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CONSTITUTIONAL SUPREMACY AND THE DOMESTICATION OF HUMAN RIGHT TREATIES IN NIGERIA.

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Abstract

Nigeria's constitutional order combines an emphatic supremacy clause with a dualist rule for treaties. Section 1 of the Constitution of the Federal Republic of Nigeria 1999 makes the Constitution binding on all authorities and invalidates inconsistent law, while section 12 denies a treaty domestic force unless enacted by the National Assembly. This article employing the doctrinal methodology examines how those rules operate in relation to human rights treaties. It argues that ratification creates obligations for Nigeria on the international plane, but ordinarily neither creates a self-executing cause of action nor displaces inconsistent municipal law. Domestication converts treaty norms into enforceable legislation, yet the resulting Act remains subordinate to the Constitution. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act supplies the principal illustration: it expands the domestic rights repertoire, including socio-economic and peoples' rights, but cannot prevail over an inconsistent constitutional provision. The article also considers interpretive use of unincorporated treaties, federalism under section 12(2)-(3), regional adjudication, and the distinct jurisdiction of the National Industrial Court under section 254C (2). It concludes that the present model protects democratic legitimacy and constitutional control but permits serious implementation gaps. Targeted constitutional and statutory reform especially a transparent treaty register, time-bound legislative scrutiny, rights-impact review and an interpretive presumption of conformity would improve compliance without sacrificing constitutional supremacy.

Keywords: African Charter, Constitutional supremacy, Dualism, Human rights, International law, Nigeria, Treaty Domestication.

1. Introduction

The relationship between international human rights law and Nigerian municipal law is governed by two propositions that must be kept analytically separate. First, the Constitution is the supreme norm of the Nigerian legal order. Secondly, a treaty does not acquire the force of law in Nigeria merely because the executive has signed or ratified it. The first proposition is expressed in section 1(1) and reinforced by section 1(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).¹ The second is stated in section 12(1), which conditions domestic legal force on enactment by the National Assembly.²

Confusion arises when ratification, domestication and enforceability are treated as synonyms, they are not. Ratification is an international act by which Nigeria expresses consent to be bound; domestication is a municipal legislative act and enforceability concerns whether a court has a legal norm, jurisdiction and remedy available in a particular case. Nigeria may therefore be internationally bound while a claimant remains unable to rely directly on the treaty in a domestic court. Conversely, once a treaty is enacted, the resulting statute is enforceable domestically but remains subject to constitutional limitations.

This article adopts a doctrinal method. It examines the Constitution, treaty legislation, reported Nigerian decisions, regional decisions and relevant international instruments. Its central claim is that constitutional supremacy and treaty domestication are complementary rather than contradictory rules: section 1 fixes the apex of the hierarchy, while section 12 controls the gateway through which treaty norms enter municipal law. The difficulty lies less in the existence of the gateway than in delay, selective incorporation, federal complexity and doctrinal inconsistency concerning the effect of incorporated and unincorporated instruments.

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 1(1), 1(3) Available at: < <https://placng.org/i/wp-content/uploads/2023/05/Constitution-of-the-Federal-Republic-of-Nigeria-2023.pdf> > accessed 9 September 2026.

² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12(1)

2. Conceptual and Theoretical Framework

2.1 Constitutional supremacy

Constitutional supremacy means that every institution derives and limits its authority by reference to the Constitution. Section 1(1) declares the Constitution supreme and binding on all persons and authorities throughout the Federation. Section 1(3) adds the operative sanction: any other law inconsistent with the Constitution is void to the extent of the inconsistency. The Supreme Court has repeatedly treated constitutional text as the controlling legal standard, not as one norm among equals. In *Attorney-General of Abia State v Attorney-General of the Federation*³, the Court affirmed that governmental power must be traced to and exercised consistently with the Constitution. *INEC v Musa*⁴ similarly illustrates that legislation cannot survive where it adds to, subtracts from or conflicts with constitutional guarantees.

A human rights treaty does not escape this structure because its subject is morally compelling or because the state has accepted it internationally. Unless the Constitution itself assigns a treaty or class of treaties constitutional or supra-legislative status, a domesticating Act remains an Act of the National Assembly. The Constitution therefore prevails over the African Charter Act where the two are irreconcilable.⁵ This is a rule about municipal validity; it does not extinguish Nigeria's separate international responsibility for non-performance.

2.2 Monism, dualism and transformation

Monist theory treats international and domestic law as parts of a single normative order and may permit treaty rules to operate internally without a further legislative act. Dualist theory treats the two orders as distinct: international obligations bind the state externally, while municipal courts apply treaty provisions only after a constitutionally recognised act of transformation or incorporation. Nigeria's section 12 model is predominantly dualist. In *Ibidapo v Lufthansa Airlines*, Wali JSC connected that approach to the common-law tradition inherited by Nigeria.⁶

³ *Attorney-General of Abia State v Attorney-General of the Federation* (No 2) (2002) 6 NWLR (Pt 764) 542 (SC).

⁴ *INEC v Musa* (2003) 3 NWLR (Pt 806) 72 (SC)

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1(3).

⁶ *Ibidapo v Lufthansa Airlines* (1997) 4 NWLR (Pt 498) 124, 150 (SC).

African Reinsurance Corporation v Abate Fantaye had earlier held that ratification without legislative enactment did not give a treaty force of law domestically.⁷

The label 'dualist', however, should not obscure important qualifications. International law may influence statutory and constitutional interpretation; rules of customary international law raise different questions from treaties; and section 254C(2) creates a specialised constitutional route for the application of ratified labour instruments by the National Industrial Court. Nigeria is therefore better described as constitutionally dualist for treaties, subject to text-specific exceptions and interpretive uses.

3. The Constitutional Architecture of Treaty Implementation

3.1 Section 12(1): the domestic-force rule

Section 12(1) provides that no treaty between the Federation and another country shall have the force of law except to the extent that it has been enacted into law by the National Assembly. The phrase 'to the extent' is significant. It permits complete incorporation, partial incorporation or implementation through legislation that translates treaty obligations into local rules rather than reproducing the treaty verbatim. The judicial task is consequently to apply the enacted text. A litigant cannot ordinarily circumvent omissions in that text by asking a domestic court to enforce the underlying treaty as though ratification itself were legislation.⁸

The Treaties (Making Procedure, etc) Act supplements the constitutional framework. It classifies agreements into law-making treaties requiring enactment, agreements imposing financial, political or social obligations requiring ratification, and cultural or educational exchange agreements that may not require ratification.⁹ It also designates the Federal Ministry of Justice as depository and requires a treaty register open to public inspection. These administrative classifications cannot modify section 12. If an instrument is relied upon as having force of law in Nigeria, constitutional enactment remains decisive.

⁷ *African Reinsurance Corporation v Abate Fantaye* (1986) 3 NWLR (Pt 32) 811 (SC).

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 12(1).

⁹ Treaties (Making Procedure, etc) Act, Cap T20, Laws of the Federation of Nigeria 2004, s 3 Available at: <<https://lawsfnigeria.placng.org/view2.php?sn=522>> accessed 9 September 2026

Executive treaty-making and legislative domestication therefore perform different constitutional functions. The executive negotiates and expresses international consent; the legislature decides whether and in what form the obligation becomes municipal law. This allocation reduces the risk that the executive may alter private rights, criminal liability or legislative competence by treaty alone. Yet, it also creates an accountability gap where ratification generates expectations and international responsibility but the legislature never completes implementation.¹⁰

3.2 Federalism under section 12(2) and (3)

Treaty implementation becomes more complex when the subject falls outside the Exclusive Legislative List. Section 12(2) authorises the National Assembly to legislate for the Federation or any part of it on matters otherwise beyond that list for the purpose of implementing a treaty. Section 12(3) then withholds presentation of such a bill for presidential assent, and prevents enactment, unless a majority of all State Houses of Assembly ratify it. The mechanism balances performance of national treaty obligations against the constitutional autonomy of the states.¹¹

The balance carries practical costs. Human rights are often cross-sectoral; children's welfare, health, education, family relations and protection from violence intersect with state legislative competence and local institutions. The Child's Rights Act 2003 is an important federal implementation measure influenced by the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.¹² But uniform enjoyment depends substantially on adoption and implementation at state level. Treaty protection can consequently vary by location even though Nigeria is a single international legal person. The constitutional design makes intergovernmental coordination indispensable.

¹⁰ *ibid* ss 4-6.

¹¹ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 12(2)-(3)

¹² Child's Rights Act 2003 Available at: < <https://placng.org/lawsofnigeria/laws/C50.pdf> > accessed 9 September 2026; Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3; African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) CAB/LEG/24.9/49.

4. The African Charter as the Principal Domestic Model

4.1 Enactment and enforceability

The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is the clearest example of domestication. Section 1 gives the Charter provisions set out in its Schedule force of law and directs all authorities and persons exercising legislative, executive or judicial powers to give them full recognition and effect. In **Ogugu v State**, the Supreme Court recognised that domestication made the Charter part of Nigerian law and placed its enforcement within the judicial powers of competent courts.¹³

The Charter materially enriches domestic rights protection. Unlike Chapter IV of the Constitution, it integrates civil and political rights with socio-economic, cultural and peoples' rights. Articles 16, 17 and 24 protect health, education and a satisfactory environment.¹⁴ These provisions can provide a normative base for claims that encounter the non-justiciability rule attached to Chapter II of the Constitution by section 6(6)(c). The ECOWAS Court's decision in **SERAP v Nigeria** treated the domesticated Charter as a basis on which socio-economic rights claims could be litigated before national courts.¹⁵ That proposition does not elevate the Charter above the Constitution; it recognises rights created by an enforceable Act in areas where the Constitution does not itself prohibit legislative protection.

4.2 Abacha v Fawehinmi and the hierarchy of norms

Abacha v Fawehinmi¹⁶ is the leading authority. Chief Gani Fawehinmi challenged arrest and detention under the African Charter Act. The Supreme Court unanimously confirmed the dualist effect of section 12, however beneficial a treaty may be, it is not domestically enforceable unless

¹³ *Ogugu v State* (1994) 9 NWLR (Pt 366) 1, 26-27 (SC).

¹⁴ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 16, 17 and 24 Available at: < <https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights> > accessed 9 September 2026.

¹⁵ *SERAP v Nigeria*, ECW/CCJ/APP/08/09, judgment ECW/CCJ/JUD/18/12, paras 65-69 Available at: < https://www.globalhealthrights.org/wp-content/uploads/2015/11/Socio-Economic-Rights-and-Accountability-Project-v-Nigeria-Decision-300_2005.pdf > accessed 9 September 2026.

¹⁶ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228, 314 and 356-57 (SC) Available at: < <https://compendium.iticlo.org/en/compendium-decisions/supreme-court-of-nigeria-abacha-v.-fawehinmi-28-april-2000-no.-sc45-1997> > accessed 9 September 2026

enacted. Because the Charter had been incorporated, the courts were required to apply it as part of Nigerian law.

The case is sometimes overstated as placing the Charter above all ordinary statutes. The more precise position is twofold. First, the Court described the Charter Act as legislation with an 'international flavour' and the majority favoured a presumption that Parliament does not intend to breach international obligations. This gives the Act interpretive weight and supports harmonisation where texts can reasonably coexist. Secondly, the justices were clear that the Charter Act is not superior to the Constitution. Constitutional supremacy remains decisive. The 'international flavour' doctrine is therefore best understood as a strong interpretive presumption, not a freestanding power to invalidate later Acts and certainly not a licence to disapply the Constitution.¹⁷

Registered Trustees of the National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria reinforces this hierarchy. In addressing freedom of association and statutory trade-union restrictions, the Supreme Court did not treat the Charter as a source capable of overriding the Constitution or a valid inconsistent rule of superior status. The case underscores the need to identify the precise norm alleged to conflict, its place in the hierarchy and the remedy sought.¹⁸

5. Ratified but Undomesticated Human Rights Treaties

Nigeria is party to major United Nations human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, and the Convention on the Rights of the Child. Ratification makes those obligations binding internationally. Article 26 of the Vienna Convention

¹⁷ *ibid* 288-89; E Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 *Journal of African Law* 249, 255-58 Available at: < <https://orca.cardiff.ac.uk/id/eprint/14418/> > accessed 9 September 2026.

¹⁸ *Registered Trustees of the National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria* (2008) 2 NWLR (Pt 1072) 575 (SC) Available at: < <https://www.cambridge.org/core/journals/international-law-reports/article/registered-trustees-of-national-association-of-community-health-practitioners-of-nigeria-and-others-v-medical-and-health-workers-union-of-nigeria/AE86F010478C07225C956A5EF5B46377> > accessed 9 September 2026.

on the Law of Treaties expresses *pacta sunt servanda*; article 27 prevents a party from invoking internal law as justification for non-performance.¹⁹

The municipal conclusion is different. Unless the relevant treaty norms have been enacted, a claimant ordinarily cannot plead the treaty alone as an independent source of a directly enforceable right.²⁰ Abacha²¹ and African Reinsurance make that result difficult to contest. Domestic statutes may nevertheless implement part of a treaty's substance. The Anti-Torture Act 2017, Child's Rights Act 2003 and legislation addressing trafficking or violence may discharge particular obligations without necessarily incorporating every provision, remedy or monitoring mechanism of the parent treaty. Partial implementation must not be confused with comprehensive domestication.²²

This distinction has remedial consequences. A court should first ask whether the asserted right exists under Chapter IV, the African Charter Act or another statute. If it does, the treaty may confirm the purpose and international context of the domestic norm. If it does not, an undomesticated treaty cannot ordinarily supply the missing cause of action. The claimant may instead pursue constitutional relief, statutory relief, regional proceedings or international petition mechanisms where jurisdictional and admissibility requirements are satisfied.

6. Interpretive and Institutional Qualifications

6.1 Consistent interpretation

The absence of direct force does not make an undomesticated treaty legally irrelevant. Nigerian courts have recognised the common-law presumption that legislation should not be construed to

¹⁹ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, arts 26-27 Available at: < https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf > accessed 9 September 2026.

²⁰ UN Office of the High Commissioner for Human Rights, 'Ratification Status for Nigeria' Available at: < https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN > accessed 9 September 2026.

²¹ Abacha v Fawehinmi (2000) 6 NWLR (Pt 660) 228, 314 and 356-57 (SC) African Reinsurance Corporation v Abate Fantaye (n 7).

²² Anti-Torture Act 2017; Child's Rights Act 2003; Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015; Violence Against Persons (Prohibition) Act 2015. See National Agency for the Prohibition of Trafficking in Persons, 'Violence Against Persons Prohibition Department' Available at: < <https://naptip.gov.ng/violence-against-persons-prohibition-department/> > accessed 9 September 2026.

place the state in breach of international law where the statutory language permits a conforming interpretation. International instruments may also illuminate the content of open-textured guarantees such as dignity, fair hearing, equality and freedom of expression. But interpretation has limits: it cannot rewrite clear legislation, invent an offence, confer jurisdiction contrary to statute or displace an express constitutional rule.²³

A disciplined court should therefore distinguish three uses. Direct application treats a domesticated provision as law. Consistent interpretation uses an international norm to choose between reasonably available meanings of domestic text. Persuasive reference draws on an international standard to explain values or comparative reasoning without making it the ratio as binding law. Stating the category expressly would improve doctrinal clarity and prevent citations to ratified treaties from creating a false impression of automatic enforceability.

6.2 The National Industrial Court exception

Section 254C, introduced by the Constitution (Third Alteration) Act 2010, complicates any absolute statement that all treaties require prior domestication. Section 254C(1)(f)-(h) gives the National Industrial Court exclusive jurisdiction over specified labour and human-rights matters connected with employment and the application or interpretation of international labour standards. Section 254C (2), notwithstanding anything contrary in the Constitution, empowers the Court to deal with matters concerning the application of an international convention, treaty or protocol ratified by Nigeria in the labour and industrial-relations field.²⁴

The better reading is that section 254C (2) is a specific constitutional exception within its subject matter and forum. Its non obstante language cannot safely be generalised beyond the National Industrial Court or beyond labour-related instruments. Even within that jurisdiction, litigants must identify ratification, relevance, the substantive standard and an available remedy. The exception demonstrates that the Constitution can confer internal effect directly when it chooses to do so; it does not undermine the general rule in section 12.

²³ *Abacha v Fawehinmi* (n 21) 288-89; see also *Ibidapo v Lufthansa Airlines* (n 6) 150.

²⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 254C(1)(f)-(h), (2); Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 Available at: < <https://placng.org/i/wp-content/uploads/2023/05/Constitution-of-the-Federal-Republic-of-Nigeria-2023.pdf> > accessed 9 September 2026.

6.3 Regional adjudication and the ECOWAS Court

The ECOWAS Court operates on a different plane. The 2005 Supplementary Protocol gives it jurisdiction over alleged human-rights violations in member states and permits access without prior exhaustion of local remedies, subject to its admissibility rules.²⁵ The Court has relied on the African Charter and other international standards in cases against Nigeria, including **SERAP v Nigeria** and **SERAP v Federal Republic of Nigeria** concerning the suspension of Twitter.²⁶

A regional judgment does not amend the Nigerian Constitution. It establishes Nigeria's international responsibility under the regional legal order and requires compliance by the state. Domestic execution and institutional response may still confront municipal procedures, but Nigeria cannot rely on section 12 as an international defence to obligations it has accepted. The apparent tension is resolved by recognising two questions: what rule a Nigerian court may apply as municipal law, and what responsibility Nigeria bears internationally.

7. Constitutional Supremacy: Protection and Constraint

The domestication requirement has a defensible constitutional rationale. It preserves representative control over rules affecting citizens, public expenditure and the federal distribution of powers. It also allows Parliament to design institutions, offences, remedies, limitation periods and transitional provisions appropriate to the Nigerian legal system. Automatic domestic effect for every executive agreement could invert the separation of powers by permitting the treaty power to legislate indirectly.

Yet the same mechanism can weaken human-rights protection. Ratification is highly visible internationally, while domestication may be delayed indefinitely and receives less public scrutiny. Selective implementation fragments rights and remedies. A government may accept monitoring obligations abroad while resisting justiciable standards at home. Federal ratification requirements can compound delay, particularly where protected interests fall within residual state competence.

²⁵ Supplementary Protocol A/SP.1/01/05 Amending Protocol A/P.1/7/91 Relating to the Community Court of Justice, arts 3-4

²⁶ *SERAP v Federal Republic of Nigeria* (Twitter suspension) ECW/CCJ/JUD/40/22 Available at: <
<https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/08/twitter-final.pdf>> accessed 9 September 2026; *SERAP v Nigeria* (n 16).

The person for whose benefit a human-rights treaty exists bears the practical cost of this institutional gap.

Constitutional supremacy also creates a substantive ceiling. If the Constitution expressly permits a restriction that a treaty forbids, a domesticated treaty Act cannot invalidate the constitutional provision. The correct domestic judicial response is to apply the Constitution, while identifying where relevant the international inconsistency. Resolution then requires constitutional amendment, legislative adjustment within constitutional space, executive policy change, or acceptance of international responsibility; it cannot be achieved by judicially promoting an Act above the Constitution.

8. Reform Proposals

a. A comprehensive treaty-implementation statute

The Treaties (Making Procedure, etc) Act should be modernised to cover signature, ratification, reservations, publication, parliamentary scrutiny, domestication, periodic review and withdrawal. The current classification system should be aligned expressly with section 12 and contemporary treaty practice.

b. A public, digital treaty register

The Federal Ministry of Justice should maintain a searchable register showing the text, signature and ratification dates, reservations, responsible ministry, implementation legislation, state ratifications where needed, reporting deadlines and decisions of supervisory bodies. This would give practical effect to the statutory duty to maintain a public register.

c. Time-bound legislative scrutiny

Every human-rights treaty submitted for ratification should be accompanied by a domestication memorandum and rights-impact assessment. Ratification should trigger a defined period within which the executive presents an implementation bill or publicly explains why existing law is sufficient.

d. A presumption of consistent interpretation

Parliament could enact a carefully framed rule requiring courts, so far as text and constitutional limits permit, to interpret legislation consistently with Nigeria's treaty obligations. The rule should expressly preserve section 1 and the prohibition against judicial legislation.

e. Federal coordination

For treaty provisions touching residual matters, the National Assembly, State Houses of Assembly, Attorneys-General and relevant commissioners should use model laws and an intergovernmental timetable. Section 12(3) should function as a coordination mechanism rather than an unattended veto point.

f. Remedial clarity

Domesticating statutes should identify competent courts, standing, remedies and the relationship with the Fundamental Rights (Enforcement Procedure) Rules. Rights without a procedural route invite avoidable preliminary litigation.

g. Constitutional review

A future alteration could confer a defined status on core human-rights treaties potentially direct effect where provisions are clear and self-executing, subject always to the Constitution. Any such reform should be explicit, prospective and accompanied by rules for conflicts and federal competence; it should not be achieved by judicial implication.

9. Conclusion

Nigerian law does not place human-rights treaties outside the Constitution. Section 1 establishes constitutional supremacy; section 12 determines how treaty rules ordinarily acquire municipal force. Ratification binds Nigeria internationally, while enactment makes treaty norms directly applicable as domestic law. Domestication does not constitutionalise the treaty: the implementing Act remains subordinate to the Constitution.

The African Charter Act demonstrates both the value and the limits of the system. It is enforceable, broadens the range of justiciable rights and carries interpretive weight because of its international

character. Nevertheless, **Abacha v Fawehinmi**²⁷ confirms that it cannot override the Constitution. Undomesticated treaties may guide interpretation but ordinarily cannot create standalone domestic causes of action. Section 254C (2) is a deliberate, specialised exception for ratified labour instruments, while ECOWAS proceedings concern Nigeria's responsibility on the regional plane. The strongest reform is not to dilute constitutional supremacy but to make treaty implementation transparent, timely and rights-centred. A modern statute, public treaty register, structured legislative scrutiny, federal coordination and remedial drafting would narrow the gap between Nigeria's international promises and the rights available in its courts. In that model, constitutional supremacy remains secure while domestication becomes a bridge to accountability rather than a barrier to it.

²⁷ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228, 314.