



An Examination of Municipal Law as a Framework for Globalization

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ABSTRACT

Globalisation is a complex phenomenon involving a variety of global trends and tendencies and as an expression can be used in terms of reference to a historical era, a process, a theory or a new paradigm. This paper explained globalization in the context of state governance and law. It is not the intention of this study to give an absolute account of globalization, but rather to emphasize its most important effects on legal development. Amongst other things, Globalization involves the growth of an international or supranational normative value system that directly and indirectly affects lawmaking in states. Through the pressure exerted by a combination of international, regional, neighbour states, trading partners, nongovernmental interest groups and international or transnational corporations, municipal constitution and lawmaking bodies are obliged to ensure that their own local laws conform to the international value system. Accordingly, it is not farfetched that municipal or domestic law has a role to play in contributing towards localization of globalization and to ensuring that the two fairly opposing concepts, function adeptly towards national growth.

Keywords: Globalization, Municipal Law, Governance, International Law

INTRODUCTION

Like many legal, social and political systems, Nigerian laws and her legal system do not change readily or quickly. But societal and economic changes, and institutional reforms, have fundamentally influenced our municipal world over the past decade, and related to this multifaceted collection of social, technological, economic and fiscal developments that we now explain as “globalization,” is a fraction of legal improvements. Globalisation is the interconnection and interdependence between all parts of the world, particularly at all levels of the economy and communications, such that former national barriers to the movement of information, finance, goods, services and businesses are being drastically reduced and everybody now has to compete with everyone in what has now become a global village.

Globalization, by its character, overlooks the boundaries of states and regions, and rises above geographical and communal separation. Globalization favours specialization and modernization,¹ but does municipal law foster globalization, and its advancement? The context in which municipal law is germane to this paper reflects in the great diversity of relationships and circumstances of state control and governance, as well as a continuously emerging legal arrangement under which globalization locally develops. This article examines the benefits of globalization to state governance, and the role of municipal law as a framework for globalization.

¹ Fenn MW, ‘The Changing Role of the Municipal Sector’ [2002] (50) (1) *Canadian Tax Journal*, 149; Fisnik K and Dren D, ‘The Relationship Between International Treaties and Domestic Law: A View from Albanian Constitutional Law and Practice’ [2012] *Pace International Law Review*, 92

The Concept of Globalization

The term ‘globalization,’ pervades the expressions of political scholars as well as legal practitioners.² Globalization refers to the present, but it is also vital to highlight that the phenomena it describes are scarcely new.³ Globalisation has been depicted as ‘a new, complex, dynamic, multidimensional, and worldwide phenomenon, which means different things to different people and different things to the same people across time and space.’⁴ It refers to the growing tendency of interactions, interconnection and integration of countries on a global scale.

Globalization according to Nsibambi is a process of advancement and increase in interaction among world’s countries and people facilitated by progressive technology changes in locomotion, communication, laws, governance, political and military power, knowledge and skills as well as interfacing of culture and value systems.⁵ In other words, globalization is not a value-free, innocent, self-determining process. It is an international, legal, socio-political economic and cultural permeation process facilitated by policies of government, private cooperation international agencies and civil society organizations. It essentially seeks to enhance and deploy a country’s economic, political, technological, ideological, legal and military power and influence for competitive domination in the world.

Globalisation refers to the process of the intensification of economic, political, social and cultural relations across international boundaries. It is principally aimed at the transcendental homogenization of political and socio-economic theory across the globe.⁶ The concept refers to the ways in which the previously distant part of the world have become connected in a historically unprecedented manner, such that development in one part of the world are now able to rapidly produce effect on the geographically distant localities, this in fact has made the world to be viewed as a global village linked by a wide array of technological, economic, social and cultural forces.⁷

The essence of globalization is its denationalizing effect. Thus it has been said that, globalization may be defined as the process of denationalization of clusters of political, economic, and social activities.⁸ The terms seem to capture a genuine sense of the changes that have transformed the world.⁹ It has helped to open municipal economics by creating a global market place in which all nations must participate directly or indirectly.¹⁰

Municipal Law

Municipal law is the technical name given to the national, domestic or the internal law of a state.¹¹ International law does not entirely ignore municipal law, as certain questions on international law, are decided by municipal law, and municipal law may be used as evidence of international custom or of general principles of law.¹² Understanding the hierarchy of laws helps with developing a clear and

² Delbruck J, ‘Globalization of Law, Politics, and Markets - Implications for Domestic Law: A European Perspective’ [1993] (1) (2) *Indiana Journal of Global Legal Studies*, 1

³ S. Dauda and R. Onya, *Third World in Global Politics* (Tabith Publishers Ltd 2017) 174

⁴ Ogbadu EE and Ameh AA, ‘Globalisation and Nigeria’s Involvement in International Marketing’ [2012] (2) (1) *Kuwait Chapter of Arabian Journal of Business and Management Review*, 44

⁵ S. Dauda and R. Onya, (n3) 173

⁶ Orga JI, ‘Globalisation: The Nigerian Experience’ [2012] (1) (2) *Review of Public Administration and Management*, 124

⁷ Dauda and Onya (n3) 174

⁸ Aman AC, ‘Globalization: Legal Aspects’ in J. D. Wright (ed) *International Encyclopedia of the Social and Behavioral Sciences Vol 10* (2nd edn, Oxford 2015) 254

⁹ Dauda and Onya (n3) 174

¹⁰ Adesina OS, ‘The Negative Impact of Globalization on Nigeria’ [2012] (2) (15) *International Journal of Humanities and Social Science*, 194

¹¹ Akehurst M, *A Modern Introduction to International Law* (4th edn, George Allen & Unwin Publishers Ltd 1982) 43

¹² *Ibid.*; Grant JP, *International Law* (Edinburgh University Press 2010)

consistent legal and regulatory framework for any system, by ensuring the appropriate content and detail is contained in each level of hierarchy.¹³ Municipal law is often expressed as law issued by a particular political superior for the observance of those under the authority within a state, law that governs the relationship between the individuals and the state; and if there is a violation of a municipal law, the aggrieved party is availed administrative and judicial processes within the state.

O'Connell expressed that the problem of the relationship of international law and municipal law is raised in almost every case in a municipal court when a rule of international law is asserted to govern the decision. He identified that four possible attitudes follow this question- that international law has primacy over municipal law in international decisions (monism), that municipal law has primacy over international law in municipal decisions (dualist theory), that municipal law has primacy over international law (monism in reverse); that there should be no supposition of conflict between international law and municipal law (the harmonization theory).¹⁴

The harmonization doctrine views international law and municipal law, not as derivatives one from the other, nor as disconnected systems, but as elements of the same *corpus*, and sharing the same philosophical origin. The harmonization doctrine thrust the emphasis on the positive side of the relationship between international law and municipal law and avoids the tendency either to polarize the two or to arrange them vertically.¹⁵

However, the relationship between international law and municipal law continues to plague the legal world, and one could argue that, though an old problem, the relationship retains relevance, as the search for an understanding of the relationship between international and municipal legal systems becomes essential in order to address many legal and political questions. Lawyers often contend that international and domestic law, though differing on occasion, coincide in almost every aspect.¹⁶ Municipal law is state law that deals with relationship between the individuals and their organization within a state. It is the internal law of the state, binding on the citizens of the state.

The Effects of Globalization on Governance

Dauda and Onya identified that one of the most durable effects of globalization has been the growing recognition across many African, Asian, and Latin American countries, that good governance at all level is the essential starting point for economic progress. Globalization has helped many developing countries to better appreciate the importance of their democratic rights and to aspire to proper functioning of democratic systems that respect human rights and the rule of law.¹⁷ It is increasingly recognised that good governance is significant in a country's developmental processes to ensure that globalization benefits all. Global governance is rooted in the idea that economic and financial globalization has profoundly redistributed economic and political power, thus challenging State authority. Globalization is influencing governance relating to real estate, small business, taxes, education law and policies, health care, migration, human rights, civil rights and a higher quality of life.¹⁸ Developing nations are increasingly recognizing that countries which have benefited from globalization have invested significantly in education and technological advancement.¹⁹ Globalization has brought about the increase rate in private sector participation in socio-economic development in Nigeria.²⁰

Globalisation has opened the boundaries of states and the causes and consequences of its political, social, health and economic decisions are not contained by borders. Globalisation affects everyone; individuals,

¹³ Clegg M, Ellena K, Ennis D, and Vickery C, *The Hierarchy of Laws: Understanding and Implementing the Legal Frameworks that Govern Elections* (International Foundation for Electoral Systems 2016) 1

¹⁴ O'Connell DP, *International Law for Students* (Stevens & Sons 1971) 15

¹⁵ *Ibid* 16

¹⁶ Gasiokwu MOU, 'Contemporary Issues in International Law: Essays in Honour of Hon. Justice Francis Fedode E. Tabai' in C Y O Adei (ed) *The Growth of International Law in The 21st Century* (Faculty of Law DELSU 2006) 46

¹⁷ Dauda and Onya (n3) 179

¹⁸ Orga (n6) 24

¹⁹ Dauda and Onya (n3) 180

²⁰ *Ibid* 181

communities, countries, regions and institutions. Some scholars view globalization as the continuation of modernization and a force of progress, wealth, freedom, democracy and happiness, while others view it as another form of imposition. Its critiques view globalization as harmful, and perceive it as a force that brings about increased domination and control by wealthier and overdeveloped nations over the poor and underdeveloped countries.²¹

However, globalization has provided the impetus for nations, to tailor their development efforts towards competitiveness in order to remain relevant in the emerging global economy.²² Globalization reveals the interconnectedness within and across regions of the world due to the growing social, economic, political networks, education, information, and communications technology of different groups of people.²³

Municipal Law as a Framework for Globalisation

Potter questioned if globalization in fact, means that the entire world is becoming more uniform, or that there is a chance of such uniformity.²⁴ But globalization is not merely uniformisation. Although increased communication and competition may sometimes lead to uniformity or perceived uniformity of culture, of policies, and of laws, such uniformity always remains partial.²⁵ Globalization is not a mere transfer of issues from a local to a supranational sphere, which could be accompanied by a move from domestic to supranational law.²⁶

To survive in the new world order requires vision, appropriate knowledge, skills, economic reforms, and wisdom from our leaders. It also requires sensitivity, willingness to develop, a change of attitude and the right technical assistance from global actors such as the UN and its agencies.²⁷ If municipal law remains the domestic law of a state regulating the conduct of individuals and legal entities within it, the government needs to discover rules and strong institutions for stronger governance at local, national, regional and international levels to ensure that globalization is beneficial to all, especially a developing Nigeria.

Globalisation is seen as an instrument for economic development and municipal law ought to promote the legal improvements required for this growth.²⁸ The Nigerian Cybercrimes Act 2015 provides penalty for offences ranging from tampering with critical infrastructure,²⁹ to cyber terrorism, fraudulent issuance of e-instructions, child pornography and related offences, cyber stalking, cyber squatting, racist and xenophobic offences, breach of confidence by service providers, manipulation of ATM/POS terminals etc., these provisions are in line with modern technological advancements, technological realities and global practices.³⁰

Where there exists some legal balance, promoting global practices, principles and ideas, causing globalization of democracy; global ideological shift; global technological revolution particularly through information and communication technologies; globalization of culture and the environment, and above all, globalization of the economy, municipal law transcends into a 'financier' for globalization.

This proposes that globalization is beneficial to the legal world to such extent that it can stimulate international best practices in local conducts. Yet expressing that municipal law embraces globalization toothlessly, may seem a hodgepodge, as globalization is also capable of increasing inequality within and

²¹ Orga (n6) 24

²² *Ibid* 127

²³ Adesina (n10) 196

²⁴ Potter RB, 'Global Convergence, Divergence and Development' in V Desai and RB Potter (eds) *The Companion to Development Studies* (2nd edn Hodder Education 2008) 192

²⁵ Michaels R., 'Globalization and Law: Law Beyond the State' in Banakar and Travers (eds) *Law and Society Theory* (Forthcoming 2013) 291

²⁶ *Ibid*

²⁷ Dauda and Onya (n3) 181

²⁸ Ogbadu and Ameh (n4) 49

²⁹ s 11 Cybercrimes (Prohibition, Prevention, Etc) Act, 2015

³⁰ ss 17-30 Cybercrimes (Prohibition, Prevention, Etc) Act, 2015; Ogbadu and Ameh (n4) 49

between nations, threatening human employment and living standards, increases the volatility of financial markets and capital movement as well as create risks of social, economic and environmental degradation. At this point critics of globalization argue that municipal law which protects cannot be used to endanger a state.³¹ However, whereas the maintenance of national external rules is, of course, important because they enable people to maintain their unique cultural identity and heritage, they are no longer as crucial, in themselves, as they used to be.³² This means that to the extent that law is phenomenological in the sense that it enables people both internally and externally through rules made by others to relate things around them, it should no longer just focus on the national spirit alone, but should also take account of the wider global spirit, which infuses everyone, as well.³³

Law is viewed as a recipient of globalization, although law is also one of the most important shapers of globalization. That is not to say that national legal borders are not important. They are, and ought to be maintained in order to safeguard a peoples' heritage. But Kathrani emphasized that it is this rich tapestry of culture that makes the world what it is; however, because of the effects of globalization, it is also important at the same time that people everywhere are secured.³⁴

Municipal law puts international best practices to local consumption and enjoyment. For instance, the National Institute for Cancer Research and Treatment (Establishment) Act, 2017 provides for the collection of analysis, interpretation and publication of cancer related incidence, prevalence and mortality data from all the State of the Federation and to provide development of public education and public policy related to cancer, and advising government on cancer related issues. The Endangered Species Control of International Trade and Traffic Amendment Act 2016, amends the Endangered Species (Control of International Trade and Traffic) Act, Cap E9, Laws of the Federation of Nigeria, 2004, to review the fines upwards in order to have a more deterrent effect and reflect the economic realities of our time; and for related matters.³⁵

What precisely globalization means remains what consequence it has in different areas and how to respond to challenges posed by globalization.³⁶ Amongst other things, Globalization involves the growth of an international or supranational normative value system that directly and indirectly affects lawmaking in national states.³⁷ Through the pressure exerted by a combination of international regional and other transitional bodies, powerful states neighbors and trading partners, nongovernmental interest groups and international or transnational corporations, municipal constitution and lawmaking bodies are obliged to ensure that their own law conforms to the international value system.³⁸

Globalization refers to those processes which tend to create and consolidate a unified world economy, a single ecological system and a complex network of communications that covers the whole globe, even if it does not penetrate to every part of it.³⁹ It can influence the seemingly constitutional and trade – neutral areas of private law indirectly. It is appreciated that adoption of international norms and standards will

³¹ Kathrani P, 'Globalisation and Law: the Effect of Globalisation on the Domestic Interpretation of Law' [2009] (2) (116) *Jurisprudence*, 115; s 1 of Nigerian Same Sex Marriage (Prohibition) Act, 2014 prohibits marriage or civil union by persons of same sex.

³² Kathrani (*Ibid*) 123

³³ *Ibid* 124

³⁴ *Ibid* 128

³⁵ s 1(2) of the Endangered Species Control of International Trade and Traffic Amendment Act 2016 provides that 'As from the commencement of this Act, no person shall hunt, capture, trade in or otherwise deal with an animal species specified in the Second Schedule to this Act (being animals which, though not necessarily now threatened with extinction, may become so threatened unless trade in respect of such species is controlled) except where he is in possession of a licence issued under this Act.'

³⁶ Krivenkos EY, 'Introduction: Human Rights, Power and Globalization: A Roadmap' in EY Krivenko (ed) *Human Rights and Power in Times of Globalization* (Konin Klijke Brill NV 2018) 1

³⁷ M. Faure and A. Van der Watt, 'Comparative and Concluding Remarks' in M. Faure and A. Van der Watt (eds) *Globalization and Private Law. The Way Forward* (Edward Elgar, 2010) 457

³⁸ *Ibid* 457

³⁹ Twining W, *Globalization and Legal Theory* (Cambridge University Press 2000) 4

introduce or strengthen constitutional supremacy, independence of the judiciary and judicial reviewer, which will in turn affect both the style of adjudication and the substance of private law.⁴⁰

The state, through its government, has the power to lay down binding rules as laws that do not require the specific consent of the governed. But from the increased global interdependence of states, a state no longer holds unconditional discretion on lawmaking contrary to international principles, international human rights standards, signed international conventions and treaties and global best practices. The Anti Torture Act of 2017 makes comprehensive provisions for penalising the acts of torture and other cruel, inhuman and degrading treatment or punishment, and prescribes penalties for the commission of such acts. It redefines the meaning of torture under s 2 of the Act. By s 9 of the 2017 Nigerian Anti Torture Act,

9 (1) A person who contravenes section 2 of this Act commits an offence and is liable on Penalties conviction to imprisonment for a term not exceeding 25 years.

(2) Torture resulting in the loss of life of a person is considered as murder and shall be tried and punished under the relevant laws.

(3) The penalties specified under this section shall be without prejudice to the prosecution of other crimes and other legal remedies available to the victim under other existing laws, including the right to claim for compensation.⁴¹

Faure and Van der Watt point to the fact that an obvious (Institutional) effect of globalization is the tendency to shift lawmaking powers away from the nation state, where decision making power was traditionally rested. Globalization for private lawmaking leads to a centralization of powers and a convergence of legal norms via harmonization.⁴² Today, a picture of law in the world must deal with a much more complex picture involving established, resurgent, developing, nascent and potential forms of global legal ordering.⁴³

Globalization thus involves economic integration; the transfer of policies across borders; the transmission of knowledge; cultural stability; the reproductive relations and discourses of power; and it remains a global process, a concept, a revolution, and an establishment of the global market free from legal-sociopolitical control. The nexus between municipal law and globalization is about responsiveness to a relative interdependence of legal systems. Globalization is embedded in our institutions – domestic and international, public and private, by virtue of legal arrangements (legislation, agency regulations, contracts, etc.) that draw global forces into everyday life, and vice versa. It is not a unilinear process or geography, but a dynamic relation across multiple regimes of public and private ordering.

According to Aman Jr., globalization is subject to a wide array of influences and control, and yields pervasive social effects – some of them broadly homogenizing, some of them diversifying in highly specific ways.⁴⁴ Understanding the relationship of globalization to municipal or domestic law requires analysis of the interactions of markets, rights and bodies of law at all levels of government, domestic and international, as well as diverse processes of governance that involve norm creation, enforcement, and adjudication by state and non-state actors alike.

⁴⁰Faure and Van der Watt (n37) 458

⁴¹s 9 Anti Torture Act, 2017

⁴² Faure and Van der Watt (n37) 68

⁴³Twining (n39) 51

⁴⁴Aman Jr (n8) 255

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