever in Nigeria, by virtue of section 12(1) of the 1999 constitution, as amended; and that a domesticated treaty in accordance with section 12(1) of the constitution does not operate in Nigeria by the force international law but by virtue of the statute enacted by the Legislature (National Assembly) to Implement it. (see the Supreme Courts decision in Abacha v. Fawehinmi (2000) FWLR (pt.4) 553 at 586, per Ogundare, Jsc; and in the case of Attorney General of the Federation v. AG of Abia State and Ors (2002) FWLR (pt. 102) P.1 at 92-93).

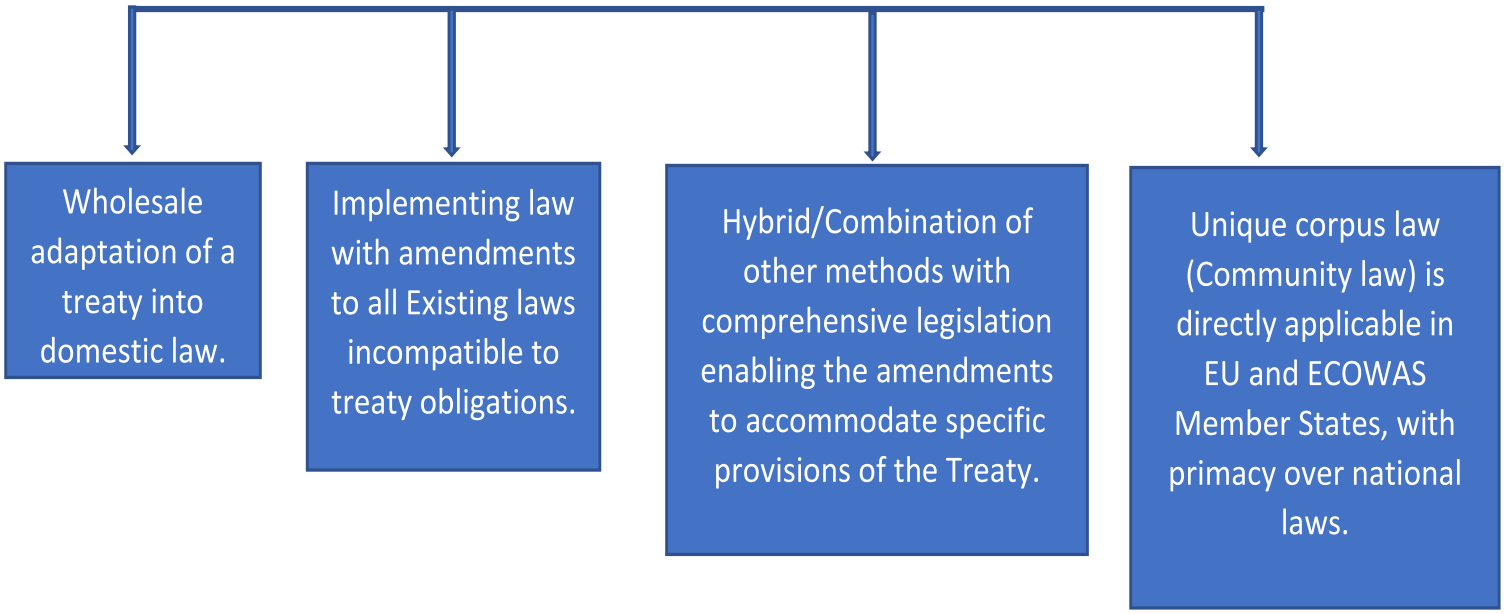
However, the Constitution of the Federal Republic of Nigeria (Third Alteration) Act,

2010/ came into force in 2011, appears to have made ratified but undomesticated labour related treaties Justiciable in Nigeria without any legislative intervention by means of an implementing national legislation of such treaties (See section 6(2) and section 254(c) of the Act). Subsection (2) of the said section 254(c) introduced monist doctrine of automatic application of ratified treaties thereby excluding application of both Section 12 (1) of the Constitution and the Judicial authority in the case of Abacha v. Fawehinmi as far as labour treaties are concerned in Nigeria.

It is worth noting that international trade agreements/treaties like the AfCFTA are, as a rule of international law, not Self-executing. State Parties to such treaties must ensure that the required domestic legal arrangements are in place in order to give effect to their obligations. They cannot invoke their national law or their own constitution to escape from their international obligations (See Article 27 of the Vienna Convention on the Law of Treaties).

There are four (4) basic methods of national implementation of a treaty in international practice: -

Figure 1



NIALS DIGEST
Vol. 2 No. 2

1. The practice in the domestication of treaties in Nigeria: - 1960-2021

Domestication of treaties in Nigeria is primarily a constitutional requirement by virtue of section 12(1) of the 1999 constitution, as amended. It is also a statutory /legislative requirement by virtue of section 3(1)(a) and 3(2)(a) as well as 3(3) of the Treaties (Marking Procedure etc.) Act, Cap.T20, Laws of the Federation of Nigeria (LFN) 2004.

The Nigerian Constitution gives the federal government exclusive Jurisdiction over 68 items on the Exclusive Legislative List of the 2nd Schedule to the Constitution, including matters relating to Foreign Affairs (see item 26); implementation of treaties(item 31), Trade and Commerce between Nigeria and other countries (see item62); Customs and Excise Duties (see item 16); Trade representation, etc(see item 20); ; Export Duties (see 1tem 25); Maritime and Shipping (item 36); Copyright (item 13); Patents, Trade Marks, Trade or Business Names, Industrial Designs and Merchandise Marks(item 43). In its description of Nigeria's Foreign Policy Objectives, section 19(d) of the Constitution refers to "respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication".

The National Policy on Justice, 2017, adopted by the Federal Executive Council in November 2019, equally refers to Nigeria's commitment to compliance with her Treat obligations consistent with the constitutional responsibilities pointed out earlier see NPJ thematic issue 17 @ pp. 67 to 68).

The Nigerian Constitution makes no specific treaty making procedure /power, but reserves to the Legislature National Assembly the exclusive power to domesticate treaties relating to matters on the Exclusive Legislative List, including the power to make laws on matters **not** included in the Exclusive List for the purpose of implementing a treaty (Sect1on 12(1) & (2)).

NB: - Constitutionally therefore, the Executive's power to make treaties (negotiation, conclusion/ signing and ratification is implied, having the responsibility of promoting Nigeria's foreign policy objectives, initiating and concluding trade and commerce agreement on behalf of the Federation and people of Nigeria, as statutorily empowered by section 1(2) of the Treaties (Making Procedure, Etc.) Act.

Hence in practice, since independence, while the acts of Negotiation, Conclusion and

Ratification of Treaties are undeniably a cluster of Executive functions, the primary and exclusive role of the Legislature/National Assembly lies in domestication of treaties (already ratified by the executive) in order to give it the force of law for domestic Implementation. This is so because, NEITHER the Constitution NOR the Treaties (Making Procedure Act ASSIGNS ANY ROLE to the National Assembly in respect of treaty-making in Nigeria. Cumulatively. the power to make and domesticate treaties in Nigeria is a prerogative of the Federal Government. This was the position of the Supreme Court of Nigeria, per Ogundare, Jsc, in the case of Attorney General of Federation v. AG of Abia and others, where the Court held that: -

"In the exercise of its sovereignty, Nigeria from time to time enters into treaties, both bilateral and multilateral. The conduct of external affairs is on the exclusive legislative list. The power to conduct such affairs is therefore, in the Government of the Federation to the exclusion of any other political component unit in the Federation." ((2002) FWLR pt.l02,1 at 92-93). Further under Article l(a) of the Vienna Law of Treaties, only central governments have the capacity to validly conclude treaties on behalf of sovereign states.

Table 1:- Methods Adopted by Nigeria in Practice

1.	**Wholesale adoption:-** An implementing national legislation is enacted for wholesale adoption of treaty into domestic law (and Annexed the treaty in question). **E.g.,** the African Charter on Human and Peoples Rights, Cap. A9, LFN 2004; and the Geneva Conventions Act Cap.G3, LFN 2004(which gives effect to the fundamental provisions and obligations relating to universal Jurisdiction for war crimes and duty to punish individuals under the Four Geneva Conventions of 1949). **NB:-** In 2009,the Geneva Conventions and Additional Protocols (Consolidated) Bill was scheduled for consideration by NASS, for the purpose of Repeal of Cap. G3 and for the Domestic implementation of both the Four Geneva Conventions and their Two Additional Protocols of 1977. Officially gazetted as SB 315/C31693183,NASS;and was re-tabled in 2019/2020 as an Executive Bill for passage.

2.	**Superseding for incompatibility/inconsistency with treaty obligations:-**An implementing legislation with suspension or amendments to all Existing national legislations that may be *I* are incompatible with State obligations under the treaty in question. **E.g.,** the Child Rights Act, No. 26 of 2003, superseded the Children and Young Persons Act of 1945 etc for inconsistency with Nigeria's treaty obligations under both the UN Convention on the Rights of the Child and the AU Charter on the Rights and Welfare of the Child ratified by Nigeria(section 274)
3.	**A Hybrid approach/Combination of other methods:-** An implementing Comprehensive Legislation enabling the CONSEQUENTIAL AMENDMENTS to accommodate new or expansive provisions contained in the treaty; or for the specific provisions of the treaty to be incorporated in consequential amendments to existing domestic legislations. **E.g.,** the Suppression of Piracy and Other Maritime Offences Act 2019, gives effect to the fundamental maritime security provisions under the UN Convention on the Law of the Sea (UNCLOS) 1982 and the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) 1988 and its Protocols. **NB**:- while section 21 of the act provides for consequential amendment/ repeal, Section 2,6 and treaties explicity on matters relating to application, Jurisdiction, Custody and detention.
4.	**Domestication by Reference: -** is where the implementing legislation transforms a treaty (or treaties) into domestic law merely by reference to either specifically or generally of the treaty in the body, long and short titles, preamble or schedule of the implementing statue. **E.g.,** the Constitution of Nigeria(Third Alteration) Act, 2010 (Assented on 4 March 2011) is an incorporation of the National Industrial Court (NIC) Act into the Constitution, a re-establishment of the NIC as a superior court of records with exclusive Jurisdiction on labour and related matters provided in section 254(c) as embodied in Section 6 of the Third Alteration Act. Section 254(c) (2) of the Act, made reference to the application of all treaties, which Nigeria has ratified , relating to labour, employment, workplace, industrial relations or matters connected therewith, and conferred Jurisdiction on NIC to deal with such matters, notwithstanding anything to the contrary in this Constitution.

	NB: - The above provision appears to have practically rendered inoperative the provisions of section 12(1) of the Constitution in this context. (See the Supreme Court of Nigeria's decision in the case of NDIC v. Okem Ent. Ltd (2004)10 NWLR (pt.880) p.107 at 182.) NB: -The Plant Variety Protection Act, 2021refers to UPOV and incorporated the provisions of the 2001Plant VarityTreaty ratified by Nigeria on 20 January 2021relating to Plant Breeders and Farmers' Rights.
5.	**Domestication by a UNIQUE CORPUS LAW** (Community law) with direct application in Member States of the European Union (EU) and the Economic Community of West African States (ECOWAS), without recourse to the rigours and attendant delays of parliamentary ratification (in civil law jurisdictions) or domestication of such treaties (in dualist Jurisdictions like Nigeria). **NB:** - In ECOWAS, under the new Community Legal regime, consistent with MONISM, all Acts passed by the Authority of Heads of States, apply directly in Member States as Legally binding instruments.

While Figure 1 and Table 1 above reveal the methods of domestication of treaties in both international and Nigerian practices, tables 2-4 below show the applicable legal instruments on treaty making and domestication and selected domesticated treaties relating to trade, economic integration, human rights and humanitarian law, petroleum, taxation an maritime crimes, amongst others, in Nigeria.

Table 2:- Legal Instruments on Treaties Making Procedure and Domestication in Nigeria

S/N	Title of Instrument	Purpose / Objectives	Scope/ Content/structure
1	Constitution of the Federal Republic of Nigeria 1999, as amended.	The Constitution is for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of the Nigerian people. Accordingly, section 1(1) of the Constitution provides that the Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria. Section 1(3) further provides that if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.	Section 12 of the Constitution provides for the Implementation of treaties as follows- (1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly. (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty. (3) A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.
2	**Treaties (Making Procedure, Etc.) Act Cap T20 Laws of the Federation of Nigeria 2004.**	**The Act provides, among other things, for treaty-making procedure and the designation of the Federal Ministry of Justice as the depository of all treaties entered into between the Federation and any other country.**	**The Act consists of 7 sections, providing for the following –** • **Section 1 - Treaty making procedure** • **Section 2 - Making of treaties** • **Section 3 - Classification of treaties** • **Section 4 - Designation of the depository of treaties** • **Section 5 - Register of treaties** • **Section 6 - Responsibility to give information to Federal Government Printer** • **Section 7 provides for the short title of the Act.**

Table 3:- Selected Domesticated Treaties In Nigeria

1. Treaty to Establish the African Union (Ratification and Enforcement) Act,2003.
2. The International Convention for the Safety of life at sea No. 9 (Ratification and Enforcement) Act, 2004.
3. United Nations Convention against Transitional Organised Crime (ratification and Enforcement) Act, 2005.
4. Treaty to Establish African Economic Community Relating to the Pan African Parliament (Accession and Jurisdiction) Act,2005 as amended in 2016
5. Treaty on Mutual Legal Assistance in Criminal Matters between the Government of the Federal Republic of South Africa (Ratification and Enforcement) Act,2005.
6. Extradition Treaty between the Government of the Federal Republic of Nigeria and the Government of the Federal Republic of South Africa (Ratification and Enforcement) Act,2005.
7. 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 areas of the Exclusive Economic Zone of the two States (Ratification and Enforcement) Act, 2005.
8. United Nations Convention on Carriage of Goods by Sea (Ratification and Enforcement) Act, 2005.
9. Treaty to Establish Rotterdam Convention on the Prior informed Consent Procedure for certain Hazardous chemicals and Pesticides in International Trade (Ratification and Enforcement) Act,2005.
10. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971as amended (Ratification and Enforcement) Act, 2006.
11. International Convention on Civil Liability for Oil Pollution Damage,(Ratification and Enforcement) Act,2006.
12. International Convention for the Prevention of Pollution from Ships, 1973 and 1978 Protocol (Ratification and Enforcement) Act,2007.
13. Transfer of Convicted offenders (Enactment and Enforcement) (Amendment) Act, 2013.
14. Prohibition Of Double Taxation Between The Federal Republic Of Nigeria And The Republic Of South Korea (Domestication And Enforcement) Act,2017
15. Agreement on the Avoidance of Double Taxation between Federal Republic of Nigeria and the Kingdom of Sweden (Domestication and Enforcement) Act,2017.

16. Avoidance of Double Taxation Agreement between the Federal Republic of Nigeria and the Kingdom of Spain (Domestication and Enforcement) Act 2018.
17. African Charter on Human and Peoples' Rights (Ratification of Enforcement) Act,Cap. A, LFN 2004.
18. Geneva Corrections Act,Cap.G3,LFN 2004.
19. Child Rights Act, No.26, 2003.
20. Plant Variety Protection Act, 2021.

2. The Why of Domestic Implementation of Treaties?

- Usually, the obligation to perform a treaty is intrinsic to its ratification *I* accession by the state and therefore is not expressly stipulated. The Vienna convention on the law of treaties simply states that a treaty must be performed in good faith by the states which are parties to it. Indeed, a state in good faith does want that the treaty to which it has become a party, is given full effect.
- It is the normal duty of the states which are parties to a treaty to take every necessary step to ensure that provisions of the letter are given full effect.
- Out of a total of **23** International Humanitarian Law/ International Criminal LawTreaties, Nigeria had **Signed** all, **Ratified 19** out of 23, **Domesticated 2** with 6 Domestication Bills pending before NASS. (See ICRC.org/databases/treaties -Accessed on 7 June 2021).
- Out of a total of **14** UN Human Rights Treaties, Nigeria had **Ratified /Acceded to 12** and **Domesticated 7** by hybrid, reference and superseding methods (Acts:- E.g., the CRA, 2003; The Torture Act, 2017, NAPTIP Act,2015; VAPP Act, 2015 and Persons with Disabilities Act, 2018).
- Out of a total of **178** International Labour Organization (ILO) Conventions (Fundamental, Governance and Technical), Nigeria had **Ratified 40**, of which 26 are in force in Nigeria by virtue of Domestication by reference made under the Constitution, Third Alternation Act, 2010/2011.
- Out of total of **23** Multilateral Environmental Treaties, Nigeria had **Ratified 20** with only **two domesticated** (UNCLOS,1982 by SUPOMO Act, 2019) and (Plant Variety Treaty- ITPGRFA, 2001, by the Plant Variety Protection, Act, 2021).

- Out of a total of **17** UNESCO Treaties, Nigeria had **Ratified all the 17** with **zero domestication.**
- Out of a total of **61** African Union Treaties relating to Governance, Trade, Economic integration, Human Rights, Health, Education etc., Nigeria had **Ratified 26** of them with only **4 domesticated.**
- Nigeria had Ratified/Acceded to **10** (ten) Intellectual Property Treaties between 1963 and 2017 (source:- WIPO IP Portal - accessed 15 June, 2021).
- In addition to the Foundation ECOWAS Treaties of 1975, Revised in 1993 and Amended in 2006 by the Supplementary Protocol amending the Revised Treaty of 1993, fifteen {15) Supplementary Acts passed by the Authority of Heads of State are directly applicable in all Member States by virtue of the Monist Corpus Law/Community Law. (See ECOWAS Documentation online for the Supplementary Acts passed between 2008 and 2014).
- Nigeria inherited from UK at independence about 334 treaties. (see Nigerian treaties in force 1970-1990 (1990) 22).

3. The how of Domestic Implementation?

METHODS OF DOMESTIC IMPLEMENTATION OF A TREATY

There are 4 basic methods in international practice: -

- An Implementing Legislation for WHOLESALE ADOPTING of a treaty into domestic law (and Annexed the treaty in question).

  E.g. The Geneva Conventions Act and the African Charter on Human and Peoples' Rights.

- An Implementing Legislation with AMMENDMENTS to all EXISTING national legislations that may be/are incompatible with state obligations under the treaty in question.

  E.G.,French-civil law jurisdiction approach.

- A HYBRID/combination of other method Approach:- with COMPREHENSIVE Legislation enabling the CONSEQUENTIAL AMENDMENTS to accommodate new/expansive provisions/elements in the treaty; or for the specific provisions of the treaty to be incorporated in consequential amendments to existing domestic legislations.

  E.G.,the Canadian Act on the Rome Statute of ICC Cap. 24 of 29th June, 2000.
  - See the Preamble to the Canadian Act.

- Unique corpus law (Community law) with direct applicable in Member States of the EU and ECOWAS, without recourse to the rigours of parliamentary ratification or domestication of such treaties. In ECOWAS, they are known as a Supplementary Acts, that the Authority of Heads of States passes

Table 4:- list of domesticated IHL/IHRL Treaties/National Implementing Legislatios/Draft Domestication Bills in Nigeria:-1960-2020

S/NO	TITLE OF INSTRUMENT	STATUS
1.	Geneva Conventions Act Cap. G.3 Vol. 7 LFN	Domesticated Treaty:- Commencement date 30/9/60
2.	Armed froced Act Cap. A. 20 Vol.1 LFN 2004	Implementing legislation relating to universal jurisdiction and state duty to punish for IHL violations. Commencement date 6th July 1994 (initially Armed Forces Decree 105 of 1993 as amended in 1994
3.	Nigerian Red Cross Society Act Cap. N. 130 Vol. 12 LFN 2004	Implementing legislation:- Commencement date 1/1/1961
4.	Geneva Conventions and Additional Protocol Bill. December 2007	Draft Bill before the National Assembly:- for the Repeal of Cap. G.3 LFN 2004 and for the domestic implementation of both the conventions and the Additional Protocols.
5.	Chemical Weapons Convention (Prohibition) Bill. 2006	Implementing legislation:- Officially gazette 12 April 2006, Vol. 3, No. 8 NASS Journal, Abuja yet to be passed into law by the NASS.
6.	Convention Against Torture and Other Cruel Inhuman Punishment (Ratification and Enforcement) Bill 2005	Implementing legislation passed by both chambers of NASS - 25 May, 2005

7.	Rome Statue of the ICC (Ratification and Jurisdiction) Bill 2005	Implentting legislation:- Officially gazetted 12th July 2001, Vol. 88 Vo. 46 passed by the Senate 9th May 2005
8.	Diplomatic Immunities and Privileges Act Cap. D9 Vol. 5 LFN 2004	Domesticated the Vienna Convention Diplomatic Relations etc. Commencement date of the Act 27 Dec. 1962
9.	The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A.9 LFN 2004	Domesticated ACHPR Treaty
10.	The Child Rights Act. 2003	Special Implementing Legistation of the UN CRC and AUCRWC. Commencement date:- 31st July 2003.
11.	National Commission for Refugees etc Act (of 29-12-89) Cap. N.12 LFN 2004	Domesticated in Nigeria 1951 UN Convention and its 1967 Protocol on Refugees as well as the 1959 OAU (AU) Refugees Convention

4. Strategies for developing a national implementing legislation domesticating the AfCFTA in Nigeria.

The following strategic actions are worth considering in pursuit of the above: -

I. Establish a technical expert working group to develop a workplan for developing a domestic implementing legislation of the AfCFTA in Nigeria. inclusive of the workplan are the following points: -

- Provide rationale behind/Justification for domestication and implementation;
- Propose desk review of relevant national legislations in order to identify gaps, remove legal obstacles for trade and identify legislations needing amendment;

ii. Invest in a consultative process

The development of a national instrument on AfCFTA is a process worth investing in for the following reasons: -

- It is an opportunity for the government to demonstrate its approach to fulfilling its primary role in addressing trade matters and NAC-AfCFTA and to further build its capacity.
- It brings together all relevant actors involved in addressing trade matters in the affected country. It triggers relevant discussions among all participants in the process and provides advocacy opportunities.
- It helps to resolve misunderstandings and to reach agreement on key notions, definitions and concepts.
- It is an excellent opportunity to involve the private sectors and CSOS.
- It is an important learning exercise for everyone involved.
- The consultative process to develop a national instrument is as important as the outcome, because it will shape its content and prospects for its successful implementation.

iii. Define the nature and scope of the envisaged national implementing legislation: -The first decision to reach is whether the stakeholders involvedwould prefer to adopt any of the 4 models in international practice or to reflect on other Nigerian national practices by reference and by special adoption of ECOWAS Monist model or to look for best practices elsewhere.

iv. WHICH METHOD FOR AfCFTA AND ITS PROTOCOLS??

- **5 option**s are available from Nigerian National Practice on domestication of Treaties in Nigeria, 1960- 2021.
- Due to its complexity and vast areas of coverage, the preferred option is first, to Domesticate the fundamental principles and State obligations and establish a national coordinating body for the implementation of AfCFTA. Hence may adopt the Reference or Hybrid method or take a cue from the Geneva Conventions Act, Cap. G3, LFN 2004 approach.

5. Need for Monitoring and Evaluation Framework of implementation of the Policy and the Domestication Bill

- Monitoring and evaluating implementation serves two primary purposes:

  i. Measuring progress: It is important to measure the progress made in implementation of the instrument and assess its impact on economy. Progress assessments are also important for donors if they are to continue to support the implementation activities.

  ii. Promptly identifying obstacles and gaps: Obstacles and gaps in the implementation process can be problematic and costly if they are not quickly identified and addressed.

An implementation action plan can help to measure progress and identify obstacles and gaps. In order to maximise its potential, any such plan should clearly identify a body with monitoring expertise and experience, establish monitoring periods and require the national institutional focal point to convene regular or ad hoc meetings to take stock of the implementation

iii. The six W's of an implementation action plan

- Who undertakes what activity, where and when, using which funding and under whose leadership?
- **Who?** This question identifies those responsible for implementing particular aspects of the national instrument.
- **What?** This question identifies the specific activities to be undertaken in line with the chosen thematic priorities.
- **Where?** This question identifies the geographical area(s) where priority activities are to take place.
- **When?** This question determines the specific timeframes for the various parts of the implementation process.
- **Which funding?** This question prompts leaders to identify sources of funding for specific activities.
- **Whose leadership?** Drawing on the structures established by the national instrument, this question ensures that responsibility for specific activities is clear.

iv. Keeping the process on the national agenda

Given the complexity of the consultative development of a national instrument on AfCFTA, national and other entities may have to make substantial efforts to keep the process on the national agenda. The periods between validation and adoption,and then between adoption and implementation, are particularly important in this sense.

The following measures may help to sustain momentum for the development and implementation of the instrument:

- Ensuring the government body entrusted with leading the process is equipped with the necessary capacities and decision-making powers to maintain the pace of the process;
- Advocacy by other national, regional and international entities with their relevant governmental counterparts and, if applicable, with parliament for swift adoption and implementation. A national champion may be identified to pursue the process;
- Expressions of commitment and support for implementation from other national, regional and international entities during the process;
- The making and honouring of financial commitments for implementation;
- Ensuring that national, regional and international entities' planning and programming is in line with the instrument, even if not yet adopted, giving effect to expressed commitments.

Conclusion

It is evident from the above that domestication of treaties in Nigeria is a constitutional function, supported by case law. The analysis reveals also that between 1960 and May 2021, Nigeria has triggered four out of 5 different methods of domestication of treaties on different subjects. Due to the complexity of AfCFTA and its Protocols, all the four options are open for possible consideration or a combination of domestication by Reference and Hybrid may be plausible.



ABUJA OFFICE:
Supreme Court of Nigeria Complex, Three Arms Zone,
PMB 385, Garki, Abuja.
www. nials.edu.ng, info@nials.edu.ng

LAGOS OFFICE
University of Lagos Complex, PMB 12820, Akoka Lagos State.