CONSTITUTIONS OF ANGLOPHONE WEST AFRICAN COUNTRIES AND PRIVATE PROPERTY RIGHTS TREATIES

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The article appraises treaties bordering on private property rights, examines the Constitutions of all Anglophone West African countries and ascertains the extent of consistency of those Constitutions with the salutary provisions of the treaties. It considers the pertinence, value and justification of treaties and Constitutions, particularly, from the viewpoint of both being veritable instruments for entrenching private property rights. It further treats the issue of hierarchy between private property related treaties and Constitutions of Anglophone West African countries as well as the history, nature, amplitude and philosophical foundation of private property rights and concludes with recommendations, including those deemed necessary for further entrenching private property rights through treaties and Constitutions of Anglophone West African countries.

1. Introduction

Treaties are a written agreement formally concluded between two or more sovereign States[1] on a given subject-matter; as such, signatory-States are expected to adhere to them.[2] Treaties cover, amongst others, virtually all aspects of fundamental rights, including private property rights.

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1 See, Garner, Bryan A. (ed.), *Black's Law Dictionary* (9th ed., West Pub., Minnesota, 2004), 1642.

2 This is pursuant to the rule: *"pacta sunt servanda"*, *infra*. It is noteworthy, that where the obligations created in such treaties have also attained the status of obligations recognized by the international customary law, those obligations will also bind non-parties to the treaties; see, *infra*.

Against this backdrop, *inter alia*, treaties play a fundamental role in international relations,[3] world peace and order as well as global growth and development.

Whether or not States are signatories to international treaties and the extent of internalization of the provisions of those treaties on a particular subject-matter, particularly, by way of incorporating them in local legislation, is an appropriate way of measuring compliance by a State with its international obligations and best practices on that subject-

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[3] See, for instance, the preamble to *the Vienna Convention on the Law of Treaties, 1969* - U.K.T.S. 58 (1980) Cmnd. 7964; 8 LL.M. 679 (1969); A.J.I.L. 875 (1969). Oyebode calls this treaty: "Treaty on Treaties"; see, Oyebode, Akin, *International Law and Politics: An African Perspective* (Bolabay Pubs., Lagos, 2003), 71. Wallace adds that the treaty is "a product of 20 years work by the International Law Commission"; see, Wallace, M.M. Rebecca, *International Law* (3rd ed., Sweet & Maxwell, London, 1997), 20. Dixon describes it as "the most important pieces of work ever undertaken by the International Law Commission"; see, Dixon, Martin, *International Law* (3rd ed., Blackstone Press Ltd., London, 1906), 52. Although the treaty was passed by the Vienna Conference on 23 May, 1969, it entered into force on 27 January, 1980. The eleven-year period between its adoption and entry into force, respectively, Dixon argues, is a reflection that it is comprehensive in scope and that it seeks solution to a variety of controversial issues; see, Dixon, *supra*, 52. The fact that as at January, 1996, 77 parties, including the United Kingdom had ratified it and that, so far, more than 100 countries have done so, attest to its pertinence and acceptability. See further, Wallace, *supra*, 224, Dixon, *supra*, 46 and 52, and Oyebode, *supra*, 71. Wallace, *supra*, Dixon *supra* and Oyebode, *supra*, respectively, attest that the expansive influence of treaties in international law and relations is reflected in the diversity and pervasiveness of the subject-matters regulated by them. Oyebode, *supra*, particularly, posits that "the pre-eminence of treaties in international life generally is borne out by the fact that the most urgent problems confronting humankind today - disarmament, peaceful use of nuclear energy, environmental pollution, ocean bed resources, and so on, can only be resolved through the proven, definitive instrumentality of the international agreement", which treaties represent; see, Oyebode, *supra*, 71. All of the Anglo-phone West African countries, *infra*, are signatories to this treaty; see, http://en.wikipedia.org/wiki/Vienna_Convention, accessed on 26 November, 2011, 1. As such, they are bound by it, pursuant to the rule: *"pacta sunt servanda"*, *infra*.

matter. By implication, this is also a reflection of the level of adaptability of that State to the dynamics of best practices to good governance and of its civilization.

The thrust of this Paper is to appraise the treaties dealing with private property rights and to ascertain the extent to which the Constitutions of English-Speaking West African States[4] incorporate the model provisions contained in those

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[4] West African countries are constituents of West Africa, which is the westernmost region of the African continent. West African countries, which are sixteen in all, are as follows: Benin Republic, Burkina Faso, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo. This is approximately, three-and-half of the entire constituent-nations of the African continent, which are fifty-four. While the western and southern border of West Africa is the Atlantic Ocean, the sub-region's northern border is the Sahara Desert; and while some indicate that the eastern border is the Benue Trough, others maintain that it is a line which runs from Mount Cameroon to Lake Chad. Colonial boundaries are reflected in the modern boundaries between contemporary West African nations, cutting across ethnic and cultural lines, often dividing single ethnic groups between two or more countries. It occupies a landmass more than 6,140,000 square kilometers, which approximates one-fifth of the total landmass of the African continent. Linguistically, West Africa is diverse, indeed. Culturally, the sub-region is varied, although, profound similarities pervade the varied cultures. Two official languages exist. These are the English language and the French language. While the former is the official language in Liberia and countries having British colonial background, such as The Gambia, Ghana, Nigeria, and Sierra Leone, the latter is the official language in countries having French colonial background, such as Benin Republic, Burkina Faso, Cape Verde, Cote D'Ivoire, Guinea, Guinea-Bissau, Mali, Mauritania, Niger, Senegal, and Togo. It is noteworthy that although English is the official language in Liberia, Liberia is not a former colony of Britain. The country never even had roots in European scramble for Africa. Beginning in 1820, it was colonized by freed American slaves with the help of the American Colonization Society, a private organization that believed ex-slaves would have greater freedom and equality in Africa. The capital city of Monrovia is named after James Monroe, the fifth President of the United States of America and a prominent supporter of the Liberian colonization process; see, http://en.wikipedia.org/wiki/Liberia, 1. Importantly, the focus of this paper is on Anglo-phone West African countries, namely: The Gambia, Ghana, Liberia, Nigeria and Sierra Leone.

treaties. The Paper is divided into 7 parts. These introductory remarks constitute Part 1. In Part 2, pertinence, value and the justification of treaties and constitutions being veritable tools for entrenching private property rights will be explored. Part 3 is devoted to an examination of the significance, worth and historical antecedents of private property rights. The nature and amplitude of private property rights, respectively, are appraised in Part 4. In doing this, first, the bases and rationale of private property rights are examined, and, second, it is determined whether the rights are absolute and "illimitable". Part 5 consists of the evaluation of relevant treaties and the determination whether Anglo-phone West African States[5] are signatories to them, in which case, they are bound by virtue of the *pacta sunt servanda* doctrine or whether they are otherwise bound. In Part 6, the Constitutions of Anglo-phone West African States[6] are examined and this is done with the aim of comparing them with the provisions of the treaties and ascertaining the level of compatibility of both. Part 7 consists of our concluding submissions and recommendations.

2. Importance of Treaties and Constitutions in Preserving Private Property Rights

2.1 Treaties

2.1.1 Treaties: General Overview

Treaties are an agreement formally signed, ratified, or adhered to between nations or sovereigns.[7] Alternatively,

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5 *Supra* (fn.4).

6 *Supra.*

7 See, *supra* (fn.1). In *Maclaine Watson v. Department of Trade and Industry* [1989] 3 All E.R. 523 (Tin Council Litigation), Lord Templeman likened treaties to contracts in municipal law, when His Lordship declared: "treaty is a contract between governments of two or more sovereign states". Dixon argues that treaties are the result of

they are an agreement concluded between two or more States in written form and governed by international law.[8] In the definition proffered by him, *Umozurike* emphasizes that treaties create binding obligations among subjects of international law.[9] *Wallace* submits that treaties represent the most tangible and most reliable method of ascertaining, in exact terms, what has been agreed between States on a particular subject-matter.[10] *Dixon* asserts that treaties, being instruments governed by international law, once they enter into force, the parties thereto have a legally binding obligation in international law.[11] "Treaties" is a generic term also used to denote "Accords", "Conventions", "Covenants", "Declarations", "Pacts";[12] and are referred to as "international

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direct negotiations between legal equals and each party is bound by the terms of the agreement because they have deliberately consented to the obligations contained therein. Thus, just as national contracts create specific obligations which "the law" says must be fulfilled, so international treaties create specific obligations which international law says must be fulfilled; see, Dixon, *supra*, 26. Oyebode argues that, in the context of this comparison, the *pacta sunt servanda* doctrine (in the international realm) is, in fact, analogous to the *consensus ad idem* doctrine (in the domestic sphere); see, Oyebode, *supra*, 81.

8 See, Garner, Bryan A. (ed.), *Black's Law Dictionary*, *supra*, 1642 and *Article 2(1)(a) of the Vienna Convention on the Law of Treaties*, *supra*; see also, the I.C.J. in *Qatar v. Bahrain*, otherwise known as the *Maritime Delimitations and Territorial Questions Case* 1994 J.C.J. 112, 121 - 122, regarding what may constitute an international agreement. It is noteworthy, however, that this meaning differs from the meaning ascribed to "Treaties" in *the Constitution of the United States of America*. In that Constitution, "Treaties" are defined as "an agreement made by the President [of the United States of America] with the advice and consent of the Senate"; see, *Article II, section 2 of the Constitution of the United States of America* and Garner, Bryan A. (ed.), *supra*, 1640, citing Baderman David J., *International Law Frameworks* (2001), 158.

9 See, Umozurike, U.O., *Introduction to International Law* (3rd ed., Spectrum Books Ltd., Ibadan, 2005), 16.

10 See, Wallace, *supra*, 20.

11 See, Dixon, *supra*, 47.

12 See, Garner, Bryan A. (ed.), *Black's Law Dictionary*, *supra*, 1642. See also, Watergehr, *The International Law of Treaties*, http://web.me.com/

conventions" in *Article 38(a)* of the *Statute of the International Court of Justice*.[13] Treaties constitute one of the three sources of international law encapsulated in the said Statute;[14] and adherents of the Soviet School of thought insist that treaties are the most important source of international law.[15] In this context, *Oyebode* contends that "international law is today largely a product of treaties ..."[16] and stresses that

> "the United Nations Charter which is arguably the most important source of modern international law, is itself a treaty, whose provisions consider treaties as the main source of international law".[17]

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waltergehr, 1 and Umozurike, U.O., *supra*, 16. Umozurike adds the following to the list of synonyms for Treaties; namely: "Protocols", "Arrangements", Understandings", "Compromises", "Regulations", "Provisions", "Charters", "Statutes" and "Acts" and emphasizes that the synonyms are so used notwithstanding that they have other meanings; see, Umozurike, *supra*, 16. Wallace adds "Agreement" and "Exchange of Notes", among others, to the list; see, Wallace, *supra*, 225. As regards this multiplicity of names given to treaties, see, Oyebode, *supra*, 81.

13 See, Wallace, *supra*, 19, Watergehr, *supra*, 1 and Umozurike, U.O., *supra*, 15. This Statute is otherwise known as the "Bible of the Poor".

14 See, *Art. 38 (1)* of the Statute, Watergehr, *supra*, 1, and Umozurike, U.O., *supra*, 15. The other two sources mentioned in the Article are: (i) international custom, being evidence of a general practice accepted by law; and (ii) general principles of law recognized by civilized nations. Umozurike, U.O., *supra*, however, adds a third source; namely judicial decisions and teachings of "the most highly qualified publicists of the various nations", these "being subsidiary means" for determining the rules of law. This addition, according to the author, is, however, subject to *Art. 59* of the Statute. It is noteworthy that writers are at a consensus that treaties or international conventions, international custom and general principles of law, respectively, are the most authoritative sources of international law and that, in any case, the sources specified in *Art. 38 (1)* of the Statute of the International Court, *supra*, are not exhaustive; see, Umozurike, *supra*, 15.

15 See, Wallace, *supra*, 20.

16 See, Oyebode, *supra*, 71.

17 *Supra*, 71. The learned author cites, in support, the Preamble to the Charter as well as *Art. 38* of the Statute of the International Court of Justice, *supra*.

Originally, the rules regarding treaties were either part of customary international law or of the general principles of law. In contemporary times, however, the rules governing treaties have been codified and are embodied in the *Vienna Convention on the Law of Treaties.*[18]

The power to enter into treaties derives from the sovereignty and independence of nations. *Umozurike* posits that sovereignty, in this context, is analogous to "Sovereign equality" of States, which culminates, *inter alia*, in the formidable international law rule of one-State-one-vote as well as that of non-discrimination against resident foreigners. Closely related to this is the principle that the power to enter into treaties is vested, exclusively, in an international person and an "international person" has been described as "an entity that is recognized as having rights and duties in international law".

Umozurike correctly argues that the most important development in contemporary international law is the widening concept of international personality and that, to the extent that modern international law confers rights and duties on individuals, they may be said to enjoy a measure of international personality, *pro tanto.*

However, whereas the scope of international personality may be a subject of controversy among writers, certainly, it is incontrovertible that States remain the typical and primary subjects of international law. "State" has been defined as "any entity that has a defined territory and population under the control of a government that engages in foreign relations".

The Montevideo Convention, 1933, which was signed by the United States of America and South American States, enumerates the main features of Statehood as:

(i) a permanent population;
(ii) a defined territory;

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[18] See Watergehr, supra 1.

(iii) a government; and
(iv) capacity to enter into relations with other States.

Whereas the first three of the above features are controversial, the fourth is sacrosanct and is controversy-free. Thus, a State must possess the capacity to enter into relations with other States. In reinforcing the necessity of this feature, *Umozurike* submits that this is the only feature of a State that distinguishes it from other territories, such as colonies, protectorates and units within a federation, which normally have no such capacity.

Independence is an indispensible attribute of Statehood and this connotes the power to take decisions without reference to another party. Thus, the PCIJ, in *Austro-German Customs Union Case* characterized it as the "sole right of decision in all matters economic, political, financial or otherwise, with the result that the independence is not violated". Independence is coterminous with sovereignty, which *Judge Huber* defined in the *Island of Palmas Case.*

International personality is, normally, granted to a federal authority, although municipal constitutions may confer the federating units with limited powers to conduct foreign relations, especially in economic and cultural matters. Flowing from this principle of recognition of a federal authority as the recognized personality in international relations, if a federal unit commits an international misdemeanor, this is imputed to the federal authority.

Although the *Vienna Convention on the Law of Treaties* is inapplicable to Treaties made prior to its coming into force, yet, *de facto*, the Convention is also applicable to those pre-existing treaties because, to a large extent, the Convention incorporates pre-existing customary rules.

It requires emphasis that treaties remain pertinent since they are the major instrument through which international relations are conducted, and, by implication, the chief means by which universal civility and quality of lives within subjects of

the international community are sustained and by which global cooperation and peace, respectively, are upheld. *Rebecca M.M. Wallace* argues that treaties are "the most tangible and most reliable method of identifying what has been agreed between states" and are "increasingly utilized to regulate relations between international persons". *Dixon* explains this pertinence of treaties by emphasising that they are the only source of international law which allows State-parties the opportunity of deliberately and consciously creating rights and duties. As such, the author insists, they are bound to be respected.

Also, adherents of the Soviet School of Thought insist that treaties are the most important source of international law. *Charles Edward Minenga* adds two interesting dimensions to the significance of treaties when the writer canvases that treaties reduce problems involving conflicts between States and promote the international rule of law. The challenges posed to twenty-first century trade and investments between States by globalization, particularly, the necessity of safeguarding foreign investments, including capital inflows, increases the relevance of treaties. In the context of the focus of this Paper, in order to create incentive-effects in property owners, that is, citizens and foreigners alike, which incentive-effects are essential for socio-economic growth and development, it is necessary to guarantee private property rights and treaties are a ready veritable tool for achieving this lofty objective.

Treaties are categorized into:

(a) a contract treaty, which is treaty that merely regulates a specific relationship between two or more States, for instance, a loan agreement;
(b) a constitutional treaty, which creates an international organization in which case, the treaty is also the constitution of the international organization; and
(c) a law-making treaty, which lays down rules for a number of States.

The focus of this Paper is on the third category of treaties. In relation to this class of treaties, although treaties bind only the parties thereto, in line with the cannon *pacta tertiis nec nocent nec prosunt*, (which is one of the five fundamental principles that regulate the operation of treaties) yet, *Umozurike* argues that they are the nearest to legislation in a partially organized international society. Thus, parties to a treaty are bound by all of the obligations in the treaty by virtue of the *pacta sunt servanda* doctrine. However, non-parties too may be bound, where the obligations created by the treaty have attained the status of customary law, or to the extent that a treaty lays down a code of conduct. If State practice develops along the lines of the treaty code, the result could be that new rules of custom, which are similar to those found in the treaty, come into being. Either of these occurrences constitutes an exception to the *pacta tertiis nec nocent nec prosunt* and the *pacta sunt servanda* doctrines, since these doctrines, themselves, originated from customary international law.

On a final note, here, it is pertinent to underscore the cardinal principle of international law that a State may not plead a breach of its constitutional provisions or those of other States relating to treaty-making so as to invalidate a treaty to which it is a party.

2.1.2 Nature of Private Property Rights-Related Treaties

As profound as the importance of treaties is in international law, their major drawback is in the fact that scholars have been unable to reach a consensus on their exact juridical interpretation. This challenge is more visible in relation to treaties relating to private property rights, which, like other human rights' treaties, belong to a class of international law referred to as "non-traditional class". This category of treaties does not stipulate concrete rights or obligations for sovereign parties to them. In other words, they are normative rules only.

As such, although they are rules of law, nonetheless, their content is inherently flexible or vague.

Three prominent characteristics of private property rights-related treaties as well as other non-traditional treaties are discernible. First, is the apparent wariness of sovereign-parties to establish clear-cut norms, particularly, in novel situations. Second, is the creation of "scaled" or "relative" obligations. Third, is that the obligation purportedly created may be vague and equivocal as it relates to what it requires States to do in order to avoid international responsibility. Such vague obligations, in the words of *Dixon*, lack precise and practical legal content. An example of a "scaled" or "relative" obligation is in *Article 2* of the *Covenant on Economic, Social and Cultural Rights, 1966*, which obliges parties to "take steps, individually and through international assistance ... with a view to achieving progressively" the rights recognized in the treaty. Another example of such vague obligation is the alleged customary law obligation to pay "appropriate" compensation following an expropriation of foreign-owned property.

These pitfalls notwithstanding, these treaties, undoubtedly have, at least, two merits. First, sovereign states still respect the compulsion of law and of morality to respect the provisions of the treaties to which they are parties and this, eventually, results in the development of more concrete and harder laws in due course. Second, such rules lessen the chances of conflict between competing ideologies. These merits, thus, solidify the significance of treaties in world order.

2.2 Constitutions

Phillips and *Jackson* describe the term "Constitution" in two different senses. First, as "the system of laws, customs and conventions which defines the composition and powers of organs of the state, and regulates the relations of the various state organs to one another and to the private citizen"; and

second, as "the document in which the most important laws of the Constitution are authoritatively ordained". According to the authors, "Constitution", in the former sense, being unwritten, is abstract while, in the latter sense, Constitution being written, is concrete. Almost all civilized societies, with the exception of the United Kingdom, New Zealand and Israel now operate written, concrete Constitutions. All Anglo-phone West African countries, which are the focus of this paper, operate written Constitutions.

A written, concrete Constitution, which *Stanley* refers to as "one of the hallmarks of modern democratic governance" and the "skeleton ... upon which the legal existence of the society hangs", is the most fundamental law in any civilized country. It is often referred to as "the *grundnorm*" or "supreme law" within that country. As such, every other law or power derives legitimacy from it. Conversely, every conflicting law is void to the extent of its inconsistency. For instance, all the Constitutions of Nigeria since independence have contained provisions establishing their supremacy. *Section 1 (1) of the 1999 Nigeria Constitution* provides that "this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria". *Section 1 (3) of the Constitution* adds 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".

It is apposite to state that part of the most visible powers expressly conferred by the Constitution are treaty-making powers as well as powers regarding the implementation of treaties. In this connection, constitutional provisions do not only specify the organs that are competent to conclude treaties in the exercise of the sovereign powers of the State but also the procedure to be followed in order to bring the treaties concluded into operation within the domestic domain.

3. Pertinence and Historical Antecedents of Private Property Rights

Historically, private property rights, like other innate rights, are as old as human existence.

Also, jurisprudence, which, as deep and wide legal thoughts, underlies every aspect of human existence, is so broad in both concept and scope that it provides a lot of teachings about the significance of the subject of private property rights.

The inter-relationship between jurisprudence, otherwise called legal philosophy, and private property rights is knit, indeed. This is, essentially, because of the primary nature of jurisprudence or legal philosophy as either an art or science committed to investigating the attributes, essence and growth of law generally or any area of it, private property rights included. "Philosophy", which originated in ancient Greek and from the Greek language, has as its Latin language translation: *"philosophia"* meaning "love of wisdom". Little wonder, therefore, that *Descartes* describes "philosophy" as "nothing but the study of wisdom and truth".

Jurisprudentially, property rights are private rights, in the sense that they attach to the very essence and existence of a person, whether natural or corporate and the institute of private property rights is universal. This is so because there is, virtually, no culture in the whole universe in which the institute of private property is not solidly entrenched.

"Property" is what *Robert Nozik* calls "just acquisition" which refers to a good, possession or commodity acquired through the acquirer's intellect, knowledge and labour. The property concept vests a near-absolute ownership or title which consists of a bundle of sacred and inviolable rights. This is probably in recognition of the fact that, usually, immense labour, expenditure and risk-taking by a natural or corporate person precede the acquisition of the property which he owns interest in. This, therefore, naturally, explains the

"justness" in the "acquisition" of that property. This property, as noted earlier, is privately intrinsic in its owner and vests proprietary rights in him, which rights are inherently sacred and inviolable.

All the jurisprudence schools of thought, unusually, unite in the thinking that property rights are sacred and inviolable. The rationale for this resolution is manifold but it lies chiefly in the imperative of shielding the person, natural or corporate, from the arbitrary, capricious and unfathomable incursion of the State into his private property rights.

This enviable recognition of private property rights is the rationale for this category of rights being entrenched as an immutable right in important treaties as well as in the Constitution of every civilized society; and this has been so since the *Declaration of the Rights of Man and the Citizen, 1789.* In that Declaration, this right was reflected in the following affirmation:

> "Since property is a sacred and inviolable right, no one may be deprived thereof".

4. Constituents of Private Property Rights

As indicated earlier, property rights are a variant of fundamental human rights since, like other fundamental human rights, they are innate in man. This explains why they are more appropriately referred to as "private property rights". Private property rights encapsulate rights over a very wide range of categories of private property, and include land, property in possession or corporeal personal property and property in action or incorporeal personal property.

Defining "land" has been rightly identified as herculean, the challenge emanating, in the main, from the nature of proprietary interest in land, which is an amalgam of corporeal interests and incorporeal interests. Regarding this challenge, *Banire* enthuses:

> "The multifaceted nature of land raises a challenge in providing a definition of land which is acceptable and also captures its varied aspects. This challenge is complicated by the fact that apart from the physical components of land ("corporeal hereditaments"), land also comprises abstract concepts ("incorporeal hereditaments") which are not "the object of sensation and can neither be seen nor handled. Incorporeal hereditaments are creatures of the mind, and exist only in contemplation".

However, the learned authors of *Black's Law Dictionary* describe "land" in restricted but clear terms as an "immovable and indestructible three-dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on or permanently affixed to it". This definition is similar to that proffered by both *Smith* and *Utuama*, which is that "land" is a "physical thing which comprises the surface of the earth and all the things that are attached to it".

A "property in possession" or "corporeal personal property" refers to the proprietary interest which subsists, only, where the owner has the right both to occupy and to enjoy the property. *Jegede* posits that it consists "of corporeal chattels which by their nature can be the subject of physical possession and enjoyment" and that being so, its possession and ownership pass, only, by physical delivery.

On the other hand, "property in action" or "incorporeal personal property" is "a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action and not by taking physical possession. *Jegede* describes it as follows:

> "A proprietary right in property; a right of recognizable economic value, though it has no tangible or physical existence and therefore not capable of being physically

> possessed. Being an abstract right in property, if it is infringed or wrongfully or unlawfully determined, it can only be protected, claimed or enforced by action and not by taking physical possession".

Examples of property in action or incorporeal personal property include right to debts, shares in a joint-stock company or in partnership property, debentures in a limited company, insurance policies, negotiable instruments, bills of lading, patent rights, copyrights, trade marks, rights of action arising from a contract, for instance, right to damages for the breach of such contract, rights arising by reason of the commission of tort or other civil wrong, for example, right of liquidator against directors of a company for misfeasance, rights of a beneficiary in a trust and rights under legacies. In *Colonial Bank v. Whiney*, property in action is said to denote "all incorporeal personal property".

Having defined "land" and highlighted the distinction between corporeal personal property or property in possession and incorporeal personal property or property in action, it is pertinent to emphasise that there cannot be a hybrid form of personal proprietary right in-between both types of private property. This is because, in the words of *Fry, L.J.* in *Colonial Bank v. Whiney*, "the law knows no *tertium quid* between the two".

5. Treaties Relating to Private Property Rights

Treaties relating to private property rights contain wide provisions. These cover inviolability of property rights as well as exceptions to them. These provisions shall, now, be discussed.

5.1 Inviolability of Private Property Rights

The sanctity and inviolability of property rights has become

endemic in treaties, since the *American Declaration of the Rights and Duties of Man, 1948.* This is reflected, generally, in the preamble to the Declaration as follows:

> "All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another".

In specific terms, it is reflected in the following words:

> "Every person has the right to own ... private property..."

It is also a prominent feature of the *Universal Declaration of Human Rights, 1948*, which does not only provide for the right to own property, either solely or in association with others, but also provides for insulation against arbitrary deprivation of property.

The *American Convention on Human Rights, 1978* also assures of the right of everyone within Party-States to the use and enjoyment of his property.

Furthermore, it is visible in the *African Charter on Human and Peoples' Rights, 1981*

which, unequivocally, guarantees the right to private property.[116]

The *Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), 197* also seeks to obliterate all forms of discrimination against women, among others, in relation to acquisition, ownership, management, administration, enjoyment and disposition of properties.

Similarly, the *International Convention on the Elimination of all Forms of Racial Discrimination, 1965* contains a provision abolishing discrimination on the basis of race, colour and national or ethnic origin, relating, among others, to ownership of property, either solely or jointly.

Furthermore, in the *Indigenous and Tribal Peoples'*

Convention, 1989, tribal peoples in independent countries who are distinguishable by virtue of social, cultural and economic conditions, have the right to decide their priorities in the process of development as it affects, among others, the lands they occupy. By virtue of *Article 13* of the Convention, governments must "respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship".

Article 44 contains robust provisions. First, the "rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy" are recognized. Second, the right of the peoples concerned to use lands not exclusively occupied by them, but to which they traditionally have access for their subsistence and traditional activities, are preserved. Third, governments are obliged to take steps to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession of those lands, and, finally, adequate procedures must be established within the national legal system to resolve land claims by the peoples concerned.

By virtue of *Article 17*, whatever procedure has become established by the peoples concerned for the transmission of their land must be respected.

Finally, persons who are not part of these peoples are barred from taking advantage of their customs as well as their lack of understanding of the laws, in order to secure the ownership, possession or use of land belonging to them.

Article 18 provides for the criminalization of unauthorized intrusion upon or use of the lands of the peoples concerned and for deterrence from such offence as well as for adequate compensation.

Article 15 provides for safeguard of the rights of the peoples concerned to the natural resources embedded in their lands, such rights including participation in the use, management

and conservation of the resources. Also, the peoples concerned shall, whenever possible, participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

The *Declaration on Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, 1985*, reserves the right of aliens to own property either alone or jointly with others in the country in which they live.

The *Universal Declaration of Human Rights, 1948* was expressly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" that appear in the *United Nations Charter*. The Declaration, therefore, represents a fundamental constructive document of the United Nations, which should apply to all United Nations Member States, including all Anglo-phone West African countries. Thus, the 1968 United Nations International Conference on Human Rights advised that the Declaration "constitutes an obligation for the members of the international community".

This argument is reinforced by the consensus of International Law experts that the Declaration forms part of customary international law and that this makes it binding on all governments, particularly governments of United Nations' Member States, including all Anglo-phone West African countries.

All Anglo-phone West African countries being State-Parties to the *African Charter on Human and Peoples' Rights, CEDAW* and the *International Convention on the Elimination of all Forms of Racial Discrimination*, are bound by the provisions of the treaties, in accordance with the doctrine of *pacta sunt servanda.*

Finally, like the *Universal Declaration of Human Rights, 1948*, the *Declaration on Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, 1985*, is a United Nations' instrument and should apply to all United Nations Member States, including all Anglo-phone West

African countries either as signatories to the *United Nations Charter* pursuant to which the instrument was made or as part of customary international law.

5.2 Exception to Private Property Rights

Most of the treaties relating to private property rights that we have discussed contain provisions that allow for incursion into private property rights in deserving situations. For example, the following exception to the sanctity and inviolability of private property rights appears in the *American Declaration of the Rights and Duties of Man, 1948*:

> "It is the duty of every person to pay the taxes established by law for the support of public services".

Also, in the *Universal Declaration of Human Rights, 1948* it is established that a property owner may be deprived of his property provided the deprivation is not arbitrary.

The *American Convention on Human Rights, 1978* approves of subordination of private property rights to "the interest of society" on conditions that the subordination must:

(i) be done through law;
(ii) on "payment of just compensation", and
(iii) in strict compliance with the procedure established by relevant law.

What amounts to "interest of society" is expressed to be "reasons of public utility or social interest".

Furthermore, the *African Charter on Human and Peoples' Rights, 198* allows encroachment into private property rights only in the interest of public need or general interest of the community and in accordance with appropriate laws.

By virtue of the *Indigenous and Tribal Peoples' Convention, 1989*, the peoples concerned must be consulted whenever

consideration is given regarding their capacity to alienate their lands and they must be adequately compensated for any such alienation.

Also the State may retain the ownership of mineral sub-surface resources or rights to other resources relating to lands but this is conditional upon:

(a) governments establishing and maintaining procedures through which they shall consult the peoples with a view to ascertaining whether and to what degree the peoples' interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of the lands of the peoples concerned;
(b) the peoples concerned, whenever possible, participating in the benefits of such activities; and
(c) the peoples concerned receiving fair compensation for any damages which they may sustain as a result of such activities.

In the *Declaration on Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, 1985*, there are three exceptions to the private property rights of a person who is not a national of the country in which he or she lives. These are:

(1) if ownership of property contravenes any domestic law;
(2) if restrictions are prescribed by law provided that such restrictions are necessary in a democratic society for the purpose of protecting national security, public safety, public order, public health or morals or the rights and freedoms of others; and
(3) non-arbitrary deprivation of his or her lawfully acquired assets.

The foregoing, clearly, shows that an obligation is foisted

on Anglo-phone West African countries to be bound by all of the private property related treaties which we have discussed above, except the *American Convention on Human Rights, 1978*. This is based on either the *pacta tertiis nec nocent nec prosunt* and the *pacta sunt servanda* doctrines or customary international law.

Against this background, it is apposite to look at the Constitutions of the countries with a view to discovering the extent of their compliance with the treaties.

6. Constitutions of Anglophone West African Countries and Private Property Rights

6.1 Inviolability of Private Property Rights

Constitutions of all of the world's civilized nations incorporate and guarantee the inviolability of private property rights by making such rights fundamental. The strategic nature of this entrenchment should be viewed from the perspective of the supremacy of the Constitution, most of these civilized nations being countries which operate under written Constitutions.

All of Nigeria's Constitutions since political independence in 1960 have had this sacredness of property rights entrenched in them.

Section 43 of the current Constitution of Nigeria - *the 1999 Constitution*, entrenches the right of Nigerians to own immovable property within Nigeria. This provision is, apparently, both restrictive and confusing. A holistic interpretation of *section 43* and *section 44 (1) of the Nigeria Constitution*, which provides that "no movable property ... shall be taken possession of compulsorily ...", would, however, suggest a latent intention to grant absolute proprietary rights over movable property within Nigeria to all persons - Nigerians and non-Nigerians.

Article 22 of the Constitution of Liberia, 1986, clearly

guarantees the right of all persons to own movable property within Liberia. However, it restricts the right to own immovable property within Liberia only to Liberians. This is much clearer and confusion-free. The situation in Ghana is very similar to that in Liberia. Thus, whereas *Article 18 (1) of the Constitution of Ghana, 1992,* unequivocally, reserves the right of all persons to own movable and immovable property in Ghana, *Article 266 of the Constitution,* nevertheless, limits the interest which a non-Ghanaian may hold in an immovable property to a lease-hold of a term of fifty years. The approach in Liberia and Ghana is, thus, commended to Nigeria.

These provisions, for instance, forestall any effort by anyone, particularly the Sovereign, to unjustly prevent a Nigerian from lawfully acquiring immovable property in Nigeria or a Liberian from lawfully acquiring immovable property in Liberia. They also prohibit any attempt by the Nigerian or Liberian government to, unjustly, compulsorily, acquire such immovable property subsequent to acquisition.

However, unlike in Ghana, Nigeria and Liberia where the rightto property is restricted

to the extent of discrimination between citizens and non-citizens in respect of ownership of real property, the right is not so qualified in The Gambiaand Sierra Leone. The approach in The Gambia and Sierra Leone, in this regard, is similar to that in Tanzania and is applauded and commended to Ghana, Nigeria and Liberia.

The significance that the The Gambia, Ghana, Nigeria and Sierra Leone Constitutions each attach to the inviolability of property rights is so strong that they provide, in *section 18 (4) (a), Article 13 (2) (a), section 33 (2) (a)* and *section 16 (2) (a),* respectively, that killing may be just and excusable if it is done in defence of property. This, therefore, constitutes an exception to another fundamental right - the right to life. Thus, Liberia is the only Anglo-phone West African country which, by constitutional arrangement, disallows killing on account of defence of property. Clearly, therefore, only Liberia,

although partly, conforms with *Article 4* of the *African Charter on Human and Peoples' Rights, 1981,* which prohibits capital punishment for whatever reason. However, the conformity of Liberia, in this respect, is not total because killing is still allowed by the Liberia Constitution, if it is in furtherance of a sentence of a court.

Sections 43 and 33 (1) (a) of the Nigerian Constitution are enhanced, in the entrenchment of the sacredness and illimitability of property rights, by *section 44* which, ordinarily, disallows compulsory acquisition of both movable and immovable proprietary rights. *Section 44* of the *Nigeria Constitution* is similar to *Article 20* of the *Liberia Constitution.*

By virtue of *Article 18 of the Constitution of Ghana,* the right of every person to own property, either alone or jointly with others, is safeguarded. An individual is also protected from interference with the privacy of his property, among others.

Section 22 (1) of the Constitution of The Gambia, Article 20 of the Ghana Constitution, Article 24 of the Liberia Constitution and *section 21 (1) of the Sierra Leone Constitution* are the same as *section 44 of the Nigerian Constitution*; they all entrench the sacredness and inviolability of private property by, generally, disallowing compulsory acquisition of private property rights. Although the Ghana Constitution does not expressly state so, unlike the Nigeria Constitution, the scope of proprietary rights protected would encompass interests in both movable and immovable properties.

Article 22 of the Ghana Constitution provides for the enactment of legislation which would regulate the property rights of spouses. It also provides for equal access of spouses to property that is jointly acquired during marriage and for equitable distribution of such property between the spouses upon the dissolution of the marriage.

Similarly, *Article 23 of the Liberia Constitution* preserves the right of ownership and possession which a spouse may acquire either before or during marriage and such property

must not be applied to off-set the obligations of the other spouse or be used as security or be controlled or alienated without the owners' voluntary consent. It also mandates Parliament to enact laws that would regulate devolution of estates and ensure adequate protection for surviving spouses of both statutory and customary marriages and the surviving children of such spouses.

These lofty provisions of the *Ghana* and *Liberia Constitutions*, respectively, are in line with the provisions of *CEDAW* and they are commended to The Gambia, Nigeria and Sierra Leone.

6.2 Exception to Private Property Rights

Exception to the inviolability of private property rights, generally, indicates that the private property rights concept is not absolute, after all. Thus, in certain excusable circumstances, the State is permitted to make incursion into private property rights and whenever it does, such incursion will be justified. This exception is both Constitutional and Jurisprudential in foundation. It is noteworthy, however, that both perspectives to the exception are inter-related, the former deriving from the latter. These two perspectives shall, now, be examined.

6.2.1 Jurisprudential Perspective

The starting-point in discussing the jurisprudential perspective of the exception is to underscore the truth that the said exception derives from the nature and concept of the State or Sovereignty. Just as the case is regarding the concept of illimitability or inviolability of property rights, all Jurists coincide in approving, either expressly or tacitly, of the just existence, stature and functioning of a Sovereign, in any given society.

Thus, one of the theories of the Natural Law Jurists is that

a universal duty of human and legal beings is to contribute to the general order and welfare of society and that this duty imposes an obligation to abide by the lawsmade by a Sovereign law-maker for the good of society.

But while the approval of the Natural Law theorists of the just existence and power of a law-making Sovereign appears somewhat implicit, that of the Legal Positivists is express. Thus, *Jeremy Bentham, John Austin, H.L.A. Hart, William Edward Hearn* and *Joseph Raz* are all in agreement on the sanctity of the doctrine of Sovereignty.

Seminal proponents of such other jurisprudential theories as the sociological theory, he historical theory, the pure theory, the economic theory, and the American Realismare not in disagreement with the naturalists and the positivists on the existence and functionality of a Sovereign who, in any society, has the power to make laws for the order and well-being of that society.

Apart from the general jurisprudential explanation for Sovereignty discussed above, the doctrine is, also, often explained from the perspective of two ancillary doctrines; namely:

(i) the social contract doctrine; and
(ii) the eminent domain theory.

The thrust of the social contract doctrine is that persons - human and legal - must surrender a portion of their private rights and liberty to an established authority in return for an organized, stable, orderly and peaceful society. In the context of this theory, it has been asserted that the established authority has the "legal right to deal as it thinks fit with anything and everything within its territory".

The theory of eminent domain or of "*dominium eminens*" refers to the transcendental property of the Sovereign or the power vested in the Sovereign to take private property for public use. Although of American origin and operation, *Keir and*

Lawson argue that this doctrine is synonymous with what is known in English law as compulsory purchase or expropriation.

On the whole, the foregoing establishes that the expropriation of property rights of persons, human and legal, although, ordinarily, antithetical to the concept of inviolability of the proprietary rights of those persons, is, nevertheless, legal, as it enjoys tremendous jurisprudential support in virtually every conceivable legal philosophy. This overwhelming support can, in turn, be traced to the very nature of man as a triune being, having a make-up consisting of body, soul and spirit. *Thomas Hobbes* posits that these constituents are capable of making man intrinsically averse to living in an environment where life is "solitary, poor, nasty, brutish and short" and this elicits his willingness to submit to an overriding authority, charged with the responsibility of initiating and coordinating the daily order, well-being, growth and development of his environment.

6.2.3 Constitutional Perspective

From the viewpoint of the Constitution, the following exception is, for instance, made to the right to own property contained in *Article 17 of Declaration of the Rights of Man and the Citizen, 1789*:

> "Legally established public necessity".

Also, the following exceptions to private property rights are contained in *section 22 (2) of the Constitution of The Gambia, section 44 (1)* and *(2) of the Nigeria Constitution*, and *section 21 (2) of the Constitution of Sierra Leone*, namely; expropriation of property rights:

(i) in pursuance of an existing law;
(ii) by way of imposition or enforcement of taxes, rates and duties;

(iii) by way of imposition of penalties or forfeitures for breaching a law, whether under civil process or after conviction for an offence;
(iv) by way of grant of leases, tenancies, mortgages, charges, bills of sale or other rights or obligations which arise out of contracts;
(v) by way of vesting or administering the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, and of corporate or unincorporated bodies in the course of being wound-up;
(vi) by way of execution of judgments or orders of court;
(vii) by way of taking possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;
(viii) by way of possession of enemy property by the State;
(ix) by way of administration of trusts by trustees;
(x) by way of the operation of limitation of actions;
(xi) by way of vesting of interests in bodies corporate directly established by an existing law;
(xii) by way of temporary taking of possession of property for the purpose of any examination, investigation or inquiry;
(xiii) by way of allowing for the carrying out of work on land for the purpose of soil conservation;
(xiv) by way of allowing any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities;
(xv) by way of government exercising its absolute interest in and under control of all minerals, mineral oils and natural gas in, under or upon

any land in or upon the territorial waters and the Exclusive Economic Zone; and

(xvi) by way of compulsory acquisition of property for general public purpose.

Regarding the last exception, however, the Constitution of The Gambia, the Ghana Constitution and the Constitution of Sierra Leone, respectively, are much more explicit in relation to the activities that constitute "general public purpose". These activities include defence, public safety, the economic well-being of Ghana, protection of public health or morals, prevention of disorder or crime, protection of the rights of others, country planning necessity and any activity whose aim is public necessity or benefit. The conditions upon which these activities must take place are, thus, similar in The Gambia, Ghana, Liberia, Nigeria and Sierra Leone.

The conditions in The Gambia, Ghana, Liberia and Sierra Leone can be gathered from *section 22 (1) (b)* and *(c)* of the *Constitution of The Gambia, Articles 18 (2) and 20 (1) (b), (2), (3), (5) and (6)* of the *Constitution of Ghana, Article 24* of the *Constitution of Liberia* and *section 21 (1) (b)* and *(c)* of the *Constitution of Sierra Leone*, respectively.

These are:

(a) pursuant to a law which is necessary in a "free and democratic society";
(b) necessity established by reasonable justification for causing any hardship that may result to the holder of interest in a property sought to be acquired;
(c) authorising law providing for prompt payment of adequate compensation;
(d) authorizing law providing for right of access to court regarding the determination of his interest and the amount of compensation to which he is entitled;
(e) where compulsory acquisition involves displacement of inhabitants, the State must resettle the displaced

inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values; and

(f) a property compulsorily acquired must be used, solely, for the public interest or purpose for which it was acquired.

Where a property acquired was not used for the public interest or purpose for which it was acquired, the State shall give the owner the first option to re-acquire the property for consideration consisting of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition.

It ought to be reiterated that the Constitutional perspective to the exception to private property rights is deeply-rooted in the Jurisprudential nature and concept of Sovereignty, which has as its central-objective the common-good, as opposed to individual, selfish good.

6.3 Treaties and Constitutions in Hierarchy of Norms

The drawbacks on the pertinence of treaties are exacerbated by the usual absence of a statement in the Constitutions of countries, relating to the status of treaties, first, in relation to the Constitutions and second, in relation to the other laws of those countries. This phenomenon engenders the usual debate on the position of treaties in relation to Constitutions, a debate *Oyebode* stresses usually re-kindles what the learned author terms "sterile controversy" and "academic opinions" about the relationship between international and domestic laws.

In the Constitutions of The Gambia, Ghana, Nigeria and Sierra Leone, unlike in the Constitution of Liberia, there is no categorical statement of the status of treaties within the legal order in those countries. This vacuum, obviously, creates a big task for the courts. This challenge is less visible where there is no conflict between the provisions of treaties on private property rights and Constitutions of Anglo-phone countries.

On the other hand, the challenge is prevalent where there is such conflict. Also, the Constitution of Liberia proceeds a step further by also providing for its supremacy over treaties; thereby resolving, as far as Liberia is concerned, the supremacy controversy between the Constitution and treaties, *infra*. This is salutary and is commended to The Gambia, Ghana, Nigeria and Sierra Leone.

The challenge is exacerbated by generally disallowing the application of treaties on private property rights, through constitutional arrangement, in Ghana, Nigeria and Sierra Leone. The position in Sierra Leone is aggravated by the provision of *section 170 (1) of the Constitution of Sierra Leone, 1991 (as amended)*, which excludes treaties from the list of extant laws in Sierra Leone. The implication of this, by virtue of the *expressio unius est exclusio alterius* doctrine, is that treaties are, ordinarily, unenforceable in Sierra Leone.

Art. 2, Paras. 1 and 2 of the Constitution of Liberia, 1986, provides for the supremacy of the Liberia Constitution over treaties, thereby resolving, as far as Liberia is concerned, the supremacy controversy between the Constitution and treaties. This is salutary and is commended to The Gambia, Ghana, Nigeria and Sierra Leone. It would also appear that by the same provision, treaties are constitutionally recognized as part of the domestic laws of Liberia.

Unfortunately, the *Constitution of Sierra Leone, 1991 (as amended)* contains no provisions whatsoever, on its supremacy over other domestic laws and treaties. This should, therefore, be remedied, by way of constitutional amendment, without further delay.

It however smacks of incongruity and is, indeed, unfathomable and irreconcilable that Anglo-phone West African countries would, on the one hand, share in the vision underpinning treaties on private property rights and consciously and deliberately create rights and duties pursuant to them and, on the other hand, turn-around and exclude the operation of those treaties within their domains, particularly,

by constitutional arrangement. It is submitted that this approach is not rational. This is perhaps the justification for the international customary law principle that a country cannot exclude its treaty obligations by constitutional and other legal means.

It is submitted, therefore, that Anglo-phone West African countries must, by constitutional amendment, align with the provisions of all private property rights related treaties which we have discussed in this Paper.

7. Conclusion

In this Paper, the pertinence, value and the justification of treaties and constitutions being veritable tools for entrenching private property rights have been appraised. It has been established that the preponderance of experts' opinion favours treaties as instruments creating binding obligations; as representing the most tangible and most reliable method of exactly ascertaining what has been agreed between States on a particular subject-matter; as instruments governed and enforced in pursuance of international law; as the most important source of international law; as the major instruments through which international relations are conducted and, by implication, the chief means by which universal civility and quality of lives within subjects of the international community are sustained and global cooperation and peace, respectively, are enthroned; as being the only source of international law, which allows State-parties, the opportunity of deliberately and consciously creating rights and duties; as promoting international rule of law; as intrinsically capable of attracting and safeguarding foreign investments, including capital inflows to the Anglo-phone West African countries, particularly, in view of the challenges posed to twenty-first century trade and investments between States by globalization; and as representing international expectations and best practices on a subject-matter, compliance with which

shows the level of civilization of a country and its adaptability to the dynamics of best approaches to good governance.

The nature and significance of private property rights - from historical and jurisprudential perspectives have also been examined and it has been ascertained that these rights are profoundly important; for being as old as man, for attaching to the very essence and existence of a person, for being a universal institution solidly entrenched in every culture in the world, for being a prominent feature of past and contemporary constitutions of civilized nations and of treaties, and for being "just acquisition" because it is acquired through the acquirer's intellect, knowledge and labourand in recognition that immense labour, expenditure and risk-taking by a person precede the acquisition of property.

The various exceptions to the concept of inviolability of property rights have been pointed out and it has been opined that those exceptions are founded on the necessity, in certain circumstances, of depriving a person of property rights for the common good. The rationale for the exceptions has also been founded on the unique Jurisprudential nature, stature, characteristics and functioning of the Sovereign and the concept of Sovereignty has been explained both in general terms and from the twin-ancillary perspectives of the social contract and the theory of eminent domain.

Happily, it has been established that all Anglo-phone West-African countries, through their Constitutions, ensure substantial compliance with the provisions of the treaties dealing with private property rights. First, all of the Constitutions entrench the inviolability of private property rights in them. Second, they all excuse infringement of private property rights on account of overall public interest - in the exercise of the powers of the Sovereigns in the respective countries. Therefore, these countries are in compliance with international expectations and best practices on the subject-matter of private property rights. By implication, Anglo-phone West-African countries manifest civilization and adaptability

to the dynamics of best approaches to good governance in the area of private property rights. In specific terms, this entrenchment creates incentive-effects in property owners, which incentive-effects are essential for socio-economic growth and development.

However, certain inadequacies regarding the compliance of Anglo-phone West African countries with private property rights related treaties have been observed. In this context, it has been observed that the strategic nature of Constitutions make them a suitable tool through which compliance with treaties on private property rights may be ensured. This strategic nature manifests, mainly, in the supremacy of the Constitutions over all other laws. This makes fatal, indeed, the absence of any provision in the Constitution of Sierra Leone on the supremacy of that Constitution. This is unlike the Constitutions of The Gambia, Ghana, Liberia and Nigeria. It is surprising that the Constitution of Sierra Leone has been amended twice and this anomaly was not remedied in any of those amendments. It is submitted that this should be remedied without further delay.

The use of the word: "should" instead of the word: "shall" in enshrining the supremacy of the Constitution of Ghana is capable of creating interpretation challenges for Ghana courts. This is because the word implies that the supremacy of the Ghana Constitution over other laws is made a matter of persuasion and not of compulsion. In this regard, therefore, the approach in The Gambia, Liberia and Nigeria where the word: "shall" is used, is preferable and should be adopted in the Constitution of Ghana by way of an amendment.

The discriminatory treatment in the Constitutions of Ghana, Liberia and Nigeria between citizens on the one hand and aliens on the other hand, in relation to ownership of immovable property, is inapt. It is antithetical to the norms expressed in treaties on private property rights and is capable of discouraging foreign investments that are much needed by these countries for growth and development. Ghana,

Liberia and Nigeria must, thus, follow the good example of The Gambia and Sierra Leone in this regard by removing this discrimination through constitutional amendment.

Although the tremendous economic and ancillary significance of private property to the life of its owner cannot be over-emphasized; nonetheless, this must not be justification for excusing killing on account of protection of private property, as it is currently the case in the Constitutions of The Gambia, Ghana, Nigeria and Sierra Leone. The exemplary position in Liberia, in this regard, is, therefore, commended to these countries.

It is inappropriate for Anglo-phone West African countries to sign treaties on private property rights and turn-around to exclude the operation of those treaties within their domains, through their constitutions. It is recommended that this conflict should be removed. Assuming, *arguendo*, that this situation does not change, then, it is submitted that The Gambia, Ghana, Nigeria and Sierra Leone should follow the example of Liberia, in, specifically, providing for the legal status of a treaty. That is; first, whether a treaty is a domestic law, *pro tanto*; and second, whether a treaty is inferior or superior to or is at par with the Constitution.

The explicitness of what constitutes compulsory acquisition of private property for "general public purpose", in the Constitutions of The Gambia, Ghana and Sierra Leone, is commended to Liberia and Nigeria.

Certain conditions-precedent to compulsory acquisition of property in the Constitutions of The Gambia, Ghana, Liberia and Sierra Leone are salutary. These are:

(i) the necessity of establishing reasonable justification for causing the hardship that may result to the owner of a property sought to be acquired;
(ii) the need for authorizing law to provide for prompt payment of adequate compensation;
(iii) the imperative of the authorizing law providing for

right of access to court regarding the determination of the owner of the property sought to be acquired and the amount of compensation to which he is entitled;

(iv) where compulsory acquisition sought to be made involves displacement of inhabitants, the necessity of resettling the displaced inhabitants on suitable alternative land, having due regard for their economic well-being and social and cultural values; and

(v) the compulsion to use the property compulsorily acquired, solely, for the public interest or purpose for which it was acquired.

It is submitted that these noble provisions are rooted in the doctrine of inviolability of private property rights. They reflect the utmost regard which the State in The Gambia, Ghana, Liberia and Sierra Leone still has for private property rights, notwithstanding the Sovereign power to acquire private property for general public purpose. The provisions are, therefore, commended to Nigeria.

Also, the provision in the Constitutions of The Gambia, Ghana and Liberia which compel the State to give the owner of a property not used for the public purpose for which it was acquired the first option to re-acquire the property for a consideration consisting of the compensation paid to him or such other amount as is commensurate with the value of the property at the time of the re-acquisition, must be applauded. This provision is, therefore, commended to Nigeria and Sierra Leone.

Finally, the laudable provisions of the *Ghana* and *Liberia Constitutions*, respectively, which are aimed at ensuring gender equality in relation to acquisition, use, enjoyment and disposal of property by spouses, are in line with *CEDAW* and they are commended to The Gambia, Nigeria and Sierra Leone.

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