An Evaluation of Citizens' Rights to Data Privacy and Protection in Nigeria

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Abstract

The right to data privacy emerged as a result of the rising need to protect individuals from risks occasioned from the automated or manual processing of their personal information due to the advancement in technology of systems that can collect, store, and process personal data. Under Nigeria's Constitutional framework, it is guaranteed for the protection and privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communications. However, despite the increasing recognition for and the awareness of the right to privacy and data protection across the world, there is still lack of legal, institutional process and infrastructure to support the protection of rights in Nigeria. Data privacy and protection is yet to be given a significant attention, hence, the reason for inadequacies. This research work aims to provide a general overview on data privacy and protection, the extant legal and Institutional framework, its challenges and recommendation towards an effective enhancement of data privacy and protection framework in Nigeria. The research method used for this study is doctrinal method which consists of existing primary sources and secondary sources. The work recommends the need for a more concise principal legal framework and also accommodate a wider definition of personal information.

Keywords: Data, Inadequacies, Privacy. Protection and Rights.

Introduction

Data privacy and data protection are issues of profound importance around the world today as it concerns and affect everyone irrespective of status

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or age. Privacy has been hailed as "integral part of our humanity", "the heart of our liberty" and "the beginning of all freedoms."[3]

Nigeria is among the various countries that are making strides in terms of the access and usage of information and communication technology (ICT) although data protection and privacy are almost alien to the Nigerian society. Data subjects are, mostly unaware of their existing property rights in data and Data collectors/administrators are numb to their corresponding duty to protect and/or respect the privacy data entrusted in their hands.[4]

Nigerians have really never bothered about what happens to their data privacy and protection rights, except recently with the growing emergence of negligible few civil societies and development of ICTs which is spear heading the need for a proper data privacy and protection Regulation.[5] Data privacy is basically the right of data subjects to control the processing that is collection, storage and dissemination of their personal information so that it can be used only for the purposes they desire. Data privacy is so crucial today to the extent of it being addressed as the new oil by different authors and professionals.

Noticeably, the five largest companies in the world, Google, Amazon, Face book, Apple and Microsoft deal in data and data processing of its consumers. With recent transactions all over the world, the access and use of data has dominated the policy agenda of many international human rights and economic institutions hence, gaining a fundamental ground in the world policy market.[6] It is against this background that this research seeks to critically examine citizens' rights to data privacy and protection in Nigeria.

Literature Review

In today's modern society, data privacy and protection have become an area of law that needs attention as a result of the rising wave of technology

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[3] J D Solove, *Understanding Privacy* (Cambridge: Harvard University Press, 2008) 14

[4] B Olumide, "Data Protection and Privacy challenges in Nigeria" https://sig.ng>data (PDF) accessed on January 25th, 2020

[5] *Ibid* (n2).

[6] C Kurner, "The European Union and the search for an International Data Protection Framework" (2014) 2(1) *Groningen Journal of International Law,* 55.

and the daily activities of man in the use of these technologies. Due to the significance of data privacy as a contemporary human right, it has gained a lot of attention from scholars and policy makers worldwide.

Ndubueze,[7] examines the regulatory framework for data protection in Nigeria through the eye of international Human Rights standard on privacy. He concludes in his article that Nigeria is not lagging behind in her data protection framework, especially in the light of international standards on policy while she fails to appreciate the challenges Nigeria is faced with. However, this study is in disagreement with her position, this is because when there is no enforceable rules guiding a particular course, the state is free to act and this in return raises more violation than remedy.

Allotey,[8] holds the view that the constitutional reference to correspondence telephone and telegraphic communications envisages an intention to protect information privacy. He further submits that the constitutional provision is narrow and may not be a sufficient legal instrument for individuals to adopt for the enforcement of their fundamental rights or control of the access and use of their personal data. His submission are realistic because the constitution is so specific and do not cover other aspects of data privacy and protection guidelines. However, the author would have made few recommendations on what Nigeria should adopt or how to achieve a comprehensive workable data protection law.

Olumide,[9] argues that while he is like other data subjects grateful for NITDA's proactive interpolation in the mould of the NDPR, there will always be room for, not only an improvement, but further review of the

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[7] L E Ndubueze, "Analysis of Nigeria's Data Protection Framework viz-a-viz the International Human Rights Standards on Privacy," last modified November 12, 2019, <https://dnllegalandstyle.com/2019/analysis-of-nigerias-data-protection-framework-viz-a-viz-the-international-human-rights-standards-on-privacy> accessed on February 25th, 2020.

[8] A K Allotey, "Data protection and transborder data flows: Implication for Nigeria's integration into the Global network economy (unpublished LLS thesis, university of South Africa 2014, 175), https://uir.unisa.ac.za/handle/10500/13903 accessed on March 25th, 2020.

[9] Olumide Babalola, 'My thoughts on the Nigeria Data Protection Regulation' (NDPR) 2019 last modified June 4, 2019, available at https://thenigerianlawyer.com/my-thoughts-on-the- nigeria-data-protection-regulation-ndpr-2019, accessed on February 25th, 2020.

regulation to further respond to the dynamism of the Nigerian Socio-economic reality. Further, he opines that in as much as the NDPR has been rightly touted as Nigeria's comprehensive and contemporary regulation on data privacy, NITDA and all other stakeholders need not get complacent with this commendable regulation but it must be periodically revised and updated to cater for outstanding issues whether existing or arising in the future.

Izuogu[10] also carried out a similar but more detailed study of the government policy. He contends that the solution to the personal information proliferation would be the adoption of a law in line with the EU directive without anything more. However, I doubt if the practice in UK can be efficiently practiced and totally adopted here as Nigeria is still slow in terms of technological advancement. Emmanuel Salami,[11] in his article was able to highlight some relevant provisions of the regulation and other related issues particularly Nigeria's level of data protection compliance in the light of the new regulation. He points that a potential clog in the wheel of the Regulation and its attempt at data protection compliance in Nigeria is the unanswered question of whether the Regulation will apply in relation to personal data processing carried out by the government and its agencies. He further states that the regulation does not make any mention of processing activities carried out by the Government and that it can be inferred from the spirit of the law, the Regulation does not apply to the government. The author fails to address detailed possible ways to move the regulation forward.

Also, Senator Ihenyen[12] contends that Nigeria needs a principal legislation on data protection. Further, that after the ghostly existence of the NITDA Guidelines for up to six silent years, one would have expected that Nigeria would enact more comprehensive data protection legislation. Also, that for more efficient administration, regulation, and supervision, new

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10 C E Izuogu, 'Data Protection and other implication of the ongoing SIM card registration process' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1597665 accessed on January 1st, 2020

11 The Nigerian Data Protection Regulation 2019: Overview, Effects and Limits <https:/ /www.datenschutz-notizen.de/the-nigeria-data-protection-regulation-2019-overview-effects-and-limits-3522349/

12 S Ihenyen. "Nigeria: New Regulation demonstrates a serious approach to data protection" available on https://infusionlawyers.com/Nigeria-new-regulation-demostates-a-serious- approach-to-data-protection/ accessed on January 1st, 2020.

legislation should establish an overarching Data Protection Act. However, he did not make any recommendation as to how the Nigeria Regulation would be improved upon.

Ehondor and Ogbu,[13] assessed the NDPR in relation to how it seeks to stop data privacy violations perpetuated by social media companies. The NDPR is criticized for its weak and vague demand for compliance. To curb these violations, these authors propose that a regulation be issued to tackle the data controlling activities of social media companies at local and regional levels. Their work placed a particular emphasis on the activities of Facebook. It concludes that Government is saddled with the responsibility for protecting citizen's data given to social media companies. The above authors having based their recommendation on the assertion that data protection is a fundamental right in Nigeria, they went further to reinstate that such right must be demanded and protected. This argument was not made with reference to any law in Nigeria. Obviously, without a justifying enactment on the protection and privacy of data in Nigeria, Citizens' right will continue to be violated.

Legal Framework

Prior to the Nigeria Data Protection Regulations (NDPR),[14] most laws on data privacy and protection in Nigeria were industries related, categorized on certain ages and lacked provision for citizens' protection.

(a) Nigerian Data Protection Regulations, 2019

On 25th January 2019, the NITDA issued the NDPR (Nigeria's first codified Data Protection Legislation) pursuant to its power under the NITDA Act. The Regulations introduced a new data protection framework with novel

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[13] Beryl Ehondor and Silk Ogbu, 'Personal Data Protection and Facebook Privacy Infringement in Nigeria' (2020) 17(2) *Journal of Leadership Accountability and Ethics,* 142-156.

[14] NDPR was issued by the National Information Technology Development Agency (NITDA) under the NITDA Act on 25th January, 2019. E Ndubueze, Analysis of Nigeria's Data Protection Framework viz-a-viz the International Human Rights Standards on Privacy, modified on November 12, 2019 at https://dnllegalandstyle.com/2019/analysis-of-nigerias-data-protection- framework-viz-a-viz-the-international-human-rights-standards-on-privacy- ndubueze-ebere-l/#_ftn4 accessed on February 17th, 2019.

compliance requirements for organizations that deal with the data of individuals. The NDPR applies to all transactions intended for processing of personal data of natural persons residing in Nigeria or Nigerian Citizens residing in foreign Jurisdictions. The Objectives of the Regulations are as follows:

- To safeguard the rights of natural persons to data privacy;
- To foster safe conduct of transactions involving the exchange of personal data;
- To prevent manipulation of personal data; and
- To ensure that Nigerian businesses remain competitive in international trade; through the safeguards afforded by a just and equitable legal regulatory framework on data protection and which regulatory framework is in tune with global best practices.[15] This regulation applies to all transactions intended for the processing of personal data and to the actual processing of personal data notwithstanding the means by which the data processing is being conducted or intended to be conducted and in respect of natural persons in Nigeria; This regulation applies to natural persons residing in Nigeria or residing outside Nigeria but of Nigeria descent. This regulation shall not operate to deny any Nigerian or any natural persons the privacy rights entitled to under any law, Regulation, policy, contract, for the time being in force in Nigeria or in any foreign Jurisdiction. The Rights of Data Subjects are:
  - Right to access information on data free of charge – Section 3.1 (3)
  - Right to request rectification.
  - Right to withdraw consent.
  - Right to information on further processing.
  - Right to request deletion (an encapsulation of right to be forgotten).[16]

However, data subjects can object to the processing of their data when the data controller intend to process for the purposes of marketing.

[15] Nigeria Data Protection Regulation, 2019.
[16] Nigerian Data Protection Regulation 2019, Regulations 3(8).

The Challenges of NDPR

(a) Enforceability

A major issue with the NDPR is enforceability. Since the NDPR, many data breaches has occurred and reported. It is unclear what NITDA is doing to address them. It is yet to be seen how NITDA intends to hold fellow agencies accountable and enforce punishment where applicable. There is a reason why in many parts of the world, including many African countries, data protection law sets up an independent data protection commission that has mandates that allows it to hold other government agencies including law enforcement and other entities that engages with data responsibility.[17]

In addition, the regulation provides for only penalties upon breach by data controllers which involves payment to NITDA. The NDPR does not necessarily provide penalties where individual's right are breached or provide any remedy for data subjects whose rights are infringed upon except redress in court; it lacks a punishment section. This lacuna is a fundamental one that cannot be overlooked.

(b) Applicability

The regulation solely "applies to all transactions intended for the processing of personal data and to actual processing of personal data . . . and to natural persons residing in Nigeria or residing outside Nigeria but of Nigerian descent." The NDPR applying solely to personal data and natural persons means the regulation excludes other forms of data and corporate organisations respectively. All over the world, transaction has gone beyond natural persons and now includes juristic persons. The applicability of NDPR is thus limited to only natural persons.

(c) Lack of Independency

The NITDA fails to fulfil the requirement of being independent because it is an agency under the Federal Ministry of Communication and Digital Technology and a combined reading of sections 31 and 34 of the NITDA

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[17] Adeboye Adegoke, Where is Nigeria's Data Protection Law? Modified September 26, 2019 available at https://www.livetimesng.com/where-is-Nigerias-data-protection-law accessed on January 25th, 2020.

Act, reveals that it is subject to the directives of the Minister of Science and technology. No doubt, Greanleaf concludes that NITDA is not independent, because the Minister may give it general directions concerning the carrying out of its functions.[18]

Other Relevant Laws

(a) The Constitution of the Federal Republic of Nigeria 1999 (as amended)[19]

The constitutional protection of data privacy in Nigeria is the foremost provision on data privacy. The constitution in its section 37 expressly provides for the right of privacy thus: "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected." Although the provision does not specifically mention "data", it is arguable that information on homes, correspondences and telephone conversations are captured in the definition of personal data hence, the above provision can be used to safeguard such breach.[20] This contention was backed by the Court of Appeal in the decision in *Emerging Market Telecommunications Services v. Barr. Godfrey Nya Eneye*, the Court of Appeal held that:

> Section 37 of the Constitution under which the respondent instituted the action at the lower court provides: "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected." It is my view that by giving those unknown persons and organizations access to the respondent's Etisalat GSM phone number to send unsolicited text messages into it, amount to violation of the respondent's right to privacy guaranteed by Section 37 of the Constitution, which includes the right to privacy of a personal's telephone line.

Same was also the decision of court in the unreported case of *Barr. Ezugwu Anene v. Airtel Nigeria Ltd.*[21] Also, section 45 provides for the limitation of

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[18] Graham Greenleaf and Bertil Cottier, 'International and regional commitments in Africa Data privacy laws: A comparative analysis', (2022) 44 (105638) Computer Law and Security Review.

[19] Constitution of the Federal Republic of Nigeria (as amended), 1999

[20] Olumide Babalola, " Data Protection and Privacy in Nigeria, (Legal Issues)", https://sig.ng>2019/07>DA pdf accessed on January 25th, 2020.

[21] Suit No: FCT/HC/CV/545/2015 (Unreported).

the right thus:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society:

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom of other persons.

Furthermore, in Incorporated Trustees of Digital Rights Lawyer Initiative v. The National Identity Management Commission,[22] the Court held that the right a person has to privacy as provided under the Constitution also includes the protection of personal information from others. The Court further commented that, 'the right to privacy is not limited to his home but extends to anything that is private and personal to him including communication and personal data'. This has given credence to arguments that data protection is inextricably linked to privacy in Nigeria.

(b) The Freedom of Information Act (FOIA), 2011

The above provides for public access to public records and information. The Act also exempts personal information within or in the custody of public agencies to be accessed, unless the individual involved consents to the disclosure.[23] This very provision protects personal information/ data. In Habib Nigerian Bank Ltd. v. Fathudeen Syeed M. Koya,[24] there was an alleged disclosure by the appellant bank of a customer's transaction information, without the latter's consent. It was held by Court of Appeal that it was elementary knowledge that the bank owed a duty of care and secrecy to the customers. Thus, although the protection conferred on lawyers, journalists and doctors may not be explicitly provided by law to particular persons, the courts can recognize the existence of a duty of non-disclosure without consent.[25] However, this only applies to

22 Unreported Suit No. A/83/2020

information in the custody of public/government agencies and institutions in Nigeria; it makes no room for private institutions.

(c) The Cybercrimes (Prohibition, Prevention, etc.) Act 2015[26]

The above Act is Nigeria's foremost law on cybercrimes. It criminalizes data privacy breaches. Generally, this Act prohibits, prevents and punishes Cybercrimes in Nigeria. It prescribes that anyone or service provider in possession of any person's personal data shall take appropriate measures to safeguard such data.[27]

(d) The Child Rights Act 2003[28]

The Child Rights Act protects the privacy rights of children (persons under the age of 18). The Act protects and guarantees the right of every child to privacy, family life, home, correspondence, telephone conversation and telegraphic communication subject to the supervision and control of the parents and guardians.[29]

(e) The Federal Competition and Consumer Protection Act 2019[30]

The Act stipulates that the Federal Competition and Consumer Commission shall ensure that business secrets of all parties concerned in investigations conducted by it are adequately protected during all stages of the investigation or enquiry.[31]

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23 The Freedom of Information Act, S. 14(1).

24 (1992) 7 NWLR Pt. 251, P. 43.

25 Udo Udoma & Belo-Osagie, "Data Privacy Protection in Nigeria" https:www.uubo.org/media/1337/data-privacy-protection-in-Nigeria accessed on January 25th, 2020.

26 Federal Republic of Nigeria Official Gazette (15th May) Vol. 102.Available on https://cert.gov.ng/ngcert/resources/Cybercrime_Prohibition_Prevention_etc_Act_2015.pdf accessed on February 25th, 2020.

27 Cybercrimes (Prohibition, Prevention, etc.) Act 2015, S. 21.

28 Child Right Act No 26 of 2003 (Federal Republic of Nigeria Official Gazette No. 26, Vol. 90). Available on https://www.refworld.org/pdfid/5568201f4.pdf accessed 29th February, 2020.

29 Child Rights Act 2003, S.8.

30 Federal Republic of Nigeria Official Gazette No. 18 (1st February 2019) Vol. 106 http://fccpc.gov.ng/uploads/FCCPA%202019.pdf accessed 29th February, 2020

31 Federal Competition and Consumer Act 2019, Section 34(6).

(f) The National Health Act (NHA) 2014[32]

The above Act which regulates health users and health care personnel restricts the disclosure of the personal information of users of health services in their records. It also ensures that health care providers take the necessary steps to safeguard such data.

(g) The NCC Consumer Code of Practice Regulation 2007[33]

Part VI of the Nigerian Communications Commission (NCC) regulation, generally deals with the protection of consumers' data in the telecoms sector. Reg. 35 requires all licensees to take reasonable steps to protect the information of their customers against improper or accidental disclosures. It prescribes that licensees shall not transfer this information to a third party except as permitted by the consumer or commission or by other applicable laws or regulation. Data collected by the licensee must be such that is reasonably required for business purposes and not to be kept for longer than necessary. This law extends not only to electronic or written data but also to verbal data recorded by the licensee.[34] It also provides for notification of the consumer of the use and disclosure of data obtained from them.

(h) The NCC Registration of Telephone Subscribers Regulation 2011[35]

Regulations 9 and 10 of the NCC Registration of Telephone Subscribers Regulation, 2011, deals with the data privacy and protection of subscribers. It provides for confidentiality of personal information of subscribers stored in the central database or a licensee's database.[36] It also provides that this information shall not be released to a third party nor transferred outside Nigeria without the prior written consent of the subscriber and commission, respectively. This regulation also regards the information stored in the Central Database as the property of the federal government of Nigeria.[37] However, the above regulation does not protect individual subscriber's right to privacy but treats any violation by licensees,

[32] Federal Republic of Nigeria Official Gazette No 145 (27th October 2014) Vol 101

[33] Nigerian Communication Act 2003, Federal Republic of Nigeria official Gazette No. 87 (10th July, 2007) Vol. 94.

[34] CPC 2007, Regulation 35(3).

[35] Federal Republic of Nigeria OFFICIAL Gazette No. 87 (10th July, 2007) Vol. 94.

[36] NCA 2003, Regulation 9(2).

[37] *Ibid*, Regulation 5.

Independent Registration Agents as a breach of regulations. Invariably, lack of compliance with the data protection provisions would be solely treated as breach of regulations.

(i) The National Identity Management Commission (NIMC) Act 2007[38]

Section 26 of this Act requires the approval of the Commission before a corporate body or anybody can have access to data stored in their database. The Act also empowers the NIMC to collect, collate and process data of Nigerian citizens and residents. Although the above legislations capture data protection in its special ways, there is need for the legislature to harmonise the existing law to produce an all- inclusive data protection law like other countries.

(j) Electoral Act[39]

The act empowers INEC to compile, maintain and update the National register of voters for those eligible to vote anywhere in Nigeria. By so doing, personal data of individuals are collated on a continuous basis. The above act is only related to data stored for election purposes and did not provide any remedy to any data subject whose right is infringed upon.

Institutional Framework

Prior to 2022, what existed where sectorial institution. In the month of February 2020, the Federal Government of Nigeria, established the Nigerian Data Protection Bureau (NDPB), replacing the NITDA. The agency was saddled with the responsibility to oversee the implementation of the NDPR and ensure the establishment of a primary legislation.

The Nigerian banking industry provides for a centralized biometric identification system known as bank verification number (BVN) for identification of bank customers. The regulatory framework issued by CBN is to ensure adequate security and safety of the information of all banking customers.[40] However, there no specific sanctions for non-

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[38] National Identity Management Commission Act No 23 of 2007 (Federal Republic of Nigeria Official Gazette No 23,Vol 94) https://www.nimc/gov.ng/docs/reports/nimc_act.pdf accessed on 28th February, 2020.

[39] Electoral Act 2010, S. 9(1).

[40] Clause 1.8 of the framework.

compliance other than the threat of imposition of penalties.

Data Privacy and Protection: Are they Fundamental Rights? Generally, privacy has often been regarded as an element of liberty, the right to be free from intrusions by the State. Privacy is a fundamental right essential to autonomy and the protection of human dignity serving as the foundation upon which many other human rights are built.[41] In the EU, human dignity is recognized as an absolute fundamental right. Privacy is most significant because it helps establish boundaries or limit to who has access to our bodies, places and things, as well as our communications and information. Almost every country in the world recognizes privacy in some way, be it in their Constitution or other primary legislation. The right to privacy or private life is enshrined in the Universal Declaration of Human Rights,[42] and Article 7 of the Charter of Fundamental Rights of the European Union[43] (Charter).[44] Also, Article 17,[45] states thus:

> No one shall be subjected to family home or correspondence nor to unlawful interference with his privacy, family home or correspondence, nor unlawful attacks on hid honour or reputation. The right to privacy is a fundamental right enshrined in many international human rights law as expressed above. The right to privacy is multi-faceted, but a fundamental aspect of it, increasingly relevant to people's lives, is the protection of individuals' data.[46]

As early as 1988, the UN Human Rights Committee, the body charged with monitoring and implementation of the international Covenant on Political and Civil Rights (ICCPR), recognized the need for data protection laws to safeguard the fundamental right to privacy recognized by Article 17 of the ICCPR.[47] However, privacy cannot function without protection. Hence, information relating to an identified natural (living) person,

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[41] "What is Privacy?" last modified October 23rd, 2017 https://privacyinternational.org/explainer/explainer/56/what-privacy accessed on January 1st, 2020.

[42] Universal Declaration of Human Rights 1948, Article 12

[43] Charter of Fundamental Rights of the European Union 2009 (OJ C83/02)

[44] Private life and privacy can be and are used interchangeably. See for more details on the usage and Interchangeability of the term Gonzalez Fuster (2014). Particularly p. 81-84 regarding the convention

[45] International Covenant on Civil and Political Rights (ICCPR) 1996, Article 17.

[46] A Rengel, "Privacy-invading technologies and recommendations for designing a better future for privacy Rights" *Intercultural Human Rights Law View,* 8 (2013) 204.

[47] *Ibid.*

including names, dates of birth, photographs, video footage, email address and telephone numbers, need to be protected. Other information such as IP addresses and communications content-related to or provided by end-users of communication services are also considered personal data.

The notion of data protection originates from the right to data privacy and both are instrumental in preserving and promoting fundamental values and rights; and to exercise other rights and freedoms such as free speech or the right to assembly. Data Protection has precise aims to ensure the fair processing (collection, use, storage, personal data by both the public and private sectors.

Data protection appeared as an offspring of privacy and the two rights still seem inextricably tied up together with a birth cord. However, as any child, data protection is trying to mark its own way in life. There has been a debate as to whether data privacy and protection are fundamental rights. The protection of personal data has long been recognized as a fundamental aspect of the right to privacy. In recent years it has been recognized as a standalone right. Data Protection is a fundamental rights. Data protection is essential for exercise of right of privacy and hardly can privacy be discussed without protection in view. Article 12,[48] provides: “No one shall be subjected to the arbitrary interference with his privacy, family, home or correspondence . . . Everyone has the right to the protection of the law against such interference or attacks.”

An important element of right to privacy is the right to protection of personal data. While the right to data protection can be inferred from the general right to privacy, some international and regional instruments also stipulate a more specific right to protection of personal data including the OECD’s Guidelines on Protection of Privacy and Trans-border Flows of Personal Data, the Council of Europe Convention 108 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, a number of European Union Directives and its pending Regulation, and the European Charter of Fundamental Rights, the Asia-Pacific Economic Co-operation (APEC) Privacy Framework 2004, and the Economic Community of West African States has a supplementary Act on data protection from 2010.[49] From the above, every individual is entitled to

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[48] Universal Declaration of Human Rights.

[49] *Ibid.*

have their personal information protected, used in a fair and legal way, and made available to them at their request.

The fundamental rights protecting individuals' privacy and personal data are not ends in themselves. Their protection inherently contributes to furthering other individual fundamental rights and freedoms which we call privacy's and data protection's enabling function.

Recommendations

A critical examination of the NDPR reveals that those saddled with the responsibility of making law in the country still have great work to do in developing a comprehensive data protection Law capable of attaining adequate security of data. Regardless of the NDPR, it is necessary for the Nigerian Legislature to emulate and introduce from other Jurisdictions where they have failed to address important emerging issues. However, the following are possible recommendations.

(a) Nigeria should move beyond the NDPR to ensure the establishment of a comprehensive law on Data Protection in Nigeria.

(b) NITDA should put advocacy at the forefront as the courts have most not been effective in advancing data privacy and protection rights largely because cases on infringement are not brought before them.

(c) Government should also collaborate with bodies like WIPO, Privacy International and International Association of Privacy Professional (IAPP) to help train data subjects.

(d) Also, the law should provide that any proposed DPA must be independent, and shielded from the control and manipulation of the government.

(e) There is need for the law to accommodate a wider definition of personal information and data subjects.

Conclusion

Nigeria happens to be one of the African countries with an inadequate law. NDPR may be a step in the right direction and also a good means of expanding the revenue capacity of the NITDA, the question is can it effectively protect citizens' right? Government is a potential violator of citizen's privacy rights, so an effective data protection law should not be regulated within the ambit and confines of a government agency. It will

definitely create room for government's interference and make the regulation loose its independence and transparency. It is therefore most imperative for the National Assembly to go back to its drawing board to redraft the bill to accommodate and provide provisions capable of competing with international standards which would close the gap in the regulation to produce a robust data protection and privacy framework in Nigeria.

The Role of Policy in Developing Environmental Law in Nigeria

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Abstract

Protecting the environment is one of the major challenges facing many developing countries, inclusive of Nigeria. Damages to the Nigerian environment has been growing steadily and worse in recent decades. Every year, tons of waste are provided into the Nigerian environments which results in pollution and biodiversity endangered. The environmental problem in Nigeria is classified into two major folds. They are natural and anthropenic. While the natural problems are soil wash, sheet erosion coastal erosion and marine erosion, flooding, drought and desertification. The anthropogenic factors are oil pollution, oil well blow-out and other associated discharges, over population and squatter settlement, industrial waste, water, soil and water pollution, urban waste, non-biodegradable waste and used oil, interactional waste dumping and biodiversity loss and etc. The preservation and protection of the environment is crucial to the future of the Nigeria and future mankind. Therefore a regulatory policy is crucial to the control of these menaces. Various policies have been introduced in Nigeria by successive governments geared towards ameliorating the source of this preventable calamity. The National Environmental Agency (NFSREA) and other International Affiliation has provided adequate measures at securing for all Nigerians a quality environment adequate for good health and wellbeing and also recommended the best ways in conserving the environment and natural resources for the benefits of the present and future generation. The paper aimed at seeing some of the policies and legislations towards environmental sustainability in Nigeria. It was maintained that there exist a plethora of laws and legislation, both local and international, yet the Nigerian environment is far from being preserved. This paper concludes that political will power of state actors are a requirement for implementation of the policies of environmental laws. The paper recommends the use of cultural and religious identity of the indigenous natives for effective awareness in the management of environmental policies as this would promote sensitization and acceptability among the people.

Keywords: Environment, Law, Policy, Nigeria.

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The Role of Policy in Developing Environmental Law in Nigeria Environmental laws are greatly influenced by choice policy. In Nigeria, there exists a plethora of legal and policy options that regulate and control pollution menaces. Legislations provides the legal ambit through which government policies aimed at combating the problem of pollution as well as the protection of the environments are achieved.

The Nigeria government, both federal and states have done a lot in the regime of policy formulation and legislations with a view of dealing with the specific matters affecting the environment for the sole purpose of protecting and preserving the environment. For a country to achieve success in maintaining a healthy environment, it must make the appropriate policies and legislations towards the desired direction. Environmental policies and legislations have tremendous roles to play in the development of any nation's environmental laws, and Nigeria is not an exception.

Suffice it to say that environment policies and regulations in Nigeria were borne out of national emergency with the discovery of five shiploads of toxic waste of Italian origin in Koko, Warri, Delta State.[2]

Before 1988, Nigeria had no properly defined and articulated policy on the environment, as there existed transient laws and regulations which lacked coordination or coherence in a concerted focus at improving the decaying environment.[3]

The Koko toxic waste dump actually motivated serious consideration by government in formulating policies on environmental laws in Nigeria with the sudden realization that the erstwhile scope and concept of the environment needed a redefinition as well as the drafting of new anti-pollution measures to address emerging problems.[4] This incidence brought

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[2] Okonkwo Theodore, "The Laws of Environmental Liability" (Lagos: Afrique Publishers, 2003) p. 2.

[3] Niki Tobi, J.S.C. "National Environmental and International Agreements," Being the text of a paper presented by NIKI TOBI J.C.A. (as he then was) at the workshop and Training on the Role of Government Policy and Decision Makers in Environmental Management" organized by *Afrique* Environmental Development and Education (AEDE) in collaboration with the Government of Delta State (Local Government Service Commission) At Asaba, Nigeria, Tuesday 23 to Thursday 25 August, 2000.

[4] L. Atsegbua *et al.* "Environmnetal Law in Nigeria: Theory and Practice" (Lagos: Asaba Press ltd; 2003) p. 6.

to the fore greater public environmental awareness and the inadequacy of the legal framework for environmental protection in Nigeria.[5]

In response to this development, the Nigerian Government swiftly promulgated, the Harmful Waste (Special Criminal Provisions) Decree.[6] Decree which later became Act,[7] prohibited the carrying, depositing and dumping of Harmful Waste on any Land, Territorial Waters, Contiguous zone, Exclusive Economic zone of Nigeria or its Inland Water ways.

There was punishments attached to breach of these laws, heavy fines were imposed on offenders. Imprisonment for life compensation through the restoration of the polluted environment is all instruments are all instrument channeled towards checking and restoring the environment.

In "Environmental Management" organized by Afrique Environmental Development and Education (AEDE) in collaboration with the Government of Delta State (Local Government Service Commission) at Asaba, Nigeria, Tuesday 23 to Thursday 25 August, 2000.

The Government further promulgated the Federal Environmental Protection Agency Decree,[8] thereby bringing into existence the Federal Environmental Protection Agency charged with the responsibility of the overall management of the Nigerian Environment. Each of the 36 States of Nigeria and the Federal Capital Territory has two main laws dealing with environmental protection. In each of these states there exist the Environmental Laws and State Environmental Agencies. The laws are enforced by either their environmental sanitation taskforce waste management board or State Environmental Protection Agencies. It is the belief of the Nigerian government that the legislations as provided by the successive government would deal extensively on two major classifications of environmental problems bedeviling the National. They are natural and anthropenic problems.

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5 Okorodudu-Fubara, M.T., *Law of Environmental Protection* 1st ed (Lagos: Caltop Publication (Nig) Ltd. 1998) p. 57.

6 Decree No. 42 of 1988. [Now contained in LFN, 2004].

7 Cap. 165, Las of the Federation of Nigeria, 1990 (Law LFN, 2004).

8 Degree No, 58 of 1988, which later became FEPA Act, now replaced by the National Environmental Standards und Regulations Enforcement Agent (Establishment) Act", 2007.

What is a Policy?

This is a set of interrelated decision by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specific situation where those decisions should, in principle be within the power of those actors to achieve.[9]

Environmental policies falls under the regulatory type among other policies of governments which involves the setting of standards and rules to restrict the activities of some groups in the society in other to prevent undesirable consequences of their action.[10] Regulatory policy must be articulated into the development of environmental laws to enhance optimal benefits in curbing the menaces associated with environmental degradation.

Policies and the Development of Environmental Law Environmental law is projected from the multi vintage of the law as an instrument of both social and economic engineering. Laws, both statutory and common laws are policies which regulate the foregoing stated areas of social and economic concern provide the framework of our environmental law.[11]

Governments, Non-Governmental Organizations, Community groups, scientists and other experts have all been important contributors to developing policies on the environment and defining practical responses to implement such policies.

The National Policy on the Environment and Development of Environmental Law

In Nigeria, prior to the adoption of the National Policy on the Environment in 1989, the country lacked a clear focus for the management of its environment. There was no defined and clearly articulated National policy goals for the Nation's environment.[12]

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[9] Jenkins, W.: Policy Analysis: A political and organization perspectives, Martin Robertson, 1978.

[10] Egonmwan J.A: Publc Policy Analysis (Concept and Applications) Resyin Nig. Ltd., Benin, 2000. p. 13.

[11] J.A. Adebsi. "The Role of Environmental Law in Attaining Sustainable Development: Nigeria's Experience" Environmental and Planning Laws Review at P. 107.

[12] Okorodudu-Fubara, M.T., Ibid at p56, se also Atsegbua, L. et al "Environmental Law in Nigeria: Theory and Practice" (Lagos: Ababa Press Ltd., 2003) at p. 151.

The September, 1988 International Workshop organized by the Federal Ministry of Works and Housing (Environmental Planning and Protection Division) and the United Nations Environmental Programme13 on the Goals and guidelines of the National Environmental Policy for Nigeria Report by the World Commission on Environmental and Development (Brundtland Report), the United Nations, "Environmental perspective to the year 2000 and beyond" and the "Cairo Programme of Action for Africa Co-operation in the field of Environment" all had significant influence on the National policy on the Environment.[14]

A fundamental role played by the National policy on the Environment towards the development of our environmental laws is that it helped tremendously to readjust the nation's relationship with its environment based on the principle of sustainable development and proper management of the environment and its resources.

Among other things, the National Policy on the Environment formulated National policy goals and strategies for implementation. The human factors, Land use and Soil conservation, Water Resources Management, Forestry, Wildlife and Reserves, Marine and Coastal resources, Sanitation and Waste management, Toxic and Hazardous substances, Mining, Agro-chemicals, Air and Noise pollution, Occupational health safety and preservation of greenbelts, became easily recognized concepts in an effort to provide a regime of management regulations and policies to balance the problems they posed. It was here that the establishment of an administering and enforcement organ in the nature of the Federal Environmental Protection Agency[15] was proposed.

The Nigerian policy, which identifies the correlation between the health and welfare of all Nigerians and the urgent transition to sustainable development, attempts to provide the concepts and strategies that will lead to the procedures and other concrete actions required for launching Nigeria into an era of social justice, self- reliance and resource development that are environmentally friendly.[16]

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[13] [Hereinafter, The UNEP].

[14] *Ibid.*

[15] Now replaced with the NESREA Act, 2007.

[16] See Aina, E.O.A. and Adedipe, N.O. ed. "The making of the Nigerian Environmental Policy (Ibadan: University Press, 1991) pp. 313-329, see also Atsegbua *et al, ibid* at p. 53.

Another role of the National Policy on the Environment worth mentioning here is that the period between 1989, when the Nigeria policy was formulated and today has marked a period of intensive legal, administrative and to a lesser extent, judicial actions against man's activities that are deleterious to the environment.[17]

The policy is also aimed at ensuring a sustainable development based on proper management of the environment in order to meet the needs of the present and future generations.[18]

In order to achieve the policy of sustainable development, the following policy goals are enumerated in the National Policy.[19]

(a) To secure for all Nigerians a quality of environment adequate for their health and well-being;

(b) To conserve and use the environment and national resources for the benefit of present and future generation;

(c) To restore, maintain and enhance the ecosystem and ecological processes essential for functioning of the biosphere to preserve biological diversity and the principle of optimum sustainable yield in the use of living natural resources;

(d) To raise public awareness and promote understanding and essential linkages between environment and development and to encourage individual and community participant in environmental improvement efforts; and

(e) To co-operate in good faith with other countries, international organizations/agencies to achieve optimal use of trans-boundary natural resources and effective prevention or abatement of trans-boundary environmental pollution.[20]

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[17] *Ibid.*
[18] *Ibid.*
[19] *Ibid.*
[20] *Ibid.*

Prior to the enactment of the Land Use Act Decree 1978,[21] ownership of freehold or customary land imposed no corresponding obligation on the quality of development.[22] Besides, the existing laissez-faire attitude towards land encouraged fragmentation of holdings and under-utilization or substandard use of land. The Obasanjo Military Administration in revising the old trend adopted a trusteeship policy of land tenure for the country.

In the absence of an all-embracive Land Resources Conservation Law or policy, there are other specific laws and national policies which complement the objective of the Land Use Act.

Framework on National Policy Environmental Law

The national policy on the environment

(a) The Constitution of the Federal Republic of Nigeria (1999) as amended.

(b) National environmental standard and regulations enforcement agency NESREA Act.

(c) Environmental Impact Assessment Act.

(d) Land Use Act.

(e) Harmful Waste (Special Criminal Provisions) Act.

(f) Hydrocarbon Oil Refineries Act.

(g) Associated Gas re-infection Act.

(h) The endangered species Act.

(i) Sea Fisheries Act.

(j) Exclusive Economic Zone Act

(k) Pipe Line Act.

(l) Petroleum Act.

(m) Territorial Workers Act.

(n) Federal National Park Act.

An example of such policies is the Land Resources Policy 1988, which major role was to rehabilitate areas of the country that are affected by

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[21] Now the Land Use Act, Laws of the Federation of Nigeria, 2004.

[22] MT, Okorodudu-Fubara, *ibid* at p. 40.

drought, desert encroachment, soil erosion and flood and to prevent the spread of these natural disasters.[23] Another policy is the policy on forest products which aimed at achieving self-sufficiency in wood products through the means of sound forest management principles and techniques. The Agricultural policy for Nigeria 1988, also seek to protect the Nation's forest products and wildlife, especially the endangered species. This invariably has a positive role to play in the development of our environmental laws. Nonetheless, in Nigeria, there are laws regulating water, air and land, amongst others are:

The Water Resources Act[24]

This is targeted at developing the quality of water in the country. Sections 5 and 6 provides authority to make pollution preventable and regulate for protection of fisheries, flora, fauna. Section 18 makes an offender liable with a fine. Control of water pollution is dealt with by a number of Federal and State statutes, some of the relevant Federal Laws are: The Nigerian Criminal Code, which prohibits the fouling of water and prescribed a punishment of six months imprisonment for an offender[25] and the oil in Navigable Water Decree[26] prohibits the discharge of oil into designated sea areas and provide penalties for the specified offences. The Minister of Petroleum is mandated by section 8 of the Petroleum Decree, 1969 (now Act to make regulations, among other matters, for the prevention of pollution of water.

Nuclear Safety and Radiation Protection Act[27]

This regulates the radioactive substances and equipment emitting and generating ionizing radiation. Section 4 of the Act provides authority to make regulations for the protection of the environment from harmful effect of ionizing radiation. Section 15 and 16 makes registration of premises and the restriction of ionizing radiation sources to premises mandatory.

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[23] Agricultural Policy for Nigeria 1988 Para 19.
[24] (Cap 22 LFN 2004).
[25] *Ibid*, Para 3.3(c) (2)(6).
[26] Section 245.
[27] Cap N142 LFN 2004

Air and Atmospheric Resources Laws

The air in this sense is taken to refer to the earth's atmosphere and has been defined as a mixture of gases surrounding the earth breathed by all land animals and plants.[28] The quality of air available for respiration and photosynthetic processes is very crucial to the continuity of life in the planet. Hence the needs to regulate conduct which may adversely affect the quality of air and protect the air resources.[29] The sum total of the provisions of sections 243 to 248 of the Criminal Code particularly sections 245 and 247, inclusive of section 20 of the NESREA Act is that a person must not pollute water, Air and the Atmosphere. The legislation does not seek merely to prevent deliberate or negligent pollution of the waters, air and the Atmosphere. It envisages that, at least, in many cases proper precautions must be taken to ensure that pollution does not occur. Experience has shown that it is not enough merely to take care: accidents will happen.[30]

The legislation envisages that in many cases care must be supplemented and precautions taken so as to ensure that pollution will not occur.[31]

The International Legal Initiatives

At the international scene, there exist several policies and laws which have helped in no small measure to sharpen and develop environmental laws. Some of the conferences where these laws and policies were carefully laid down are critically examined hereunder.

(a) Stockholm Declarations on the Human Environment

The urgent need to limit and if possible, eliminate the impairment of the human environment led to this conference in 1972.[32] One of the major roles of this conference in the development of environmental Laws is that it opened new frontiers in environmental law by focusing the attention of the international community on the environment. Thus, individual states and the people became more aware of the need to protect the

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28 The Oil in Navigable Waters Decree 1968, gives municipal effects.
29 Laws of the Federation of Nigeria, 2004.
30 See Theodore Okonkwo, *The Law of International Liability* (Lagos: Afrique Environmental Development and Education, 2003) at p. 23.
31 *Ibid.*
32 L. Atsegbua *et al*, at p.11

environment against abuse and degradation. The most outstanding impact of the Stockholm Conference on the environment was principle 21, which states that: "states have a responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction.[33]

Another fundamental role of the policies laid down in this conference is that it affirms the sovereign right of states to exploit their own resources pursuant to their own environmental policies in accordance with the United Nations Charter and the principles of international Laws. However, there were some constraints, which hampered the objectives and roles the policies laid down in the Conference sought to achieve.

An example of some of these constraints was the boycott of the Conference by the Defunct Soviet Union and most of the old Eastern Bloc of socialist states because the United States and other countries in the Western Capitalist bloc refused to admit the old East Germany from participating in the Conference. This controversy prevented a global participation in the Conference and also prevented the realization of the goals originally sought by many of the participant.[34]

(b) The Stockholm Conference

This conference was held on 2nd and 3rd June 2022 and included world leaders and representatives from government and organization. Civil society and youths gathered in Sweden on the title, a Healthy Planet for the prosperity of all-Our responsibility and Opportunity. It was a 2 days meeting to commemorate the 50th anniversary of the United Nations Conference on the Human Environment.

The Fundamental Policies laid down at Stockholm 50 was for every nation to realize that to "slave off a climate catastrophe, the world must have annual greenhouse gas emission by 2030 to reach net-zero by 2050. It was also pointed out that Air Pollution, the greatest environment threat to public health globally, accounts for an established 7 million premature death every year. The main objective of this conference was to protect Human Health from the effect of Organic Pollutants (POP).

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[33] L. Atsegbua *et al,* at p. 12.

[34] W.P. Gornley, Human Right and Environment: "The Need for International CO-operation" (Netherlands S.W. Sijthoff-Leyden 1976) p. 121.

(c) The Earth Summit

This conference otherwise known as the 'Earth summit', took place from 3rd to 14th June, 1992 in Rio de Janeiro, Brazil. One of the major roles played by the policies laid down at this Conference is that it brought about significant development practices. These developments have led to the recognition that government should prepare sustainable strategies and policies for its citizens.[35] The Conference adopted the Rio declaration containing twenty-seven non-binding principles on environment and development from a global perspective.

The need to protect the environment from ecological disaster prompted this United Nations Conference on Environment and Development (UNCED), held on 3rd to 14 June, 1992 at Rio de Janeiro, Brazil. This Conference developed a programme of Action for sustainable development otherwise known and called Agenda '21'.[36]

Agenda 21 as a comprehensive blueprint for action to be taken globally-from 1992 into the present twenty-first century-by Government, United Nations Organizations, Development Agencies, Non-Governmental Organizations and Independent-Sector Groups in every area on which human activity impacts on the environment.[37]

The Rio Declaration-which provides a context for specific proposals of Agenda 21 provides in its principle 11 that "States shall enact effective environmental legislation, environmental standards, management objectives and priorities which should reflect the environmental and developmental context to which they apply, standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries."

Nigeria's Harmful and Hazardous Waste Law meets the provisions of principle Il of Agenda 21. Through the Laws, we can as a nation better manage and protect the ecosystem and bring about a more prosperous future for us all.[38] Despite the shortcomings of some of the policies of the

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[35] R.M., Wallace. "International Law" ed. (London: Sweet and Maxwell, 1997) p. 195.

[36] Theodore Okonkwo; "The Law of Environmental Liability" (Lagos: Afique Environmental Development and Education), 2003 at p. 3.

[37] *Ibid.*

[38] Earth summit: Agenda 21, the United Nations Programme of Action from Rio, United Nations Publication. New York, NY i0017, USA, 1993 at p.10

Conference, for instance, it avoided many controversial issues such as population growth, consumption patterns and the international debt of developing countries.[39] On the whole, the Rio Conference played some positive roles in the development of international law, as it relates to the environment particularly with the adoption of the concept of sustainable development.

(d) Rio Conference 2012

This is another conference from Rio tagged "Rio 2012". It took place after 20 years from the former one. This conference emphasized on sustainable development through political commitment of nations. The conference is on 2 major concepts thus:

- A green economy in the context of sustainable development and poverty eradication.
- The institutional framework for sustainable development.

The conference was aimed at social inclusiveness, economic development and environmental protection are the avenues to sustainable development.

(e) United Nations Climate Change Conference

The 2022 United Nations climate change conference commonly referred to as COP 27 was the 27th United Nations Climate change conference held between November 6 and 20, 2022 in Egypt. At the Conference a 'loss and damage' fund was agreed for the first time which was considered a significant achievement.[40] This is an agreement to provide funding to countries who are most vulnerable and affected by climate change.[41]

(f) The World Summit on Sustainable Development[42]

This summit was held in Johannesburg South Africa, from 25 August to 4 September 2002. The major roles of the summit was that it directed the world's attention towards meeting difficult challenges including improving

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[39] Wallace, R. M.. ibid at p, 195.

[40] Climate change: Five Key take always from COP 27 BBC News 2022 accessed en.m Wikipedia.org wiki 2022 May 15th 2023.

[41] COP 27 Reaches Breakthrough Agreement on New "Loss and Damage" Fund for vulnerable countries. Accessed en.m Wikipedia.org wiki 2022 May 15th 2023.

[42] [Hereinafter, The WSSD]

people's lives and conserving the natural resources in a world that is growing in population with ever increasing demands for food, water, shelter, sanitation, energy, health services and economic security.[43] The summit also concentrated on the implementation of the concept of "Sustainable Development and attention was focused on how to identify concrete steps and quantifiable target for better implementation of "Agenda 21 of the Rio Declaration.[44]

Apart from the absence of the United States which rendered the summit partially impotent, the summit was criticized for excluding a variety of organizations and individuals who were instrumental in conservation and green history.[45]

(g) The Bamako Convention

This convention was adopted in Bamako, Mali, on January 31 1991, as a result of the dissatýsfaction of developing countries with the earlier Convention, "the Basel Convention" which was widely criticized for its partial ban on trans-boundary movement of Hazardous Wastes.[46]

The major role played by this convention in the Development of environmental law is that it created a framework of obligation through the suppression of hazardous wastes, the prevention of trans- boundary movement of or importation of hazardous wastes and the taking of precautionary measures against the occurrence of such wastes.[47]

African Union and the Development of Environmental Law

In 2002, with the coming of the African Union which replaced the defunct Organization of African Unity (OAU), a fundamental shift was made form

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43 Johannesburg 'Summit (online) http /hohanesbgapit.org (accessed 29th May, 2023).
44 *Ibid.*
45 *Ibid.*
46 Basic Facts About the United Nations United Nations, New York, 199% p. 264, Edna Chinyere Eguh.
"Regulation of Trans-boundary Movement of Hazardous Wastes: Lessons from Koko" (1997) RADIC, 130 at 141, sec also Liu Sylvia, F, "The Koko Incident: Developing International Norms for the Trans-boundary Movement of Hazardous Waste." (1991) Journal of National Resources and Environmental Law, Vol. 8 at 121.
47 Ojwang. B "Kenya's place in international Environmental initiative" (1993) 5 *African Journal of International and Comparative Law,* p. 793.

predominantly political co-operation to a joint Africa growth and development and at the same time to participate actively in the World economy, enlarging Africa's economic prospects.

Its major role is that it addressed environmental challenges while reducing poverty and recognizes that the range of issues necessary to nurture the region's environmental base and promote the sustainable use of natural resources is vast and complex and thus that a systematic combination of initiatives is necessary to develop a coherent environment.

The National Standards Established by the National Environmental Standards and Regulation

Apparently, this Act which replaced the FEPA Act, is now the statutory threshold of a national policy on environmental protection in Nigeria. This Act encapsulates a broad-spectrum policy in the environment.[48] It set up a powerful agency called the National Environmental Standards and Regulation Enforcement Agency. Like the former Federal Environmental Protection Agency, its roles and functions are:

(a) It shall be the enforcement agency for environmental standards, regulations, rules, laws, policies and guidelines in Nigeria,[49]

(b) It shall have responsibility for the protection and development of the environment.[50]

(c) It shall have the responsibility for biodiversity conservation and sustainable development of Nigeria's national resources in general and environmental technology, including co-ordination and liaison with relevant stakeholders within and outside Nigeria on matters of enforcement of environmental standards, regulations, rules, laws, policies and guidelines.[51]

The Act in a pertinent sense heralded and projects the declared environmental values and precepts contained in the National policy on the Environment and places substantive duties on the Agency which it gave birth to. The Agency is also required to establish criteria and guidelines

48 Okorodudu-Kubara, M.T, *ibid* at p. 169.
49 Section 1(2)(a) of the NESREA Ac, 2007.
50 Section 2.
51 See also section 7,

for the control of concentration of substances in the air which are likely to result in damage or deterioration in the health of property, human, animal or plant, the most appropriate means to prevent and combat different kinds of atmospheric pollution, and the use of appropriate means to reduce emission to permissible levels.

The coming of the NESREA Act, just like the FEPA Act, before it, is a great step towards improving other environmental degradation in the country.[52] The Act prohibits the discharge in such harmful quantities of any hazardous substance into the waters of Nigeria or adjoining shorelines, except as permitted or authorized by the law in force in Nigeria.[53] Before the coming of the FEPA Act, which the NESREA Act has just replaced, enforcement of environmental Laws and regulations in Nigeria was hazardous. Institutional enforcement of laws and regulations was done by several government agencies. This state of affairs had a negative effect on the achievement of an enduring compliance standard.[54] The Agency is also required by law to enter into consultation with appropriate authorities for the purpose of identifying major noise sources, noise criteria and noise control technology and on the basis of the findings established noise abatement programme and noise emission standards which the Agency deems necessary to pressure and maintain public health and welfare.[55]

The Challenges of Environmental Laws and Policies in Nigeria Laws and agencies exists in Nigeria for the protection of the environment from degradation, yet gas flaring indiscriminate waste and toxic drops abounds in Nigeria environment and this clearly depicts a state of non-compliance with the enabling laws for regulating the environment.

Scavengers are everywhere. They tore huge bad and sacks containing refuge thereby causing odours which thereafter translates to pollution of the environments. The Associated Gas-Re-Injection Act Cap 12 (LFN) 1990 which was signed to end wasteful and destructive gas flaring by forcing oil companies to develop scheme for re-injecting oil and gas into the main fold has hitherto failed to do so since 2010. Gas flaring remains Nigeria major source of pollution and this has led to the destruction of eco-system and other species.

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[52] Atsegbua *et al,* at p. 80.
[53] See section 27, NESREA Act.
[54] Atsegbua *et al,* at p. 168.
[55] Section 22 of the NESREA Act.

The criminal code[56] which protects environment from abuse has been taken for granted. Big multi-national companies take little or non-recognizance of this law to do whatsoever they like. A good example is the Shell Petroleum Development Company (SPDC) in the destruction of Ogoni Land in Rivers State.

Conclusion

Despite major efforts to protect the environment in many developing nations, there continue to be a vicious cycle of re-occurrence of environmental problems. The inevitability of occupation on Land, water, marine and coastal resources which resulted in the expansion of Agriculture and other urban uses of land led to increased degradation of natural ecosystems in Nigeria, and these activities is tantamount to human extinction as well as biodiversity. In this regard, policies and laws which inevitably provide a basis for the solution of the environment should be sustained.

The bilateral and multilateral co-operation amongst states on policies and strategies for the development of Environmental Law, must be a matter of serious concern to state actors. Nigeria is on a right direction in her affiliation to many international agencies with regards to affecting the various regulations and policies of FEPA (and now NESREA) is a welcome development.

The enforcement of such rules should however be decentralized through enhancement of the various states' Environmental Agencies. The government of Nigeria, though have encouraged various individuals entrepreneurs to go into waste management in line with the appropriate environmental laws of various states in the federation, government should also create an enabling atmosphere for them to operate no matter whose horse in gored.

The need for government to evolve more policies on the forest is not necessary as there exist enough policies to conserve the Nations environment from fire, erosion, insects, diseases, introduction or spread of noxious weeds, insects and animals and other causes of deforestation, rather the political will power to operate the already existing ones is key to the development of environmental laws in the Nation.

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[56] (Cap 77 LFN of 1997).

There is a need for government to evolve the cultural and religious beliefs of the indigenous natives on environmental socialization to make a positive impact on the effectiveness and efficiency in the management of the environment in any given location in Nigeria.

The Role of the Laws With the Most Significant Connection as a Choice of Law Rule in Resolving Conflicts in Private International Law

Nwaogazie Innocent Ekezie[1]
&
Sunday Abdul[2]

Abstract

The most significant connection doctrine plays important role in the conflict of laws. It has been applied not only in the field of contracts but also to several particular issues in areas other than contract. Courts in different jurisdictions have often adopted the notion of characteristic performance and provide some presumptions to determine the country of most significant connection. In default, the court has to impute an intention by asking, as just and reasonable persons, which laws of the parties ought to, or would, have intended to nominate if they had thought about it when they were making the contract. In the absence of express or implied agreements, the proper law of the contract will be determined to be the system of private law which the transaction has the closest or most real connection. This is an objective test to be determined by the circumstances of the case. This paper will examine briefly some select choice of law rules as well as the factors that a court will consider in determining the law with the most significant connection as well as its application in the Nigerian legal system and the United Kingdom.

Keywords: International Law, Jurisdiction, Conflicts Resolution.

Introduction

Each country's legal system reflects its values. As a result, national laws and the structure of domestic judicial systems vary considerably from

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country to country.[3] Nevertheless, many kinds of legal situations or events, such as marriage, decedents' estates, torts, and business transactions, often are not confined to a single country or even to a single jurisdiction within a country. The courts of each involved country may claim jurisdiction over the matter, and the laws of each involved country may be applicable under certain circumstances.[4]

Most Significant Relationship test is a test used to determine which state law is adequate and can be applied to a dispute. This doctrine is applied mostly in conflict of law cases. By this doctrine, the substantial relation between a state law with the occurrence and the parties is determined. While determining the appropriate state law, the courts take into consideration matters are:

(a) Place of occurrence;

(b) Residence, place of business, and the place of incorporation of the parties; and

(c) The relationship between the parties if any.[5] This is a conflict of laws approach that considers which state's law has the strongest relationship to the matter and the parties.[6]

Other Theories on Choice of Law in Private International Law Choice of law is a set of rules used to select which jurisdiction's laws to apply in a law suit.[7] Choice of law is a procedural stage in litigation of a case involving conflict of laws when it is necessary to reconcile the differences between the laws of different legal jurisdictions. The outcome of this process is potentially to require courts of one jurisdiction to apply the law of a different jurisdiction in lawsuits arising from, say, family law, tort, or contract. The law which is applied is sometimes referred to as "proper law."[8] The choice of law rules discussed in this sub heading is as follows:

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[3] Ulrich M., H. Peter, 'Conflict of Laws' (2017) https://www.britannica.com/topic/coflict-of-laws Accessed 23/4/2023.

[4] *Ibid.*

[5] US legal, 'Most Significant Relationship Test' (2018) https://definitions.uslegal.com/m/most-significant-relationship-test/ Accessed 25/4/2023.

[6] Quimbee, 'Most Significant Relationship' www.quimbee.com Accessed 25/04/2023.

[7] Lawshelf, 'Doctrine and Choice of Law' (2013) https://lawshelf.com/courseware/entry/erie-doctrine-and-choice-of-law Accessed 27/4/2023.

[8] https://en.m.wikipedia.org/wiki/Choice-of-law Accessed 27/4/2023.

(a) Law of the Place of Making (lex loci contractus);
(b) The Law of the Place of Performance (lex loci solutionis);
(c) Personal Law of the Parties (lex domicicili);
(d) The Law of the Place of Litigation (Lex Fori);
(e) Express Intention of the Parties (Party Autonomy).

The Law of the Place of Making (*lex loci contractus*)

This choice of law rule connects the laws of a territory to contracts made within that territory.[9] It is rooted in the territorial or vested right theory supported by Beale and his followers. Indeed it is a time honoured principle that parties in a given territory ought not to violate the law of that territory, lest their contract be invalidated by the law of that territory.[10] This theory proposes that a contract is born into a legal system and that rights are "vested" in a contract through its "place of birth".[11] This vested territorial right is inherent in the contract, no matter where it is interpreted or enforced.[12] Courts and writers favour the application of this rule when in doubt about the application of other choice of law rules. They justify it on the basis that the territoriality principle is similar to the one applicable in crime and tort cases – territorial principle of *lex loci delicti*.[13] Proponents of this rule conclude that it gives certainty in choice of law issues because the place where a contract is made is usually established and certain. This rule may however be problematic in some cases where contracts are made and signed electronically. For instance if a Nigerian enters into contract with a South African and sends an electronic copy of the contract document to the South African to also sign, determining the law of the place of making of such contract may become problematic.

The Law of the Place of Performance (*lex loci solutionis*)

This rule shares a theoretical underpinning with the *lex loci contractus* rule- the vested right theory or territorial principle. The difference is that,

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[9] J.H. Beale, 1935, *A Treatise on the Conflict of Laws,* Vol 2, New York: Baker Voorhis &Co, 1044-1045
[10] Arthur Nusbauum,1942, "Conflicting Theories of Contract; Cases Versus Restatement", Yale LJ, 899.
[11] A.V Dicey, 1896, *A Digest of the Law of England with Reference to the Conflict of Laws,* London, UK: Stevens and Sons, 660.
[12] Beale, *op cit,* 63-74.

while lex loci contractus rule makes the law of the place of execution the connecting factor, *lex loci solutionis* makes the place of performance the connecting factor for determining the applicable law. This rule attaches significance to the "mode" and "incidents" or modalities of payment or other performance of contract.[14] Proponents therefore argue that this rule is based on express intention rule (party autonomy) because the performance of a contract is usually based on the intention and the agreement of the parties.[15] Although the lex loci solutionis usually answers questions regarding the performance, discharge, and breach of a contract, opponents of this rule argue that it cannot be used to determine the validity of a contract.[16] This is because the vested right theory only refers to the question of the validity of a contract to the place of execution and not the place of performance.[17]

Personal Law of the Parties (*lex domicicili*)

This rule proposes that matters concerning an individual should be governed by the system of law mostly connected to the individual.[18] It connects the law of a domicile of parties to their contracts. The application of this rule appears straight forward because parties can only have one domicile at a time.[19] However, it becomes problematic in the contract where parties possess different domicile – an unavoidable situation in international contracts.[20] The difficulties arise from choosing the domicile that prevails. For example the rule proposes that the debtors domicile should determine rights and obligations arising from the debts. As a result they cannot promise more than what their domicile allows.[21] This makes the domicile of a debtor more important than that of the creditor. This

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13 Sherman Chang, 1934, "The Validity of Contracts in the Conflict of Laws", China L Rev 33, 41-42.

14 *Ibid,* 464.

15 S. Chang, Opcit Note 16, 35.

16 "Conflict of Laws, Party Autonomy in Contract," Note , (1957) 57:4 Colum L Rev, 568.

17 *Ibid.*

18 T.C. Hartley, 2009, *International Commercial Litigation.* Cambridge: Cambridge University Press. 507.

19 *Ibid.*

20 *Ibid,* 509.

21 E. Rabel, *op cit,* 473.

means that the debtor's domicile governs the performance of a debt in another country-an unintended extra territorial effect.[22]

The Law of the Place of Litigation (*Lex Fori*)

This choice of law rule dictate that regardless of the contract contact with another states law or the intentions of the parties, the law of the place where the matter is litigated is applied (Forum law).[23] The party who argues for the application of a foreign law must show reasons for it application. The lex Fori rule is based on the theory that if the forum and a foreign state each have a domestic rule, the underline policies of which are applicable to the inter-state case in issue. It is improper for a court to give effect to the policies of another state in preference to those of its own state.[24] Therefore the forum policy interest trumps the application of any foreign law.[25] By this rule, the notion of justice to a case is based on the superiority of a state policy rather than the human conduct which is at the centre of the dispute. While this rule promotes the forum state policies, it encourages forum shopping because a plaintiff that is aware of a favorable state policy of an issue may litigate in that forum as opposed to the appropriate or agreed forum.

Express Intention of the Parties (Party Autonomy)

Party autonomy is the "entitlement of parties to select the laws under which their contractual terms will be interpreted (governed), and the jurisdiction in which those terms, will event of dispute, be enforced.[26]

Party autonomy has grown over the years. It has been described as "one of the fundamental principles of private international law,"[27] and a master of all rules in conflict of laws.[28] Countries usually begin the choice of law

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[22] See *Milliken v. Pratt* (1878)125 Mass Jud Sup Ct 374.

[23] See generally Albert Ehrenzweig, 1960, "The *Lex Fori* – Basic Rules in the Conflict of Laws" 58 Mich L Rev 637.

[24] *ibid.*

[25] *ibid.*

[26] A. Ehrenzweig & E. Jayme, 1977, Private International Law: A Comparative Treatise on American International Conflicts Laws, Including the Law of Admiralty. Leyden: AW Sijthof, vol 3, 253

[27] Institute of International Law, 1992, "Resolution on the Autonomy of Parties in International Contracts Between Private Persons or Entities" 64 II YB, 383.

[28] M. Lehmann, 2008, "Liberating the Individual from Battles Between State: Justifying Party Autonomy in Conflict of Laws" 41 Vand J Transnat'l L. 384

process by looking for the will of the parties before considering other rules. Therefore the application of other choice of law rules is treated as dependent on presence on absence of the parties' intention.

Application of the Law with the Most Significant Connection in Resolving Conflict of Laws

In its choice of applicable law, the court that exercises jurisdiction determines which law to apply to a case that involves foreign parties, foreign transactions, or a number of foreign elements.[29] Classic theories of conflict of laws were territorially oriented. The German jurist and legal scholar Friedrich Karl Von Savigny[30] sought to identify the law where "according to its nature", the legal problem or relationship had its "seat". Anglo-American legal scholar, Joseph Beale,[31] whose thoughts shaped much of American conflict of laws theories in the first half of the 20th century, referred to this as where the rights and obligations of the parties are "vested".

Classic theories of conflict of laws used a number of connecting factors to determine the territorially applicable law. In matters of family law, Anglo-American law used parties' domicile. In civil law countries by contrast, a person's nationality was until recently the most important connecting factor. However, the reference is now more commonly to the law of person's "habitual residence".

For torts, American law traditionally looked to the law of the place of injury whereas European law referred either to it or the law of the place where the wrongful conduct had occurred. For Contracts, most legal systems looked to the place of performance for breach but stipulated that the place of formation was a more important connecting factor for the question of validity.[32]

The Law with the Most Significant Connection in Torts

The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the place which has the most

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[29] US Legal, Opcit Note 4.
[30] 1779-1861.
[31] 1861-1943.
[32] US Legal, Opcit Note 4.

significant relationship to the occurrence and the parties. In *Pust v. Union Supply Co*,[33] the plaintiff Larry E. Pust was injured on October 31 1968, when his right arm was caught in the nip point of a conveyor at the Holly Sugar Corporation plant in Sydney, Montana. In 1979, Pust filed a products liability suit against the Union Supply Company in Denver District Court. The complainant alleged that Union Supply had designed and manufactured the conveyor in the Holly Sugar Plant, that the conveyor was defective and that it was the proximate cause of Pust's injuries. The bulk of the evidence was directed to the issue of exactly who was responsible for the design and manufacture of the conveyor. Union Supply had won the contract to manufacture the conveyor belt for Holly Sugar but subcontracted out the manufacture of most of its component parts.

At the close of evidence, the District Court granted Union Supply's motion to dismiss the complaint. On appeal, the Court of Appeals reversed the judgment dismissing Pust's complaint. Upon further appeal, the Supreme Court held that 'Looking at the evidence in the light most favorable to Pust, we find ample evidence that Union Supply was a designer of this conveyor system. There was evidence that Union Supply added the mechanical and structural design, together with necessary engineering specifications, without which the conveyor would not be built. Other evidence showed that Union Supply redesigned and modified each of the sections of the conveyor. Union Supply did the most substantial mechanical design necessary for the conveyor to become operational. Based on this evidence, a jury could find Union Supply to be a designer of the conveyor'. Union Supply was held liable in Pust's tortuous action because it played the most substantial role in the manufacture of the conveyor belt.

Under the most significant relationship rule, the most significant factors are the parties' domicile and location of the tort.[34] A parties' forum selection clause in any applicable agreement is also a factor a court will consider. In *Bates v. Superior Court*,[35] the court held that the inquiry to determine which state has the significant relationship is qualitative and not quantitative.

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[33] 38 Colo. App 435 (Colo. Ct. App 1976).
[34] See Melton v Borg Warner Corp 467 F. Supp. 983 (W.D. Tex. 1979).
[35] 156 Ariz 46 (Ariz 1988).

In tort action, the local law of the state where injury occurred determines the rights and liabilities of the parties, unless some other state has a more significant relationship with the occurrence and the parties to the particular issue involved, in which event local law of the latter will govern.[36]

In *Murphy v. Colorado Aviation Inc*[37] the court held that the choice of law rule applicable to multistate tort controversies is the significant contacts approach. The general principles which the forum should consider in determining which state has the most significant relationship with the cause of action are as follows:

(a) The rights and liabilities of the parties with respect to an issue in torts, and

(b) Contacts to be taken into account in applying the principles of a particular section to determine the law applicable to an issue.[38] The specific contacts to be taken into account when assessing which state has the most significant connection to a tort claim include:

(c) The place where the injury occurred.

(d) The place where the conduct causing the injury occurred

(e) The domicile, residence, nationality, place of incorporation and place of business of the parties, and

(f) The place where the relationship, if any, between the parties is centered.[39]

Another significant rule is the doctrine of depecage- whereby the contacts are evaluated according their importance with respect to particular issues.[40] In determining the most significant relationship under a choice of law issue, the mere counting of contacts will not be determinative of the law to be applied. Rather, it is the relevancy of the contact in the terms of policy considerations important to the forum vis-à-vis, other contact states.

In determining the most significant relationship under a choice of law issue, consideration is given to the policies and interests of the forum

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[36] See *Cassy v. Manson Constr. & Engineering Co.,* 247 Ore. 247 (Or. 1967).
[37] 41 Colo. App 237 (Colo Ct. App 1978).
[38] See *Melton v Borg Warner Corp, op cit.*
[39] *Bates v. Superior Court*, Supra Note 58.
[40] See *Wilcox v. Wilcox* 26 Wis. 2d 617 (Wis 1965).

state, the tort state, and of the other states that may have an interest by virtue of the domicile of the parties or other relevant factors. In *Wilcox v. Wilcox*[41] the court observed that it is obvious that one state may have legitimate contact with one facet or issue of the case but not with another, and hence it is not necessary in each case to apply only the law of a single state to all phases of the law suit. Adoption of the most significant relationship test does not require a court to disregard a foreign jurisdiction's law in all cases. The flexibility of the most significant relationship doctrine requires that each case be decided on its own facts.[42]

Law with the Most Significant Relationship in Contract

In the absence of the expressed or an implied choice of law, contracts should be governed by the law of contract with which the contract is significantly related.[43] At common law this significant relationship refers to the country with which the contract is closely connected.[44]

There is also a presumption in Rome Convention provisions to determine the most significant connection. The convention45 explains that the contract is closely connected with the country where the party at the time of conclusion of the contract resides or he is habitual resident of that particular country. The article 4 of the Convention further explains if the contract is made in the course of party's trade or profession then in this case the country of most significant relationship shall be the country in which the principal place of business is situated or where under the terms of the contract the performance is to be effected.

In *Lilydale Cooperative Limited v. Meyn Canada Inc*[46] the court took the opportunity to review the most significant relationship test, which was first established by the American Supreme Court in *Imperial Life Assurance Co of Canada v. Colmenares*.[47] Brief facts of the Lilydale case are as follows: The plaintiff, Lilydale Cooperative Limited, operated poultry processing

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41 Supra.
42 Travelers Indem. Co. v. Lake, 594 A.2d 38 (Del. 1991)
43 Article 4(1) of the Rome Convention of 1980
44 Law Teacher: 'Laws with the Most Significant Connection'. Available at www.lawteacher.net accessed 19/5/2023.
45 Article 4(2).
46 2015 ONCA 281.

plant in Alberta. The defendant, Meyn, was a multinational provider of poultry processing solutions that carried on business in Ontario.

In 1993 Lilydale purchased a fryer and oven system from Meyn. Lylidale used the oven for ten years until 2004 when a fire occurred in its plant. Lylidale alleged that the oven was defective and started the fire in its plant. Lylidale and Meyn jointly brought a motion by special case for the opinion of the court to decide whether Alberta or Ontario law applied to Lylidale's action in tort and contract. In Ontario the ultimate limitation period is 15 years whereas in Alberta the ultimate limitation period is 10 years. Lylidale's action in contract would be statute barred under Alberta law but was still under the ultimate limitation period allowed under Ontario law. Applying the most significant relationship test, the court held that the Alberta law applied to the tort claim but that Ontario law applied to the breach of contract claim. The court listed the following as the criteria that inform the most significant relationship test in the absence of express intention by parties to a contract:

(a) The domicile and even the residence of the parties;
(b) The national character of a corporation and the place where its principal place of business is situated;
(c) The place where the contract is made and the place where the contract is to be performed;
(d) The style in which the contract is drafted (e.g. whether the language is appropriate to one system of law but not appropriate to another);
(e) The fact that a certain stipulation is valid under one law but void under another;
(f) The identification and balancing of the relevant criteria that inform the closest and most significant relationship test in each particular case necessarily involves an exercise of judicial discretion.

Law with the Most Significant Connection in the United Kingdom

The conflict of law rules in the United Kingdom (particularly in England and Wales) has both statutory and common law (case law) sources, and the balance of each varies in each field of law. For example, choice of law

[47] (1967) SCR 443, 62 DLR (2d) 138.

in tort and contract is now dominated by statute: the Private International Law (Miscellaneous Provisions) Act 1995 and Contracts (Applicable Law) Act 1990 respectively. In cases where parties have made an express choice of law, or one that is demonstrable by reasonable certainty, this law applies. Where there is choice of court agreement, this is often enough to infer that the law of that court was intended to be chosen.[48]

In cases where there is no express choice of law, or one that is demonstrable with reasonable certainty, a two-part test applies in most contracts. At the first stage, there is the presumption that the law will be the law of the habitual residence of the characteristic performer. The characteristic performer is not always easy to identify, but is usually the party who is not providing payment for the goods or service (e.g. the characteristic performer is the vendor of a product, the lender in a banking transaction, the guarantor in a contract of guarantee). This presumption may be rebutted in favour of a country with which the contract is more significantly connected only in "circumstances which clearly demonstrate the existence of connecting factors justifying the disregarding of the presumption."

In cases involving consumer and employment contracts, the law of habitual residence of the consumer, and usual place of work of the employee, respectively will apply.[49]

In respect of issues relating to tort, the provisions of part III of the Private International Law (Miscellaneous Provisions) Act 1995 apply to most torts (defamation and related torts are excluded, and remain governed by the common law). Where all the events constituting a tort occur in a place, the solution is simple. Where the elements of those events occur in different countries, the applicable law under general rule is taken as being:

(a) In personal injury or wrongful death cases, the law of the country where the individual was when he sustained the injury;

(b) In cases of damage to property, the law of the country where the property was when it was damaged;

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[48] European Judicial Network in Civil and Commercial Matters: Applicable Law – England and Wales. Available at ec.europa.eu/civiljustice/applicable- law/applicable-law-eng-en.htm Accessed 19/5/2023.

[49] *Ibid.*

(c) In any other case, the law of the country in which the most significant element or elements of those events occurred.

In respect of the administration of trusts, the applicable law is that chosen by the settler, or, in the absence of such choice, by the law with which the trust is most significantly connected. This law determines the validity of the trust, its construction effects and the administration of the trust. A will on the other hand is interpreted by the law intended by the testator, which is presumed to be the law of his domicile at the date of the will. The validity of an alleged revocation of a will is determined by the law of the domicile of the testator at the time of the alleged revocation.[50]

The Law with the Most Significant Connection in Nigeria

The problem of conflict of laws in Nigeria is a complex issue. This is not only because of the federal form of government with its separate federal and state laws which sometimes create jurisdictional conflict, but more so because of the dual system of court and the States.[51] As a general rule, cases between natives or Nigerians or persons with Nigerian descent are to be decided under customary law being the law with which they are most significantly related. In Labinjo v. Abake52 a girl of seventeen or eighteen years of age was sued for certain trade debts. Her defense was based on Infant Relief Act which was to make such debt unenforceable against an infant. Both the trial judge and the Divisional Court assumed that the Act applied.

However, the full court in rescinding the earlier decisions, raised the question why the case had not been decided under customary law and stated as follows: The general rule is that if there is a native law and custom applicable to the matter in controversy, and if such law and custom is not repugnant to natural justice, equity and good conscience or incompatible with ant local ordinance, and if it shall not appear that it was intended by the parties that the obligations under the transaction be regulated by English law, the matter in controversy shall be determined in accordance with such native law and custom.[53]

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[50] *ibid.*
[51] N. Iguh 2010, "Conflict of Laws in Nigeria". *Nnamdi Azikiwe University Law Journal* Vol. 3. 55.
[52] (1924) 5NLR 33.

However, where the transaction is unknown to customary law, the English Law will apply, being the law significantly related to such transaction. To enter into a transaction that is only recognized by English law may be construed as an agreement to be bound by English law. For instance an agreement for transaction via electronic media is unknown to customary law and cannot be governed by it.[54]

Where there is conflict between different systems of customary laws, the law with the most significant connection will be the law "prevailing in the area of jurisdiction of the court or binding between the parties.[55]

In cases of succession, the general rule in jurisdictions is that in the case of both testate and intestate succession, where English law or local statutes do not apply, the personal law of the deceased, that is the customary law to which the deceased was normally subject, is the law binding between the parties and excludes the law of the place. This therefore means that in the case of conflict between the personal laws of the deceased and the law of the place where the deceased may have been resident, the personal law of the deceased prevails, being the law with which he has the most significant relationship.[56]

In land matters, where the land is subject to customary law, the most appropriate law for customary courts to apply in resolving land disputes should be the law of the area where the land is situated-lex situs. 57 This is so because it is the laws of the particular area where the land is situated that has the most significant relationship/connection with the land in dispute and this would ensure that the disposition of land in a particular area is always subject to the same customary law.

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[53] See also *Koney v. Union Trading Company* (1934) W.A.C.A.. In this case an action was brought by an educated African carpenter against a European company. The defense relied on the English statute of limitations and the plaintiff in reply contended that English law should not govern the case, relying solely on the fact that he was an African. The West African Court of Appeal however dismissed such assertion pointing out that under the relevant statutes, the usual combination of that fact with the further fact that the other party was not an African was to make English Law applicable.

[54] See *Rotibi v. Savage* (1944) 17 NLR 77.

[55] See section 23(1) of the Customary Law of Eastern Nigeria, Section 20(1) of the Native Courts Laws of Northern Nigeria and Section 20 of the Customary Courts law of the then Western Nigeria. These laws though repealed have been reenacted in the various states of the federation with similar provisions. See for example section 16 of the Customary Courts Law of Abia State.

Conclusion

The laws with the most significant relationship are an important aspect of choice of law rules in private international law. It comes to play mostly in cases where parties to a transaction do not state clearly what laws should govern their transactions or regulate disputes between them. In such instances the courts in adjudicating over disputes take various factors into consideration in deciding which law is best suited in resolving disputes between parties. This is a very significant choice of law rule and it has been used in determining the applicable law in disputes relating to various fields of law including contract, tort, succession, etc. The courts have also along the line formulated certain rules which serve as guides in determining the choice of applicable law based on the most significant relationship choice of law rule. These rules so formulated have served as veritable guides to the courts in most cases of conflicts in private international law.

[56] See *Tapa v. Kuka* (1945)18NLR 5; 75, where Nupe native law and custom was held to govern the estate of a Nupe man who died intestate leaving a house in Lagos. See also Section 20(2) of the Customary Court Laws of the former Western Region.

[57] See section 20(1) of the Customary Courts Laws of Western Region and also section 21(2) of the Area Courts Edicts of Northern Nigeria.