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The Applicability of Customary International Law in NigerianContext: Definitive Lessons from South Africa

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Abstract

The applicability of customary international law in municipal law is characterised by parallels, nuances, and marked distinctions ranging from the state practice and opinio juris sive necessitates (acceptance of obligation to be bound) of one sovereign state to another. Adopting the doctrinal research methodology, this article presents an overview of the applicability of customary international law within the purview of Nigerian legal system. The article finds that, unlike treaties which have a clear legal framework, there is no explicit and definitive statutory provision or categorical judicial decision regarding the applicability of customary international law in Nigerian legal milieu. Although some scholars have asserted that customary international law may be applicable in Nigeria if successfully proved or judicially noticed, and inferences may be drawn from a few judicial decisions, there is need for a definitive statutory provision or categorical judicial pronouncement in this regard. It would appear that Nigerian state practice is recondite as far as the applicability of customary international law in the domestic milieu is concerned. In contradistinction, this article has tellingly indicated that South Africa has a definite constitutional provision and authoritative judicial pronouncement in respect of the applicability of customary international law in its jurisdiction. The article therefore recommends that government should take a cue from the South African archetype and accordingly recalibrate the extant legal regime in order to foster a definitive restatement of the correlation between customary international law and municipal law in the Nigerian context.

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1. INTRODUCTION

Customary law is a fundamental source of international law. The term 'source of law' has been defined as 'the fountain of authority of a rule of law, that is, the origin from which a legal rule derive its authority'[829] It refers to the criteria in which a legal rule is recognised as valid in a particular legal system.[830]International law, just like municipal or domestic law, is comprised of various sources. The main sources of international law are explicitly enshrined in sub paragraph 1 of article 38 of the Statute of the International Court of Justice 1945[831]whichprovides that:

> The court whose function is to decide in accordance with international law such disputes as are submitted to it shall apply:
> (a) International conventions, whether general or particular establishing rules expressly recognized by contesting states;
> (b) International customs, as evidence of a general practice accepted as law;
> (c) The general principles of law recognized by civilised nations;
> (d) … judicial decisions and the teachings of the most highly qualified publicists of various nations, as subsidiary means for the determination of the rules of law.

The foregoing provisions are generally recognised as valid sources of international law. Other possible sources of international law include acts of international institutions, unilateral acts of states, soft law, and equity.[832]The focal point of this discourse is premised on the applicability of customary international law in Nigeria. Article 38 (1) (b) of the Statute of The International Court of Justice 1945 states that: 'The court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply … international custom, as evidence of a general practice accepted as law.'The International Court of Justice (ICJ) in the*Nicaragua Case (Nicaragua V Usa Merits)*[833] stated that custom consists of two elements, the objective one of 'a general practice' and the subjective one 'accepted as law', also referred to as *opinion juris*.

In comparative terms, while States Parties to treaties give their express consent to be bound by treaties, under customary international law, such consent may be inferred from their

[829] Akintunde Olusegun Obilade, The Nigerian Legal System (Spectrum Books Limited 1979) 54.
[830] Peter Malanczuk, Akehurst's Modern Introduction of International Law (7th Edn Routledge, 1997) 35.
[831] 33 UNTS 993.
[832] Malnczuk (n2) 52-56).
[833] 1986 ICJ Rep 14 at 9).

conduct. The existence of customary rule is usually identified by two requirement' viz; settled state practice (*Usus*) and the acceptance of an obligation to be bound (*opinion juris sive necessitates*).[834]Thus in the*Continental Shelf (Libya V Malta) Case*,[835]the ICJ held that the substance of customary international law must be ascertained primarily from the actual practice and *opinio juris* of states. Thus the evidence of customary international law is to be found in the actual practice of states and *opinio juris sive necessitates* or *opinio juris*.[836]The idea of state practice can be ascertained from newspaper reports of the acts of states, international conferences and meetings of international organisations, statements of government officials to the parliament or press, state laws, judicial decisions, writings of international lawyers, treaties, and decisions of municipal as well as international tribunals.[837]

The applicability of customary international law in domestic law varies from country to country. The mode and extent of application of international law in municipal legal systems essentially depends on the jurisprudence and state practice of the nation concerned. This article primarily discusses the applicability of customary international law in Nigerian domestic legal milieu and in the South African context. It points out parallels, nuances and distinctions between the approaches of both countries and makes recommendations for reforms and policy consideration in Nigeria. The article is basically divided into five sub heads. The first subhead presents a brief introduction of customary international law as a quintessential source of international law. The second subhead provides the philosophical underpinning of the discourse. The third subhead contextualises the relationship between international law and municipal law. In doing so, it considers the correlation between customary international and national law in the South African context. It also analyses the intersection between customary international law and domestic law within the purview of Nigerian legal system. The fourth subhead espouses the recalibration of the Nigerian approach through the prism of South African state practice and *opinio juris sive necessitates* or *opinio juris*. The fifth and final subhead is the conclusion.

[834] John Duggard, Daniel Bethlehem, Max duplessis and Aton Katz, International Law: A South African perspective (JUTA, 2005) 29.
[835] 1985 ICJ Rep 29.
[836] See Malnczuk (n2) 39.
[837] Ibid.

2. THEORETICAL UNDERPINNINGS

The interface between international law and domestic law is predicated on fundamental theoretical underpinnings. The main theories in the context of the present discourse are the monist theory and the dualist theory. These theories basically explain the nature of international law and the dynamics involved in the relationship between international law and municipal law. The ideological bases of each theory are discussed in brief hereunder.

2.1 The Monist Theory

The monist theory posits that international law and national law form part of the same legal order.[838]Exponents of monist theory have basically espoused the view that international law and municipal law are intricately connected with each other.[839]The monist theory is essentially premised on the stance that international law and domestic law are parts of a single legal system functioning harmoniously to meet the needs of the society.[840]Proponents of monism hold the view that laws are mainly enacted for individuals. While domestic law is binding on such individuals directly, international law is legally binding on them through the state.[841]To the monists, law is a unified branch of knowledge.[842]In monist states, treaties have the status of law in the domestic arena notwithstanding the absence of legislation to incorporate or domesticate such treaties. Generally, in monist states some treaties have the status of law which is enforceable within the domestic legal system.[843] Switzerland is a typical example of a monist country. International law is considered as a part of national law. In that country, 'there is no need for the legislator to make a law or transform the treaty into law. As soon as the treaty enters into force, it automatically becomes applicable under Swiss law.[844]By virtue of the monist theory, the application of international law in the domestic arena is founded on the doctrine of incorporation. The doctrine of incorporation holds that a rule or principle of international automatically becomes part of domestic law without the requirement for adoption or transformation by the legislature or courts in the domestic

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[838] Malanczuk (n2) 63.
[839] S.K Kapoor, International Law and Human Rights (17th edn Central Agency 2009) 101.
[840] H.O Argawal, International Law (18th edn Central Law Publications 2010) 44.
[841] Ibid 44-45.
[842] Kapoor (n11) 101.
[843] David Sloss, 'Domestic Application of Treaties' (2011) Santa Clara University <https://digitalcommons.law.scu.edu/facpubs/635> accessed 20 November 2020.
[844] Robert Kolb, 'Relationship between International and Internal Law' Baripedia https://baripedia.org/wiki/Relationship-between-internationall-and-internal-law accessed 20 November 2020.

milieu.[845]Thus monist theory is based on the ideology that international law and national law constitute the same legal order.

2.2 The Dualist Theory

The dualist theory is predicated on the stand point that international law and domestic law are two distinct legal systems which exist independently of each other.[846]Unlike monism, dualism rejects the notion that international law and domestic law operate as part of a single entity.[847]Proponents of dualism maintain that international law is separate and distinct from national law as each system operates in its area of competence. Under dualism, international law can only become part of municipal or domestic law if it is transformed into the national legal system through legislation or judicial process.[848]Nigeria is, in principle, typically a dualist nation taking into consideration the provisions of section 12 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended, which is to the effect that treaties do not have the force of law in Nigeria except such treaties have been duly enacted into law by the National Assembly. Accordingly, the applicability of international law in the domestic arena would be viewed from a monist or dualist stand point. Nonetheless, it is pertinent to state that in practical terms, the approach of states regarding the relationship between international law and municipal law is depicts certain commonalities, nuances, and even marked differences between states especially when juxtaposed with another state. This view point may be distilled by an appraisal of the state practice of a particular country in comparison with those of another state or other states.

3. CONTEXTUALISING THE CORRELATION BETWEEN CUSTOMARYINTERNATIONAL LAW AND MUNICIPAL LAW

As pointed out earlier, the approach of countries regarding the relationship between international law and municipal law depicts commonalities, nuances and in some cases, marked differences from one state to the other. Even within the same country, the approach regarding the applicability of international law and municipal law regarding treaties differs from its approach in relation to customary international law. For instance, the British state practice regarding the application of treaties in municipal law is predicated on the principles regarding the relationship between the executive (Crown) and Parliament. The treaty making

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[845] Martin Dixon, Textbook on International Law (7th edn Oxford University Press 2013) 98.
[846] Malanczuk (n2) 63.
[847] Dixon (n17) 114.
[848] Ibid 95-99.

process such as negotiation, signature, and ratification of treaties is vested in the executive arm of government.[849]The applicability of treaties in municipal law is determined by the nature and character of the treaty. Some treaties are legally binding and enforceable only if an enabling legislation is enacted. This process is called transformation. This rule applies in the following circumstances:[850]

(1) Where the treaty affect private rights or duties;
(2) Where the treaty relates to financial or fiscal obligations;
(3) Where the treaty requires the amendment of statutes or common law for their enforcement;
(4) Where the treaties specify that they are to be applied subject to the assent of the Parliament; and
(5) Where the treaties deal with cession of British territory, among others.

In the *International Tin Case,*[851]Lord Oliver stated that '…Quite simply, a treaty is not part of English law unless and until it has been incorporated into law by legislation.'[852]However, it is imperative to note that besides specific treaties which require the approval of Parliament, other treaties such as treaties modifying belligerent rights in the course of armed conflict are recognised as part of British law[853]without undergoing the process of transformation. Such treaties are applicable and enforceable in Britain as a matter of course. In contradistinction, all rules of customary international law are, in principle, recognised as part of the law of the country.[854]Customary international law is applicable and enforceable in Britain provided it is not inconsistent with Acts of Parliament or judicial decisions of apex courts. Customary international law rules are applicable in the country through the process of incorporation.[855]This potent principle of English law has been glaringly enunciated in the case R v Jones,[856]where the House of Lords held, inter alia, that customary international law is (without the need for any domestic statute or judicial decision) part of the domestic law of England and Wales.

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[849] Gurdip Singh, International Law (2nd Edn, MacMillian Publishers India Ltd, 2011) 53.
[850] Argarwal (n12) 47.
[851] ILM 29 (1990) 67.
[852] ibid
[853] Argarwal (n12) 47.
[854] Oppenheims's International cited in H.O Agarwal, International law and Human Rights (18th Edn Central Law Publications, 2010) 46.
[855] Agarwal (n12) 46.
[856] [2006] ukhl 16; [2007] 1. A.c 136.

In the light of the fact that the relationship between international law and domestic law varies from state to state, this article discusses the South African state practice regarding the relationship between customary international law and municipal law as well as the intersection between customary international law and domestic law in the Nigerian context.

3.1The Interface between Customary International Law and Domestic Law: The South African Perspective

In much the same way as the British approach to the relationship between international law and municipal law, customary international law is applicable in South Africa as part of the law of the country. Accordingly, section 231 of the South African Constitution, 1996, expressly provides that rules of customary international law are binding on South Africa and shall form part of the law of the country.[857]The foregoing position of South African constitutional law tellingly resonates with significant judicial decisions in the country. For instance, in the case of *South Atlantic Islands Development Corporation Ltd v Buchan*, [858]the court declined to admit in evidence an affidavit adduced by a pundit or expert in the field of international law based on the premise that international law ought not be construed as foreign law and therefore it was not necessary to prove it in court by way of affidavit. The court categorically stated that customary international law constitutes part of the country's law and it is incumbent on domestic courts to discover and apply apposite norms of international law. Similarly, in the South African case of *Nduli and Another v Minister of Justice*,[859] the South African Court of Appeal asserted that it is axiomatic that international law constitutes an intrinsic part of South African law.

However, it is expedient to point out that although customary international law is generally applicable in South Africa as part of the same legal order, it will not apply if it is evidently in conflict with the country's legislation. Thus Sanders succinctly buttressed the preceding exception to the general rule regarding the inapplicability of customary international law in the event of its conflict with South African domestic legislation as follows:

> Customary international law will not be applied if it is in conflict with South African legislation. However, the effect of

[857] M. T. Ladan, *Materials and Cases on Public International Law* (ABU Press Ltd, 2007) 6 cited in Elizabeth A. Oji, 'Application of Customary International Law in Nigerian Courts' <nials-nigeria.org>pub>Elizabeth.OJI> accessed 10 November 2017.

[858] (1971) (1) SA 234 (C) at 238 B-F cited in Duggard (n6) 51

[859] (1978) (1) SA 893 (A)

> this rule may be softened as a result of the likely existence in South African law of a rebuttable presumption that parliament does not intend to legislate contrary to international law.[860]

By and large, the relationship between customary international law and municipal law in the South African context is essentially predicated on the monist theoretical approach which is to the effect that international law and domestic law constitutes part of the same legal order. Customary international law is applicable in the country through incorporation. As earlier indicated, the foregoing legal provision is explicitly enshrined in section 231 of the South African Constitution, 1996, as well as judicial decisions. To all intents and purposes, these legal instruments unequivocally articulate the correlation of customary international law and South African law. It is vehemently posited thatthe South African State Practice and *opinio juris* regarding the applicability of customary international law in the domestic arena has definitive and salutary vantage points. This stance is grounded on the fact that states, intergovernmental organisations, non-governmental organisations (NGOs), non-state actors, and other entities are patently spared the rigours of ascertaining and establishing the applicability of customary international law in South Africa. In contradistinction, the applicability of customary international law in the domestic milieu would be fraught with difficulties and uncertainties where the position of the law in this regard is otherwise silent, ambiguous, nuanced, contradictory, or equivocal.

3.2 The Intersection between Customary International Law and Domestic Law: The Nigerian Perspective

Customary law within Nigerian domestic parlance refers to the customs, norms and traditions of members of a community which they recognise as legally binding. There are two main types of customary law, namely, ethnic customary law and Islamic law. Ethnic customary law is indigenous. Islamic law is based on Muslim religion. Unlike ethnic customary law, Islamic law is not indigenous; it is received customary law which was introduced in Nigeria.[861]Ethnic customary law is mainly unwritten. There are many customary laws in Nigeria.[862]The country has about 250 ethnic groups including Hausa, Fulani, Yoruba, Igbo, Ijaw, Kanuri, Ibibio, Tiv,

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[860] A.J.G.M. Sanders, 'Our State Cannot Speak With Two Voices' 88.S. AFR L.J. 413 cited in Andre Stemmet, 'The Influence of Recent Constitutional Developments in South Africa On the Relationship between International Law and Municipal Law' International Lawyer [1999] (33) (1); 48.

[861] Obilade (n1) 83.

[862] ibid

Idoma, Igede, Akoko Edos, Binis, Etsako, Esans, Owans, Etulo[863], and many others. Given the diverse ethnic groups in the country, customary law varies from one ethnic group to the other. There are notable differences and variations of customary norms even within the same ethnic group. It is pertinent to note that members of each community or ethnic group regard their customs as legally binding. Ethnic customary law is also flexible. It changes and transforms from time to time as the society develops in the course of history.Although customary law is a source of Nigerian law, it has to be established through legally recognised methods. There are basically two methods of establishing customary law before courts, viz; by proof and by judicial notice. Thus section 16 (2) of the Evidence Act, 2011, states that:

> A custom may be adopted as part of the law governing a particular set of circumstances if it can be judicially noticed or can be proved to exist by evidence.

Under section 16 (2) of the Evidence Act, 2011, the burden of proving a custom rests upon the person alleging its existence. Section 256 (1) of the Evidence Act, 2011, stipulates that the provision of the Evidence Act applies to all courts in Nigeria with the exception of an arbitrator, a general court martial, and civil matters before Area courts, Customary Courts, Customary Court of Appeal, and Sharia Court of Appeal[864]. However, the provision of the Evidence is applicable in Area Courts in criminal matters.[865] The foregoing provisions of the Evidence Act, 2011, imply that the Evidence Act is not applicable in customary courts in respect of civil matters. It is only applicable in an Area Court in respect of criminal matters.

Section 122 (1) of the Evidence Act, 2011, states that no fact which the court takes judicial notice needs to be proved, By virtue of the provisions of section 122 (2) (l) of the Evidence Act, 2011, the court is empowered to take judicial notice of all general customs, rules and principles which have been held to have the force of law in any court established under the constitution and all customs which have been duly certified to and recorded in any such court. Thus where a custom is judicially noticed, it need not be proved.[866]Section 17 of the Evidence Act, 2011, provides that a custom may be judicially noticed when it has been adjudicated upon once by

[863] United States Embassy in Nigeria, 'Nigeria Fact Scheet' January 2012. Economic Section, United States Embassy Nigeria.<https://photos-state.gov.pdfs> accessed 3 May 2021.
[864] See Tongding v Kakshak (2018) LPELR (46167)10-15
[865] See Evidence Act 2011, s256 (2)(3).
[866] Evidence Act 2011, s 122 (2) (l).

a superior court of record.Section 16 (1) of the Evidence Act, 2011, is to the effect that a custom may be adopted as part of the law governing a particular set of circumstances if it can be proved to exist by evidence. Similarly, section 18 (1) of the Evidence Act, 2011, is to the effect that where a custom cannot be established as one judicially noticed, it must be proved as a fact. In other words, customary law can be established in court by adducing evidence. Section 18 (2) of the Evidence Act provides that:

> Where the existence of or the nature of a custom applicable to a given case is in issue, there may be given in evidence the opinions of persons who would be likely to know of its existence in accordance with section 73.

The opinions of persons who would be likely to know of the existence of customs applicable to members of a community are admissible in evidence.[867]The types of evidence that may be adduced in court to prove the existence of customary law include witnesses, expert evidence or opinion, and text books as well as manuscripts.[868]Native Chiefs or traditional rulers or other persons having special knowledge of customary law may be allowed to express their opinion on a rule of customary law as evidence in court.[869]The opinions of Native Chiefs[870] or traditional rulers or other persons having special knowledge of customary law are deemed to be relevant under section 19 of the Evidence Act 2011.

Against the foregoing backdrop, customary international law would appear to form part of Nigerian law if it is successfully proved in court or if judicial notice is taken of it. However, there is no clear judicial pronouncement on the status of customary international law in Nigeria.[871] Oji asserts that since Nigerian customary law forms part of the body of Nigerian laws, based on its characteristics, so also is customary international law, provided it is duly proved or established in Nigerian Courts.[872]Similarly, Adigun notes that common law adopts customary international

[867] Evidence Act 2011, s73 (1).
[868] Ese Malemi, *The Nigerian Legal System: Text and Cases* (Prinston Publishing Company 1999) 97.
[869] Obilade (n1) 85.
[870] Malemi (n36) 97.
[871] Paul Adole Ejembi, *International and Domestic Disability Law: The Nigerian Perspective* (Jos University Press, 2020) 103.
[872] Elizabeth A. Oji, 'Application of Customary International Law in Nigerian Courts' <nials-nigeria.org>pub>Elizabeth.OJI> accessed 10 November 2017.cited in Paul Adole Ejembi, *International and Domestic Disability Law: The Nigerian Perspective* (Jos University Press, 2020) 103.

law into Nigerian legal system.[873]This view finds support in the case of *Eagles Super Park Ltd v African Continental Bank*.[874]In that case, the claimant instructed the defendant to issue a letter of credit in an enterprise situated in Japan called the Musahi Trading Company for the supply of raw materials to the claimant in Nigeria. The letter of credit in question was meant to be utilised by the claimant to defray the expenses involved in the supply of raw materials. The defendant provided the funds and the claimant paid the charges and commission involved to the defendant for the credit transfer. However, it was discovered that the credit was not delivered to the Japanese supplier. The claimant wrote several letters to the defendant regarding the failure to transfer credit to the Japanese supplier to no avail.Aggrieved, an action was instituted in the High Court of Justice in Nigeria. In the course of adjudication, the court had to determine whether the Uniform Customs and Practice (UCP) for documentary credit was applicable in Nigeria. Albeit, the UCP was established by the International Chamber of Commerce, with its headquarter located in Paris, it was contended that it has universal application in terms of standardization of letters of credit within the purview of banking and commercial transactions. At the trial court, the application of UCP in Nigerian jurisdiction was declined. On Appeal, the Court of Appeal held that the UCP constitutes customary international law and can be judicially noticed and applied in Nigeria.[875]On the basis of the preceding assertions and case law,it may be loosely inferred that customary international law constitutes Nigerian law provided it is proved in a court of competent jurisdiction or judicially noticed in the absence of a definitive statutory provision on the matter. Thus, unlike the South African state practice which expressly recognises the application of customary international as part of the country's law through explicit constitutional and legal provisions, the Nigerian state practice in this regard is not definitive. It is essentially recondite, abstruse, unclear,fuzzy, wooly and wobbly.

4. TOWARDS RECALIBRATING THE NIGERIAN APPROACH THROUGH THE PRISM OF SOUTH AFRICAN STATE PRACTICE AND OPINIO JURISSIVE NECESSITATIS

[873] Muyiwa Adigun, 'The Status of Customary International Law under the Nigerian Legal System' <https://www.tandfonline.com/doi/abs/10.1080/03050718.2019.1677484> accessed 18 April 2021.
[874] [2006] 19 NWLR (pt 1013] 20
[875] Ibid.

To a large extent, Nigeria's approach regarding the relationship between international law and municipal law with particular reference to international conventions or treaties is premised on the dualist theoretical construct which is to the effect that international law and municipal law are separate and distinct legal systems. Therefore, international law can only be applicable in the domestic arena through the process of transformation. This is exemplified by the provision of subsection 1 of section 12 of the CFRN, 1999, as amended, which provides that:

> No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

The above mentioned provision has been affirmed by the Supreme Court of Nigeria in the case of *Abacha v Fawehinmi,*[876]where the court held that no treaty entered into by the government of Nigeria shall have the force of law except to the extent to which the treaty has been enacted into law by the National Assembly.[877]Conversely, as pointed out earlier, the correlation between customary international law and Nigerian law is recondite. There is no clear statutory or judicial pronouncement in this regard. It would appear on the basis of assertions of scholars such as Oji that customary international law would constitute part of Nigerian law if it is successfully proved in court[878] or if it isjudicially noticed by a superior court of record. This implies that international customs are not applicable in Nigeria as a matter of course. Such customs would have to be validated by the binding judicial decisions in order to attain the force of law in the domestic milieu. Unlike treaties, it would seem that Nigerian law is not explicit regarding the role of the legislation in validating customary international law. Given the equivocal and recondite nature of Nigerian law regarding the interface between customary international law and municipal law, it is recommended that a cue should be taken from South African State practice and*opinio juris sive necessitates.* This can be achieved, first and foremost, by amending the extant Nigerian constitution to make customary international law directly applicable as part of Nigerian law provided it is not inconsistent with legislative provisions. The legislature, state functionaries, NGOs, and individuals should be actively involved in the proposed constitutional amendment process to give effect to the restatement of customary international law as a constituent aspect of

[876] (2000) FWLR 533 at 585.
[877] Ibid.
[878] Oji (n44)

Nigerian municipal law. Furthermore, the judiciary should make definitive pronouncements regarding the applicability of Nigerian law in line with amended provisions of the constitution as exemplified by the South African archetype and jurisprudence.

5. CONCLUSION

The intersection between customary international law and municipal law is characterised by parallels, nuances, and marked distinctions ranging from one sovereign state to the other. By and large, Nigeria's approach in respect of the interface between international law and municipal law with specific reference to treaties is predicated on the dualist theoretical underpinning which is to the effect that international law and municipal law are distinct bodies of law. Thus international norms are inapplicable in the domestic milieu unless it is domesticated through the process of transformation. By contrast, there is no explicit statutory provision regarding the applicability of customary international law in Nigerian legal system. Although some scholars have asserted that customary international law may be applicable in Nigeria if successfully proved or judicially noticed by superior courts of record and inferences may be drawn from a few judicial decisions, there is need for a definite statutory provision or categorical judicial decision in this regard. It would appear that Nigerian state practice is recondite regarding the applicability of customary international law in Nigerian milieu. In the light of the equivocal position of Nigerian law, it is recommended that the country should take a cue from the South African archetype and accordingly recalibrate the extant legal regime in order to foster a definitive restatement of the correlation between customary international and Nigerian law.