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The Role of a Free Press in Good Governance a Papper Presented

By Philips O. Okolo
Niger Delta University, Nigeria

Introduction- It gives me joy and I am humbled to be given this rare privilege to be chosen amongst other most suitable and very much qualified persons and/or personalities to give this prestigious lecture by one of the most respected and valued professional/prestigious trade unions in the world (NUJ) Bayelsa Chapter. This is more so, when you consider the critical place the media or put differently the press plays in the society. It is in this context that, the topic of our discourse or paper is apt, particularly when considered from the perspective of the broad theme of this years' World Press Freedom Day (Media Freedom for Better Future: Shaping the Post 2015 Development Agenda).

To what extent does free and independent media contribute to good governance and what are the consequences for human development? What is the role of the free press in strengthening good governance, democracy and human development?

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The Role of a Free Press in Good Governance a Papper Presented

Philips O. Okolo

I. Introduction

It gives me joy and I am humbled to be given this rare privilege to be chosen amongst other most suitable and very much qualified persons and/or personalities to give this prestigious lecture by one of the most respected and valued professional/prestigious trade unions in the world (NUJ) Bayelsa Chapter. This is more so, when you consider the critical place the media or put differently the press plays in the society. It is in this context that, the topic of our discourse or paper is apt, particularly when considered from the perspective of the broad theme of this years' World Press Freedom Day (Media Freedom for Better Future: Shaping the Post 2015 Development Agenda).

To what extent does free and independent media contribute to good governance and what are the consequences for human development? What is the role of the free press in strengthening good governance, democracy and human development?

This lecture shall attempt to explore these issues with a view to provide some clear cut answers. In order to provide the answer to these questions, we shall define and discuss the following concepts: Media/Free-Press, Good Governance and Human Development.

Apart from this introduction, the rest part of this paper is structured into five sections. Section one deals with the meaning of media; section two discusses the role of free press in good governance and human development; section three highlights the concept of good governance; section four on its part analyzed the role of free press in strengthening good governance and human development; while section five concludes the paper, it also incorporates the bibliography.

a) The Meaning of the Media

The media or mass media is a basic source of news and entertainment. They are also means of carrying messages which could build communities into nations. They are sources of information. The media falls into three basic categories: print, electronics and photographs. This categorization differentiates the technology that produces them. John, (2001).

The primary print media sources are books, magazines, newspapers, electronic media sources are basically television, radio, sound recordings and the web. The primary sources of the photographic medium are movies. There is the media source traditional to ancient societies, which is oral, beating of drum, lighting fire, making representation, drawing diagrams and the use of the town crier. John (2001, p. 6). This lecture will be more concentrated on the modern media sources.

The print media has the characteristics of binding, regularity of content and timeliness. The technological basis of the print media is the printing press, which dates back to the 1440s. John (2001, p. 6). The print media is a permanent source of reference. Martin Luther, King Jnr. Stated that:

> *"No other agency can penetrate so deeply, abide so persistently witness so daringly and influence so irresistibly as the printed pages". Ebisinte, (2007).*

The electronic media which comprise television, radio, sound recording flash. Pioneering work on the electronic media began in 1800s but was however consolidated on the 20th century. Unlike print messages, television and radio messages disappear as soon as they are terminated, except they are stored in tapes and other devices.

The photographic media is both still and motion. It could be produced through chemical media could be stored in silver halide (negative) and photo album while digitally produced media could be stored in flash drive, diskettes, external hard drive, CD plates, etc.

Joseph R. Dominick defines the media thus:

> *In the broadcast sense of the word, medium is the channel through which a message travels from the course to the receiver,… sound and light waves are media of communication. Mass media are channels of communication which include not only the mechanical devices that transmit and sometimes store the message… but also the institutions that use these machines to transmit messages. When talk about the mass media of television, radio, news papers, magazines, sound recordings and films, we will be referring to the people, the polices, the organizations and the technology that go into producing and distributing mass communication. Dominick, (2002).*

The implication in Dominick's understanding of the media includes the structural framework, the actors, personnel and the medium through which the information is derived (got), used and retained.

Wolvin in considering the influence of the media says this:

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We are influenced by the media, radio, television, internet, magazine, news paper, film, etc. Radio and television play a role in the communication lives of almost every person. When you consider that the typical person spends four hour and fifteen minutes a day in front of a television set, you can appreciate the potential influence the media can have. Add to this, the popularity of the internet as a communication tool, and your awareness of the influence should increase even more. Wolvin, (1998).

The above excerpt demonstrates that the media has an influential potential in sharpening the way and manner of the thinking process and thought patterns of individual and groups. The media is capable of correcting certain believes and impressions the people hold in some matters. The media is an effective tool in modifying behaviour.

This era is assumed a media literate dispensation. It stands that people have developed the capacity to access information through the media, which essentially comprise the print, electronics, specifically the internet and general computer knowledge. Hybels, (2001).

The expansion of the media channels or courses as well as its input in fashioning the decision making process caught the interest of social scientist in 20th century such as Harold Laswell, who is cited in (Miller 2006; 258) said thus:

But when all allowances have been made and all extravagant estimates pared to the bone, the fact remains that propaganda is one of the most powerful instrumentalities in the modern world… in the great society it is no longer possible to fuse the waywardness of individuals in the furnace of the war dance; a newer and more subtler instrument must weld thousand and even millions of human beings into one amalgamated mass of hate and will and hope…. The name of this new hammer and anvil of social solidarity is propaganda. Miller, (2001).

Scholars have devised several theories and models in the study of the media. The theorists call the influence of the media in shaping the thoughts, opinions, attitudes and the general behaviour in the direction they prefer as the "magic bullet theory".

Auguste Comte, Herbet Spencer and Emile Durkheim in their investigation commended that those who are predisposed to the influence of the mass media propaganda in society have the following peculiarities; they are psychological isolated, impersonal and relatively farther from informal social obligations.

There are several other theories that explain the effect and outcome of the media. They put in to the right perspectives the media in relation to the behaviour of man. They are essentially, social cognitive theory, uses and gratification, media system dependency, etc. the social cognitive theory gives the relationship between behaviour and the media presentation, some instances are media violence and crime among youths, media performance and indecent dressing in society. Some persons access the media because of the gratifying programmes. An example is the use and gratification, in the nationwide NTA show "who want to be a millionaire". The media, "system dependency theory" is a tripartite framework where the media audience and society depend on each other to actualize their objective.

Another analytical categorization of the media are the models, which include, hot-cool model, entertainment-information model, elitist populist model and the pull-push model. The hot-cool media is made of the print which makes up the "hot" of the model. This is because one requires high concentration to make meaning out of the model. The "cool" generally consist of radio, movies and television programmes which are often presented with light music at the background.

The second model is the entertainment-information. It tells that the media is for the purpose of entertainment and information.

The elitist-populist model explains the socio cultural tensions that have arisen in society which broad segments of the population what they want. These class interests are visible in virtually every sphere of human social existence. It ranges from music, books, clothing's romance etc.

Vivian John posits that:

At one end of the continuum is serious media content that appeals to people who can be called elitists because they believe that the mass media have a responsibility to contribute to a better society and a retirement of the culture, regardless of whether the media attract large audiences. At the other end of the continuum are populist, who are entirely oriented to the market place populists believe that the media are at their best when they give people what they want.

The mass media have historical significance in shaping socio-cultural values and any media committed to this cause has the likeliness to ignore the largest possible audience.

The pull-push model describes the media as both passive and active. Certain media programmes or items could be very inviting, therefore activates your interest in the media, e.g. "Super Stories" on NTA. "Second Chance" or "Focus Nigeria" in AIT and "Sunrise Daily" in channels TV. The pull could either make the audience turn their interest to or away from the media. Some programmes that are highly treasured by some audience are rather offensive to others. "African Magic" in cable television appeal to some audience, especially women, however sports channels seem more delightful to others especially men and youths.

Some media analysts have observed that the media is biased against the mass of the people in their reportage and presentation.

Accordingly Vivian posits the following:

> *People form opinion from the information and interpretations to which they are exposed, which means that even news coverage has an element of persuasion. The media attempts to persuade, however are usually in editorials and commentaries whose persuasive purpose are obvious. Most news media separate materials designed to persuade from news. News papers package their opinion articles in an editorial section commentary on television is introduced as opinion.*

The media in a globalized world is to the peril of some societies and economic advantage of others. The media of the developed societies have exerted so much influence on the less developed countries of the world in the areas of culture integration, technology, values, commerce, etc. this obviously has truncated the national consciousness and development in the developing countries (Third world). What is then the role of free press in good governance, this is the subject of our discourse in the next section.

b) *The Role of Free Press in Good Governance and Human Development*

There exists a long tradition of liberal theorists from Milton through Locke and Madison to John Stuart Mill have argued that the existence of a unfettered and independent press within each nation is essential in the process of democratization by contributing towards the right of freedom of expression, thought and conscience, strengthening the responsiveness and accountability of governments to all citizens, and providing a pluralist platform and channel of political expression for a multiplicity of groups and interests. Shah, (1996); Amartya, (1999); Mc Quail, (2001) The guarantee of freedom of expression and information is recognized as a basic human right in the Universal Declaration of Human Rights adopted by the UN in 1948, the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights. The positive relationship between the growth of the free press and the process of democratization is thought to be reciprocal (Figure 1 displayed an analytical frame work).

The core claim is that, in the first stage, the initial transition from autocracy opens up the state control of the media to private ownership, diffuses access, and reduces official censorship and government control of information. The public thereby receives greater exposure to a wider variety of cultural products and ideas through access to multiple radio and TV channels, as well as the diffusion of new technologies such as the Internet and mobile telephones. Once media liberalization has commenced, in the second stage democratic consolidation and human development are strengthened where journalists in independent newspapers, radio and television stations facilitate greater transparency and accountability in governance, by serving in their watch-dog roles, as well as providing a civic forum for multiple voices in public debate, and highlighting social problems to inform the policy agenda. (Hyden; Leslie and Ogundimu, [eds] 2002).

Through this process, many observers emphasize that a free press is not just valuable for democracy, a matter widely acknowledged, but the final claim is that this process is also vital for human development. This perspective is exemplified by Amartya Sen's argument that political freedoms are linked to improved economic development outcomes and good governance in low- income countries by encouraging responsiveness to public concerns. The free press, Sen suggests, enhances the voice of poor people and generates more informed choices about economic needs. Amartya, (1999, pp. 629–640). James D. Wolfensen has earlier echoed these sentiments when he was the president of the World Bank: "A free press is not a luxury. A free press is at the absolute core of equitable development, because if you cannot enfranchise poor people, if they do not have a right to expression, if there is no searchlight on corruption and inequitable practices, you cannot build the public consensus needed to bring about change." Wolfeson, (1999, A39).

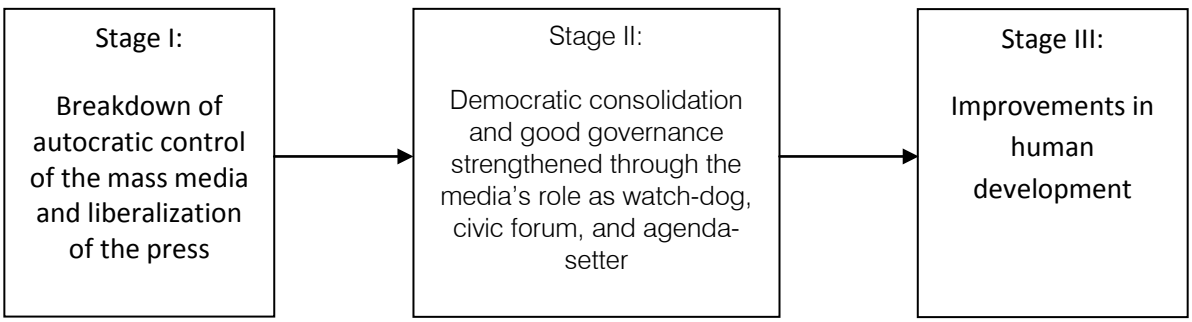

Figure 1 : Analytical framework

Source: Pippa Norris, May2006, pp12. (See also world Freedom Day) 4/19/2006 @ http://www.undp.org/governance/

More liberal media landscapes are therefore widely regarded as strengthening democratization and good governance directly, as well as human development indirectly. These claims are commonly heard among popular commentators, donor agencies, and the international community. But what systematic evidence supports these contentions? Despite historical case- studies focusing on the role of the press in specific countries and regions, it is somewhat surprising that relatively little comparative research has explored the systematic linkages in this process. Much existing research has also focused on assessing the impact of media access, such as the diffusion of newspaper readership or television viewership, rather than press freedom. Beyond paying lip service to the importance of political rights and civil liberties, work on democratic institutions has tended to emphasize constitutional arrangements, including the impact of electoral and party systems, federal or unitary states, and parliamentary or presidential executives, while neglecting to analyze comparable evidence for the role of the news media as part of the democratization process. Lijphart, (1999).

Accordingly, Mahatma Gandhi posits that:

> *One of the objects of a newspaper is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments; the third is fearlessly to expose popular defects. Yadav, (2001: 1–4)*

The above quote explains the importance of media or press in upholding freedom, and in expanding education and social reforms and change. Media can inform people giving them the voice to be heard and heeded to. Democracy requires that people should have the right to know the activities of the government, especially the decision of the government that affects their life, liberty and property. Information is important for people to make choices regarding their participation in the State, the market and the civil society. Sufficient information helps people to decide rationally and take the right course of action beneficial to them. Media-both print and electronic-thus helps people to know what is happening around the world, socialize them with the values of pluralism and equip them with the elements of modernity. By publicizing information the media also make public services more responsive to the people. These in my opinion and those who share the same view with me should be the focus of the media or press in shaping the post 2015 development agenda both in Nigeria and across the world.

A responsible press or media equally helps in socialization of people into citizenship, democratization of the State and political society, institutionalization of civic culture through unfettered flow of information, and rationalized use of power in social relations. In a nascent democracy like Nepal, media can also help voters with the contents of civic and political education and strengthen the culture of democracy. This is the reason political scientist Karl Deutsch has called that the system of communication proves a "nerve of the polity," and any breakdown of the nerve may cause dysfunctional impact in the performance of the polity causing governance decay. The Nigerian press is indeed very vibrant and has contributed immensely in the socialization process of the society, i.e. the June 12 Era, etc.

Realizing this the Article 16 of the Constitution of Nepal 1990 says:; every citizen shall have the right to demand and receive information on any matter of public importance". This implies that the right to information has become a human and constitutional right of the Nepalese people. The denial of this right can be contested under Article 23 of the constitution. The Supreme Court of Nepal under Article 88(2) holds tremendous power to enforce this right. This suggests that free access to information on matters of public importance has become a core of the governing process. In fact, the key element of good governance postulates three essential features: legitimacy; accountability and transparency-the last element being the core basis of media culture.

This article deals with three sections: The first section deals with the elements of good governance. The second section elaborates the right to information as a key to good governance in Nepal. The third one deals with the precondition for media freedom and media culture in Nepal. The last section draws a brief conclusion presenting a synthesis of the whole analysis.

Right to information as a key to good governance in Nepal as it is much more important in Nigeria today: Governance is conceived as the capacity of the state, the market and the civil society, media included, "to sustain itself under the constitutional setting" in order to move "towards avowed goals, reduce the inherent cleavages among social, cultural, ecological and political systems and communities, concert sound policies, mobilize resources and maintain the sufficient level of legitimacy, transparency, credibility and accountability before the public'". A governance that steers in normative order to achieve its goals-law and order, human and national security, voice and participation and the promotion of public goods is called good governance. The World Bank defines: “Good governance is epitomized by predictable and enlightened policy making; a bureaucracy imbued with a professional ethos; an executive arm of government accountable for its actions; a strong civil society participating in public affairs; and all behaving under the rule of law". "Transparency guarantees, including the right to disclosure, can thus be an important category of

instrumental freedom, limiting the powers of the State by providing the citizens the fundamental and human rights. Article 12 of the constitution guarantees the right to freedom. These freedoms include:

- Personal liberty under law of the land and abolition of capital punishment;
- Freedom of opinion and expression;
- Peaceful assembly;
- Freedom to form unions and organizations;
- Freedom to move and reside in any part of the country and
- Freedom to practice any occupation, profession, trade and industry.

But these freedoms do not limit the sovereignty of the State to legislate and act if they lead to chaos and anarchy and undermine:

- The sovereignty and integrity of the Kingdom of Nepal;
- Jeopardize social cohesion or harmony among the people;
- Facilitate into an act of sedition, defamation, contempt of court, instigation of offense, and
- Act contrary to decent public behavior or morality.

The State can formulate laws and acts to constitutionalize the behavior of citizen and help them in conforming to the ideals of constitutional patriotism implying a kind of balance between the public order and individual freedom. Similarly, Article 13 provides provisions for press and publication right so as to make the functioning of governance as transparent as possible. This is the way to bring the institutions of governance closer to the people and allowing them to make choices on public and political matters. Article 13-1 clearly stipulates that "*no news item, article or other reading material shall be censored*". Similarly, clause 2 and 3 provide that "'no press should be closed or seized for printing any news item, article or other reading materials", and "the registration of a newspaper or periodical shall not be canceled merely for publishing any news item, article or other reading material."

These provisions suggest that there is freedom to the press and publication. But again they are subjected to the vision, spirit and principles of the constitution. The arrangement tries to set equilibrium between the sovereignty of the people to enjoy their press and public right and the sovereignty of the state to make laws so that citizens do not violate the sovereignty and integrity of Nepal, create disharmony in the society and disobey the laws of the land. This suggests that rights are tied with duties and accountabilities.

Freedom of citizens, a free and responsible press, an independent judiciary and government's data information are the system which can be perceived to be the key to the enhancement of right to information and make the institutions of governance transparent and accountable. The right to information, guaranteed rights and press and publication right are three vital means for establishing "open society" visualized by the Nepalese constitution. An information Act must be brought out as soon as possible both to help in the way of freedom of information, enforce the accountability of information as well as to endow substance and quality in democratic debates so that citizens can monitor the day to day functioning of public institutions and actors. The right to information is closely tied to the accountability mechanism, for monitoring every action of government which leads to good governance, places the dominant actors of governance-the state, the market and civil society in balance, and monitors their performance as per the boundaries for action defined for them. Media thus perform vital tasks of informing, socializing, communicating and articulating the power of the public and preparing them for social transformation and good governance. It is our believe and conviction that the freedom of information (FOI) bill which was recently passed by the National Assembly and signed into law by the President of the Federal Republic of Nigeria shall bridge the gap in this situation, so far there are still indications that this in reality is not the case.

c) The Concept of Good Governance

The increasing priority accorded the concept of Good Governance in international discourses, on politics and development across the globe has resulted in constant definitions and redefinitions as to what really constitutes Good Governance Doornbos, (2003); Suchitra, (2004); Gisselguist, (2012). In perusing various literatures on the Good Governance concept, one could identify three strands of argument: The first strand is proponents of the Good Governance agenda that sees it as a worthy goal and a means through which to impact economic growth and development. Their argument is aptly captured thus: Those in poorly governed countries, it is argued, corrupt bureaucrats and politicians baldly hinder development efforts by stealing aid contributions or misdirecting them into unproductive activities. Less obvious but equally pernicious, governments that are not accountable to their citizens and with inefficient bureaucracies and weak institutions are unwilling or unable to formulate and implement pro-growth and pro-poor policies Gisseltquirt, (2012, p.1).

The second strand on the other hand is the opponents who raise strong challenges and argue the following points:

i. Use of Good Governance criteria in the allocation of foreign aids effectively introduces political conditionality's and imposes Western liberal models of democracy Nanda, (2006); NEPAD, (2007, p.3-4).
ii. Good Governance agenda is a poor guide for development policy. It is unrealistically long and not attuned to issues of sequencing and historical developments Grindle, (2004); Booths, (2011)

iii. Good Governance ignores institutional variations across well governed states Pitchett, (2004), Andrews, (2008).

The third stream of research raises questions about the causal effect of the quality of governance on various outcomes especially economic growth (Kurtz & Schrank, 2007a, 2007b; Khan, 2009). It is instructive to point out that current body of literature (Gerring 2001; Goertz, 2005; Keefer, 2009; Shirley, 2010; Gisselquirt, 2011) have argued that good governance is a poorly defined concept and that future research should rather focus on the disaggregated components of good governance. This in part informs the structure of the discourse of this work. A critical consideration of the conceived differences surrounding the concept goes to point out the increased significance attached to the concept in recent times and also underscores the utility of the good governance components in development index across the nations and in the aggregate well being of democratic governance of a country. But whether or not Nigeria falls into the category of good and better governance deserved to be explored. However, it is my candid opinion that Nigeria as it is currently requires a lot more to get there.

Despite the contentions surrounding the concept, Good Governance has assumed an entrenched position as an indicator for measuring the development progress of any nation as well as a central factor for development. As Oburota (2003) argued "Politically, people may disagree about the best means of achieving good governance, but they quite agreed that Good Governance is absolutely imperative for social and economic progress". That is why many nations are striving to be seen to offer good governance to its citizenry. All these provoke the question what then is Good Governance? To adjudge governance as good or bad we have to first of all define the concept of governance itself. Governance has been variously defined as "the management of society by the people" Albrow, (2001, p.151), and "the exercise of authority or control to manage a country's affairs and resources" Schneider, (1999, p. 7). See also Ibaba, & Okolo, (2009); Etekpe, & Okolo, (2011); Okolo & Inokoba (2014); Okolo & Akpkighe, (2014) respectively.

A synthesis of current definitions from monetary agencies such as World Bank, International development agencies such as United Nations Development Program (UNDP) and multilateral donors yields a more complex definition, which is set out in a 1997 UNDP policy document entitled "Governance for Sustainable Human Development" this way: The exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises of the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences. – UNDP. Governance within the context of this paper refers primarily to government in domestic politics and is simply defined as the manner in which power is exercised by governments in the management and distribution of a country's social and economic resources.

This suggests that governance can be good or bad depending on the method of the management of a country's resources. So what is Good Governance? We are going to first take the definition of the concept by World Bank, as the chief engineer of the Good Governance agenda. How does World Bank define this concept believed to be capable of engendering sustainable development and democracy in countries such as Nigeria? To the World Bank, Good Governance consists of a public service that is efficient, a judicial system that is reliable, and an administration that is accountable to the public (1989, 60). Accordingly, the key components of Good Governance include effectiveness and efficiency in public sector management, accountability and responsiveness of public officials to citizenry, rule of law and public access to information and transparency (World Bank, 1989, 1992, viii). Other International Monetary Agents defined the concept in similar way as World Bank did (See the definitions of ADB, 2008; EBRD, 2010; IADB, 2010). These definitions from the monetary agencies adopted the economic and management focused approach, whereas Multilateral Donor Agencies such as the UNDP (OECD, UNN, UNESCO) and others adopted political issues approach in their definitions. The definitions of these Donor Agencies are expertly captured in this United Nations Development Programme's (UNDP, 2002) definition of Good Governance as striving for: Rule of law, transparency, participation, equity, effectiveness and efficiency, accountability, and strategic vision in the exercise of political, economic, and administrative authority.(UNDP, 2002, p.2). See also Dunu, (2013, Pp. 178 – 184).

This definition more than the previous definitions captured what has become identified by scholars as the elements or components of Good Governance .These components of Good Governance are; participation, consensus oriented, rule of law, transparency, accountability, responsiveness, efficiency and effectiveness. These elements are also eloquently captured in this definition of the concept by Organization for Economic Co-operation and Development (OECD). According to OECD, Good Governance has eight major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making (OECD, 2000). All these attributes are instruments of effective governance in the sense that

they provide necessary anchor for the act of governance.

The Nigerian constitution in Section16 (2) acknowledged that the essence of the Nigerian state is to promote the common good. The implication of this is clearly explained by Eboh (2003) this way; "The common good stands in opposition to the good of rulers or of a ruling group. It implies that every individual, no matter how high or low, has a duty to share in promoting the welfare of the community as well as a right to benefit from that welfare". Common implies that the "good" is all inclusive. In essence, the common good cannot exclude or exempt any section of the population. If any section of the population is in fact excluded from participating in the life of the community, even at a minimal level, then that is a contradiction to the concept of the common good, Eboh, (2003).

The above explanations capture the view of Ogundiya (2010) in his analysis of Good Governance as he maintains that Governance is good provided it is able to achieve the desired end of the state defined in terms of justice, equity, protection of life and property, enhanced participation, preservation of the rule of law and improved living standard of the population. Similarly, Nigeria's Vision 2020 document defined Good Governance as a means of accountability in all its ramifications. It also means the rule of law and an unfettered judiciary; that is freedom of expression and choice in political association. Good governance means transparency, equity and honesty in public office.

What is deducible from this plethora of definitions is that Good Governance, as a concept, is applicable to all sections of society such as the government, legislature, judiciary, media/press, private sector, corporate sector, trade unions (NUJ) and of course non-government organizations (NGOs). The implication here is that, it is only when all these and other various sections of society conduct their affairs in a socially responsible manner that the objective of achieving larger good of the largest number of people in society can be achieved, Madhav, (2007). See also Okolo, & Inokoba, (2014). In this regards the free and unfettered press becomes increasingly and absolutely pivotal.

Remarkably, it is only when we appraise the manner in which the affairs of a country are run that we can discern which government is good or bad or which has been a success or failure. Failure of governance implies that those in political control have not properly managed the economy and other social institutions. According to World Bank (1992) bad governance has many features, among which are: failure to make a clear separation between what is public and what is private, hence a tendency to divert public resources for private gain; failure to establish a predictable framework for law and government behaviour in a manner that is conducive to development, or arbitrariness in the application of rules and laws; excessive rules, regulations, licensing requirements, etc, which impede the functioning of markets and encourage rent-seeking; priorities that are inconsistent with development, thus, resulting in a misallocation of resources and excessively narrow base for, or non-transparencies, decision-making.

However, looking at the rate of unemployment, diversion of resources by public officials, escalating rate of corruption (Nigeria continues to be reported among the most corrupt countries of the world), tribal cum ethnic clashes, abuse of office by public officials, looting of public finances, kidnapping, increased rate of cybercrimes and other types of crimes there is every reason to believe that Good Governance is still a mirage as far as the Nigerian polity is concerned. Ogundiya (2010) expressed similar views as he emphasizes that, the problem of Nigerian development is both a symptom and consequence of the absence of Good Governance. Since Good Governance implies the exercise of power in a responsible and responsive manner that will ensure greater good, how can the media contribute, and why is the media seen as a critical sector in this regard? See Okolo, (2014, Pp. 91 - 99).

d) The Role of Free Press in Strengthening Good Governance and Human Development

The important role free press or media plays in fostering an environment of good governance needs hardly be emphasized. As the watchdog and interpreter of public issues and events, the media has a special role in every society. In our information-based society the media has a disproportionately visible and influential role.

Democracy cannot exist in the absence of a free press. This is because democracy is based on popular will and popular opinion depends on the public's awareness and knowledge. It is the mass media that brings up, promotes and propagates public awareness.

The main responsibility of the press is to provide comprehensive, analytical and factual news and opinion to the people on everyday issues and events of popular concern. To fulfill its duty and responsibility, the press must work according to the fundamental principles of professional ethics, as well as norms and values of journalism.

- *Press freedom*

Democracy can neither be sustainable nor strong without a free press. On the other hand, press freedom will not be possible without democracy. Therefore, the mass media and journalists must be committed to democracy. For this, the press must be perpetually involved in the establishment and promotion of a democratic culture.

➢ *Right to information and freedom of expression*

The press must remain ever vigilant to protect and enforce people's freedom of thought and expression and citizens' right to all information relating to the various aspects of their life and future. The fact that access to information is a citizen's right must be taken to heart, and information must be presented in a simple and palatable manner. Right to information is inherent in democratic functioning and a pre-condition for good governance and the realization of all other human rights, including education and health care. The main objectives should be the promotion of transparency and accountability in governance so as to minimize corruption and inefficiency in public office and to ensure the public's participation in governance and decision making.

➢ *Accuracy and objectivity*

Media must be credible and trustworthy. Trust is the most valuable asset for any media. Once lost, it cannot be earned back. It is for this reason that all media must uphold their principles to provide accurate and factual news and other programmes.

➢ *Impartiality and diversity of opinion*

It is not enough that news presented by the media is factual. It must also be impartial, covering a diversity of opinions. Both sides of the argument must get due consideration. Voices and opinions of all the groups, ethnicities, languages, political and religious beliefs within the society must be included.

➢ *Fairness*

Broadcasters must not harbour any prejudices for or against any individual that is mentioned in the news item. Hidden recording can be carried out without permission only if there is adequate basis in the public interest to do so.

➢ *Violence, crime and anti-social behaviour*

Broadcast organizations must protect the society from crime, criminals and criminal activities. Any material that promotes violence and ethnic, religious, linguistic and other kinds of hatred must not be broadcast. Programmes that glorify violence and crime, or turning criminals into heroes, must not be allowed. However, programmes that clearly spell out the consequences of violence and provide moral education should be encouraged. News and other programmes that promote ethnic, religious, regional and cultural goodwill in the society should also be encouraged.

➢ *Protection of the underprivileged*

Issues, opinions and expressions regarding women, minority communities, neglected groups, elderly people, disabled and backward classes must be given the opportunity to be aired. To guarantee the rights and interests of the marginalized and underprivileged communities, content should be rights-oriented.

➢ *Political impartiality*

Broadcasters must understand the difference between politics in general and party politics. Media should not be a vehicle, or used as an advocate for any political party or ideology. Public and political issues should be clearly understood, analyzed and presented in an impartial manner.

➢ *Elections*

During elections / political campaigns, equal time slots or opportunity must be allocated to each of the legitimate political parties and candidates. In the course of elections, messages that encourage goodwill and harmony among all the ethnic groups, religions, genders, cultures, languages, regions and communities should be broadcast.

Media plays the role of watch-dog in reporting corruption, complacency and negligence. In a changing, competitive landscape, compliance to good governance has never been taken so seriously, as people demand more transparency from both the government and private sectors. Responsible practices from government, universal principles on human rights and the fight against corruption have assumed great importance. A flourishing media sector enables people to make informed decisions, becoming more effective participants in society's development.

In a developing country like Nepal, the relatively low level of literacy, the variations in topography and limited access to electricity all make radio the most suitable medium to satisfy the information needs of the masses. A robust, independent and pluralistic media environment is crucial for good governance and the overall development of the country. Freedom of expression, free flow of information and fair reporting without government and commercial influences are accelerators of development.

The rapid growth of private independent radio and TV broadcasters and the changing role of the state broadcasters are creating a more congenial atmosphere for the effective functioning of the media as a major player in good governance. Nepal has gone through phases of armed conflict, struggle for democracy, abolition of the monarchy and the tumultuous events leading to the declaration of a Federal Democratic Republic, and the media has been a vital player at every juncture. The issue of good governance assumes the highest priority in an atmosphere of chaos, instability, insecurity and lack of accountability. These are also characteristics of the absence of a legitimate, democratically elected government. During times of political upheaval when attempts were made to stifle press freedom, the media has stood up and played the role of watch-dog and ombudsman, upholding "public interest" above everything else.

The roles of the media, including the social media, in promoting Good Governance are being

recognized by the governments and policy- makers in various countries. In the UK, a "Survey of Policy Opinion on Governance and the Media" published by BBC (2009) reveals that although the emphasis on Good Governance in the development agenda is questionable, "there seems to be increasing recognition of the media's role in governance in the development community. There are also some indicators that media are being more recognized by the policy-makers as having a central role in development." The role of the media in promoting Good Governance is obvious. All aspects of Good Governance are facilitated by the existence of a strong, pluralistic and independent media within the society (UNESCO, 2005). Fortunately, the Nigerian press/media terrain to a large extent could be adjudged to qualify.

The significance of the press/media in how well or not governance can be executed in the society is best captured in this more than a century argument by Joseph Pulitzer, in 1904. Pulitzer summarized his views thus: Our Republic and its press will rise or fall together. An able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular government is a sham and a mockery. A cynical, mercenary, demagogic press will produce in time a people as base as itself. The power to mould the future of the Republic will be in the hands of the journalists of future generations (1904).

What Pulitzer was essentially saying here is that the press/media can make or break a society by the way and manner it functions. In our information- based society the media has a disproportionately visible and influential role in fostering an environment where Good Governance will flourish. As the watchdog, agenda setter of public discourses and interpreter of public issues and events, the media have a special role in governance.

The main responsibility of the press/media as is widely acknowledged is to provide comprehensive, analytical and factual news and opinion to the people on everyday issues and events of popular concern. Indeed this is the critical link between the functioning of the media and Good Governance. The press/media are the only institution with the capacity to allow and facilitate regular checks and assessment by the population of the activities of government and assist in bringing public concern and voices into the open by providing a platform for public discussion. In fact the nature and character of the media greatly impacts on the governance process in any society. For it is only when the media report, monitor, investigate and criticize the public administration's policies and actions as well as inform and educate the citizens can good governance be enthroned. We are now going to examine the concrete ways the media can contribute to good governance within the ambit of the eight elements of good governance identified earlier in this paper.

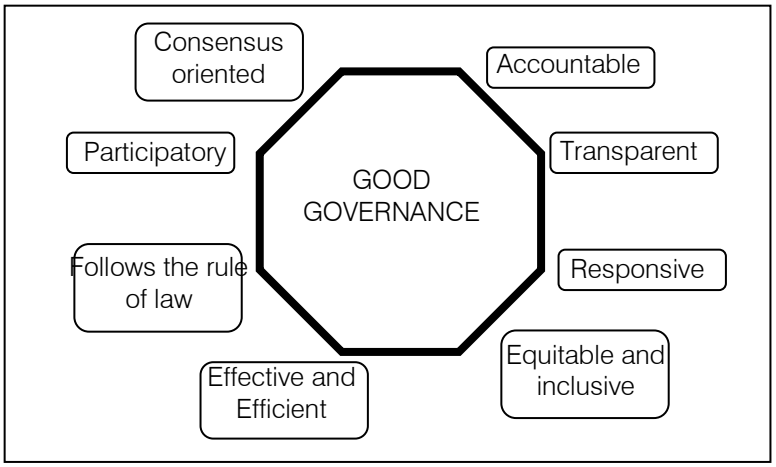

Figure 2 : Elements Of Good Governance And Media's Role

Source: UNESCO, 2005 Adapted and modified by Okolo, 20014 (see also Dunu I. 2013, pp. 185)

As was discussed earlier, there are eight commonly identified elements of Good Governance; it is within these elements and others that I shall now interrogate the relationship between press/media and Good Governance as displayed in Figure 2.

- *Transparency*

Transparency is often regarded as the openness of institutions, that is, the degree to wish outsiders can monitor and evaluate the actions of insiders. The purpose of transparency is to allow citizens, to hold institutions, governments and markets accountable for their policies and performances. Transparency is also defined as official business conducted in such a way that substantive and procedural information is available to and broadly understandable by, people and groups in society, subject to reasonable limits protecting security and privacy Bellver & Kaufmann, (2005). Radio can play an

active role in promoting transparency in governance. By reporting on issues with adequate research and objectivity, radio ensures that citizens are well informed and that their right to information is protected.

➢ *Participation*

The issue of inclusiveness has featured in many debates and discussions. One of the causes of the Maoist insurgency was inadequate representation of the marginalized groups in the decision making process. Radio can ensure the greater participation of marginalized groups, ethic communities, language minorities and the underprivileged. Nepal has witnessed the greater participation of such groups through a process of empowerment brought about by responsible media.

Participation as an element of Good Governance implies the wide involvement of ordinary citizens in decision making and governance. According to UNESCO (2005) document, participation is a crucial element for Good Governance in two ways: Participation by citizens in decision making process allows greater transparency and can help ensure that political decisions are adapted to the needs of the people and affected by them. Second, participation is important for democratic legitimacy, which depends on the investment people have as citizens in their own governing. Citizen participation in the act of governance is engendered by the media and other intermediate institutions. However as widely acknowledged, the role of the media in fostering participation is vital as the media reports on aspects of the decision making process and give stakeholders a voice in the process. The media enables participation in two ways; as a facilitator providing platforms for the citizens to have accurate and sufficient information that help citizens make rational and informed decisions and take the right course of action beneficial to them: As a feedback mechanism, the media provide the means for the citizens to register their feelings and express their assent and dissent concerning issues. The media as the primary intermediaries of information supply the information that other sectors of the society need to participate effectively.

➢ *Accountability*

Media also ensures accountability through adherence to generally accepted standards. While giving a voice to the voiceless, the media has also played its role in holding those in power accountable for their actions. Accountability is a key requirement of Good Governance. Not only governmental institutions but also the private sector and civil society organizations must be accountable to the public and to their institutional stakeholders. Who is accountable to whom varies, depending on whether decisions or actions taken are internal or external to an organization or institution. In general government is accountable to the society.

Accountability points to the responsibility of judging the practices of public administrators to determine their effectiveness in the execution of their public functions. It is a process of taking responsibility for decisions and actions by government and public service organizations, private sector companies, civil society institutions and organizations and by the individuals working in these institutions, firms and organizations. Accountability also includes how these individuals and institutions are managing public funds, and whether there is fairness and performance in all aspects in accordance with agreed rules, contracts, standards and fair and accurate reporting on performance results vis-à-vis mandated roles and/or plans Jobarteh, (2012). One of the strengths of accountability is that it reduces the possibility of corruption in the polity to an almost zero level by reducing abuse of power by the State Accountability includes various kinds of internal and external mechanism of scrutiny.

The free press/media represent one of the major mechanisms of accountability. Holding government accountable therefore is a constitutional requirement of the Nigerian media. Access to information is the cornerstone of accountability. It is only when the public are provided with the relevant and adequate information can they hold those in authority accountable for their actions and inactions. As the main purveyor of information the media owe a sacred duty to the public to provide them with truthful and regular information. It is in recognition of this significant role of the media that the Nigerian government passed the FOI bill into law. As a recent study eloquently puts it, "Without information, there is no accountability. Information is power and the more people who posses it, the more power is distributed. The degree to which a media is independent is the degree to which it can perform an effective public watchdog function of “Public Affairs”. Pope, (2000, p.119-120).For the media to facilitate accountability in governance journalists should know the four fundamental questions about accountability:

i. Who has an obligation?
ii. What commitments or standards are supposed to be met?
iii. What will show whether the commitments and standards have been met?
iv. What are the consequences for misconduct or poor performance? Jobarteh, (2012).

Accountability and transparency have been identified as twin concepts that are necessary pre-conditions for just governance and democracy which helps to ensure that government power is exercised according to the will of the citizenry. Given the above explanations, when can we say that there is just or fair governance in a country such a Nigeria? Answer to this question, could be viewed from these four perspectives:

- When the State uses investments and scarce resources reasonably for the benefit of all citizens, and most especially for the most disadvantaged.
- When the State operates by a clear set of rules, which are considered just and fair by most citizens.
- When the State treats citizens with respect and inform citizens about what it is doing or not doing
- When the State allows citizens to choose who leads them and have a say about what they need and want from government Jobarteh, (2012; paraphrased).

➢ *Stability*

Radio serves as a unifying force by providing a forum for informed debates in times of political conflict. Informed and responsible citizens contribute to the stability of the country.

➢ *Fairness*

The essential quality of the press is to be fair and just. Radio in Nepal has always attempted to be fair in reporting events during times of upheaval and political uncertainty.

➢ *Human rights*

Respect for human rights is the hallmark of every democracy. In a country like Nepal, there have been instances of violation of human rights by opposing sides in a conflict. Radio has been quick to report on human rights violations on numerous occasions. Ensuring human rights leads to good governance. Radio is the most effective tool to draw the attention of the concerned authorities as well as the international community to human rights issues. All the above contribute to ensuring effective government, and radio lies at the heart of good governance. Observance of the requirements for neutrality, upholding balance and impartiality, educating the public on governance issues and exposing malpractices should be the guiding principles for radio broadcasters.

There have been times when the media in Nepal resorted to sensationalism in reporting crime and criminal activities. Reporting ethnic or religious riots must be undertaken with caution, always keeping ethical values in mind. It is the duty of the media to be balanced and also to ensure that the consequences of the reporting do not disturb law and order or ferment unrest. Desperate attempts by competing media to win audiences through sensational reporting should not be encouraged.

In conclusion, I wish to stress the need for radio to evolve in order to fulfill its function to ensure good governance. Radio must promote and help enforce human rights more assertively. It must strive to maintain its role as a public watchdog. The media should neither doctor facts nor resort to reporting along partisan lines. It cannot be expected to report anything but the truth. It is precisely this role -- and the responsibility that comes with it -- which radio needs to assume. It is a development which the government needs to accept, and further facilitate.

➢ *Rule of law*

The rule of law is the foundation of Good Governance. Good governance requires fair legal frameworks that are enforced impartially. The rule of law can be understood both as a set of practices which allow the law to perform a mediating role between various stake holders in society and as a normative standard invoked by members of society that demonstrate their assent to this principle (UNESCO, 2005). Indeed the obvious demonstration of absence of Good Governance is the presence of arbitrariness and disregard for the rule of law. The rule of law is best seen as an ideal where impartial enforcement of laws is enthroned in every sector of the society. In the enforcement of the rule of law the media again plays a crucial role as the sector of the society most able to promote vigilance towards the rule of law, through fostering investigative journalism, promoting the openness of all the institutions that are relevant in ensuring that the rule of law is respected in the society. Citizens must understand for instance that the rule of law consists of a set of institutions, laws and practices that are established to prevent the arbitrary exercise of power.

➢ *Responsiveness*

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe, by responding to the grievances, needs and aspirations of the citizens. As we mentioned earlier, the media act as a feedback mechanism where the public's are given the opportunity to bring their plight to the notice of the State. Often times than not the media do this through various media campaigns that serve to remind the State of their obligations to the public. The vigilance and capacity of the media are particularly important in tracking the availability and accessibility of services to various segments of the public

➢ *Consensus oriented*

There are several actors as well as many view points in a given society. Good Governance requires mediation of the different interests in society to reach a broad consensus in society on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long-term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community. It is in this area that the core functions of the media are experienced- The provision of information, education and enlightenment to the citizenry; so that they can

effectively make informed decisions and take actions resulting thereof in the good of the society.

In doing this, the media help to mobilize the citizen to achieve development programmes of the country. The mass media's role in mobilizing Nigerians for the 2006 census could be seen as a good case in point. The census took place between 21st and 27th of March, 2006. The media's role was apparent before, during and after the head count. The National Population Census (NPC) collaborated with the mass media to "ensure a full-scale participation in the census exercise" Ojete, (2008). One way the media provided meaningful information and education on the census is via editorials, news, headlines and other journalistic genres (Ojete, Ibid).

- *Equity and inclusiveness*

A society's well being depends on ensuring that all its members feel that they have a stake in it and not excluded from the mainstream of society. This requires all groups, particularly the most vulnerable, to have opportunities to improve and/or maintain their well being. The media's role in this regard is very simple-giving balanced and fair coverage to all issues in a manner that diverse voices and opinions will be represented. It is perhaps in this function that the Nigerian media have been greatly faulted. The Nigerian media have been accused of prejudice in reporting and treating issues of public concern.

- *Effectiveness and efficiency*

Good Governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of Good Governance also covers the sustainable use of natural resources and the protection of the environment. Effectiveness and efficiency means that state institutions are functioning optimally according to the rule of law, thus tremendously enhancing the overall effectiveness of government. Although the media cannot in themselves alone ensure effectiveness and efficiency of all the institution in the society. However, the media can help keep the different institutions and administrators on their toes by readily and regularly reporting cases of inefficiency and other related vices in the system. This way inefficiency in public institutions, organizations and government will be greatly reduced. The media through development of media campaigns, documentaries, editorial comments and other platforms of criticism can spotlight institutions and practices that are inefficient and unproductive.

This lecture has demonstrated how the Nigerian press/media have contributed in trying to enthrone Good Governance in the country. Critics of the media/press points to the gaps and areas of weakness which this paper acknowledged, however it is the submission of this paper that the media/press plays an indispensible role in ensuring good governance in any society and that the Nigerian press/media in this regard could be adjudged as having performed fairly well even though there are still gaps which other researchers are encouraged to fill.

e) Concluding Remarks

Despite acknowledging the various ways the Nigerian press/media have attempted to foster good governance, the fact remains that there are still critical issues that the Nigerian press/media need to deal with. Some of the more obvious and vital once will be highlighted. Nigerian journalists, oftentimes tend to over censor themselves for fear of reprisals, particularly the public media. This leads to factual inexactitude. A situation where information are often incomplete or deliberately down played or some facts missing. Some of the other challenges for the Nigerian media/press include: the issue of poor remuneration for the journalists; the polarization of the media along North - South divide that pervades Nigerian politics; ownership influence that affects media stand on issues, the private media, as well as the public media have often been accused of reflecting the ideological and political considerations of the proprietors ;the issue of protocol journalism in which highly placed public officials are deliberately shielded from embarrassing questions and investigations from the media in return for some consideration for the media Jibo, (2003); extreme commercialization of news; partisan, biased or ethnic reporting of events Olukotun, (2000) and the practice of black mail journalism. See Dunu, (2013).

To what extent does free and independent media contribute to good governance and what are the consequences for human development? This lecture examined the results of a cross-sectional comparison analysing the impact of press freedom on multiple indicators of democracy and good governance. The paper seeks to explain and argue that, where the media/press functions effectively as a watch-dog, a civic forum and an agenda-setter, it helps to promote democracy, good governance and thus human development. Findings support claims that the free press is important, both intrinsically and instrumentally, as a major component of democracy, good governance and human development.

The growth of the free press and the process of democratization are thought to enhance each other. It is claimed that:

i. The transition from autocracy opens up the media to private ownership, broadens access to the media, and reduces government control of information;
ii. The media then directly contributes to democratization and governance by serving as a watch-dog (promoting accountability and

transparency), a civic forum (allowing multiple voices to be heard) and an agenda-setter (highlighting social problems);

iii. Political freedoms and a free press contribute indirectly to human development by encouraging government responsiveness to public concerns. There is however a lack of evidence and relatively little comparative research to support these claims. Furthermore, most existing research focuses on the impact of media access, rather than on that of press freedom.

The paper finds that the free press is significantly associated with levels of democracy, irrespective of the indicator of democracy used. (The impact of media/press liberalization was the most consistent predictor of democracy, and was even stronger than wealth.) Further, countries where much of the public has access to the free press usually have greater political stability, rule of law, government efficiency in the policy process, regulatory quality, and the least corruption. Other findings relate to the global distribution of press freedom includes:

- There are significant regional variations, with the highest levels of press freedom found in industrialized nations (including the most affluent economies and longest-standing democracies). Latin America and South-East Asia enjoy relatively high levels of press freedom, while Arab states appear to have the lowest levels.
- There are also considerable variations within Latin America, Africa and Asia. Some countries with low levels of economic development have high levels of press freedom such as Benin and Mali. See Noris, (2006, Pp 1 – 26).

A free and independent media is integral to the process of democratisation and good governance and ultimately to human development. This lecture attempted to highlight both the direct and indirect benefits of the free press on human development, other studies indicate the plausibility of the assumption that improvements in democracy and good governance contribute indirectly to poverty alleviation by making governments more accountable and responsive to need.

Good Governance requires the understanding and participation of every member of the society. However, it has been observed that for governance to be just and democratic, leaders more than any other sector of the society need to use their power responsibly and for the greater good. Systems and procedures need to be in place that impose restraints on power and encourage government officials to act in the public's best interests. The media/press, their roles, channels and contents, are considered powerful enough to make this achievement a reality. The Nigerian media/press as exemplified by the NUJ have been in the vanguard for the promotion and sustenance of the democracy we now have in the country, even the struggle for independence was pioneered and fought for by the Nigerian media/press. But a great number of existing media channels in the country need to take up the responsibility of adequately engendering better governance in our democratic polity. As the institution mandated to hold those in governance accountable, the Nigerian media/press can effectively achieve this if they apply the basic principles of patriotism, accountability, transparency and objectivity in the discharge of their duties as well as uphold the sanctity of truth and fairness at all times.

I thank you all, once again for given the opportunity to share ideas with you and may God bless you for your kind attention please.

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La Liberte, Les Philosophes Et La Politique

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Résumé- Le présent article met exergue les isotopiesphilosophèmes qui constituent la sphère idéique des préoccupations des philosophes/intellectuels. L'auteur examine l'antinomie philosophe engagé-philosophe libre penseur comme axe structurel de la construction des mentalités sociales. L'idée motrice de l'article est la primordialité du patrimoine de valeurs spirituelles sur la matérialité et la fugacité des choses triviales. L'auteur complaint la pauvreté d'esprit des pays où il n'y a quasiment pas eu de tradition philosophiques et, de surcroit, le régime soviétique a balayé toute conscience identitaire.

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I. Introduction

La liberté - combien de définitions n'en citons-nous ? -reste dans la perception de tous comme un grand mot, même si la notion est tout à fait aporétique et opaque au moment où nous essayons de la définir, que soit de manière succincte ou exhaustive. Un mot grand, emblématique, symbolique, mobilisateur, martyrisant, béatifiant, extravagant, vengeant, victorieux, conquérant, dévastateur, manipulateur, moralisateur, salutaire, génial… La série d'épithètes et d'isotopies ne s'arrête pas là. Chaque définitionest l'expression concentrée de l'expérience humaine, cristallisée dans des chroniques, œuvres littéraires appartenant à un patrimoine universel inestimable.

La liberté ne peut pas être expliquée par le prisme du métaphysique, pétrifié sur un segment de temps, la liberté peut et doit être expliquée par le prisme de l'infini, étendu en trois dimensions: espace, temps, volume; en d'autres termes – territoire, histoire, homme. Car, on fera la distinction entre la liberté redonnée au gladiateur dans la Rome Antique, la liberté de la pensée face à l'inquisition médiévale, la liberté conquise par les révolutionnaires français en 1789 d'un côté, et la libre circulation des personnes, capitaux et marchandises dans l'Union Européenne.

« La notion de liberté a connu une évolution dans le temps. L'histoire des civilisations nous enseigne que la liberté spirituelle est beaucoup plus précieuse que la liberté matérielle. Un peuple est d'autant plus libre s'il est cultivé et lettré. La liberté spirituelle délivre l'économie d'un État. Cette réalité est décrite de manière détaillée par Voltaire dans ses « Lettres philosophiques », publiées lors de son exil en Grande-Bretagne.

La philosophie et les sciences anglaises sont à l'avant-garde du mouvement intellectuel. L'Anglais s'affirme un type d'homme nouveau: libre en ses Pensées comme en ses actions, ne craignant rien en ce monde ni dans l'autre » - « Filosofia şi ştiinţele englezeşti sunt în avangarda mişcării intelectuale. Englezul se afirmă drept un tip de om nou: liber atât în gândirile sale, cât şi în acţiuni, neavând frică de nimic nici pe lumea aceasta, nici în cealaltă » (Voltaire, 2010, p.12).

Voltaire s'émerveille de la Bourse de Londres, dont on dit que c'est une place plus respectable que certaines cours royales. On peut y rencontrer des députés de toutes nationalités et confessions religieuses, qui se réunissent au nom du bien et de l'unité des hommes. La liberté dans un pays où il existe trente confessions religieuses génère la tolérance. Voilàune is otopie importante de la liberté. Sans tolérance il n'y a pas de liberté – c'est la conclusion à laquelle aboutit Voltaire dans son « Traité sur la tolérance », écrit et publié suite à l'affaire Calas de 1762 en France, conclusion absolument moderne, en consonance parfaite avec les valeurs générales humaines, institutionnalisées par de nombreuses résolutions et recommandations des organismes européens. Il est grand temps de reconnaître que Voltaire a jeté un regard visionnaire sur la réussite du parcours britannique vers la liberté institutionnalisée beaucoup plus tôt, glorifiant ainsi une autre vertu des Anglais telle que le courage. Bien sûr, d'autres peuples en ont fait preuve, mais ils n'ont pas pu obtenir la liberté convoitée (nous pensons aux Roumains de Bessarabie, dont on ne peut pas dire qu'ils sont libres autant spirituellement que matériellement):

« Il en a coûté sans doute pour établir la liberté en Angleterre; c'est dans des mers de sang qu'on a noyé l'idole du pouvoir despotique; mais les Anglais ne croient point avoir acheté trop cher de bonnes lois. Les autres nationsn'ont pas eu moins de troubles, n'ont pas versé moins de sang qu'eux; mais ce sang qu'elles ont répandu pour la cause de leur liberté n'a fait que cimenter leur servitude». (Voltaire, 2010, p.56).

Le désir de ne pas être contraint dans la pensée, dans l'action et les doléances tiennent de notre essence humaine. La liberté comme notion est inconcevable en dehors de l'Homme. L'Homme est le générateur de la liberté, son concepteur et la pensée nous amène au péché originel. Plus encore, la Femme a osé désobéir à Dieu, ayant goûté au fruit interdit. Même si c'est le Serpent qui à induit la Femme en tentation, nous avons l'appui du texte sacré pour affirmer que la Femme est à l'origine de la liberté, si primitive qu'elle soit – renfermée dans la membrane olfactive-gustative du fruit interdit. Les préoccupations telluriques du

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Créateur centré sur son Œuvre ont stigmatisé y inclus la malédiction d'Adam et Eve, qui ont été condamnés à une existence pleine de privations matérielles, mais - surtout – finie dans l'espace et dans le temps. Ayant été privés d'immortalité, Adam et Eve, et à travers eux, l'humanité tout entière, a concentré tous ses espoirs sur ce qui apparemment semble pouvoir offrir le bonheur – la Liberté. Le volume sémantique du mot Liberté ne peut aucunement être réduit à la définition proposée par le Trésor de la Langue Française : État de celui, de ce qui n'est pas soumis à une ou des contrainte(s) externe(s) ; à propos de l'homme (de ce qui le concerne) en tant qu'individu particulier ou en tant que membre d'une société politique. Condition de celui, de ce qui n'est pas soumis à la puissance contraignante d'autrui… (TLF, http://atilf.atilf.fr/dendien/scripts/tlfiv5/visusel.exe?11;s=3108411240;r=1;nat=; sol=0).

S'il faut étendre cette définition, il est nécessaire de faire une précision très importante qui peut prendre la forme d'une signification générique: valeur (état, nécessité) existentielle consciente de l'Homme en vertu de laquelle celui-ci pense et agit à son gré, ou, selon la définition de Rousseau, il s'agirait d'une liberté naturelle:

La liberté naturelle c'est le droit illimité à tout ce que l'homme peut atteindre. (Rousseau, p.61).

Cette définition donne une signification générique d'une pureté native, qui ne prend pas en considération les contraintes d'une société organisée politiquement. Lesdites contraintes viennent avec l'institutionnalisation de l'État et du droit. L'instrument unique qui permet l'élaboration d'un système de normes et de lois est par excellence la langue. Ceux qui se sont adonnés à la mise en forme linguistique des lois de la nature et de l'homme sont les Philosophes de l'Antiquité. Aristote et Platon ont inauguré la vie des doctrines et des polémiques philosophiques. Les vérités écrites par eux ont été reprises, perfectionnées, détaillées par les intellectuels de la modernité.

Les intellectuels, les tribuns, les érudits, les philosophes constituent les élites des société organisées institutionnellement.Ils comprennent le mieux l'essence des choses, transmettent la lumière de la sagesse, prédisent la marche des événements grâce à un esprit visionnaire. En termes contemporains il s'agirait des intellectuels.Les intellectuels sont les dépositaires par excellence de la liberté de pensée.Rien n'est plus libre que la pensée, la raison. Rien ne vous rend plus libre que la vérité, découverte et disséminée sans contraintes ou persécutions. La vérité suprême c'est Dieu, et la vérité sur l'existentialité humaine est à la portée du philosophe-intellectuel, du savant, capable de voir au–delà des apparences impénétrables et de discerner les antinomies conflictuelles, porteuses de mort et destruction des antinomies dialectiques, créatrices de progrès et de développement.

Un Philosophe dans le sens originel du mot est l'homme qui de manière désintéressée cherche la vérité, étant guidé uniquement par sa vocation. En fait, si l'on doit croire les propos de Hegel, les vrais philosophes n'existent plus, il existe plutôt des systèmes de pensée. Les philosophes de l'Antiquité ont largement contribué à la promotion des sciences et des arts afin de perpétuer l'esprit créateur, de fortifier ainsi la Cité, de pérenniser la civilisation, faisant de la place à l'édification des sociétés futures.Parfois l'histoire nous offre des exemples d'intolérance de la Cité vis-à-vis de la liberté de la pensée philosophique, l'exemple le plus illustre étant celui de Socrate, le philosophe–martyr de la Grèce antique. Socrate n'a pas écrit sa doctrine, il l'a vécue.

« Socrate, qui approcha le plus près de la connaissance du Créateur, en porta la peine et mourut martyr de la Divinité[…] on lui imputait d'inspirer aux jeunes gens des maximes contre la religion et le gouvernement […] il eut d'abord deux cent vingt voix pour lui. Le tribunal des Cinq-cents possédait deux cent vingt philosophes: c'est beaucoup, je doute qu'on les trouve ailleurs.». (Voltaire, 2009, p.62).

De toute façon, les 220 voix des philosophes qui ont voté contre la peine de mort pour Socrate n'ont pas suffi à son salut. Des noms notoires de l'histoire de la pensée scientifique philosophique qui ont payé de leur vie la liberté de pensée nous reviennent dans la mémoire : l'éditeur érudit et le traducteur français du XVI siècle Étienne Dolet, le traducteur de la Bible de l'hébreu, du grec et du latin vers le français l'olivétain Secondo Lancelotti, le traducteur de la Bible de l'hébreu, du grec et du latin vers l'anglais Tyndale, le philosophe réformateur Jan Huss – eux ainsi que beaucoup d'autres sont morts par empoisonnement ou ont été condamnés à mort ayant été brûlés publiquement. La liste pourrait être complétée. Ils ont été annihilés physiquement, mais la vérité ne peut pas être brûlée sur le bûcher, ni empoisonnée.

Les Cités tout au long de l'histoire ont su « se procurer » des philosophes afin de justifier les guerres, les croisades ou les constructions. Préoccupés à la source par l'interprétation de la Bible et à prôner la divinité au sein du peuple, les philosophes de vocation cèdent la place aux philosophes rémunérés. « Les philosophes rémunérés » des Cités, suivant les termes de Hegel, sont les précurseurs des intellectuels modernes, engagés politiquement. Les sages de la Cour, les conseillers, les représentants des « Lumières » qui entouraient les Césars, les monarques, les princes, les tsars ou les dictateurs ont exercé une influence déterminante sur la marche de l'histoire, en domptant souvent la fureur des tyrans, en éteignant le bûcher des guerres, mais aussi en contribuant à l'épanouissement ou la chute des empires. L'humanité a parcouru un long chemin pour aboutir à l'affirmation de la liberté en tant que valeur existentielle suprême et de la vérité en tant que victoire de la raison sur l'obscurantisme. Est-ce que l'engagement du philosophe pour de l'argent aux services de la Cité est une corruption intellectuelle? Le

monde idéique du philosophe tissu de vérités pensées, de vérités absolues, dégrade le moment où lui, le philosophe, dévie de ces vérités, en livrant aux services de la Cité ou de la Politique des pseudo-vérités, dites ou écrites sur la trivialité de l'écriture corrompue.

Graphe 1 : Le cercle de valeurs du philosophe intellectuel.

La Politique a envahi les sociétés antiques et modernes, devenant un phénomène supranational, issu des doctrines et idées philosophiques, mises au service des hommes du pouvoir. Dans ce sens, le philosophe-intellectuel a deux options : attendre de manière contemplative la succession naturelle ou aléatoire des événements dans la société, en restant dans son espace idéique isolé de la matérialité sociale, ou influencer directement la succession événementielle dans la société en s'impliquant activement dans la sphère politique.

Depuis « Le Prince » de Machiavel jusqu'aux mémoires des ex-chefs d'État, traités de politologie, d'ores et déjà le philosophe-intellectuel n'est plus appelé à discerner entre le bien et le mal, à conseiller les hommes du pouvoir, mais à s'impliquer dans les affaires de l'État. L'implication et l'engagement ferme semblent être deux concepts différents. L'implication de l'intellectuel dans les affaires de l'État vient de son désir incontournable de changer le monde, de le perfectionner, de le rendre plus beau, plus juste, plus correct. Faire changer le monde afin de le perfectionner est un désidératif noble qui découle de l'existence même du philosophe, de sa raison d'être. L'engagement politique du philosophe suppose parfois la corruption intellectuelle et n'exclut pas la trahison par lui de ses propres convictions, principes et vérités, au nom de la promotion d'une pseudo-vérité ou d'un mensonge par transfert d'autorité vers la sphère politique. Il existe des voix qui soutiennent que l'implication des philosophes dans la politique est inutile:

«Les intellectuels n'ont rien à chercher sur la même scène que les politiciens. Ce n'est pas leur affaire de se mêler du vacarme du siècle, de se dissiper sur la place publique, s'abandonner à une problématique contingente. Laisser de côté la vie contemplative, remplacer les grandes questions de l'esprit par des anxiétés triviales et conjoncturelles signifie trahir la condition d'intellectuel, scarifier le talent qui t'a été donné. » (Plesu, 2007, p.70).

Mais les préceptes « laïques » ne se font pas entendre chez les philosophes. Comme à l'époque de l'Antiquité, les philosophes veulent participer aux affaires de l'État, étant inspirés par le conflit biblique irréconciliable: le combat entre le Bien et le Mal. Le motif du crime fratricide Cain – Abel constitue la pierre philosophale de toutes les doctrines. Les philosophes sont toujours là, au devoir, la plume ou le discours prêt à convaincre, à agir, à déterminer et à remporter la victoire.

Comme on le sait, l'arme parfaite des philosophes pour affirmer la vérité et faire l'éloge de la liberté de la pensée a depuis toujours été et continue d'être le mot. La Langue est une révélation quand elle se trouve au service du philosophe-intellectuel libre, mais devient une malédiction dans le cas du philosophe-intellectuel engagé politiquement. Gabriel Liiecanu va encore plus loin en affirmant que la langue est:

« Un instrument divin qui se pervertit rien qu'en devenant utilité humaine… l'Homme est libre, mais aussi déchu, il peut également bien utiliser la langue soit dans le sens de la vérité, soit dans le sens du mensonge. » (Liiceanu, 2006, p.12).

Graphe 2 : Les isotopies du discours philosophique.

La langue est un pouvoir, la langue et le pouvoir sont inséparables, j'ai essayé de le démontrer dans certains de mes articles (Gutu, 2010, p.17-32). La langue de bois des régimes totalitaires communistes a servi d'apanage indispensable à la construction d'une société basée sur le mensonge et la haine. Le mensonge et la haine, conçus et organisés intellectuellement, en commençant par la fin du XIX siècle, institutionnalisés au début du XX-e siècle pour manipuler les peuples et les nations, se sont avérés les piliers de la doctrine communiste. Dans un régime totalitaire communiste:

« …le mensonge devient la colonne vertébrale du Mal, car il est utilisé non pas contre un ennemi externe, qui menace l'existence de ta propre collectivité, mais contre cette même collectivité. » (Liiceanu, 2006, p.61).

Le mensonge prôné au sein du peuple, élevé au rang de vérité, diffusé avec insistance durant des années laisse des séquelles inguérissables pour des années dans la mentalité collective, en la privant de mémoire historique et d'essence identitaire. C'est justement cela qui nous arrive, à nous les Roumains de Bessarabie, suite à la dictature communiste durant plus de cinquante ans.

« Jamais on ne corrompt un peuple, mais souvent on le trompe, et c'est alors seulement qu'il parait vouloir ce qui est mal.». (Rousseau, 2010, p.68)

Liiceanu propose aussi une classification des intellectuels des régimes totalitaires-communistes : les intellectuels qui ont cru le mensonge de l'idéologie communiste, mais qui ont reconnu leur erreur (les réveillés), les intellectuels qui ont cru le mensonge communiste jusqu'à leur dernière heure, même au moment où ils ont été fusillés par leurs collègues de parti (les hypnotisés), la troisième catégorie – ce sont les intellectuels qui ont su dès le début que l'idéologie communiste était un mensonge, mais qui ont continué de la propager, ils mentaient consciemment, c'est avec

eux qu'on a construit le communisme à l'échelle planétaire. (Liiceanu, 2006, pp.64-66).

Les régimes totalitaires-communistes, ayant comme idéologues Marx et Lénine, qui ont été eux-mêmes transis de haine contre le genre humain (Marx pour le fait qu'il n'a jamais réussi à obtenir aucune chaire dans les universités allemandes, Lénine pour le fait qu'il avait été renvoyé de l'université et n'a jamais terminé ses études), ont institutionnalisé la haine de classe, en la redirigeant contre les intellectuels, même si c'étaient ces derniers qui avaient été les concepteurs de la révolution russe. Il n'y a jamais eu dans l'histoire des sociétés une machine plus bestiale de destruction des intellectuels que la machine du communisme. Les intellectuels ont été annihilés physiquement par extermination ou travaux dans les goulags, ou ont été réduits au silence par un asservissement moral-spirituel. Résultat – toute une littérature héritée, engagée idéologiquement (Gutu, 2009), dépourvue d'essence et créativité.

« Du moment où la haine est dotée d'idéologie, elle devient organisée intellectuellement. … En organisant intellectuellement la haine, l'idéologie déforme fatalement la vérité et cultive systématiquement la haine. L'esprit plongé dans l'obscurité de la haine ne peut pas avoir accès à la vérité, mais seulement au mensonge, au faux. » (Liiceanu, 2007, pp. 66-67).

Graphe 3 : La typologie des philosophes intellectuels dans la société moderne.

Dans les époques des grandes monarchies les victimes des disgrâces du peuple étaient toujours les rois, les reines. Le déferlement des révolutions européennes, inauguré par la révolution française, a fait tomber les têtes du haut des pyramides monarchiques, une réplique de cette tradition ayant été la fin des Ceausescu en Roumanie en décembre 1989. Or, la fragilité dont ont fait preuve les intellectuels engagés idéologiquement à l'époque totalitaire communiste a généré une sorte d'intolérance à l'égard des intellectuels, des philosophes, des poètes. On incrimine les intellectuels poir leur manque de caractère, de conséquence, de pouvoir et de volonté, comme le mentionne Andrei Plesu:

« Une grande partie de la population autochtone est plutôt ennuyée par les intellectuels. Ils sont en général des quidams qu'on ne comprend pas, et qui ne te comprennent pas, des personnages sur lesquels on ne peut pas compter, des inutiles qui devraient s'occuper de leurs affaires s'ils peuvent toutefois servir à quelque chose. » (Plesu, 2007, p.67)

Ces attitudes persistent, les échecs et les ratés étant attribués aux intellectuels, leur contribution étant négligée et sous-appréciée surtout lors des moments de crise dans l'histoire. Dans le cas présent nous faisons référence aux événements de 1989 qui ont eu lieu en République de Moldavie, quand une véritable révolution des poètes a eu lieu, ces derniers ayant été à la source du mouvement de renaissance nationale. Il est vrai que la révolution a été volée par les ex-nomenklaturistes KGB-istes, qui sont venus au pouvoir pour s'enrichir et non pas pour rompre définitivement avec le passé communiste. Les intellectuels ont servi leur patrie en 1989 en République de Moldavie, mais ce n'était pas de leur compétence de remettre le jeune État sur les rails de la technocratie. Les intellectuels ont accompli une mission très importante : ils ont apporté la liberté de la pensée, ils ont initié la réforme dans l'éducation et la culture, fait qui a donné des fruits – l'apparition des générations jeunes, qui, à leur tour, ont contribué à la chute du régime néo-communiste en avril 2009 en déclenchant la Révolution Twitter.

La démocratisation des sociétés post-totalitaires a placé au premier plan l'activisme et l'engagement politique des intellectuels. La République de Moldavie est une démocratie émergente, certains phénomènes socio-politiques sont absolument nouveaux pour notre société. Les habitudes comportementales des intellectuels de la République de Moldavie sont souvent alourdies par la mémoire des engagements idéologiques du passé. La vénalité basée exclusivement sur le facteur matériel, « sélectionne » parmi les intellectuels les plus adaptables et pragmatiques, le plus souvent le phénomène étant répandu dans les milieu journalistiques, plus rarement parmi les poètes, savants, ces derniers étant des moralistes-philosophes du style traditionnel défini par Hegel. Sans eux – les philosophes-moralistes – qui resteront à jamais en dehors du politique, qui veillent à l'intégrité spirituelle de la nation, aucun État n'a d'avenir: « Sans la prestation des moralists l'humanité se déboussole. Un monde dans lequel personne ne prend le parti du spirituel, dans lequel personne ne défend les valeurs de bonhomie, justesse et ne les oppose pas "aux passions laïques", c'est un monde qui glisse vers le matériel le plus pur et finit dans la bestialité.» (Liiceanu, 2007, p.102).

Les intellectuels vénaux qui ont toujours été engagés politiquement, indifféremment de la couleur du pouvoir, sont définis par Gabriel Liiceanu comme des « flagorneurs ». Ceux-ci se complaisent à se nommer intellectuels, ont des prétendues ambitions politiques, s'adjugent des performances intellectuelles dont ils ne sont pas les auteurs, s'auto-pilotent dans les milieux publics, en réussissant aisément à se procurer la faveur du pouvoir en recourant à des prévarications financières et à la corruption. De véritables caméléons, lesdits quidams se portent très bien, reniant sans difficulté les principes pour lesquels ils plaidaient hier au profit des principes, même contraires, qui conviennent au pouvoir aujourd'hui.

« Le mot "flagorneur" est attribué à l'individu qui, après avoir déçu ses prochains par sa prestation dans le communisme, au lieu de se retirer de la scène sociale avec un air d'excuse, persiste, métamorphosé,

pour décevoir ses prochains une seconde fois. Il s'agit, donc, du flagorneur auto-potentialisé historiquement. Il se trouve en ce moment, après avoir salutairement atteint l'autre rive, dans les plus importantes institutions de l'État et dans les points cardinaux de la société roumaine. » (Liiceanu, 2007, p.150).

L'intégrité des principes est la condition sine qua non pour celui qui veut se nommer intellectuel. Cette intégrité, dans son expression pure, peut être sauvegardée en dehors du politique. La lucidité et l'équidistance, tant nécessaires pour générer des jugements de valeur, restent intactes dans le cas des raisonnements formulés avec détachement, le philosophe se guidant uniquement sur sa propre expérience, sagesse et intuition visionnaire. L'élan de l'intellectuel pour intervenir dans le changement du monde, le rendre meilleur par son implication dans la politique, est freiné par la trivialité ludique et spéculatrice des intrigues et arrangements d'ordre conjoncturel. La décision de persévérer dépend du type de tempérament, même si les intellectuels le plus souvent sont des mélancoliques. La réalité nous confirme que les intellectuels ne renoncent jamais à leur mission de faire changer le monde et acceptent leur rôle de conseillers publics ou « de l'ombre » de ceux qui se trouvent au pouvoir.

« Entre l'intellectuel qui participe directement au jeu politique et celui qui l'ignore, le dernier temps on voit de plus en plus souvent l'intellectuel qui influence la marche des événements, restant en dehors de son vacarme » (Plesu, 2007, p.72).

L'exemple de l'Académie Française en est une preuve éloquente. Les prises d'attitude vis-à-vis des événements ou phénomènes importants de la société française sont prophétiques et font partie du patrimoine inaliénable de la France. André Malraux a été et reste encore l'intellectuel numéro un de la France: écrivain, orateur, ministre dans différentes positions gouvernementales, il s'est engagé politiquement en faveur de la culture. Un grand pays a donné à l'humanité de grands intellectuels. Ce qu'écrivait jadis Voltaire à propos de la liberté conquise par les Anglais est parfaitement valable pour les Français. Voltaire a vanté l'expérience des Anglais par ressentiment à l'égard de la monarchie française qui l'avait exilé. Nous, nous sommes suffisamment réalistes pour apprécier le sacrifice de la France et son apport substantiel à la marche victorieuse de la Liberté au XIX-e siècle : Chateaubriand, Benjamin Constant, Balzac, Georges Sand, Gustave Flaubert, Charles Baudelaire, Pierre Larousse, Victor Hugo – voilà quelques noms de résonance des philosophes-intellectuels français qui ont œuvré à la gloire de l'État français.

L'espace roumain a donné à l'universalité des noms notoires d'intellectuels qui ont délivré les esprits, le plus renommé étant Mihai Eminescu, le symbole de la liberté du génie créateur, poète, tribun, publiciste. Mircea Eliade, Constantin Noica, Titu Maiorescu, Emil Cioran, Bogdan Petriceicu-Haşdeu, nés en Bessarabie – voici seulement quelsues noms d'intellectuels roumains qui réellement ont contribué au changement du monde dans les temps dans lesquels ils ont vécu et activé. Sans doute, les historiographes de l'avenir vont répertorier les noms de philosophes roumains contemporains qui veillent de l'extérieur ou de l'intérieur du politique au développement correct de la société.

Les philosophes constituent la richesse la plus grande d'un pays, ils prônent les valeurs idéalistes suprêmes: la liberté de la pensée et la vérité. Les philosophes-intellectuels d'un pays jettent les fondements de la raison d'être – du sens existentiel de celui-ci -, en lui assurant les prémisses nécessaires à sa modernisation. Un État sans philosophie et sans philosophes reste une entité géo-politique en dérive, incapable de déterminer le présent et l'avenir. Dites-moi qui sont vos philosophes et je vous dirai quel est votre pays.

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Realization of Health Right in Nigeria: A Case for Judicial Activism

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Abstract- Nigeria adopts the dualist approach to international human right laws and it remains one of the countries with the highest medical-related death rates in the world. The nonenforceability of member state's minimum core obligation and, the non-justiciability of ECSRs in Nigeria remains seemingly, a major impediment to the realization of health right in Nigeria thus; Nigeria ranks 158 out of 177 countries on the Human Development Index. Eleanor D. Kinney suggested approaches that can advance recognition and implementation of human right to health in the US however, Kinney wittingly excluded justiciability approach to the implementation and realization of right to health given that once a legislation is enacted and full recognition is given to this class of right, policies and programs will be established and adequate funding will become essential. The present position in Nigeria is different. There are laws – international and regional treaties already domesticated. These laws are focused on the realization of health rights in Nigeria. The paper therefore, contends that given the judicial activism evidences from India, South Africa and its effects on the implementation and accessibility of health care right in these countries, the setbacks in realizing health right in Nigeria is a challenge to the Nigerian Judiciary.

Keywords: *health care, health rights and judicial activism.*

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Keywords: health care, health rights and judicial activism.

> *'…The very notion of entrenching rights is to provide a basic framework of constitutional regard for every human being. It is not the duty of courts to side with one section of society against another…But there is every reason why it should be incumbent on the courts to see to it that basic respect for the dignity of every person is maintained at all times. That is why we have fundamental rights.'* [1]

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[1] Sachs A., 'The Judicial Enforcement of Socio-Economic Rights: The Grootboom Case' 140 in Jones, Peris and Kristian Stokke (eds), Democratising Development: The politics of socio-economic rights in South Africa (Martinus Nijhoff Leiden 2005).

I. Introduction

The right to health is the right to the highest attainable standard of health and it is recognized in at least 115 constitutions.[2] Therefore the adequate access to health care, such as the primary health care, sexual health care, medical and pharmaceutical technologies, and healthy environment are complimentary to any other efforts put in place by the government to ensure that its citizenry is virile and healthy. The right was first reflected in the World Health Organization constitution in 1946[3] and was later reiterated in the 1978 Declaration of *Alma Ata*. Right to health was also adopted by the World Health Assembly in 1998.[4] According to International Convention on Economic and Social Cultural Rights,[5] and the General Comment No. 14,[6] every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity as health is a fundamental human right. Health is indispensable for the exercise of other human rights and the realization of the right to health may be pursued through various complementary approaches. These approaches include formulation of health policies, the implementation of health programs as developed by the World Health Organisation (WHO), or the adoption of specific legal instruments for instance the domestication of international treaties which provides for the health rights. In Nigeria, the legal authority for human right to health and health care are international and regional treaties.

Office of the U.N. High Comm'n for Human Rights, *The Right to Health: Fact Sheet No. 31* 10 (2008), accessed online on 24th May, 2013 at http://www.ohchr.org/Documents/Publications/Fact sheet31 .pdf. The right to health is an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. See for example, CESCR General Comment No. 14, (E/C. 12/2000/4), para. 8., ICJ, *Rights to Health Database, Preliminary Proposal, 2002,* quoted by the Special Rapporteur on the Right to Health of the Commission on Human Rights in his first report, par.20: E/CN. 4/2003/58: http://www. unhchr. ch/Huridocda/Huridoca.nsf/0/9854302995c2c86fc1256cec005a18d7/$ FILE/G0310979.pdf.

[3] See generally the Basic Document, 43rd Edition, Geneva, World Health Organization, 2001.

[4] See Article 25(1) of UDHR, Article 12(1) and (2) of the icescr, cerd of 1963, the cedan of 1979 and the crc of 1989.

[5] (Article12).

[6] (11/08/00)(E/C.12/200/4) (Paragraph 1)

These International and Regional treaties define the content of the international human right to health in Nigeria and, also impose on Nigerian government as signatory of the international and regional treaties, the duties to assure health care services, promote and protect the health of its population.[7]

II. Health Right in Nigeria

The source of human rights generally can be traced back to the Magna Carta of 1215, and the Bill of Rights 1689,[8] and the right to health is a relatively new legal concept, borrowed from the aspirational terms of international human rights instruments and of evolving philosophies of distributive justice.[9] In Nigeria, the health rights can be said to date back to the acceptance of Sir Henry Willink's Commission's recommendations on human constitutional conference which formed the basis for the Chapter III of the Independence Constitution of 1960 and the Republican Constitution of 1963.[10] According to Babalola, the beginning of health schemes in Nigeria is traceable to the emergence of the National Development Plan in the 60's through the 70's which made provisions geared towards integrating health with other social services.[11] In 1988, the government introduced National Health Policy and Strategic Framework which was aimed at achieving Health for all Nigerians. In overall, the policy seeks to improve the health of all Nigerians through devising a sustainable Health System based on focusing emphasis on Primary Health Care (PHC) that promotes, protective, preventive, restores and rehabilitates, as well as ensure a socially and productive society for all individuals[12] This policy was subsequently revised in 2004. [13] Under the extant Constitution of the Federal Republic of Nigeria, 1999 (As Amended by the Third Alteration) all Socio-economic Rights are classified under the Fundamental Objectives and Directive Principles of State Policy and enshrined in Chapter II of the Constitution.[14] The right to health has long been treated as a "second generation right," under International Human Rights Treaties and Conventions, and this implies that it is not enforceable at the national level except ratified and domesticated at the national level.[15] Nigeria is a party to major international human rights treaties such as the International Covenant on Civil and Political Rights (the "ICCPR"),[16] the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"),[17] the International Convention on the Elimination of All Forms of Racial Discrimination (the "ICERD"),[18] the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"),[19] the Convention on the Elimination of All Forms of Discrimination Against Women (the "CEDAW")[20] and the Convention on the Rights of the Child (the "CRC").[21] At the regional level, the goal of Africa Health Strategy is to contribute to Africa's socio-economic development by improving the health of its people and by ensuring access to essential health care for all Africans, especially the poorest and most marginalized, by 2015.[22] Therefore, the African Union

[7] See generally *Eleanor D. K.* Recognition of the International Human Right to Health and Health Care in the United States accessed online on 12th February, 2013 at ……..According to Lawson-Dada, F., on financing healthcare in Nigeria, the right to health care in Nigeria is derived primarily from regional and international laws and instruments ratified by Nigerian Government which foists on the government as a state, the responsibility to ensure the implementation of access to health care particularly in view of the objectives of various international instruments which serve as the platform for protecting health care rights in Nigeria. See generally Lawson-Dada, F., "Healthcare financing in Nigeria: A legal discourse" (2009) 3 *University of Ado-Ekiti Law Journal* 81 – 110 at 85,

[8] Oputa, C.A., Human Rights in the Political and Legal Culture of Nigeria, 2nd Ndigbe Memorial Lectures, Nigerian Law Publications Ltd., Lagos (1998) 38 – 39.

[9] Katharine G. Young & Julieta Lemaitre, *Vol. 26* (2013) The Comparative Fortunes of the Right to Health: Two Tales of Justiciability in Colombia and South Africa *Harvard Human Rights Journal* pp. 180

[10] See generally the provision of the Constitution of the Federal Republic of Nigeria, 1960, 1963 etc.

[11] Afe Babalola, 2011 Health Scheme Development, being a paper presented on 3rd February, 2011 at the University Teaching Hospital, Ibadan at the SIDCAIN Diabetes and Hypertension Conference.

[12] Hodo B. Riman, & Emmanuel S. Akpan, (2010) Causality between Poverty, Health Expenditure and Health Status: Evidence from Nigeria using VECM *European Journal of Economics, Finance and Administrative Sciences - Issue 27 (2010) 121*

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[14] See Okpara, O., *Human Rights Law & Practice in Nigeria* (Enugu; Chenglo Ltd, 2005) 61; Section 17 provides for the social objectives of the Nigerian State and makes it an obligation for government to direct its policies towards ensuring adequate medical and health facilities for all persons; ensure that the health, safety and welfare of all persons in employment are not endangered or abused. Clearly the constitutional provisions under sections 33 and 35 recognized that the rights to life, sanctity of the human person and human dignity are necessarily connected to physical and mental health of persons. A combined reading of Sections 17, 33 and 35 shows the recognition of right to health includes the provision of affordable, available, adequate, qualitative and accessible health care facilities and services by all, especially women's reproductive health rights without any discrimination.

[15] Ajigboye O., "An Overview of the Legal Framework of Health Rights in Nigeria" 1(2013) *ABUAD Law Journal*, Afe Babalola University Press, pp.

[16] Ratified October, 29 1993.

[17] Ratified October 29, 1993.

[18] Ratified January 4, 1969.

[19] Ratified July 28, 2001.

[20] Ratified July 13, 1985.

[21] Ratified April 19, 1991. Nigeria has also signed the two optional protocols related to this Convention: The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, both signed on September 8, 2000.

[22] See generally, the Africa Health Strategy: 2007 – 2015, at the THIRD SESSION OF THE AFRICAN UNION CONFERENCE OF MINISTERS OF HEALTH, JOHANNESBURG, SOUTH AFRICA on "*Strengthening of Health Systems for Equity and Development in Africa"* 9– 13 APRIL 2007 CAMH/MIN/5(III).

has an ample provision for health rights in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (the "African Charter Act").[23] The effect of this however remains impugned as there continues to be a decline in the implementation and realization of health rights in Nigeria although Nigeria is a signatory to several international and regional treaties.

a) Approaches to realization of health rights internationally

The promotion of human rights and the fight against poverty and other socio- economic rights is now a major concern for the United Nations. This reflects in the organization's mandate and the approaches in place for the realization of these rights particularly health rights. One of the widely accepted approach to realize health right is the rights-based approach commonly referred to as the "traditional" or "generational" approach. A rights-based approach to development is based on the framework of rights and obligations. Human rights-based approach determines the relationship between individuals, groups with valid claims (rights-holders) and, State and non-state actors with correlative obligations. It works towards strengthening the capacities of rights-holders to make their claims, and of the states to meet their obligations."[24] This approach is now generally accepted as the capacity of citizenry to claim for ESCRs is curtailed as this category of rights are generally treated as non-justiciable.[25] Human Right is a basic principle that is accepted with wide consensus. It is also applicable to all democracies across the globe. Indeed some scholars see the entrenchment of these rights as a means of protecting the minorities from the majorities thus forming the core basis for a democratic society while others are of the view that by the Social Contract theory. In recent times, other scholars see it from the perspective of welfare entitlement to the citizenry.[26] Thus, each of these scholars holds different view on the approach to realizing human rights. Human Rights approach is the philosophical perception and theory of how to ensure the achievement of human rights goals. Primarily, the human right based approach is concerned with the realization of rights through the promotion, protection, of rights. This approach essentially seeks to address violations after they have occurred or address human rights issues before they occur. It is a reactive and proactive measure to ensure that human rights goals are achieved.[27] Simply put, rights approach to realization of rights means making sure that citizens can hold governments to accountable for their human rights obligations.[28] Another approach is the Essential Approach. This approach to realizing human rights is based on the essence of the right sought to be protected and proponents of this approach set up a normative investigation into why we value economic and social rights and which of their aspects should be most important. Thus it raises the need for a minimum standard particularly on states obligation towards achieving the set human right goals. This approach is helpful in ensuring that advocates are able to articulate the minimum core of rights through vocabularies that draw attention to the important ethical justifications for economic and social rights. This approach is consistent with the insight that rights belong to a category of legal entitlement that is, for special reasons, immune to the vagaries of short-term politics or cost-benefit decision making.[29] Young argued that the strongest example of the Essence Approach views the right's core content as an embodiment of "the intrinsic value of each human right which is essential for the very existence of that right as a human right."[30] Oliyide on the other hand however argued that rights impose positive obligations on the government to provide conducive and decent living condition without which the negative rights i.e. the civil and political rights cannot be enjoyed. The non-justiciable class however are also fundamental to human existence and survival. He concluded by suggesting that the judiciary should, in the future improve on its gesture by making even more progressive and encouraging pronouncements appertaining to Human Rights than it has done in the past.[31]

III. The Judiciary and Escrs in Nigeria

Judicial systems vary from one country to another depending on the constitutional and political

[23] Now contained in Chapter 10, Laws of the Federation 1990.

[24] United Nations Development Programme. 2003. "The Human Rights Based Approach to Development: Towards a Common Understanding Among the UN Agencies." New York: UNDP.

[25] A Fair deal: Justiciability of ESC rights – Human Rights Features, 58th Session of the CHR, April 2002. Available online at: http://www.hrdc.net/sahrdc/hrfchr58/Issue3.htm#A%20fair%20deal.

[26] C. Schneider, 'The Constitutional Protection of Rights in Dworkin's and Habermas' Theories of Democracy' (2000) UCL Jurisprudence Review 101; See also the discussions of W. Forbath, Social Rights, courts and Constitutional Democracy – Poverty and Welfare Rights in the United State [2006] accessed online on 22nd May, 2013 at http://papers.ssrn.com/so13/papers.cfm?abstract_id=845924.

[27] *See* Applying a Human Rights-Based Approach to Development Cooperation And Programming: A UNDP Capacity Development Resource, Capacity Development Group Bureau for Development Policy UNDP, September 2006 accessed on 25th May, 2013 at http://www.hurilink.org/tools/Applying_a_HR_approach_to_UNDP_Technical_Cooperation--unr_revision.pdf

[28] "Realising Human Rights for Poor People." DFID, October 2000, pg. 7)

[29] Katharine G. Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' *The Yale Journal Of International Law* [Vol. 33: 113] p.138

[30] Fons Coomans, *In Search of the Core Content of the Right to Education*, *in* EXPLORING THE CORE CONTENT OF ECONOMIC AND SOCIAL RIGHTS: SOUTH AFRICAN AND INTERNATIONAL PERSPECTIVES 159, 167 (Danie Brand & Sage Russell eds., 2002)

[31] Oliyide O. & Awolowo O. Meaning, Nature and Evolution of Rights in Nigeria (2006) *Rights* (Thorne-of-Grace Limited Publishers, Lagos) 1–9, 8.

context in such country, the substantive content of the applicable legislations, the capacity of enforcing institutions and the solidity of the foundation of the rule of law.[32] Therefore, it is paramount that governments in ensuring realization of human rights particularly the *ESCRs* must consider putting an independent judicial system put in place within their polity. The judiciary should in turn ensure that there are no large backlogs of cases which can erode individual's and property rights, and in return stifle the ultimate goals of the constitution.[33] Judicial systems should discourage further obstacles capable of possibly ensuring the violation of human rights of the citizens which is now argued favourably as violation of fundamental human right on its own.[34] It is imperative to infer that such judicial systems must not only be independent, but also be practically positive in ensuring the fulfillment of such rights which the entire system must protect. By virtue of the provisions of Section 6 of the constitution, the Courts have the powers to adjudicate on matters before it. The Constitution as the grundnorm also provides for the powers of the courts to interprete the provisions of the laws thus the courts wields the powers which enables it to state the position of the extant laws. One of the legal disputes that stare at the courts therefore, is the extent of realization and implementation of the *ESCRs* on one hand and the enforcement of this class of rights b the citizenry. Mubangizi having carried out a comparative evaluation of the constitutional protection of Socio-economic Rights in South Africa, Ghana, Uganda, and Namibia, concluded that though many African constitutions tend to recognize civil and political rights, these constitutions generally disregard the socio-economic rights while some include these rights as "Directive Principles of States Policy". The necessary legal issue is therefore the justiciability of this class of rights in such countries.[35] Chapter II of the Constitution of the Federal Republic of Nigeria provides for the Fundamental Objectives and Directives Principles of State Policy.[36]

Section 14 and 17 provides as follows:

The legal effect of these Sections is different from the legal implications of the provisions of chapter four of the same constitution as the latter is cloth with a different status – justiciability by which the citizenry can approach the courts for a remedy. This is not so in respect of the former. This is because according to Oluduro, there is "no trigger mechanism" in which case there is no clause conferring jurisdiction on any courts to hear and determine claims of infringement of these rights.[37] Incidentally, at the regional level, Nigeria became a party to the African Charter on Human and People's Rights (Africa Charter), which was domesticated and now forms part of the laws in Nigeria.[38] Advocate of judicial activism therefore had urged that extrinsic meanings be used, even when the intrinsic meanings of the provision of the laws are known.[39] At the core of the concept of judicial activism at any rate is the notion that in deciding a case judges (particularly those of the appellate court) may, or some advocate must, reform the law if the existing rules or

[32] Bank, W. & Paper, T., 1999. WTP430 Court Performance around the World, Accessed online on 12th January, 2013 at http://siteresources.worldbank.org/brazilinporextn/Resources/3817166-1185895645304/4044168118640425924 3/14pub_br176.pdf

[33] According to Armando Castelar Pinheiro, in Brazil, for example, it has been estimated that inefficient courts reduce investment by 10 percent, and employment by 9 percent. *See* Armando Castelar Pinheiro, The Hidden Costs of Judicial Inefficiency: General Concepts and Estimates for Brazil, Address at the seminar "Reformuas Judiciales en Amnerica Latina: Avances y Obstaculos para el Nuevo Siglo," Confederaci6n Excelencia en la Justicia, Santafe de Bogota, Columbia (July 29, 1998) (transcript on file with author).

[34] The absence of independent and impartial tribunals is considered a violation of human rights. *See, e. g.,* International Covenant on Civil and Political Rights, Art. 14, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *reprinted in 13* I.L.M. 50 (1974) (establishing the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of criminal charges or of rights and obligations in any suit at law); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6, *signed Nov.* 4, 1950, *entered intoforce* Sept. 3, 1953, 213 U.N.T.S. 221, E.T.S. 5 ("In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."); American Convention on Human Rights, art. 8, *signed Nov.* 22, 1969, *entered into force* July 18, 1978, O.A.S.T.S. 36, O.A.S. Off. Rec. OEA/Ser. L/V/I1.23, doc.21, rev.6 (1979), *reprinted in* 9 I.L.M. 673 (1970) ("Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.").

[35] John Cantius Mubangizi 2Afr.J.Legal Stud. 1 (2006) 1 - 19

[36] See sections 14 and 17 of the Constitution of the Federal Republic of Nigeria, 1999 (As amended).

[37] See Olubayo Oluduro, (February, 2004) The Right to health in Nigeria; How justiciable? International Law, Human Rights and Development, Essays in Honour of Professor Akindele Babatunde-Oyebode Edited by Akin-Ibidapo Obe & T.F. Yerima citing Olisa Agbakoba, SAN, "Advancing Human Rights in the Fourth Republic: Prospects and Challenges" published by the Human Rights Law Service (HURI LAWS) June, 1999 p.9.

[38] See CAP A.9 Laws of Federation of Nigeria, 2004

[39] See the argument of Ronald Dworkin in Dworkin, Taking Rights Seriously, 134 - 35; where he argued that it would be wrong in interpreting the constitutional phrase, "cruel and unusual punishment" for the Supreme Court "to be much influenced by the fact that when the clause was adopted capital punishment was standard and unquestioned." He concluded that one justification for a statute is better than another and provides the direction for coherent development of the statute if it provides a more accurate or more sensitive or sounder analysis of the underlying moral principles. This he based on the argument that there must be a fusion of constitutional and morality, and so judges should decide which one of the two competing justification is superior as a matter of political morality and apply the statute so as to further that justification; See the review of Ronald Dworkin's work in Jesse, B. & John, B., 1986. Three Contemporary Theories of Judicial Review : A Critical Review.

principles appear defective.[40] The judicial powers in Nigeria are clearly provided for in Section 6 of the Constitution.

"Honourable Justice Kayode Eso, JSC, underscores judicial activism in the following words:

> "It would be tragic to reduce judges to a sterile role and make an automaton of them. I believe it is the function of judges to keep the law alive, in motion, and to make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable, but acceptable way of avoiding narrowness that spells injustice. Short of being a legislator, a judge, to my mind, must possess an aggressive stance in interpreting the law."[41]

a) Justiciability of Health Rights under the Nigerian Constitution

The term "justiciability" is generally understood to refer to right's faculty to be subjected to the scrutiny of a court of law and another quasi-judicial entity. A right is said to be justiciable when a judge can consider this right in a concrete set of circumstances and when this consideration can result in the further determination of this right's significance.[42] According to Kaase, arguments on the debate of the non-justiciability and justiciability raised in opposition and for judicial enforcement of social rights are manifold. One of the argument is that the separation of powers in a democratic government require the Judiciary in performing its functions, to restrain itself from intruding on the governmental functions assigned to other branches of government and this has been argued for and against by several authors.[43] The implementation of Economic, Social and Cultural Rights, is viewed to be costly since this class of right were understood as obliging the state to provide welfare to the individuals.[44] The consequence is that Nigerian public hospitals are grossly underfunded and health services are not properly managed, which has resulted in a comatose state of health infrastructure.[45] This is the live situation found in Nigeria whereas, the World Health Organization recommends that government should spend a minimum of $34 per capita on health annually for low income countries, Nigeria has been spending between $2 - $5 per capita on health, which is grossly below the minimum recommended.[46] Adekoya rightly captured the situation thus:

> "Nigeria with a population of over 140 million and a major producer of oil in the world have majority of her citizens living in extreme poverty. Nigeria also ranked among the 20 poorest countries in the world. As at 1996, 13 years ago, about 67% of Nigerians have been living in poverty and one can then imagine the figure would reached an alarming rate in 2009; judging from the fact that nothing tangible has been done to reverse the poverty trend in the country in spite of the much touted poverty alleviation programme of government. With the said poverty rate, over 70% of Nigerians can be regarded as desperately poor"[47]

Therefore, the non-justiciability of Economic and Socio-Cultural Rights in Nigeria remains an admitted aberration considering the huge deposit of natural resources in Nigeria. The major problem with regard to the implementation and enforcement of economic and social rights as enshrined in the ICESCR is that such implementation is dependent upon the resources available within a state party; thus, these rights themselves are limited by a lack of resources.[48] International law requires a State to carry out its

[40] Judicial Activism in Africa: Possible Defence against Authoritarian Resurgence? By E.K. Quansah Professor of law University of Botswana & CM Fombad Professor of Law University of Botswana

[41] Kayode Eso, JSC, in Transbridge Trading Company Ltd v. Survey International Ltd (1986) 4 NWLR (pt. 37) 576 at 596-7.

[42] See generally Arambulo K., Strengthening the supervision of the International Covenant on Economic, Social and Cultural Rights edited by Isfahan Merali and Valerie Oosterveld. Philadelphia: University of Pennsylvania Press (Pennsylvania Studies in Human Rgihts), 2001, pp. 280.

[43] See Kaase T.F., The Justiciability of Social Rights Myth or Reality? 1(1) October, 2010 Human Rights Review (Department of Public Law, Ahmadu Bello University, Zaria). For arguments on non-justiciability of Socio-Economic Rights, see generally Christiansen C.E., Columbia Human Rights Law Review, 38 Col. Hum. Rts. L. Rev. (2007), 321, Vile M., Constitutionalism and the Separation of Powers (Oxford; Clarendon Press, 1967), 13, Hogan G., "Directive Principles, Social Rights and the Constitution", *Irish Jurist,* Vol. 36 (2001), 174 at 189, Villiers B.D., "Social Rights" in Van Wyk, J. Dugard B. de Villiers and D. Davis (eds). Rights *and Constitutionalism – The New South African Legal Order* (Oxford: Clarendon Press, 1996) 529 at 606., Gerard H., "Judicial Review and Social Rights" in Binchy & Sarkin (eds.) *Human Rights, the Citizen and the State: South African and Irish Approaches* (Dublin; Roundhall Sweet & Maxwell, 2001) 1 at 8. These authors argued that democratic legitimacy, separation of powers, violation of separation of powers, tampering with government policies and programmes are all reasons why Socio-economic Rights should not be enforceable in the Court. Gerard argued that "if Social Rights are made justiciable and are vindicated by the Courts, the result will tend to distort the traditional balance of the separation of powers between the Judiciary and other branches of government in that more power will flow to the judiciary"

[44] Okeowo A.O., *Economic, Social and Cultural Rights: Rights or Privileges?* Celebration of a Legal Amazon Justice Badejoko Olateju Adeniji, the Chief Judge of Oyo State (Law Legends & Company) Chapter VI p.114 – 154 at 130

[45] See the concluding observations of the Committee on Economic, Social and Cultural Rights on Nigeria's 1996's Report on ICESCR, E/C.12/1/Add.23 of 13th May, 1998 paragraph 28.

[46] See Edwin E., Bringing Human Rights Home: An examination of the Domestication of Human Rights Treaties in Nigeria, *Journal of African Law,* 51, 2(2007) 249 – 284, p. 264.

[47] Adekoya C.O. Lifting Nigerians from Extreme Poverty: Grave Human Rights Challenge for Government, Vol.1(3) January, 2009 *Akungba Law Journal,* Faculty of Law, Adekunle Ajasin University, Akungba Akoko, Akungba, Nigeria, 37 – 41 at 37.

[48] Similar to the position in Nigeria, is the position in Namibia. See also the South African case of *Soobramoney v Minister of Health* (Kwazulu-Natal), Constitutional Court of South Africa, Case CCT 32/97, 27 November 1997; available at www.law.wits.ac.za/judgenebts/soobram .html; last accessed 20 October 2007.

international obligations undertaken by it by ratifying international treaties, but it does not govern the process of incorporating international law into municipal law. The principle of sovereign equality as embodied in the UN Charter is the cornerstone of the international relations between the States.[49] Each State has different processes of incorporating international law into their domestic legal system, depending on their constitutional provisions in this respect. Thus, the process of implementation of international law at national level varies in different countries and the divergent State practices pertaining to incorporation of international law into municipal law depends on the provisions of the constitution.

b) The implications of the "African Charter Act" on health rights in Nigeria

The preamble to the African Charter on Human and People's Rights, states that ...therefore it is settled that this regional instrument is an Act with important provisions in relation to the realization of health rights in Nigeria. The relevant Section of the Regional Act states as follows:

Article 1 of the Charter

> The Member States of the African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 22

1. All people shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 26

> States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Although given the arguments on justiciability and non-justiciability of rights it is settled beyond doubt that the constitution is the core propelling force for the implementation of health rights which is categorized under the non-justiciable rights, however, the African Charter represents a significantly new and challenging framework for the implementation of Economic Social and Cultural Rights in Nigeria. The Charter is a treaty and it therefore has the force of law. According to Article 26, Vienna Convention on the Law of Treaties, a treaty is defined as follows:

> ""treaty " means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"

The Constitution of the Federal Republic of Nigeria 1999 provides that no treaty between the Federation and any other country shall have the force of law except if the treaty has been incorporated into domestic law by the National Assembly.[50] The Supreme Court of Nigeria per Achike, JSC had this to say:

> "I cannot agree more with learned cross-appeallant's counsel that *Ogugu v. State* (*supra*) is a good authority that the African Charter, having been duly incorporated into our municipal laws, it would follow that the procedural provisions set out in the Fundamental Rights (Enforcement Procedure) Rules under Chapter 4 of the 1979 Constitution for enforcing fundamental rights enshrined in the Constitution, are applicable, by extension, to the provisions of the African Charter. As I have highlighted earlier in this judgement, the process of incorporating the African Charter into the body of our domestic laws simply places the Charter at par with all our domestic legislations and in turn brings the African Charter within the *judicial powers* of the courts established under the Constitution"

Consequently, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is enforceable in Nigeria.[51] Sections 88 and 89 of the Constitution also empower the Parliament with oversight function on all activities of government, which in this case includes ensuring the implementation of the relevant legal instruments and policy frameworks which Nigeria is a signatory thereto. On the one hand, it can be argued that it is the duty of the Parliament to ensure that

[49] See Articles 2(1) and 2(2) of the UN Charter; see also R. P. Anand, „Sovereignty of States in International Law", in: R.P. Anand, *Confrontation or Cooperation: International Law and the Developing Countries* (1987).

[50] Section 12(1) of the Nigerian Constitution (1999) grants the Parliament sacrosanct autonomy with regard to responsibility of ratifying all international agreements and instruments before they can assume the force of law.

[51] Adopted on June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5 reproduced in 21 I.LM 58 and came into force on October 21, 1986.

these international instruments are complied with given the nation's commitment and obligations under these instruments. According to Brand, courts can protect socio-economic rights in two ways. Firstly, through their law-making powers of interpreting legislation and developing the rules of the common law, and secondly, by adjudicating constitutional and other challenges to state measures that are intended to advance those rights.[52] On the other hand however, considering the provisions of Section 6(6) of the Constitution of the Federal Republic of Nigeria, one may argue that the Judiciary is empowered to determine any dispute arising from the purported implementation of the provisions of the Constitution. In the case of *Abacha v. Fawehinmi*[53] the Supreme Court placing reliance on the case of *Ogugu v. State*[54] held as follows:

> "The individual rights contained in the Articles of the African Charter on Human and Peoples Rights are justiciable in Nigerian courts. Thus, the Articles of the Charter show that individuals are assured rights which they can seek to protect from being violated and if violated to seek appropriate remedies; and it is in the national courts such protection and remedies can be sought and if the case is established, enforced.

By virtue of International Convention of Socio-cultural Rights, States Parties to the Covenant on *ESCRs* are to recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and such steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right includes those necessary for:

a. The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
b. The improvement of all aspects of environmental and industrial hygiene;
c. The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
d. The creation of conditions which would assure to all medical service and medical attention in the event of sickness[55]

A careful appraisal of these provisions reveal that it is the duty of States Parties to ensure that its citizenry are protected from any condition which would not guaranteed health care delivery system, or lead to a deteriorating condition which can foster ill health. It is also the duty of the court to adjudicate on such complaint before it in this regard. The goal of the *ESCRs* therefore is to ensure that citizens enjoy the highest attainable standard of health. Again, it is important to consider the unequivocal declaration of the Committee on Economic, Social and Cultural Rights:

> "Any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both the national and international level. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition."[56]

It should be noted that the fundamental rights contained in the Constitution will be meaningless if its breaches cannot be enforced. It is often said that a right, which cannot be enforced, is no right at all.[57] The African Charter places the duty and obligation on implementing institutions of the Charter and human rights advocates working in Africa to pioneer an imaginative approach to the realization of this right. According to Kinne & Clark there are different constitutions which have different patterns and provisions for health rights of their citizenries. For instance, some constitutions only make statements of aspiration, stating a goal in relation to the health of its citizens.[58] The Mozambique Constitution provides for health right and health care or public health services as an entitlement[59] and there are other constitutions which make it the duty of the state to provide health care and public health services to its citizenry. This posits that it is a state obligation which is very positive in nature.[60] It

[52] Communication 155/96; Decision handed down at the 30th Ordinary session of the Commission held in The Gambia. For text, see University of Minnesota Human Rights Library website, online: <http://www1.umn.edu/humanrts/africa/comcases/155-96b.html> (last accessed: May 30, 2005) ["Communication 155/96"].

[53] [2000]6 N.W.L.R Part. 660 at p.249

[54] *(1994)* 9 NWLR (Pt. 366) 1 at 26 – 27, (1998) 1 HRLRA 167 at 189

[55] International Covenant on Economic, Social and Cultural Rights, Article 12

[56] General Comment No. 14, par. 59. See Annex 1

[57] Chidi Odinkalu, *Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples Rights* in M. Evans and R. Murray (eds.) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (Cambridge: Cambridge University Press, 2002), p. 186.

[58] The following is an example of an aspirational statement: "The authorities shall take steps to promote the health of the population." GRW. NED. [Constitution] ch. I, art. 22, *reprinted & translated in* 13 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: THE NETHERLANDS 4 (Gisbert H. Flanz ed., Dr. Frank Hendrick trans., 2003).

[59] The following is an example of an entitlement statement: "All citizens shall have the right to medical and health care, within the terms of the law, and shall have the duty to promote and preserve health." MOZAM. CONST. pt. II, ch. III, art. 94, *translated & reprinted in* 12 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: MOZAMBIQUE 42 (Albert P. Blaustein & Gisbert H. Flanz, eds., Afr. Eur. Inst. trans., 1992).

[60] Example of a duty statement: The State shall legislate on all questions connected with public health and hygiene, endeavoring to attain the physical, moral, and social improvement of all inhabitants of the country. It is the duty of all inhabitants to take care of their health as well as to receive treatment in case of illness. The State will provide gratis the means of prevention and treatment to both indigents and those lacking sufficient means. URU. CONST. § II, ch. II, art. 44, *translated & reprinted in* 20 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: URUGUAY (Booklet 1) 5 (Gisbert H. Flanz ed., Reka Koerner trans., 1998).

imposes a duty to provide health care or public health services on the State; consequently, it can be enforced against the State. In some other countries, there are provisions of the constitution which are either pragmatic or referential. The former type of constitution states a pragmatic approach on financing health care, model of health care system in the country, and the mandate for the delivery of health care in the country,[61] however, this is not a commitment or guaranty for the citizenry's enjoyment of the highest attainable health. The referential type of constitution makes provisions for health care and health right by way of incorporating specific reference to any international or regional human rights treaties recognizing a human right to health or health care.[62] Again, this is limited in that each State has the powers to limit all International treaties' application through the provisions of the constitution. For instance in Nigeria, any treaty that is not domesticated cannot be enforced against the State. Unfortunately, international treaties do not automatically become part of national law in Nigeria just like it is in India. Consequently, the interpretation, application and implementation of international treaties at the domestic level continue to be an issue of concern to the realization of health rights in Nigeria.[63] International laws require a State to carry out its international obligations undertaken by it by ratifying international treaties, but it does not govern the process of incorporating international law into municipal law. In fact, the States follow different processes of incorporating international law into their domestic legal system, depending on their constitutional provisions in this respect. For instance, the United States Senate in the early 1950s considered a constitutional amendment that would have required a treaty to be implemented only by separate federal legislation in an effort to ensure that international human rights treaties could not be used to promote civil rights for African Americans or otherwise supersede states' rights.[64] Orentlicher in considering the case of *Wideman v. Shallowford*[65] asserts that rights to healthcare in the United States have been weak because courts have rejected the possibility of "positive" rights under the Constitution.[66] There are however other writers who are of the view that where the provisions of a national law is in conflict with the provisions of a treaty which the nation is a signatory thereto, the provisions of the State law will bow for the treaty as it is the case in the United States of America.

Again, Quincy Wright stated that the terms of Article 6, paragraph 2, of the Constitution are unambiguous, "…all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding" therefore he concluded that "whatever may be the causes, the hesitancy of courts to refer directly to international law tends to emphasize national sovereignty and the political, as distinct from the legal, aspects of international relations. On the other hand, recognition of wide judicial authority to apply treaties and international law tends to emphasize the authority of the international community and the objectivity of international law"[67] This divergent State practice pertaining to incorporation of international law into municipal law has been explained by two schools of law – *monist* and *dualist*.[68] The ICESCR stipulates the obligations of the States Parties to ensure full realization of the rights recognized under the Covenant.[69] According to the Limburg Principles on Implementation

[61] 23. The following is an example of a programmatic statement:
(1) Citizens have the right to health insurance that guarantees them accessible medical care and to free medical care under conditions and according to the procedure determined by law.
(2) The citizens' healthcare is financed from the state budget, by employers, by personal and collective insurance payments, and from other sources under conditions and according to a procedure determined by law.
(3) The state protects the health of the citizens and encourages the development of sports and tourism. (4) No one may be subjected to forced medical treatment or sanitary measures except in cases provided by law. (5) The state exercises control over all health institutions as well as over the production of pharmaceuticals, biologic [al] substances and medical equipment and over their trade. BULG. CONST. ch. II, art.52, *translated & reprinted in* 3 Constitutions of the Countries of the World: Bulgaria 11 (Gisbert H. Flanz ed., 2004).

[62] The following is an example of a referential statement: "International treaties, to whose ratification Parliament has consented and by which the Czech Republic is obligated, are part of the legal order; if the international treaty provides for something other than the law, the international treaty shall be used." ´USTAVA CR. [Constitution] (Czech Rep.) ch. I, art. 10, *translated & reprinted in* 5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: CZECH REPUBLIC 2 (Gisbert H. Flanz ed., Gisbert H. Flanz & Patricie H. Ward trans., 2003).

[63] See the Indian Case of *Jolly Jeorge v. Bank of Cochin*, AIR 1980 SC 470.

[64] See Louis H., Editorial Comments—U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker, (1995) 89 *American Journal of International Law* 341, 347; *See also,* Robert Traer, U.S. Ratification of the International Covenant on Economic, Social and Cultural Rights, in *Promises to keep: Prospects for Human Rights* 1, 3-5 (Charles S. McCoy ed., 2002) at 4.

[65] *See* Cmty. Hosp., 826 F.2d 1030, 1033 (11thCir.1987) where the court held that "The Constitution is'a charter of negative rather than positive liberties." See also: Jackson v. City of Joliet, 715 F.2d 1200, 1203 (7th Cir. 1983).

[66] Orentlicher, D., 2012. Robert H. McKinney School of Law Legal Studies Research Paper No. 2012 - 11 Rights to Healthcare in the United States : Inherently Unstable Rights to Healthcare in the United States : Inherently Unstable.

[67] Quincy W. National Court and Human Rights – The Fujii Case, *The American Journal of International Law*, Vol. 45, No. 1 (Jan., 1951), pp. 62-82.

[68] Agarwal S.K. IMPLEMENTATION OF INTERNATIONAL LAW IN INDIA: ROLE OF JUDICIARY, accessed online on 1th January, 2013 at http://oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf.

[69] See art 2(1) of the ICESCR 1966 which provides as follows: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

of the International Covenant on Economic, Social and Cultural Rights, "a failure by a State Party to comply with an obligation contained in the International Covenant on Economic, Social and Cultural Rights is, under international law, a violation of the International Covenant on Economic, Social and Cultural Rights."[70] This is also similar to Article 19 of the Vienna Convention on the Law of Treaties, 1969, which states that "a state is at liberty to enter reservations to a treaty where such reservations are not prohibited, provided for by the treaty, or such reservations are not incompatible with the object and purpose of the treaty itself."

c) Judicial Activism

Generally, there is little consensus on the meaning of the term 'judicial activism'.[71] According to *Craig Green,* a Westlaw search revealed that the terms "judicial activist" and "judicial activism" appeared in 3,815 law review articles during the 1990s and in 1,817 more articles between 2000 and 2004.[72] It is a philosophy of decision-making whereby judges follow their personal views about public policy among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violation and are willing to ignore precedent.[73] It is a paradigm of philosophical liberalism based on a legal concept that courts should endeavour to expound the horizon of law by utilitarian approach to adjudication.[74] Judicial activism is a necessary tool for growing the law and nurturing justice as it serves as an instrument for the effective social and economic engineer.[75] There is also no better definition of judicial activism than the judges interpreting laws to meet the demands of substantive justice, irrespective of the bare letters of the law and the Constitution. It implies the judges bringing its head out of and demonstrating that it hears the cry of the oppressed see the oppressive bravado of the oppressor and interprets the law to show that oppression and arbitrariness do not pay the oppressed and the society.[76] Judges also exhibits judicial activism when they modify the law from what was previously stated to be the existing law by substituting their own decision from that of the elected representatives of the people.[77] In the case of *Yaundoo v. Attorney General of Guyana,*[78] the Court stated as follows

> "the question of procedure and access to court are imperative, while civil and criminal justice are very important to the people, every citizen's right has to be recognized and translated into actual judicial remedies. Denying this right would lead to erosion and denuding the real value of our society…"

Charles Evans Hughes puts it succinctly as follows:

> "a poor judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are haled before Judge whose (sic) mental or moral goods are inferior. An honest, high minded, able and fearless Judge is the most valuable servant of democracy for he (sic) illuminates justice as he interprets and applies the law, as he makes clear the benefits and the short coming of the standards of individual community right among a free people" [79]

Oputa, JSC (as he then was) has once noted:

> "In a progressing world, the law and the administration of justice cannot afford to be static and regressive. The only option open to our jurisprudence is intelligent, mature and progressive activism. We are not to fold our hands and do nothing. No. Our judges have to so interpret the law such that it makes sense to our citizens in distress and assures them of equal protection of the law, equal freedom under the law, and equal justice. And this is what judicial activism is all about."[80]

IV. Evidence of Judicial Activism from other Countries

A careful perusal of the founding provisions of the Republic of South Africa's constitution reveals that

[70] See "The Limburg Principles on Implementation of the International Covenant on Economic, Social and Cultural Rights" (1987) 9 *Human Rights Quarterly* 122 par 70.

[71] Reyneck Thokozani Matemba, 2010. Judicial Activism : Usurpation of Parliament ' s and Executive ' s legislative functions , or a Quest for Justice and Social Transformation Judicial Activism : Usurpation of Parliament ' s and Executive ' s legislative functions , or a Quest for Justice and Social Transformation. Accessed online on 16th December ,2012 at http://sas-space.sas.ac.uk/2857/1/Matemba_LLM_ALS_ Dissertation.pdf. See also C Wolfe, *Judicial Activism: Bulwark of Freedom or Precarious Security,* Lanham, Rowman & Littlefield (1997) at pp. 1 – 33.

[72] Keenan D. Kmiec, Comment, *The Origin and Current Meanings of "Judicial Activism,"* 92 CAL. L. REV. 1441, 1442 (2004); *see also* Bradley C. Canon, *A Framework for the Analysis of Judicial Activism*, *in* SUPREME COURT ACTIVISM AND RESTRAINT 385, 386 (Stephen C. Halpern & Charles M. Lamb eds., 1982) (describing prevalent activism debates as "little more than a babel of loosely connected discussion").

[73] Bryan A. Garner, *Black's Law Dictionary,* Eighth Edition, (USA: West & Thompson, 2004) 862

[74] Honourable Justice Pats-Acholonu I.C., "Growing the Law, Nurturing Justice": Essay in Honour of Justice Niki Tobi, Enugu, 2005.

[75] Iweoha P.I., March, 2010 Vol. 2, No.1, Judicial Activism in a State of Legislative Depression, *Legislative Practice Review* 4

[76] See Daily Independent, Thursday, November, 1 2007 page II cited by IBRAHIM IMAM in The Myth of Judicial Activism in Nigeria: Making Sense of Supreme Court Judgments. Accessed online on 13th May, 2013 at http://unilorin.edu.ng/publications/imami/THE%20MYTH% 20OF%20JUDICIAL%20ACTIVISM%20IN%20NIGER%20N0%202.pdf

[77] Paul Mahoney, "Judicial Activism and Judicial Self-Restraint in the European Court of Human Rights: Two Sides of the Same Coin" (1990) 11, *Hum. Rts. L.J.* 57, 58.

[78] (1971)A.C. 972

[79] Presidential address to the American Bar Association in 1925

[80] Oputa, C.A., JSC "Legal and Judicial Activism in an Emergent Democracy: The Last Hope for the Common Man?" in Okeke, C., *Towards Functional Justice: Seminar papers of Justice Chukwudifu A. Oputa* (Golden Press Ltd, Ibadan, 2007) 12-36 at 27.

human dignity, achievement of equality and advancement of a democratic society based on rights and freedoms, and supremacy of the constitution is a unique distinction which serves as the basis for justiciability of ESCRs in South Africa.[81] Section 1 provides as follows:

1. Republic of South Africa.-The Republic of South Africa is one, sovereign, democratic state founded on the following values:
   a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
   b. Non-racialism and non-sexism.
   c. Supremacy of the constitution and the rule of law.
   d. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Section 27 and 27 of the South African Constitution provides as follows:

26. Housing

1) Everyone has the right to have access to adequate housing
2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right.
3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security

1) Everyone has the right to have access to–
   a. health care services, including reproductive health care;. . .
2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.
3) No one may be refused emergency medical treatment.[82]

These provisions in the Constitution in South Africa afford South African citizenry the opportunity to have access to the Court. Simply put, the rights tagged as ESCRs in Nigeria are enforceable in South Africa as the courts can adjudicate on issues bothering on right to heath, alongside other economic and socio-cultural rights. There is no doubt that the 1996 South African Constitution includes the Bill of Rights in addition to traditional civil and political rights, and makes these rights enforceable by the courts, by virtue of Section 38 of the Constitution. In India, the Indian Constitution has similar provisions for the protection of health rights of its citizenry, howbeit, as a Directive of State on Fundamental Principle. Section 37 of the Indian Constitution provides as follows:

Application of the principles contained in this Part.-

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Indian Constitution envisages a welfare State at the Federal level as well as the State level. This is also *in tandem* with the provisions of several international treaties on socio-cultural rights which India is a signatory thereto. In India, the Fundamental Rights and Directive Principles are interpreted harmoniously with the Fundamental Human Rights as the Supreme Court is of the position that these principles supplement each other.[83] According to Vijayashri, India's leaders had a unified vision on human rights. Although, there seem to be a distinction between judicially enforceable rights otherwise known as Fundamental Rights and the socio-economic obligations on the State known as Directive Principles of State Policy in the Indian Constitution,[84] Maneka Gandhi case formed the basis for a rethink of the position of the court on the distinction between Fundamental Human Rights and Directive Principles of State Policy. In Maneka Gandhi's case,[85] Maneka having being issued a passport on 1st June, 1976 under the Passport Act 1967, was requested by a letter originating from the regional passport officer, New Delhi on the 2nd July, 1977 to surrender her passport under section 10(3) (c) of the Act in public interest, within 7 days from the date of receipt of the letter. Maneka Gandhi demanded by a letter from the Regional passport officer, New Delhi a copy of the statement of reasons for such order. However the government of India, Ministry of External Affairs refused to produce any such reason in the interest of general public. Maneka Gandhi consequently, filed a writ petition under Article 32 of the Constitution in the Supreme Court challenging the order of the government of India as violating her fundamental rights guaranteed under Article 21 of the

[81] Sandra Liebenberg, South Africa's Evolving Jurisprudence on Socio-Economic Rights, 6 Law Democracy & Dev. 159 (2002), accessed online on 22nd May, 2013 at http://www.communitylawcentre.org.za/Projects/Socio-EconomicRights/research/socio-economicrights_jurisprudence/evolving_jurisprudence.pdf

[82] See Section 27(3) South Africa Constitution, 1996.

[83] In *Unni Krishnan, J.P.* v. *State of Andhra Pradesh*, (1993) 1 SCC 645 , Justice Jeevan Reddy declared as follows *"The provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV".*

[84] Vijayashri Sripati 2007 Constitutionalism in India and South Africa: A comparative Study from a Human Rights Perspective Volume 16: 49 *Tulane Journal of International and Comparative Law* pp. 95

[85] Maneka Gandhi v. Union of Indian and Another 1978-(001)-SCC-0248-SC, 1978-(002)-SCR-0621-SC, 1978-AIR-0597-SC

constitution. The main issues before the court in this case were as follows:

1. Whether right to go abroad is a part of right to personal liberty under Article 21.
2. Whether the Passport Act prescribes a 'procedure' as required by Article 21 before depriving a person from the right guaranteed under the said Article.
3. Whether section 10(3) (c) of the Passport Act is violative of Article 14, 19(1) (a) and 21 of the constitution.
4. Whether the impugned order of the regional passport officer is in contravention of the principles of natural justice.

The Supreme Court of India, per Justice K. Iyer, held as follows:

> "'a fundamental right is not an island in itself'. The expression "persoal liberty" in Article 21 was interpreted broadly to engulf a variety of rights within itself. The court further observed that the fundamental rights should be interpreted in such a manner so as to expand its reach and ambit rather than to concentrate its meaning and content by judicial construction. Article 21 provides that no person shall be deprived of his life or personal liberty except in accordance with procedure established by law but that does not mean that a mere semblance of procedure provided by law will satisfy the Article , the procedure should be just , fair and reasonable. The principles of natural justice are implicit in Article 21 and hence the statutory law must not condemn anyone unheard. A reasonable opportunity of defense or hearing should be given to the person before affecting him, and in the absence of which the law will be an arbitrary one"

This was the origin of the activism that led to blurring of the line of distinction and the arguments on justiciability of rights that are termed non-enforceable in India.[86] The Indian judiciary has a unique position under the Constitution as an independent organ of state designed to provide a countervailing check on the functioning of the other two organs in their respective spheres. Armed with the power to strike down executive, quasi-judicial and legislative actions as unconstitutional, the judiciary has, as the ultimate interpreter of constitutional provisions, expounded the basic features of the Constitution.[87] The judiciary in exercising its constitutional powers in India had declared that there is no division of fundamental human rights on one hand and the Directive Principle of State Policies on the other hand as the Directive Principle of State Policies are subordinate to the fundamental rights.[88] Nigeria has one of the worst statistics in the world in maternal health because only about 3,000 registered gynecologists operate in Nigeria with a population of over 170 Million.[89] Nigeria has one of the highest rates of maternal mortality in the world. One Nigerian woman dies in childbirth every ten minutes.[90] There is a need for a national approach to health education, promotion, and behavior change. Currently, the unit within the primary health care responsible for health promotion needs to be supported and strengthened to discharge her responsibilities effectively.[91] It is humbly submitted that the judiciary in a way, has a major role to play in realizing health rights today. In terms of the actual number of maternal deaths, Nigeria is ranked second in the world behind India and Nigeria is part of a group of six countries in 2008 that collectively accounted for over 50% of all maternal deaths globally. In terms of the maternal mortality ratio, Nigeria is ranked eighth in Sub-Saharan Africa behind, Angola, Chad, Liberia, Niger, Rwanda, Sierra Leone and Somalia.[92] Health indices in Nigeria are pathetic. Nearly a quarter of a million newborn babies die each year. There has been no significant reduction in the average national neonatal mortality rate over the past decade. There is wide variation in mortality between states, between urban and rural areas and among the poorest families compared to the richest.[93]

V. Conclusion

In Nigeria just as applicable in other developing countries, the human right to health is recognized in numerous international instruments which these countries are signatories thereto, but the realization of economic, social and cultural rights generally, depends

[86] See the cases of *Sunil Batra v. Delhi Administration*, A.I.R. 1980 S.C. 1565, Charles Sobraj v. Delhi Administration, A.I.R 1978 S.C. 1590 among others cases on the prisoner's rights to include freedom from mental and physical torture, and prohibition of the use of chains and fetters on prisoners.

[87] Se the case of State of Rajasthan v. Union of India (1977) 3 S.C.C 592 at 662, See S. Muralidhar, An Overview of the Experience of the Indian Judiciary First South Asian Regional Judicial Colloquium on Access ti Justice, New Delhi, 1-3 November, 2002. Available online at http://www.ielrc.org /content /w0202.pdf

[88] See the case of State of Kerala v N.V. Thomas (1976) 2 S.C.C 310 at 367

[89] 'Nigeria has worst statistics in maternal health care' by Odogwu Emeka Odogwu, Nnewi 24/06/2012 http://www.then ationonlineng. net/2011/index.php/news/51418-%E2%80%98 nigeria-has-worst-statistics-in-maternal-health-care%E2%80% 99. html

[90]

[91] Abdulraheem I. S., Olapipo A. R. & Amodu M. O. Vol. 4(1), January 2012 Primary health care services in Nigeria: Critical issues and strategies for enhancing the use by the rural communities *Journal of Public Health and Epidemiology* pp. 5-13, DOI: 10.5897/JPHE11.133 Available online at http://www. academicjournals.org/ JPHE ISSN 2141-2316 ©2012 Academic Journals

[92] Bankole, Akinrinola, Gilda Sedgh, Friday Okonofua, Collins Imarhiagbe, Rubina Hussain and Deirdre Wulf. 2009 "Barriers to Safe Motherhood in Nigeria". New York: Guttmacher Institute. Available on line at: www.guttmacher.org p. 3.

[93] Federal Ministry of Health. Saving newborn lives in Nigeria: Newborn health in the context of the Integrated Maternal, Newborn and Child Health Strategy. 2nd edition. Abuja: Federal Ministry of Health, Save the Children, Jhpiego; 2011.

significantly on action of the state, notwithstanding party states obligations under the international treaty which they are parties thereto.[94] It is therefore obvious that in advocating for the realization of health rights in Nigeria, Ladan's comment on the implementation of international treaty is right. According to Ladan, "implementing an international treaty means putting the treaty into effect. It goes a bit further than mere observance of the law. It implies that its general aim, the result that was desired by those who adopted the treaty is achieved or will be achieved, so that the treaty-rules can be said to have been given full effect."[95] In the absence of such judicial activism, a constitution would become stultified and devoid of the inner strength necessary to survive and provide normative order for the changing times.[96] It is generally accepted that domestic laws should be interpreted as far as possible in a way which conforms to a State's international legal obligations.[97] Given the legal framework put in place in Nigeria on health rights and the powers of the judiciary, one cannot but wonder the basis for sustaining such arguments which holds the plank of "non-justiciability" of health rights in Nigeria. It is submitted that the coast is clear for a sail into a new dispensation of health care system administration in Nigeria, and realization of this right in Nigeria today as the legal circumstances in Nigeria are stronger than the chances and opportunities converted through activism in India and South Africa. The judiciary therefore is protected by the domestication of the provisions of the African Charter on Human Rights on health rights in Nigeria. The judiciary is the last hope of a common man in Nigeria where there are frightening statistics on maternal mortality ratio, infant mortality rate, life expectancy even at birth, equipment and facilities available for the larger portion of the population, judges are challenged to give life to the wordings of the constitution, and apply the appropriate laws irrespective of the political consequences of such decisions particularly in the interest of the citizenry. This will also enable the State to comply with its obligations as required by the international law. Some have suggested that legal remedies might be restricted to violations emanating from failures to meet these minimum core requirements, but the concept of the "minimum core content" needs to be clearly distinguished from the idea of justiciability which had been the major impediment to the realization of health rights in Nigeria. The Nigerian health system is in comatose, few hospitals with few drugs, inadequate and substandard technology and a lack of infrastructural support, including electricity, water and diagnostic laboratories resulting in misdiagnosis. Medical record keeping is rudimentary and diseases surveillance is very poor. Delivery of health care becomes a personal affair and dependent on ability to pay for basic laboratory and physician services.[98] The rather pathetic downturn of the state of the health care sector in Nigeria can only be upturned by an approach which aligns with ensuring accountability on the part of the government for it compliance with fulfillment, respect and protection obligations under the African Charter. This cannot be achieved with an element of judicial activism in Nigeria today given the past experiences and the judicial attitude demonstrated by the judges. It is also to be noted that with the current state of the law in Nigeria on health rights, the issue of justiciability has lost its relevance as the incorporation of the African Charter has provided a basis for a finding of a *prima facie case* of violation of health rights, and thereby placing a greater onus on the governments in particular circumstances to demonstrate that all available resources have been allocated as a matter of priority to meeting the most critical needs. There is a need for a fundamental change in policy, regulation, financing, provision of health services, reorganization, management and institutional arrangements, with a practical effort by the government to improve the access to health care and health system in Nigeria in a bid to improve the health status of Nigerian citizens. This can only be achieved with the aid of an effective interpretation and application of the *corpus* in place in Nigeria by the judiciary.

[94] Ajigboye O., (2013) An Overview of the Legal Framework for the Protection of the Right to Health in Nigeria *ABUAD Law Review* Afe Babalola University Publishers, Ado Ekiti.

[95] Ladan M.T. (2013) An overview of the Rome Stature of the Inernational Criminal Court: Jurisdiction and Complementarity Principle and issues in Domestic Implementation in Nigeria Vol. 1. Issues 1(2013) *Journal of Sustainable Development Law and Policy* (Afe Babalola University, Ado- Ekiti)

[96] S.P. Sathe Judicial Activism: The Indian Experience (2001) 32 Journal of Law & Policy [Vol. 6:29

[97] See the General Comment No. 9 on the domestic application of the Covenant

[98] S. A. J. Obansa & Akinnagbe Orimisan *January 2013 Vol. 4 (1)* Health Care Financing in Nigeria: Prospects and Challenges *Mediterranean Journal of Social Sciences 221* Doi:10.5901/mjss. 2013.v4n1p221

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Legislators' use of One-Minute Speeches

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Abstract- This study examines how legislators use one-minute speeches (OMS) in a venue never before considered, the Israeli parliament (the Knesset). The study considers two research questions. First, do legislators use OMSs to set their agenda and make policy? If so, in what way? Second, what are the characteristics of the legislators who make extensive use of OMSs? We consider these questions in light of the global economic crisis of 2007-2010. The findings show that legislators made very limited use of OMSs as tool for making policy about the economic crisis. We found the same trend in the finance committee meetings and motions for the agenda. Furthermore, while opposition MKs, junior MKs and Arab MKs used OMSs more extensively than other MKs, they still rarely used them as a policy-making tool.

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Abstract- This study examines how legislators use one-minute speeches (OMS) in a venue never before considered, the Israeli parliament (the Knesset). The study considers two research questions. First, do legislators use OMSs to set their agenda and make policy? If so, in what way? Second, what are the characteristics of the legislators who make extensive use of OMSs? We consider these questions in light of the global economic crisis of 2007-2010. The findings show that legislators made very limited use of OMSs as tool for making policy about the economic crisis. We found the same trend in the finance committee meetings and motions for the agenda. Furthermore, while opposition MKs, junior MKs and Arab MKs used OMSs more extensively than other MKs, they still rarely used them as a policy-making tool.

I. Introduction

Legislators have multiple roles including enacting legislation, and engaging in oversight, representation and policy-making. (Mayhew 1974; Fenno 1978; Searing 1994; Saalfeld and Muller 1997; Strøm 1997; Blomgren and Rozenberg 2012). Any political institution has its procedures, which define the opportunities and the limitations available to its members in their daily work. In light of the limited time and resources that legislators have, we need to ask why they would choose to use one-minute speeches (hereafter OMS) over other tools available to them. What are the advantages of OMS over other parliamentary procedures? Furthermore, if legislators choose to use OMS, how do they do so—as policy-makers, position takers or in another role? Finally, what considerations motivate legislators to use OMS?

Existing studies on OMS have looked at how legislators in the U.S. House of Representatives use them (Maltzman and Sigelman 1996; Rocca 2007), why they use them (Maltzman and Sigelman 1996; Rocca 2007), and their content (Polletta 1998; Hall 2002). This study will examine the use of OMS in a venue never before considered, the Israeli parliament (the Knesset). Using Israel as the research site will allow us to test existing theories with fresh data. The study will focus on the time period before and after the first wave of the world economic crisis of 2007-2010. We chose to investigate this period of time because through it we can examine two of the roles of legislators--representing their voters and making policy. In addition, unusual events such as economy crises can be a trigger for using the easiest tool available to them – OMS.

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Furthermore, in Israel, security issues usually receive priority attention. Hence, it is interesting to investigate whether a crisis in an area other than security causes Members of the Knesset (MKs) to invest their efforts in talking about the subject and in what manner.

We will start with review of the theories about the legislator's role in policy-making. Then, after reviewing the literature about OMS, we will present some background on their use in the Israeli parliament. Relying both on the Rules of Procedure and on interviews with several MKs, we will describe the procedures governing OMS in Israel, which are similar to those used in the U.S. House of Representatives, the European Parliament, the Australian Parliament and the Canadian Parliament. We will argue that in difficult economic times Israeli MKs prefer to concentrate on internal issues rather than external ones, so they do not take the opportunity to make economic policy. In the course of the discussion, we will advance three hypotheses about the characteristics of MKs who use OMS extensively. We will then test these hypotheses using recently available OMS from the 17th and 18th Knesset terms.

II. Politicians as Policy Makers

Downs (1957) was the first scholar to argue that the relationship between legislators and their voters determines the policy decisions of the legislators. Furthermore, this relationship is founded on the mechanism of demand (the public's desire for specific policies) and supply (the response of politicians, often rooted in the desire to be reelected). Riker (1982) expanded Downs' (1957) argument and said that legislators establish ad-hoc coalitions with different agendas, but with the same goal of maximizing their chances of being reelected. The combination of the desire to be re-elected (Mayhew 1974) and to enact good public policies (Fenno1978) is a powerful motivation for legislators' actions in parliaments.

Scholars of public choice theory (Taylor 1987; Mueller 1989) claim that reality is determined by rational actors and that public policy is a result of actions of various actors. Studies have shown that legislators usually behave like rational actors, listening to the voters' demands, creating ad-hoc coalitions in order to meet the public's demands and hoping to be rewarded with reelection (Fenno1978; Searing1994; Saalfeld and Muller1997; Blomgren and Rozenberg,2012).

Politicians are just one of three groups that interact in the public policy arena, as Heclo (1978)

describe 'Iron Triangle'. The phrase was used to denote the close relationship between interest group, congressional committees and government agencies (Burstein 1991; Howlett and Ramesh 1995; Hayden 2002). The scholars of public choice theory assumed that there are reciprocal relations between the three groups (Olson 1965; Mitchell and Munger 1991). Furthermore, they claim that interest groups supply politicians with the information they need to identify the public's preferences (Ainsworth and Sened 1993; Austen-Smith 1998). In addition, they argue that government agencies such as bureaucrats can change the preferred policy of politicians (Monsen and Cannon 1965; Miller and Moe 1983).

The current research concentrates on the relationship between legislators and government agencies (bureaucrats) as they appeared during the debates in the Israeli finance committee about the world economy crisis. The first scholar who studied this relationship was Niskanen (1971) who determined that bureaucrats are driven by the desire to maximize the budget of their office, which increases their power. Subsequent scholars found that politicians adopt strategies to control bureaucrats. Therefore, the relationship between politicians and bureaucrats has built-in conflicts (Miller and Moe 1983). Miller and Moe (1983) offered an explicit model of interactions between bureaucrats and political committees with four general assumptions. First, the relationship between the actors is a bilateral monopoly. Second, the relationship is hierarchic. Third, there are two polar modes of legislative oversight. Fourth, the committee, knowing that its only information about costs comes from the bureaucrats, does not try to arrive at a comprehensive estimate of the latter's cost function. Miller and Moe claimed that bureaucratic behavior must be understood in its legislative context.

However, the technology and the information revolution of the last two decades have created a new environment for the relationship between legislators and bureaucrats. How has this new environment affected the abilities of both sides to create public policy? Is there an optimum point in their interaction that is beneficial for both sides? Makris (2006) tried to supply an answer. He found that "despite its informational disadvantage due to its lack of experience, the Congress can, by simply exploiting its political authority and deciding on the rules of the budgetary game, ensure, under certain conditions, the design of an efficient administrative bureau" (p. 285).

Public policy is composed of a collection of decisions made by politicians, interest groups, bureaucracy and the public, and is usually expressed as a law or regulation. The current research will look at public policy made by politicians using parliamentary tools other than legislation. Specifically, we will analyze one-minute speeches, motions for the agenda and the work in the finance committee regarding the world economic crisis.

III. OMSs in the US House of Representatives

What are the characteristics of legislators who use OMS and what motivates them to use this communication method? Research from the United States suggests that OMS are favored by members of Congress (MCs) who are on the margins of political activity. Scholars have suggested that those who tend to use OMS are individualistic and institutionally disadvantaged (Morris 2001; Rocca 2007), ideologically extreme (Morris 2001; Rocca 2007), members of a minority party (Maltzman and Sigelman 1996; Morris 2001), electorally insecure, and rank low in terms of tenure, party identification and party rank (Morris 2001).

Maltzman and Sigelman (1996), who were the first to study OMS, claim that they are viewed as a safety value for MCs who feel left out of the decision making process. They found that unconstrained floor time was used primarily for policy purposes and that electoral factors did not matter. The most recent study, conducted by Rocca (2007), maintains that MCs minimize risk by discussing issues that appeal to the voters. If taking a position may be rewarding, MCs will do so hoping that the voters will translate it into electoral gain. Other explanations for the use of the OMS include the introduction of television onto the floor of the U.S. House of Representatives by the Cable Satellite Public Affairs Network, which gave members a forum from which they could pursue their personal and political goals (Maltzman and Sigelman 1996). The same explanation may be relevant to the Israeli parliament because there is a direct broadcast of the parliament's proceedings on television (Sheafer and Wolfsfeld 2004). In addition, when the party chooses to, it may control the use of OMS (Harris 2005). Finally, changes in the control of Congress affected members' speeches (Hall 2002).

What is the content of OMS? Aristotle was the first academic to analyze the content of speeches. He divided them into three parts: the Ethos, the Logos and Pathos. Since his day, very few studies have used this terminology. Hall (2002) examined how MCs refer to individuals in government on the House floor. He claimed that members use symbols to send signals to their constituents and to frame the debate on public policy issues (Hall 2002). Hall concluded that the parties use different symbols to frame political debates. While Hall's analysis emphasized the Logos of the speeches, Polletta (1998) combined the Ethos and the Logos when she examined how, when, and why African American legislators referred to Martin Luther King during their OMS. She argued that congressional representations of King assimilated him into a pluralist framework by

presenting community service and institutional politics as the proper legacy of his activism. Neither Polletta nor Hall examined the Pathos of the speeches.

Most studies have analyzed one specific term of the Congress. Maltzman and Sigelman (1996) examined the 103rd Congress; Morris (2001) examined the 104th Congress; Harris (2005) examined the 101st Congress. Hall (2002) and Rocca (2007) examined more than one term. Hall examined two terms, the 103rd and 104th Congresses, and Rocca examined multiple Congresses from the 101st to the 106th. Since the current research will examine the period before and after the world economic crisis, the database includes speeches made during part of the 17th Knesset and part of the 18th Knesset.

Scholars have used a wide range of methodologies in order to explore OMS. Morris used a negative binominal event count model to predict who would use OMS and who would engage in partisan rhetoric (Morris 2001). Maltzman and Sigelman used a regression model to examine the number of lines spoken in the Congressional Record about a number of policy-oriented and electoral-based variables (Maltzman and Sigelman 1996). Harris (2005) used four logistic regression models that examined the impact of electoral margin, tenure, party leadership position, ideology, and DMB (Democratic Message Board) membership on whether or not a speech giver was on message. Content analysis was used in order to determine the way in which terms such as "bureaucrats" and "public servants" were manipulated in the floor speeches and the political gain members sought to achieve from these moves (Hall 2002). In addition, Hall used logistic regression in order to determine the factors that influenced the use of the term "bureaucrat" as a foil (Hall 2002). Polletta (1998) also conducted a content analysis; for each congressional session she scanned all documents that referred at least once to "Martin Luther King" or "Dr. King." The current research will use both content analysis and statistical models in order to draw as complete a picture as possible of the use of the OMS in the Israeli parliament during economic hard times.

The goals of the study are based on the desire to deepen our understanding about the way OMS are used in the Israeli parliament with respect to these three legislative areas. The first goal is to examine how MKs use OMS as a tool for policy-making. To accomplish this goal, we investigated policy-making by MKs with regard to the global economic crisis. The second goal is to investigate the motivations for MKs to use OMS. How are MKs who use OMS extensively different from those who make little use of it? The two goals complement each other and allow us to address the three subjects with which the literature deals. The unconstrained nature of OMS facilitates position taking, and the motivations for using OMS shed light on why legislators design the institution the way they do and on legislative participation.

IV. OMSs in the Israeli Parliament

a) *Procedures governing OMSs*

Only five legislatures have adopted OMSs: the US House of Representatives, the European Parliament and the parliaments of Australia, Canada and Israel. A comparison of the procedures governing OMS in these five legislatures yields several insights. First, OMS provide one of the few opportunities for non-legislative debate, where debate is almost always confined to the pending legislative business. Second, the recognition of the right to give a OMS is the prerogative of the Speaker. Third, in the US House OMSs are not provided for in the rules of the House, while in the Israeli parliament, the Australian parliament and the European Parliament they are. Fourth, there are set periods when OMS can be given. Finally, each Member can give only one speech each legislative day. In sum, we can see that the opportunities OMS give the Members in all five legislatures are similar. The speeches are not about legislation. The speech is initiated by a Member at a given time and lasts for a specified period. In the light of these restrictions, the main question is what motivates MKs to use OMS?

V. Policy-Making by other Means

One of legislator's roles is to make policy, usually by legislation. However, this study analyzes the policy-making role by other means: OMS, committee debates and motions for the agenda. All of these tools are available to legislators in their daily work and have never before been analyzed as instruments for policy-making.

The first question is, what is the essence of OMS used by legislators regarding the world economy crisis? How are they used for policy-making? To answer these questions, we must first understand the role of OMS in the legislator's life. An ordinary legislator has two types of tools at his/her disposal: lightweight procedural tools and heavyweight procedural tools. He or she must decide the number of tools to use, how often, with what content and in what combination.

Our interviews showed that there are three strategies for using the OMS: beginning with the lightweight procedural tools, beginning with the heavyweight procedural tools or combining the tools as needed. Disadvantaged MKs prefer to adopt the first strategy. Recently well-established MKs use the second one. Senior MKs, committee chairs and party leaders tend to adopt the third strategy.

Given that the OMS is a very easy tool for ordinary MKs to use, we expected them to use it to address the issue of the world economic crisis. However, only 4 OMS out of 1630 dealt with economic

hard times, two by MKs from the ultra-Orthodox party, United Torah Judaism, one from the extreme left The Democratic Front for Peace and Equality (Hadash) Party and one from the center-left Labor (Avoda) Party. No right-wing party members gave speeches on this topic. While there were a lot of speeches about the Israeli economy, specifically about the hard times people were experiencing, they were no different from the speeches given before the research period. Furthermore, none of them referred to the worldwide economic crisis.

a) Can OMS be used as a tool for policy-making?

Legislation is one of the major tools for policy-making, but can OMS be used as a first step toward policy-making? In order to answer this question, we analyzed the content of the OMS that referred to the world economic crisis looking for suggested alternative policies or criticizing the current government's policy.

Table 1 : Content analysis of OMSs

Who?	When?	What?	Policy?
MK Braverman Labor (Avoda)	26.2.2008	The budget and the fact that indicators such as the economic crisis should be taken into account.	He did not suggest a policy.
MK Khenin The Democratic Front for Peace and Equality (Hadash)	18.3.2008	The world economic crisis and the fact that Wall Street capitalism had brought down the American economy.	He criticized the government policy and suggested an alternative policy.
MK Halpert United Torah Judaism (Yahadut HaTorah)	3.6.2008	He quoted a resolution from the American government that decided to compensate poor people for the losses they had sustained due to the economic crisis and offer them a special grant.	He suggested an alternative policy.
MK Cohen United Torah Judaism (Yahadut HaTorah)	15.6.2008	He wondered why, when most people in Israel were experiencing hard times, the government had a positive balance sheet.	He criticized the current policy, but did not suggest an alternative policy.

While all four of the speeches used the world economic crisis as the background to a specific issue they wanted to raise on the floor, none of them discussed the economic crisis as the main issue. Nevertheless, most of them used OMS as a tool for criticizing existing policies and suggesting alternative policies. We define this use as a first step toward policy-making. However, it is uncommon for legislators to use OMS as a tool for policy-making, and the issue of economic hard times rarely arose in the OMS. Furthermore, whenever it was used, its use was only indirect. The question is why, even though this tool was available to the MKs, did they not use it more often to discuss economic hard times, criticize existing policies or suggest alternatives? Is it because they did not see the world economic crisis as an important issue or because there were other procedures they could use to talk about economic hard times and criticizes existing policies or suggest alternatives?

Here we have the same question Polletta (1998) raised—is anything actually accomplished on the floor? Polletta noted that MCs are now investing more time and effort in their constituencies. In addition, congressional committees and sub-committees have expanded their roles (Polletta 1998). Perhaps these explanations also help us understand why few in the Israeli parliament have used the OMS to address the world economic crisis.

b) Can the finance committee be used as a tool for policy-making?

Digging deeper into the finance committee, we found that during the 17th Knesset there were 11 discussions regarding the effect of the world economic crisis on the Israeli economy. In the 18th Knesset there were eight discussions regarding the same subject. We conducted a similar examination in the economic committee, but failed to find any discussion of the topic there. Note, however, that the economic committee's mandate is to deal with internal affairs, so the fact that it did not have any discussions about an external issue is not surprising.

The finance committee has 17 members including the chair committee. In 8 out of the 11 discussions on the topic, there was an impressive attendance by MKs (ranging from 7 to 17 MKs), while in 3 discussions attendance was poor (ranging from the chair only to 6 MKs). The list of guests was longer than the number of MKs who attended (from 5 up to 45!). Most of these guests held important positions relevant to the subject of the discussion: the finance minister, the Governor of the Bank of Israel, the CEO of the finance ministry, CEOs of economic organizations, and bank managers. Miller and Moe (1983) would consider these guests as bureaucrats who are important actors in the public policy process. Here we can see that their

presence in the committee meeting is significant both in their number and in the content of the discussion. Most of the discussion time was devoted to the presentations of the guests, which provided important information about and analysis of the Israeli economy. The discussions lasted from half an hour to three hours, and most of them focused on the relevant issues.

The world economic crisis was not the main issue in 10 out of 11 discussions, but it was part of the background and helped place the Israeli economic crisis in the global context. We see here much the same picture as in the OMS that did talk about the world economic crisis. One discussion was all about the consequences of the world economic crisis for Israel. Most of the time the finance minister discussed the actions his ministry was going to take in order to cope with the crisis. We found a similar picture in the 18th Knesset with eight discussions regarding the world economic crisis.

c) *Can motions for the agenda be used as a tool for policy making?*

In addition to OMS, MKs can propose a motion for the agenda, another lightweight procedural tool. When we looked at the floor debate, we found just one motion for the agenda about the world economic crisis during the 17th Knesset, which was initiated by seven MKs. At the end of the debate, 14 MKs voted to pass the motion on to the finance committee, a decision that is considered the best option for a motion for the agenda because it allows a longer and more professional discussion on the motion. A similar picture emerged from the 18th Knesset, where there was one motion for the agenda, initiated by several MKs and passed on to the finance committee. The legislator utilizes this tool, but the government's representative can ask the Knesset to reject the motion. Therefore, if the government is not in favor of the policy suggested in the motion, it has the ability and the power to keep it from coming to a vote. Unfortunately, legislators in the Israeli parliament do not consider motions for the agenda as relevant tool for policy-making about the world economy crisis.

VI. Research Design

The world experienced an economic crisis in two waves. The first wave was between 2007 and 2009[ii]. The second wave began in 2010 and is still going on. The definition of this period of time is based on a review of the major daily newspapers[iii] that reported on the economic crisis. The reasons for this crisis and the steps taken by governments to overcome it are beyond the scope of this research. We are using the first wave of the economic crisis simply as a framework for our study, which will examine OMS delivered in the Israeli parliament between 2007 and 2010. Our database includes 1630 OMS; 250 of them from January 2007, before the economic crisis, until July 2007, the beginning of the crisis; 757 of them from July 2007 until August 2009, the period of the crisis; and 623 of them from August 2009 until June 2010, the period after the economy crisis. Between 2007 and 2010 there were two Knesset terms and two governments: the 17th Knesset began on 4 May 2006 and ended on 31 March 2009 with the 31st government. The 18th Knesset began on 31 March 2009 with the 32nd government. The relevant database for the 17th Knesset has 717 OMS and the relevant database for the 18th Knesset has 913 OMS.

The research uses both qualitative and quantitative methods to analyze how MKs use OMS and to understand what motivates them to do so. First we analyzed the content of the OMS manually. During the manual analysis, we also checked for inter-coder reliability. Then, we examined the research hypotheses by using a statistical analysis. The database contains the following information for each OMS: the name of the initiator, his/her party affiliation, opposition/coalition affiliation, junior/senior rank, nationality and the subject of the speech. In a separate data file we entered the text of each OMS and used content analysis to obtain the essence of each speech. The final step was a series of in depth interviews we conducted with MKs in order to understand the "behind the scenes" process at work with regard to OMS. We sampled 15 MKs out of 90 who were not ministers or deputy ministers. The sampled MKs covered the broad spectrum of elected representative in the Knesset. Each interview took 45 minutes and dealt with general questions about the goals of the MK, the way he/she uses the parliamentary tools and specific questions about their motivation for using OMS. In addition, we analyzed the content of the finance committee protocols and transcripts of floor debates.

VII. Legislators' Motivations for using Oms

a) *Hypotheses*

Based on the literature review and the preceding discussion, we posited several explanations for the motivations of MKs to use OMS: membership of the MK's party in the coalition or outside it, seniority, nationality and position. Seniority was coded as follows: first term MKs were defined as junior MKs and those who were in their second term or later were defined as senior MKs[iv]. In the category of nationality, we distinguished between Jewish and Arab (non-Jewish) MKs. Given that some of these explanations overlap, to see the effect of each of the variables on the number of OMS, we ran a negative binominal event count model.

H1: MKs from the opposition will tend to use OMS more often than MKs from the coalition.

H2: Junior MKs will tend to use OMS more often than senior MKs.

H3: National minority (Arab) MKs will tend to use OMS more often than national majority (Jewish) MKs.

In general, the hypotheses maintain that MKs who are operating at a disadvantage within the government, either due to their position in the opposition or in their party, will be more likely to use OMS as a tool to make themselves heard.

VIII. Results and Discussion

As mentioned before, our database can be divided into two periods of time: part of the 17th Knesset and part of the 18th Knesset. Hence, the research hypotheses will be examined separately for each Knesset term.

We examined the independent variables by calculating the ratio between the number of OMS and the number of MKs who used the tool. It is interesting to note that even though MKs have a quota for using various tools, they do not use them to their full potential.

H1: MKs from the opposition will tend to use OMS more often than MKs from the coalition.

Table 1 : OMS by coalition and opposition MKs

	17th Knesset	18th Knesset
Coalition MKs	35.4% (254 out of 717) 3.25	35.8% (327 out of 913) 4.4
Opposition MKs	64.6 % (463 out of 717) 11.02	64.2% (586 out of 913) 12.7

In the 17th Knesset more OMS were initiated by MKs from the opposition, then MKs from the coalition, we found a similar picture in the 18th Knesset. To get a better picture of the use of OMS, we calculated the proportion between the number of OMS of opposition members and the number of opposition members who used OMS, and created the same calculation for coalition members. The results strengthen our previous findings. Thus, hypothesis H1 is supported for both Knesset terms. Scholars have suggested that those who use the OMS are individualistic and institutionally disadvantaged (Morris 2001). Our findings add to this description by indicating that members of the opposition are more likely to use OMS than members of the coalition. However, why if opposition members use them more extensively than coalition members did they fail to talk about economic hard times or use OMS as a policy-making tool? Again, the answer may be that the bureaucrats in the finance ministry are more powerful, seem to have a better understanding of the subject and have a professional staff to help them determine economic policy.

H2: Junior MKs will tend to use OMS more often than senior MKs.

Table 2 : OMSs by senior and junior MKs

	17th Knesset	18th Knesset
Senior MKs	62.2% (446 out of 717) 5.86	48.5% (443 out of 913) 5.09
Junior MKs	37.8% (271 out of 717) 6.15	51.5% (470 out of 913) 14.24

In the 17th Knesset more OMS were initiated by junior MKs then by senior MKs. When we looked at the proportion between the number of OMS and the number of junior MKs who used OMS, we found a different picture; 6.15 OMS were initiated by junior MKs, while 5.86 OMS were initiated by senior MKs. In the 18th Knesset more OMS were initiated by junior MKs then by senior MKs. The proportion index shows a similar picture.. These findings are similar to those in Morris' (2001) study; junior members of Congress consider the OMS an easy and readily available tool for communication, so they tend to use it more frequently than senior members. Thus, the proportion index supports hypothesis H2 in both Knesset terms.

We were curious as to whether there was a connection between the variable of being an opposition/coalition member and the variable of being a junior/senior MK. Based on the literature review, we expected junior MKs from the coalition to use OMS more often than senior MKs, in a manner similar to that of senior MKs from the opposition (Maltzman and Sigelman 1996). We ran a chi-square test and found a significant connection as expected ($\chi 2=170.129$, sig=0.00). The same tendency emerged from the data from the 18th Knesset ($\chi 2=65.648$, sig=0.00).

Why don't junior MKs use OMS as a tool for making economic policy? Based on the interviews, it appears that these newly elected legislators are not yet familiar with the advantages and disadvantages of various parliamentary tools. Therefore, in their first Knesset term junior MKs explore these tools, and only in their second term do they focus on one or more parliamentary tools that they feel will be most useful for them.

H3: National minority (Arab) MKs will tend to use OMS more often than national majority (Jewish) MKs.

The creation of the national majority-minority in the Israeli context began in 1948 with the establishment of the state of Israel. During the British Mandate, before the Israeli War of Independence, Arabs were the majority of the population and the Jews were the minority. Since 1948, the Arabs have been in the minority both de facto and de jure (Smooha 1984; Jamal 2011). Hence, relations between Jews and Arabs in Israel are not simply those of majority to minority. These relations revolve around differences in nationality, religion and the connection to the global Arab world.

Table 3 : OMSs by national minority and majority MKs

	17th Knesset	18th Knesset
Majority MKs	5.2	6.5
Minority MKs	14.5	17

During the 17th Knesset there were 12 non-Jewish MKs; 2 were Druze and 10 were Arabs (9 Muslims and 1 Christian). In the 18th Knesset there were 14 non-Jewish MKs; 3 were Druze and 11 were Arabs (10 Muslims and 1 Christian). Most of the non-Jewish MKs were in non-Jewish parties, while just a few were part of Jewish parties. The raw data show that 78.4% of the OMS were initiated by Jewish MKs, while 20.2% were initiated by Arabs MKs (the rest were initiated by Druze MKs). However, when we created the index that calculated the proportion between the number of OMS and the number of MKs by their religion, we found a different picture; the proportion of OMS of Jewish MKs was 5.2, while that of the Arab MKs was 14.5 and that of the Druze MKs was 5. The 18th Knesset showed a similar picture. The proportion of OMS of Jewish MKs was 6.5, while that of the Arab MKs was 17 and that of the Druze MKs was 10. Thus, hypnosis H3 is supported. These findings strengthen previous studies about the way minorities use OMS (Maltzman and Sigelman 1996).

Given the findings, why don't Arab MKs use OMS as a policy-making tool? First, the Arab minority in Israel faces a more complex reality than other minorities in Western democracies. They struggle to improve the status of the Arab citizens of Israel and speak up for the Palestinians as well. Second, while they often criticize the government's policies on a variety of issues, they do not have the political power to make policy.

Thus, with regard to all of the research hypotheses, we can say that despite the differences in the political systems between the United States and Israel, with regard to the use of OMS, Israeli MKs tend to behave the same as members of Congress in USA. Those who are outside the corridors of power, including members of the opposition, junior MKs, non-Jewish MKs, rank-and-file MKs, and those who are not party leaders, look to a readily available tool for making their voices heard. That tool is the OMS. Similarly, as previous studies have found, MCs who are at a disadvantage within the legislative institution will also use the OMS to accomplish the same goal.

As noted earlier, one of the weaknesses in our explanation is that in the Israeli context some of the variables we looked at overlap with one another. To see the effect of each of the variables on the number of OMS, we ran a negative binominal event count model the same as Morris (2001) did in his research. (The criterion for assessing goodness of fit was 1.1338, indicating that we used the appropriate statistical model). In the 17th Knesset the only variable that affected the number of OMS was being a member of the opposition ($\chi2=11.12$, Sig=0.0009). The probability of an opposition MK's using a OMS was 2.4 times greater than for coalition MKs (Mean estimate= 0.4123, sig=0.0005).

To achieve a better understanding of this sole significant variable, we created a new coding for it and separated the party with the largest presence in the coalition Forward (Kadima) from the other parties (including parties from the opposition and the coalition). The t-test we ran showed that MKs from Forward used fewer OMS than all of the other parties combined (F=8.065, Sig=0.006). In contrast to Harris' (2005) point about the power of the majority party to schedule OMS and place limitations on the number of OMS per day, we saw a different picture in the Israeli parliament. The largest party in the coalition does not try to limit or to put restrictions on OMS, perhaps because it regards them as less important and less effective tools compared to other tools that are available.

The data from the 18th Knesset showed a little bit of a difference. Here two variables affected the number of OMS: membership in the opposition party ($\chi2=3.87$, Sig=0.0490) and being a junior MK ($\chi2=11.62$, Sig=0.0007). Opposition MKs were 1.4 times more likely than coalition MKs (Mean estimate= 0.6694, sig=0.0458) to give a OMS. Similarly, junior MKs were twice as likely as senior MKs to give a OMS (Mean estimate= 0.5083, sig=0.0005). The additional presence of the latter variable is not surprising because the data are from the first year of the 18th Knesset when junior MKs had just been elected. Furthermore, there was no significant difference between the use of OMS by the largest party in the coalition and other parties. Perhaps members of the largest party had not assimilated the fact that they were now running the coalition, so they still behaved like members of the opposition.

The second part of the analysis was a qualitative one. In order to tell the story behind the numbers, I interviewed 15 MKs, usually by telephone. Most of the interviews lasted about 45 minutes. I asked them questions such as: why do you use the OMS so often, and how do you choose the subject of a OMS? Several insights arose from the MKs' answers. First, the respondents pointed to the availability of the tool and that fact that the MK can use it as much as he or she wants. There are almost no restrictions on its use. Junior MKs in particular are looking for any forum available to gain prominence. In addition, OMS are usually not interrupted. Hence, MKs can talk loudly and clearly for one whole minute. Finally, statistics from the television channel covering the Knesset show that many people watch the show. Therefore, for MKs the OMS is a quick way to attract potential voters. These answers can help us understand the motivation of MKs for using OMS. The tradeoff between using OMS and using other parliamentary procedures is insignificant, especially because there are almost no restrictions and MKs need

only to be on the floor and register. The benefit MKs gain from using OMS is a one-minute weekly exposure to potential voters, which is consistent with what Mayhew indicated as the primary goal of being re-elected.

As for the subject matter of the OMS, MKs initiate OMS based on events from the newspaper or stories of ordinary people that have not receive the attention they deserved. Here their benefit is the ability to represent the voters, a goal that is consistent with the representatives' mandate to enact good public policies. MKs can take a stand on issues of public policy using OMS. The content analysis we conducted revealed a broad range of subjects in the OMS: unemployment, the life of the elderly, the poverty report, land expropriation, illegal building, anti-Semitism, problems facing minorities, violence, security issues, strikes, and inequality in society. These topics resemble those that Rocca (2007) found in his research. In addition, we found that three MKs chose to concentrate on a single subject during their OMS. MK Menahem Ben-Sasson from Kadima talked about new research and gave a mini lecture about the constitution. MK Ran Cohen from New Movement – Meretz (Meretz) talked about the number of soldiers who committed suicide every year and MK Michael Ben Ari from National Union talked about the section of the Torah read on the Sabbath in synagogue. An interesting innovation was Kadima's invitation to the public to submit OMS that Kadima's MKs would read on the floor[v]. They called this initiative direct democracy and were very proud of it during the speeches.

Given that OMS have been studied only in the US House, it is important to understand the similar characteristics that can lead MKs to behave in the same way as members of Congress. While we acknowledge that there are essential differences between the US House and the Israeli parliament, we maintain that the legislators' core behavior is similar. For example, in the US House, the "safety-valve" aspect of OMS allows members of Congress who are at a disadvantage (e.g., freshmen and minority party members) to use this forum because they are shut out of other informal activities. Similar behavior is evident in the Israeli parliament (Hazan and Rahat 2006). Freshmen want to get reelected, so they must take a position on issues and be able to claim credit for doing so. Given that they cannot pass policy on their own, and are unlikely to participate in important informal activities, they turn to public and guaranteed forums such as OMS to show voters they are working on their behalf. Although Israel has three candidate selection methods, each of which leads to a different number of voters to address (Akirav 2010), we can still see similar behavior among Israeli freshmen MKs as among first-year members of Congress. Despite differences in candidate selection methods, type of government, size of country, or culture, the unconstrained nature of the OMS seems to make it an ideal tool particularly for legislators with less clout to make themselves seen by the public. Thus, we can understand why the Israeli Knesset adopted it as a tool and why certain MKs are eager to use it.

One might argue that the issue of OMS, which is a tool that exists in only five legislatures worldwide, is a minor one. There are already numerous studies about legislation and committees (Gamm and Huber 2002; Tsebelis 2002). The main questions in these studies are about the distribution of power among the different players in the legislatures (e.g., minorities, coalition/opposition members, religious groups, and constituencies). The procedures surrounding legislation and committees are complex because of the need to create checks and balances among the various forces in a legislature. In this context, OMS is an easy tool to use, one that offers short-term benefits, such as allowing a legislator to take a position on a topic of special interest to him or her, and long-term benefits, such as demonstrating ongoing participation in legislative procedures. Hence, it is relevant tool, and we should deepen our understanding about it in two ways. First, in those parliaments in which OMS does exist, we should determine who uses it, how it is used and for what purpose. Second, in those parliaments in which it does not exist, we should consider the pros and cons mentioned above in arguing for its introduction.

Four of the five legislatures that have OMS are federations (Canada, Australia, US and the EU). Israel is the exception. In these four entities, the electoral system is based on constituencies. Israel is the exception. In addition, these four entities are spread out over a wide geographical expanse. Israel is the exception. Looking at the electoral system of the five legislatures, we can see that two are strong legislatures (the US Congress and the European Parliament) and two are ex-Westminster systems (Canada and Australia). Once again, Israel, with its system of proportional representation, is the exception.

Why would Israel, whose characteristics differ so markedly from those of the other four entities with OMS, have adopted this tool? To answer this question, we looked at the House Committee's protocol from January 2000 (when MKs voted in favor of having OMS). Adopting the OMS in the Israeli parliament was part of the procedural reforms introduced by the Speaker of the House, MK Burg. Adoption of the OMS was designed to keep the Knesset's agenda relevant (House Committee Protocol 4.1.200 p. 2). This goal is echoed in the motivations of the other legislatures that have adopted the one-minute speech[vi]. For example, in the case of the Canadian Commons, the adoption of OMS was a practical response to a need strongly expressed by legislators to speak out on matters of current and often local interest. The Members felt that this need was vital

enough to modify the rules of the House to allow for such statements. Thus, the Members clearly did not feel that the statements were extraneous to the work of the House. Similarly, in the US, OMS help the individual legislator because it is a candidate-centered electoral system. If parties were completely in charge of the system, there would be less need for OMS. OMS serve the interests of the individual Congressperson because they allow him or her to take a position on an issue or claim credit for the successful passage of a piece of legislation.

Still, why do Israeli MKs make such limited use of OMS as a tool for economic policy-making? Our interview with those MKs who did make extensive use of the OMS yielded four explanations. First, MKs prefer to talk about issues that are close to them. The world economic crisis is a distant and abstract issue that is less relevant to the daily work of the ordinary MK. Second, the Israeli political system is very turbulent, so political issues such as Israeli-Palestinian conflict considered more urgent than other issues. Third, MKs may use other tools such as urgent motions or motions for deliberation in a committee to discuss the world economic crisis. Fourth, senior officials at the finance ministry are considered very powerful in the decision-making process about the economy. Perhaps MKs felt that the world economic crisis was their major official responsibility rather than an issue that the MKs needed to address. Such an explanation accords with Miller and Moe's (1983) finding that the power of the bureaucrats trumps the power of legislators in economic issues.

Finally, perhaps the infrequent use of OMS is related to the characteristics of the MKs who use them extensively. There are two rewards for using OMS. First, through them, the MK can make his or her voice heard by taking a position on an issue. Second, disadvantaged MKs who have fewer tools available to them than their more well-established peers are more likely to use them.

IX. Conclusion

Representatives in different assembles tend to behave in the same manner. The current research provides empirical proof that Israeli MKs behave in the same way in their use of the one-minute speech as MCs in the US House of Representatives. Those who favor this format tend to be individualistic and institutionally disadvantaged MKs, just like the MCs who Rocca (2007) and Morris (2001) found in the US House of Representatives. MKs from minority parties use OMS more often than other MKs, just as Maltzman and Sigelman (1996) and Morris (2001) found among MCs.

Our study examined the use that MKs make of OMS as a tool for making policy in response to the world economic crisis. We argued that in economic hard times Israeli MKs prefer to concentrate on internal issues rather than external ones, so they do not take the opportunity to talk about worldwide economic policy. The findings strengthened our claim. The data showed that MKs talked about a wide range of subjects during their OMS, including the Israeli economy, but only four talked directly about the world economic crisis, and few used it as policy-making tool. After interviewing MKs, analyzing the content of the finance committee's protocols and motions for the agenda, we offered some explanations for this puzzling data. We suggested that MKs prefer to talk about issues that are close to them. Second, political issues in Israeli politics are more urgent than other issues. Third, it is possible that MKs talked about the world economic crisis using other tools available to them. Finally, given the power of senior officials in the finance ministry in the decision making process about the economy, MKs might have felt that the world economic crisis was their area of concern rather than one the MKs should address.

Given that this study about the use of OMS in the Israeli parliament is a pioneering one, we must bear in mind that we have just scratched the surface of the issue. Future research should dig deeper into the content of the speeches, with the goal of determining how characteristics such as gender, being a member of a minority group, humor in political speeches, religion, and criticism of the government affect the choice of this parliamentary tool. In addition, given that there are no studies about OMS other than in the US House of Representatives, future research should compare the use of OMS in parliamentary environments such as in Israel, Australia, Canada, and the European Parliament with that in the US House of Representatives. Although the twenty-first century provides legislators with new challenges and new opportunities to be accessible to their audience through social networking tools such as Twitter and Facebook, the good old-fashioned speech, which has been around since the days of Aristotle, is still an important communication tool.

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Endnotes

[1] This analysis is based on Part D, Chapter two, Article 33a of the Rules of Procedure of the Knesset and on Mulvihill, Mary. 1999. *One-Minute Speeches: Current House Practices*. CRS Report for Congress.

[2] [2] Our research continues through 2010in order to examine the period after the crisis.

[3] Such as *The New York Times* and *The Washington Post* from the USA, and *The Guardian* and *The Times* from the UK.

[4] In the Israeli parliament, a term lasts for four years. Previous studies indicate that MKs adjust very quickly to the fast-lifestyle of being an MK. Therefore, we made a clear-cut distinction between the first term, which we called junior term, and the following terms, which we defined as senior terms.

[5] It was taken into account when the OMSs were coded and assessed

[6] We asked the speakers of those legislatures by email about the use of OMS.

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Cross Border Crimes in West African Sub- Region: Implications for Nigeria's National Security and External Relations

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Abstract- Despite the efforts of cross-border security agencies like the Nigeria police, customs service, Immigration services, and Nigerian civil Defense etc, Nigeria borders have been described as porous allowing all sorts of cross border or trans-border criminal activities such as human trafficking, smuggling, drug trafficking, arm robbery, money laundry and illicit arms trafficking resulting to proliferation of SALW. Thus, West Africa's regional superpower, Nigeria, continues to face serious security challenges due to cross border or trans-border criminal activities. We argue that; one, the spate of cross border criminal activities in West Africa undermines Nigeria's national security; and two, frequent trans-border crimes in West African sub-region impede Nigeria's external relations. The focus of this paper therefore is to examine the implications of cross border crimes in West Africa for Nigeria's national security and external relations. The study is basically a historical research method relying mainly on secondary sources of data from internet sources, official documents and country websites as the method of data collection.

Keywords: cross border crimes, west africa, nigeria, national security and external relations.

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Cross Border Crimes in West African Sub-Region: Implications for Nigeria's National Security and External Relations

Prebendalism as an Albatross to Democratic Practice and National Development in Nigeria: A Critical Discourse

Dr. Okeke Vincent Onyekwelu Sunday [α], Dr. Oji [σ] & Richard Okechukwu [ρ]

Abstract- Despite the efforts of cross-border security agencies like the Nigeria police, customs service, Immigration services, and Nigerian civil Defense etc, Nigeria borders have been described as porous allowing all sorts of cross border or trans-border criminal activities such as human trafficking, smuggling, drug trafficking, arm robbery, money laundry and illicit arms trafficking resulting to proliferation of SALW. Thus, West Africa's regional superpower, Nigeria, continues to face serious security challenges due to cross border or trans-border criminal activities. We argue that; one, the spate of cross border criminal activities in West Africa undermines Nigeria's national security; and two, frequent trans-border crimes in West African sub-region impede Nigeria's external relations. The focus of this paper therefore is to examine the implications of cross border crimes in West Africa for Nigeria's national security and external relations. The study is basically a historical research method relying mainly on secondary sources of data from internet sources, official documents and country websites as the method of data collection. In other words, we made use of qualitative-descriptive analysis as our method of data analysis, that is, documentary studies of official document and other materials in analyzing the secondary data. This paper titled "Cross Border Crimes in West African sub-region: Implications for Nigeria's National Security and External Relations". The paper is basically a historical research method relying mainly on secondary sources of data from internet sources, official documents and country websites as the method of data collection. We made use of qualitative-descriptive analysis as our method of data analysis, that is, documentary studies of official document and other materials in analyzing the secondary data. The major purpose of embarking on this research is to examine the implications of cross border crimes in West Africa for Nigeria's national security and external relations. Thus, we were able to make the following principal findings that, one; the spate of cross border criminal activities in West Africa undermines Nigeria's national security. Two, which frequent trans-border crimes in West African sub-region, impede Nigeria's external relations. On the basis of this, we recommend, one, reconstituting the Nigerian state in such a way as to be proactive in dealing with the rampant cross border criminal activities that undermine its national security. Two, strengthening the cross-border law enforcement agencies in order to enable them check the frequent trans-border crimes that impede its external relations and finally this paper is to explore particular cross border crimes in West African sub-region, and recommend options for effective responses. In doing this, this paper seeks to: (a) identify and discuss the different categories of cross-border crime; (b) review efforts aimed at curbing cross-border criminal activities by looking at levels of state collaborative processes and regulatory frameworks; and finally (d) recommend effective options for government and civil society action on the issue. This paper calls for strengthening short-term, feasible and implementable sub-regional collaborative programmes backed by swift national enforcement measures to address the proximate causes of cross-border crimes in West African sub-region.

Keywords: cross border crimes, west africa, nigeria, national security and external relations.

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I. Introduction

Nigeria is a diverse and a vast country covering 923, 768 square kilometres with more than 36, 450 kilometres of land and maritime borders, and shares land borders with four countries namely, Benin Republic in the West, Chad and Niger in the North, and Cameroon in the East. It shares international water Lake Chad in the North with Niger, Chad and Cameroon, and a maritime border coastline in the Gulf of Guinea or Atlantic Ocean. Along the Western border, Nigeria has 770 kilometres of shared land border with the Republic of Benin, in the North, around 1,500 kilometres with Niger and 90 kilometres with Chad and in the West, 1,700kilometres with Cameroon. Along the Southern coastline it also shares 853 kilometres of maritime border with the Atlantic Ocean known as the Gulf of Guinea. All totaling outstretch of about 4910 km of borders (Yacubu, 2005; Stohl and Tuttle, 2009; Nte, 2011). Despite the effort of cross-border security agencies like the Nigeria police, customs service, Immigration services, etc, Nigeria borders have been described as porous allowing all sorts of cross border or trans-border criminal activities such as human trafficking, smuggling, drug trafficking, arm robbery, money laundry and illicit arms trafficking resulting to

proliferation of SALW. For example, out of the 640 million small arms circulating globally, it is estimated that 100 million are found in Africa about 30 million in sub-Saharan Africa and 8 million in West Africa, alone. The majority of these SALW about 59% are in the hands of civilians, 38% are owned by government armed forces, 2.8 % by police and 0.2% by armed groups (Ibrahim, 2003; Stohl and Tuttle, 2009; Nte, 2011). Between 1999 and 2003, there were over 30 communal clashes, sectarian violence and ethno-religious conflicts with each claiming hundreds of lives and properties, and internal displacement of women and children. The proliferation and use of SALW in ethno-religious clashes and armed robbery have killed more than 10,000 Nigerians, an average of 1000 people per year since 1999. The majority of casualties about 66% in Kano riot of 2004 were SALW victims sustaining permanent disabilities. Injuries due to SALW have increased as much as ten-fold in urban Nigeria because most homicides are committed using SALW (John, Mohammed, Pinto and Nkanta, 2007; Nte, 2011). The problems of armed violence and proliferation of SALW are worsened by the inability of the police to reduce violent crime, ensure law and order and provide adequate security to the populace. None of the security agent currently possesses the training, resources or personnel to perform their duties effectively due to lengthy and porous nature of Nigerian borders (Hazen and Horner, 2007). Nte (2011) posits that there is a direct link between the acquisition of weapons like SALW and escalation conflicts into a full-brown war. The proliferation of small arms and light weapons is often one of the major security challenges currently facing Nigeria, Africa and indeed the world in general. The trafficking and wide availability of these weapons fuel communal conflict, political instability and pose a threat, not only to security, but also to sustainable development. The widespread proliferation of small arms is contributing to alarming levels of armed crime, and militancy (Nte, 2011).

a) Statement of the Problem

Statement of problem is the fundamental question that requires an answer, it is the most worrying issues that need to be properly examine and understood. It is a fundamental question because many other specific research questions are derived from it. The research problem is the fulcrum which the research objective and hypotheses revolve (Obasi, 1999). Under the statement of problem the researcher is expected to examine the 'why' related issues the researchers does not only describe as such but rather raise question that attract curiosity and expectation in terms of answer. West Africa's regional superpower, Nigeria, continues to face serious security challenges due to cross border or trans-border criminal activities. African countries generally have experienced direct, indirect and consequential impacts of weapons proliferation. Thousands of people, – both civilians and combatants – are killed or injured every year on the continent. Yet, even when death or injury is avoided, small arms proliferation and misuse can dramatically impact a community, country or region's landscape. The threat and use of small arms can undermine development, prevent the delivery of humanitarian and economic aid, and contribute to refugee and internally displaced persons (IDP) populations (Stohl and Tuttle, 2009). Thus, despite the effort of cross-border security agencies like the Nigeria police, customs service, Immigration services, etc, Nigeria borders have been described as porous allowing all sorts of cross border or trans-border criminal activities such as human trafficking, smuggling, drug trafficking, arm robbery, money laundry and illicit arms trafficking resulting to proliferation of SALW. For example, out of the 640 million small arms circulating globally, it is estimated that 100 million are found in Africa about 30 million in sub-Saharan Africa and 8 million in West Africa, alone. The majority of these SALW about 59% are in the hands of civilians, 38% are owned by government armed forces, 2.8 % by police and 0.2% by armed groups. (Ibrahim, 2003; Stohl and Tuttle, 2009; Nte, 2011). Between 1999 and 2003, there were over 30 communal clashes, sectarian violence and ethno-religious conflicts with each claiming hundreds of lives and properties, and internal displacement of women and children. The proliferation and use of SALW in ethno-religious clashes and armed robbery have killed more than 10,000 Nigerians, an average of 1000 people per year since 1999. The majority of casualties about 66% in Kano riot of 2004 were SALW victims sustaining permanent disabilities. Injuries due to SALW have increased as much as ten-fold in urban Nigeria because most homicides are committed using SALW (John, Mohammed, Pinto and Nkanta, 2007; Nte, 2011).

b) Research Questions

Research question is the fundamental question about the study that requires an answer. It is the fundamental question because other specific research questions derive from it. It, also, shapes or determines the research objectives and hypotheses. Obasi (1999) notes that research question is the most worrying issue or fact that needs to be properly examined and understood. From the foregoing, therefore, we raised the following questions:

1. Does spate of cross border criminal activities in West Africa undermine Nigeria's national security?
2. Do frequent trans-border crimes in West African sub-region impede Nigeria's external relations?

c) Objectives of the Study

Under the objectives of the research, one is required to state in concrete terms, what are expected to

be achieved at the end of the research. In other words, it represents the end product of what is being researched upon, in terms of the expectation or solution required. One is therefore required to present identifiable or concrete things to be accomplished by the research. This study has broad and specific objectives. The broad or general objective is to examine the implications of cross border crimes in West Africa for Nigeria's national security and external relations. While the specific objectives include the following:

1. To ascertain if the spate of cross border criminal activities in West Africa undermines Nigeria's national security.
2. To ascertain whether frequent trans-border crimes in West African sub-region impede Nigeria's external relations.

d) Significance of the Study

The significance of the study is one, the value or contribution which the research is going to make to existing knowledge in terms of theoretical justification or relevance; and two, the solution the research is going to provide towards ameliorating a practical problem of concern (Obasi, 1999). A research can be justified because it is (i) timely, topical or auspicious (ii) closing an existing gap in knowledge or the literature (iii) theoretically relevant (iv) practically relevant (v) in accordance with national priority (vi) in accordance with priorities set by research funding agency (vii) wider in scope in terms of issues covered or geographical arrears covered, and (viii) useful for confirming/ accepting or rejecting existing findings. It lists out the groups, institutions that are likely to benefit from the findings or discoveries of research. Therefore, the study has theoretical and practical relevance. The theoretical relevance of this study is that it examines the implications of cross border crimes in West Africa for Nigeria's national security and external relations. By so doing, the study enriches the existing stock of literature or expands the frontiers of knowledge through its findings, therefore serves as a source of data/material to those scholars who may be interested in further studies in this area. Empirically or practically, this study will be of immense benefits to Nigerian government, security advisers, defence advisers, policy makers, regional institutions like AU, ECOWAS, etc. the study is also timely and topical.

e) Nature and Meaning of Cross Border Criminal Activities

The nature of cross-border crime has changed rapidly over recent years through the use of technology, networks, the loosening of travel restrictions and through criminal diversification. Crime networks are complex and to break them is a massive task for police forces worldwide. This is in part due to the fact that the heads of these organisations have powerful connections, and their wealth enables them to bribe officials. Transnational crimes are crimes that have actual or potential effect across national borders and crimes which are intra-State but which offend fundamental values of the international community (Boister, 2003). In recent times the term is commonly used in the law enforcement agencies and academic communities. The word "transnational" describes crimes that are not only international (that is, crimes that cross borders between countries), but crimes that by their nature involve cross-border transference as an essential part of the criminal activity. Transnational crimes also include crimes that take place in one country, but their consequences significantly affect another country and transit countries may also be involved. Examples of transnational crimes include: human trafficking, people smuggling, smuggling/trafficking of goods (such as arms trafficking and drug trafficking and illegal animal and plant products and other goods prohibited on environmental grounds (e.g. banned ozone depleting substances), sex slavery, terrorism offences, torture and apartheid. Transnational organized crime (TOC) refers specifically to transnational crime carried out by organized crime organizations. Transnational crimes may also be crimes of customary international law or international crimes when committed in certain circumstances. For example they may in certain situations constitute crimes against humanity. According to the UNODC, "Transnational crime by definition involves people in more than one country maintaining a system of operation and communication that is effective enough to perform criminal transactions, sometimes repeatedly" (UNODC Report2005:14). While it may be true that the fragility of states in West Africa and the weakness of state institutions mandated to combat the drug menace has contributed to the upsurge of TOC in recent times, the complicity, active or passive, of state officials in the region and outside, cannot be ruled out. For example, the January 2004 arrest of an international smuggling gang in Ghana that had imported 675 kilograms of cocaine, with a street value estimated at USD 140 million, led to the suspects being released on bail of just USD 200,000, causing a public outcry in the press (Aning, 2007).

The task of defining or describing "trans-border crime" would not be an easy one, because many elements have been recognized as constituting it. However, "trans-border crime" represents a number of illegal and notorious activities carried out by individuals and groups across national and international borders, either for financial or economic benefits and also sociopolitical cum religious considerations. It is a set of criminal acts whose perpetrators and repercussions go beyond territorial borders. These would include human trafficking, money laundering, drug trafficking, arms smuggling or trafficking of weapons, cross-border terrorism, illegal oil bunkering, illicit trafficking in

diamonds, corruption, business fraud, to mention but these notable few (Asiwaju, 1992, Ering, 2011,). Money laundering is the practice of engaging in financial transactions to conceal the identity, source, or destination of illegally gained money. It could also be defined as the process of taking any action with property of any form which is either wholly or in part the proceeds of a crime that will disguise the fact that that property is the proceeds of a crime or obscure the beneficial ownership of said property (Ering, 2011, Boister, 2003). In the past, the term money laundering was applied only to financial transactions related to organized crime. Today, its definition has been expanded by government and international regulators such as the "US office of the controller of the Currency" to mean" any financial transaction which generates an asset or a value as the result of an illegal act", which may involve actions such as "tax evasion" or "false accounting". In some countries, the concept is broader than the involvement of money to include "any economic good" and other transactions. Money laundering is ipso facto illegal, the acts generating the money almost are themselves criminal in some way (for if not, the money would not need to be laundered) (Addo, 2006, Park, 2006, Ering, 2011).

Historically, money laundering evolved in 1931 when many methods were devised to disguise the origins of money generated by the sale of illegal alcohol. During this period All Capone's was convicted for tax evasion, mobster Meyer Lansky transferred funds from Florida "Carpet Joints" to accounts overseas. After the 1934 Swiss Banking Act, which created the principle of bank secrecy, Lansky bought a Swiss Bank into which they could transfer his illegal funds through a complex system of "Shell Companies", holding companies, and "offshore bank" accounts (Ering, 2011, Addo, 2006). Drug trafficking, on the other hand, typically refers to the possession of an illegal drug in a predetermined quantity that constitutes the drug that is going to be sold. Legally, the US defines drug trafficking as "an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute or dispense (Addo, 2006, Ering, 2011, Passas, 2002).

However, drug trafficking involves selling drugs and drug paraphernalia, whether it is a local exchange between a user and a dealer or a major international operation. Drug trafficking is a problem that affects every nation in the world and exist on many levels. It has also been described as the commercial exchange of drugs and drug paraphernalia which may include any equipment used to manufacture illegal drugs or use of them (Ering, 2011, Park, 2006).

f) Issues and Perspectives of Trans-Border Criminal Activities in Nigeria, West Africa, Africa and Globe

The international community is confronted with an increasing level of transnational crime in which criminal conduct in one country has an impact in another or even several others. Drug trafficking, human trafficking, computer crimes, terrorism, and a host of other crimes can involve actors operating outside the borders of a country which might have a significant interest in stemming the activity in question and prosecuting the perpetrator. Contemporary transnational crimes take advantage of globalization, trade liberalization and exploding new technologies to perpetrate diverse crimes and to move money, goods, services and people instantaneously for purposes of perpetrating violence for political ends (Dan, 2013). Ortuno and Wiriyachai (2009) have maintained that the past few years have been characterized by a significant increase in global criminal activities such as money laundering, trafficking in human and nuclear technology and material, the trade in human organs and migrant smuggling. At the same time, emerging crimes such as modern piracy, and trafficking in toxic waste, counterfeit medicines, precious metals or natural resources have been added to the list of traditional illegal activities such as prostitution, drug trafficking and arms trafficking. Most recently, transnational crime has grown in scope and is characterized by increasingly global reach, involved in multiple forms of criminal activity, expanding criminal markets to include large-scale financial fraud and cybercrime. And the syndicates are willing to protect their activities through violent and ruthless means, linked to international terrorist groups and devising novel and notorious organizational strategies to deter capture (Luna 2008). As it stands, no region is immune from global reach of transnational crime groups. Since the end of the Cold war, we have seen international organized crime groups continue to branch out beyond their traditional parameters, take quick advantage of new opportunities, and move more readily into new geographic areas. The major international organized crime groups operate in the United States, Latin America, West Africa, Southeast Europe, Asia, Russia and all other regions (Ering, 2011, Park, 2006). In the post-world war II era, legislators found themselves in a quandary as they were confronted with a growing list of commercial, fiscal, and environmental offenses that did not actually cause direct harm to any one identifiable victim, there was no stinking corpse. They decided that confiscating the proceeds of crime would adequately deter potential criminals. Anxious to avoid confiscation, organized criminals now needed to give these huge sums of money – not easily consumed or invested in the legal economy without raising eyebrows a patina of legitimacy they needed to "Launder" it (Asiwaju, 1992, Ering, 2011).

Money laundering has been dubbed the "Achilles heel of organized crime", for it compels mobsters to seek out and co-opt established businessmen and women with highly technical know-how and access to legal institutions like banks to launder their plunder. The term "money laundering" does not derive, as is often said from Al Capone having used Laundromats to hide ill-gotten gains. It is more likely to mean that dirty money is made clean. The first reference to the term "money laundering" itself actually appeared during the "watergate scandal" in United States of America (Ering, 2011, Park, (2006). This was when the then US president Richard Nixon's "Committee to Re-elect the president" moved dirty campaign contribution o Mexico, then brought the money back through a company in Miami. It was Britain's "The Guardian" newspaper that coined the term, referring to the process as "Laundering". Money may be laundered through a complex business network of Shell Companies and trusts based in tax haven example cashing up-moving large amount of small change each week into banks in order to avoid suspicion; captive business – involve starting up a business whose cash inflow cannot be monitored, and funnel the small change into it and pay taxes on it. Money laundering has attendant effects on the socioeconomic development of societies (Asiwaju, 1992, Ering, 2011).

Cross-Border Challenges

The Secretary-General reports every six months the Security Council on the fulfillment of the mandate of the United Nations Office for West Africa (UNOWA). The report focuses on country-specific political developments within the sub-region, on cross-border and cross-cutting issues in West Africa and on activities undertaken by UNOWA in cooperation with other United Nations entities and regional organizations, including the Economic Community of West African States (ECOWAS), as well as civil society and other international organizations. UNOWA works in synergy with other United Nations entities in regional organizations in West Africa to raises attention on and tackle the situation in the sub region. Its action is focused on a number of priorities: encouraging recovery efforts in countries affected by crisis, consolidating good governance and the rule of law, promoting human rights and gender mainstreaming, and raising awareness of the imperative need for economic growth and the fair distribution of wealth.

Source: UNOWA-United Nations Office for West Africa, 2014

II. Theoretical Framework

A theoretical framework refers to how the researcher or writer of the report not only questions, but ponders and develops thoughts or theories on what the possible answers could be, then this thoughts and theories are grouped together into themes that frame the subject. It is the process of identifying a core set of

connectors within a topic and showing how they fit together. Obasi (1999) states that, by theoretical framework, we mean a device or scheme for adopting or applying the assumptions, postulations and principles of a theory in the description and analysis of a research problem. It is a way of describing, analysis, interpreting and predicting phenomena. This study is anchored on the combination of the theory of relative autonomy of the state and failed state theory. The state relative autonomy theory is situated within the ambit of the neo-Marxist political economy paradigm. The theory of relative state autonomy depicts the level or degree of detachment or aloofness of the state in the discharge of its duties such as mediating inter-class and intra-class struggles. Thus, this theory presupposes that in any state or political society, there are two levels of contradiction, namely primary contradiction and secondary contradiction. Primary contradiction is inter-class struggle or depicts class struggle between two antagonistic classes such as the ruling class and the ruled class or the bourgeois class and the proletariat (i.e. the working class). Whilst, secondary contradiction is the intra-class struggle, denoting class conflicts within the ruling-class or between different segments of the ruling-class. Marx and Engels demonstrate this intractable phenomenon of class struggle when they declare in the preface of their book, *The Communist Manifesto* that "the history of all the hitherto existing society is the history of class struggles" (Marx and Engels, 1977). The exponents of the theory hold that a state can exhibit either low or high relative autonomy. A state exhibits high autonomy when there is high commodification of capital or excessive penetration of capital into the economy such that the bourgeois class indulges in accumulation of capital through direct exploitation of the working class or appropriation of surplus value when they enter into social relationships of production (i.e. private capitalism). Here, the state is not interventionist, in other words, it does not intervene in the domestic economy like participating in the productive activities (i.e. public/state enterprises) or controlling or nationalizing means of production. The role of state here, therefore, is to regulate. As such, the state is relatively an impartial umpire meditating inter-class and intra-class struggles through harmonization and reconciliation of class interests. The developed capitalist states of the West are, therefore, considered to exemplify this high relative autonomy, and as a result, exhibit high level of human rights observance and protection (Ake, 1976; Alavi, 1972). Conversely, a state exhibits low autonomy when there is low commoditization of capital or low penetration of (private) capital into the economy in such a way that the ruling class is constantly engage in primitive accumulation of capital through embezzlement of public fund. The state becomes the only avenue for capital accumulation. The state is thus, interventionist for engaging in productive activities of means of productive activities (i.e. public corporation) by nationalization of major means of production. This state does not limit itself to regulatory rule and is hence compromised, such that instead of rising above class struggle it is deeply immersed in it (Ake, 1981; 1985). The Nigerian state like other developing state exhibits a low level of the autonomy of the state as a result of low commoditization of capital. Under the electric mixture of mixed economy, Nigeria experiences the phenomenon of lack of penetration of (private) capital into the economy creating a parasitic petty bourgeois class whose major source of accumulation of capital is the state. Hence, the Nigerian state becomes the only avenue for (primitive) accumulation of capital through which the governing class (i.e. petty bourgeoisie) produce and reproduce their dominance. The implication of the low autonomy of the Nigerian state is that it is immersed in the class struggle rather than rising above it leading to intense struggle for the control of the state for primitive accumulation and marginalization of everything (Ake, 2001). According to Patrick (2007:644-662) the term "failed state" is often used to describe a state perceived as having failed at some of basic conditions and responsibilities of a sovereign government. A failed state is one that has shattered social and political structures. It is characterized by social, political and economic failure. Common characteristics of a failing state is when a central government is so weak or ineffective that it has little practical control over much of its territory, non-provision of public utilities or services, widespread corruption and criminality; refugees and involuntary movement of populations, and sharp economic decline. Thurer (1999) notes that failing states are invariably the product of a collapse of the power structures providing political supports for law and order, a process generally trigged and accompanied by anarchic forms of internal violence. It is the collapse of state institutions, especially the police and judiciary with resulting paralysis of governance, a breakdown of law and order, and general banditry and chaos. Not only are the functions of government suspended, but its assets are destroyed or looted; and experienced officials are killed or flee the country. According to Thurer (1999:1-5) failed states are:

The Fund for Peace propose the following attributes or characteristics of a failed state in order to make it more precise (a) loss of physical control of its territory, or of the monopoly on the legitimate use of physical force (b) erosion of authority to make collective decision (c) an inability to provide reasonable public services and (d) an inability to interact with other states as full member of the international community. Anyanwu (2005) states that by a failed state we mean a state that is unable to meet the needs and aspirations of its masses. A failed state as opposed to capable state is a state which has failed to provide for its citizen such basics needs like adequate security, food, water, electricity, health care, good roads, etc. Nigeria is by all

indications or indices a failed state - a state where nothing works. Even those ones that work in other countries once adopted in Nigeria refused to work.

a) *Background to Cross Border Crimes in Nigeria and West African Sub-Region*

There is increasing concern about cross border crime and its implications for the international community. A variety of explanations have been put forward for its increase. In this era of so called globalisation, it is suggested that the incentives for cross border crime have increased, as criminals have identified the opportunities to gain greater rewards from criminal activity outside their traditional boundaries. These cross-border crimes are mostly symptomatic rather than as causes of instability in the region. The higher levels of disposable income in Western Europe and North America create a marketing opportunity for the illicit trade of the rest of the world. This is not limited to the trade in drugs but extends to almost all criminal currency; prostitution, pornography, protection and counterfeiting (Van, 2002, Julins, 2002).

However the flow of criminal trade is not all one way. The more developed countries export crime as well as import it. Corruption is an example of a crime exported from more developed countries to those that are vulnerable in the rest of the world. Citizens and corporations from the most developed nations would head any worldwide most wanted list. The 2004 UN Secretary-General's Report on ways to combat sub-regional and cross border crimes in West Africa identified major cross-border problems including the continued weakening of the security sector, proliferation of roadblocks, youth unemployment, environmental degradation, social exclusion, explosive remnants of war (ERW), mass refugee movements and forced displacement. Inequitable and illicit exploitation of natural resources, weak national institutions and civil society structures and violations of human rights, including the rights of women, were also identified as other serious problems afflicting the sub-region (de Andrés, 2008, Boister, 2003, Mueller, 2001). Cross-border crimes in West Africa have been in existence since the 1970s. Initially, they were manifested in the form of individuals or groups of traders and businessmen and women smuggling goods across the borders. These activities eventually assumed alarming proportions when human trafficking, for the purposes of domestic slavery and illegal sexual activities, accompanied such activities as the peddling of narcotics and car-jacking among other things by transnational syndicates (de Andrés, 2008). The outbreak of intra-state conflicts in West Africa, beginning with Liberia in 1989, added mercenaries, small arms trafficking and the recruitment of child soldiers and fighters to the cross-border crimes. West African criminal networks are generally characterized by their flexibility and their ability to take on different forms and modes of operation. The criminal enterprises in West Africa use similar techniques to that of the legitimate traders and business people, typical of lineage-based societies. The standard procedure entails a successful individual entrepreneur inviting one or more junior relatives or dependants to join him or her in an illegal business deal (Boister, 2003, Dan, 2013, de Andrés, 2008).

Since the 1990s, cross-border criminal activities have become widespread and highly sophisticated. They have served as an industry for former combatants and transnational criminal syndicates who undertake illegal or criminal activities in the sub-region and in the process of undermine state security structures and abuse of human rights (de Andrés, 2008). The neglect of these communities by various tiers of government over the years, which led to their underdevelopment has not only made them transcend international boundaries to boost what Bratton (1996), Chazan (1996) and Mackenzie (1992) dubbed as "second", "parallel", "informal", "underground", "black" or "irregular" economic centers; but it has also 'transformed' them into sites for global criminal economy smuggling routes. There have also been marked features of those criminal routes in Nigeria waterways where up to half of pirate attacks around the world take place. Despite the global fall in the number of attacks in 2004, Nigeria's figure doubled the number of casualties recorded in other hot spots around the world, including Vietnam, Bangladesh and the Philippines (*The Guardian*, July 27, 2004). For example, Nigeria, Senegal and Côte d'Ivoire were named and shamed for allegedly fuelling the illegal ivory trade. Having largely wiped out their own elephant production, the three countries were believed to be importing and selling tones of ivory which has been poached in nearby countries, according to a new report from conservation watchdogs (de Andrés, 2008, Julins, 2002). Analysts and counter-terrorism experts point to the fact that the terrorist group, al Qaeda, is used, and is continuing to use, rough diamonds in West Africa. The think-tank Global Witness presented evidence that confirms that al Qaeda has been involved in the rough diamond trade since the 1990s. Firstly in Kenya and Tanzania and then in Sierra Leone and Liberia, where they began to show an interest in diamond trading in 1998, following the crackdown on their financial activities in the wake of the US embassy bombings in Kenya and Tanzania. This report argues that there are several reasons why al Qaeda has used rough diamonds; as a means of raising funds for al Qaeda cells; to hide money targeted by financial sanctions; to launder the profits of criminal activity; and to convert cash into a commodity that holds its value and is easily transportable (de Andrés, 2008. Addo, 2006).

In this context, it would be worth highlighting the past and current use of diamonds by Hezbollah as a

source of revenue and a mechanism for asset transfer. Western intelligence sources have examined the alleged links between a network of Lebanese diamond traders and their associated companies, and Lebanese terrorist group Hezbollah, before briefly considering the evidence of the past and recent involvement of Hezbollah and AMAL in raising funds from diamond trading in West Africa. It is widely accepted that Hezbollah has been using the rough diamond trade throughout the 1980s and 1990s to raise funds, and that it continues to derive financial support from it (de Andrés, 2008, Dan, 2013). Some of these activities are made possible by common ethnic affiliations (in terms of language, beliefs, perceptions and support) at either side of the borders and intense economic activity undertaken along these corridors. Armed attacks and extortion at illegal check points, and '419' robbery and criminal activities experienced especially along the Benin-Nigeria corridor of the West African borders also constitutes common cross-border crimes (de Andrés, 2008, Dan,2013). Some of the small arms are manufactured locally, while others are imported into the sub-region. In 2002 and 2003, for example, Côte d'Ivoire allegedly received several deliveries of military equipment, while Liberia received 49 deliveries in 2002 and 25 deliveries in 2003. Additionally, some of the countries in the sub-region, but especially Ghana, Mali, Nigeria, and Sierra Leone, have a flourishing artisanal industry of local arms manufacture. These arms are smuggled out of Ghana through Togo, Benin to Nigeria, and used for violent crime. In November 2008, UN report on Drug Trafficking in West Africa shows that declining US cocaine and a rising European one appear to have prompted South American cocaine traffickers to make use of low-governance areas in West Africa as transit zones. This gave rise to at least 46 tons of cocaine seizures to Europe via West Africa since 2005. Prior to this time, the entire continent combined rarely seized a ton annually. There appear to be two parallel one, mainly involving large maritime and private air shipments, owned and managed by South Americans. In exchange for logistics assistance with these shipments, West Africans are paid in cocaine (Ering, 2011, Mueller 2001). This has created a second flow, as West Africans also traffic these drugs to Europe, usually via commercial air flights. Senegal and Nigeria were the source of the greatest volumes of cocaine seized on commercial air flights, but they also have the largest international air traffic volumes. Guinea (Conakry) and Mali are disproportionally represented in terms of the number of air couriers detected relative to their air traffic volumes (Ering, 2011, Dan, 2013).

b) Trans-Border Crimes in West Africa Sub-Region and Nigeria's National Security

As it is in sea piracy, so it is in the area of trafficking of children and women where the increasing desperation to leave Nigeria, to secure higher living standard, has put Libya and Morocco under severe trans-border security threats by young Nigerians, especially of Edo stock (Garuba, 2010, Julins, 2002). This is also the context in which an extensive web of international commercial fraud otherwise known as '419', found expression in the country. Owing its popularity to the worsening economic crisis that reached the beginning of a climax in the 1980s, '419' takes its name from Nigeria's criminal code on fraud. It is difficult to ascribe a specific stereotype mode of operation to the dozens of small groups and independent operators involved in the 'business' that has expanded into internet scam, as their activities do not only take a variety of guises ranging from "seemingly legitimate business solicitations" to "illicit proposition for collusion in money-laundering." But whatever method or technique employed, what remains common to all of it operations is that its consequences often range from "financial loses to instances of kidnapping, extortion and death" (Lewis, 1996; Garuba, 2003). Apart from its economic loss, negation of investment onshore exploration and production, security risks and damage to equipment, illegal oil bunkering fuels conflict and militancy through increased armed proliferations and drug abuse which have destabilized the Niger Delta region.. The complexity of the business of illegal oil bunkering is also illustrated by its sheer number of players. While Niger Delta youth may handle the local tapping and loading, international syndicates from Eastern Europe, Russia, Australia, Lebanon, the Netherlands and France (including new entrants like Filipinos and Ghanaians) all play roles in financing, transporting, and laundering the money associated from the business (Garuba, 2010). This explains the basis upon which security sources claim that control of the bunkering routes, rather than politics around familiar agitations, is responsible for much of the unrest in the Niger Delta region, particularly in more volatile states of Bayelsa, Delta and Rivers (Garuba, 2010, Asiwaju, 1992, Julins, 2002). When sustained at a measured level such that will not close down oil production completely, conflicts in the Niger Delta clear the creeks of other traffic to lubricate the engine of illegal oil bunkering. What it takes the well organized syndicated crime gangs involved in the business to sustain the flow of the commodity is to plug back a part of the proceeds from the stolen crude oil into weapon acquisition to fan the conflicts. Apart from outright insecurity that the foregoing situation poses to the Niger Delta region and the entire country, the huge profit of the illegal private business also translates into incalculable loss to the Nigerian state (Garuba, 2010, Ate and Akinterinwa, 1992). The incessant incidents of trans-border armed robbery (such as the networks of *Shina Rambo* and *Hammani Tidjani*) and proliferation of arms and drug trafficking operations that now endanger Nigeria's national security have been largely responsible for

insecurity, as a result of opportunities provided by ECOWAS protocol on free movement of people and trade are criminally exploited by cross border criminals (Obasi, 2010; Garuba, 2010). Therefore, we conclude that the spate of cross border criminal activities in West Africa undermines Nigeria's national security.

c) *Porous Borders, Ungoverned Space and Cases of Transnational Crimes in Nigeria and West Africa*

Cross border crime is however somewhat shadowy. Much is made of its existence in the popular press. Barely a day passes without some reference to criminal gangs targeting the UK. Little research has been done to comprehensively analyze and empirically confirm the perceived growth of cross border crime. Trans-border criminal activities in West Africa straddle weak borders into specific geographic locations in affected countries where state capacity to respond to the threat and challenges posed by these illegal activities is equally weak. The smuggling of goods, especially cocoa, timber, ivory, petroleum and diamonds across national borders is most prevalent along the Côte d'Ivoire-Ghana-Togo-Benin-Nigeria and Burkina Faso corridors of the sub-region. Ordinary businessmen and women, and sometimes rebels and criminal gangs involved in civil wars in the sub-region engage in the smuggling of there or other products. These goods are smuggled in vehicles or on foot, using secret and illegal routes across borders to evade special regulations, levies or taxes, thereby making more income through the transaction of these products (de Andrés, 2008, Julins, 2002, Mueller 2001). The porous borders of West Africa, however, continue to engender cross-border crime and instability in the sub-region, owing to the lack of an appropriate mechanism for the monitoring movements and illegal activities across the borders. Cross-border criminal activities obviously undermine good governance and security, with negative impacts on the Rule of Law, economic activities and growth, human rights and general societal and cultural advancement within the sub-region. Some of these activities involve the illicit trafficking of small arms and light weapons/ammunitions and human beings, especially women and children. Mercenaries and the recruitment and use of child soldiers in armed conflict, transnational syndicates involved in crimes such as peddling of narcotics, armed robbery and '419' activities, and the smuggling of goods are other cross-border related crimes (de Andrés, 2008). Organized criminal groups or individuals carry out their illicit activities using major technological tools such as information networks, the financial system and other sophisticated means. They also take advantage of differences in legislation, legal systems and traditions, which often seriously hamper state efforts to respond adequately to the threat of organized or trans-border crimes (Ering, 2011, Mueller (2001).

Another case of political involvement in organized crime in the region concerns the late Maurice Ibekwe, a member of Nigeria's Federal House of Representatives arrested for financial fraud, forgery and conspiracy. He had served as chairman of the House Sub-Committee on Police Affairs. However, only in a small number of cases can it be shown beyond reasonable doubt that senior political figures like Ibekwe have been directly implicated in organized criminal activities (Ebo, 2003; Aning, 2009). In this context, the Nigerian Customs Service reported the interception of small arms and ammunition worth more than 4.3 billion naira (US$34.1 million) on their way into the country in the first six months of 2002. Important quantities of small arms have come through the border with Benin, and were brought into Nigeria either overland or by sea – in small boats. Equally active in this respect are the northern borders with Niger, Chad and Cameroon (de Andrés, 2008).

In spite of this hot chase of illegal oil bunkerers which has been further boosted with the provision of new speed boats and refurbished old ones for the newly resuscitated Marine Police, the syndicates have refused to give up their nefarious activities, thus prompting curiosities and accusations that the government is not proactive enough in her efforts at redressing the problem. Emerging investigation reveals that Nigeria lacks what it takes (in terms of equipment and manpower training) to effectively police the entire area of her maritime jurisdiction (Garuba, 2010). The scope of the human trafficking problem is widespread in West Africa. Child trafficking in particular spreads across eleven of the fifteen Member States of the ECOWAS including Ghana, Togo, Benin, Burkina Faso, Nigeria, Niger, Côte d'Ivoire, Guinea, Sierra Leone, the Gambia, and Mali. Available statistics indicates that the scale of the problem is enormous with an estimated 200,000 children experiencing this practice in both West and Central Africa. In 1998, about 10,000 to 15,000 Malian children worked in plantations in neighboring Côte d'Ivoire while in Nigeria, in 1996, 4,000 children were trafficked from Cross River State to various parts within and outside the country. Benin registered over 3,000 children trafficked between 1995 and 1999 (de Andrés, 2008, Julins, 2002). In a more recent human trafficking case, two Nigerians were suspected of trafficking Bangladeshi nationals to Ghana in transit to London in the United Kingdom and were arrested by the Ghanaian police. The victims reportedly paid US$2,500 each to the Nigerians to support their upkeep and stay in the country. These transactions were undertaken through non-existent employment and placement agencies both in the UK and Ghana respectively (de Andrés, 2008, Ate and Akinterinwa, 1992).

West African seashores and harbors have become the hub of transatlantic cocaine trafficking. Similarly, West African international airports have

become major redistribution exit points towards the new cocaine markets of Europe, South Africa, the Middle East and Eastern Europe (de Andrés, 2008). The analysis of the almost daily seizures conducted both in West Africa and destination markets indicate the presence and interaction of three different and complementary trafficking structures: the first, led by foreign operators, move large, multi tons shipments of cocaine from Latin America (Colombia via Brazil and Venezuela) to West Africa by the use of ships, private yachts, and more recently private airplanes (de Andrés, 2008). The second is operated by well established local trafficking networks, mainly Nigerian and Ghanaian, who buy directly from foreign drug trafficking networks shipments up to a couple of hundreds kilos of cocaine which is then either sold on regional markets or rerouted via human couriers to final destinations in Europe and South Africa. These trafficking networks which are able to mobilize dozens of human couriers on the same flight are the natural development of local drug trafficking entrepreneurs who started their operations in the region the late 1980s and 1990s and who progressively graduated from small subcontractors to larger regional independent entrepreneurs (de Andrés, 2008). West Africa and West Africans are not only an attractive location and partners for foreign criminal networks but are gradually building up and exporting their own criminal network model. Besides the well-known Nigerian networks, new ones are developing in Ghana, Côte d'Ivoire and Senegal. Following the example of the Nigerian "network" type, such criminal organizations have in common the very loose, fragmented, and business oriented features which made them extremely successful in the global village of modern "disorganized" crime (de Andrés, 2008). According to the opinion of national experts, elicited in the Annual Reports Questionnaire, cocaine use among the general population was increased in Senegal and Guinea-Conakry in 2005, whereas the situation was reported as stable in Nigeria and Burkina Faso. The use of crack cocaine was reported in Nigeria, Ghana and Côte d'Ivoire and the Gambia. In any case, if the flow through the region is highly organized, it is unlikely that much cocaine will be "spilled" into local markets, as there are strong economic incentives to bring as much of the drug as possible to its highest value destination – the European Union particularly and more generally West Europe (de Andrés, 2008).

d) Frequent Cross Border Criminal Activities in West Africa and Nigeria's External Relations

A total of 3161 kilograms of cocaine were seized in 2006 and rose to 6,468 kilogram in 2007. These data were made available as of September 31, 2007 from data collected by UNODC between January-September, 2007. This is an indication of the popularity of the route. The growing use of West Africa as a large cocaine stockpiling location is further confirmed by recent seizures made by European and Latin American countries of cocaine shipments bound to Africa. The number of maritime seizure made by European Navies off the West African coast between 2005 and 2006, a clear indication of increasing number of drug trafficking in the region (Ering, 2011). Report in This Day Newspaper of November 29, 2010 shows that in the last three months of 2010, officials of the National Drug Law Enforcement Agency (NDLEA) have impounded hard drugs valued at N5 billion. Within the same period, 130 kilogramme of heroin shipped into the country from Iran were impounded at the Tin Can Island Port, Apapa, Lagos. The substance is valued at $10 million. All of these are indications of the increasing profile of West African route for Drug Trafficking. Also, United Nations Office on Drugs and Crime (UNODC 2010) reported that there is a rapid rise in the consumption of hard drugs in the country. And according to its statistics, the increase in drug use in Nigeria is directly linked to the high level of corruption in the country (Ering, 2011, Julins, 2002, Passas, 2002).

Criminal activities damage the financial sector institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption which slows economic growth and can distort the economies external trade, internal trade, and capital flows or economic development. Money laundering causes monies appropriated for specific development projects to be diverted to individual bank accounts. This is the situation involving many individuals specifically members of the political class in Nigeria who are privileged to occupy governmental positions to siphon people's money to foreign banks to the detriment of the Nigerian public. These monies would have been used in providing. Another case of political involvement in organized crime in the region concerns the late Maurice Ibekwe, a member of Nigeria's Federal House of Representatives arrested for financial fraud, forgery and conspiracy. He had served as chairman of the House Sub-Committee on Police Affairs. However, only in a small number of cases can it be shown beyond reasonable doubt that senior political figures like Ibekwe have been directly implicated in organized criminal activities (Ebo, 2003; Aning, 2009). Similarly, the social consequences of allowing these groups to launder money can be very disastrous and damaging to a nation. It can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile and causing high inflation in countries where criminals are doing business (Ering, 2011, Ate and Akinterinwa, 1992). Nigeria's development is jeopardised because available evidences show that the country is used as a transit for drug smuggling, particularly for the West African route. This paints a bad picture for Nigeria's image and could deter investors

from investing in the economy. The dimensions of heroin smuggling through Nigeria are best illustrated by seizures, which in 2007 amounted to more than five tons of heroin and have been on the increase in succeeding years (Ering, 2011, Passas, 2002, Julins, 2002).

In addition, the Colombian cartels are now setting up shops; Colombian traffickers are corrupting law enforcement authorities and buying protection against prosecution. This act apart from worsening the rate of corruption in these West African States, fragile states such as Guinea-Bissau are becoming increasingly vulnerable and are in danger of spiraling down into ungoverned narco-states. Others in the region, including Cape Verde, Guinea, Togo, Benin, Nigeria, Ghana, Senegal and Mauritania are hanging at the precipice of a similar fate of instability and insecurity. This pattern of corruption and crime is repeating in many parts of the world (Luna 2008; UNODC 2010). Transnational criminals are not only expanding into multiple criminal activities, which transcends trafficking in drugs, and humans, but are also pioneering new more sophisticated types of criminal operations. Among the hottest today included cyber crime, financial crimes are becoming more prevalent throughout the world as criminals have become more computer-savvy and continue to coordinate many sophisticated illicit operations including through modern and innovative channels such as e-currency or digital funds and through mobile payments technologies (Ering, 2011). In many instances, the police aid and abet drug traffickers, gangs and criminal insurgencies. In Nigeria, the dimension of these criminal activities has increased. The emergence of militancy in the Niger Delta, and the spade of kidnappings have created serious problems of insecurity. This is however done in connivance with security agencies. This situation is scaring to foreign and local investors and impinges seriously on the socioeconomic development of society (Ering, 2011). Apart from drugs, the circumvention of the formal economy via trafficking of contraband goods has also haunted local industries. At a pre-yearly general meeting with the media in Lagos in July 2004, Nigerian industrialists under the aegis of the Manufacturers Association of Nigeria (MAN) declared that the country lost $6.3billion (about N800 billion) to unwholesome trade practices of smuggling and product counterfeiting in 2003 (*The Guardian*, July 5, 2004).Nigeria's border communities play a central role in the smuggling activities. While virtually all the routes they are located predate present-day artificial boundaries created by colonialism, the desperation to de-link from a distrusted and disliked system which the Nigerian economy came to symbolize turned such border communities as Jibia in Katsina State, Kiisi in Oyo State, Idiroko in Ogun State, Bakassi in Cross River State, Badagry in Lagos State and Bama in Borno State, into informal centers for substitute exchange relations (Garuba, 2006). Thus, we conclude that frequent trans-border crimes in West African sub-region impede Nigeria's external relations.

III. The Summary

We started by dwelling on all the technically in this paper, where we posed four research questions, stated four specific objectives, and four research hypotheses. We, also, demonstrated the theoretical and empirical relevance or justifications of this study. The issues, time frame and subjects covered by the study were also highlighted. The main concepts or terms used in this paper were operationalized or defined as they are applied or used in this study. In this paper we reviewed the related extent and relevant literature concerning definition and meanings of cross border criminal activities and issues and perspectives of trans-border criminal activities in Nigeria, West Africa, Africa and globe. Still in we also adopted a combination of the theory of relative autonomy of the state and failed state theory as our theoretical or conceptual framework. We discussed background to cross border crimes in Nigeria and West African sub-region, and as well examined the relationship between trans-border crimes in West Africa sub-region and Nigeria's national security. Whilst, we discussed porous borders, ungoverned space and cases of transnational crimes in Nigeria and West Africa, and also examined the nexus between the frequent cross border criminal activities in West Africa and Nigeria's external relations. Finally we summarized the entire work and drew some conclusions on the basis of which we made some recommendations.

IV. Conclusions

From the foregoing, we reached the following conclusions:

1. That the spate of cross border criminal activities in West Africa undermines Nigeria's national security.
2. That frequent trans-border crimes in West African sub-region impede Nigeria's external relations.

V. Recommendations

In the course of this study, we suggest the following recommendations:

1. Reconstitute the Nigerian state in such a way as to be proactive in dealing with the rampant cross border criminal activities that undermine its national security.
2. Strengthen the cross-border law enforcement agencies in order to enable them check the frequent trans-border crimes that impede its external relations.
3. Meaningful engagement of other West African states through both bilateral instruments and multilateral sub-regional organizations like ECOWAS to mitigate cross border crimes in West African sub-region.

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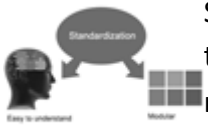

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- Please note the criterion for grading the final paper by peer-reviewers.

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· Present your points in sound order

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- Fundamental goal
- To the point depiction of the research
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- Center on shortening results - bound background information to a verdict or two, if completely necessary
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- Present a justification. Status your particular theory (es) or aim(s), and describe the logic that led you to choose them.
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Approach:

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- If use of a definite type of tools.
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- If well known procedures were used, account the procedure by name, possibly with reference, and that's all.

Approach:

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- Leave out information that is immaterial to a third party.

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The page length of this segment is set by the sum and types of data to be reported. Carry on to be to the point, by means of statistics and tables, if suitable, to present consequences most efficiently.You must obviously differentiate material that would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matter should not be submitted at all except requested by the instructor.

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- Present a background, such as by describing the question that was addressed by creation an exacting study.
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Approach

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- Give details all of your remarks as much as possible, focus on mechanisms.
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- Try to present substitute explanations if sensible alternatives be present.
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- Recommendations for detailed papers will offer supplementary suggestions.

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	A-B	**C-D**	**E-F**
Abstract	Clear and concise with appropriate content, Correct format. 200 words or below	Unclear summary and no specific data, Incorrect form Above 200 words	No specific data with ambiguous information Above 250 words
Introduction	Containing all background details with clear goal and appropriate details, flow specification, no grammar and spelling mistake, well organized sentence and paragraph, reference cited	Unclear and confusing data, appropriate format, grammar and spelling errors with unorganized matter	Out of place depth and content, hazy format
Methods and Procedures	Clear and to the point with well arranged paragraph, precision and accuracy of facts and figures, well organized subheads	Difficult to comprehend with embarrassed text, too much explanation but completed	Incorrect and unorganized structure with hazy meaning
Result	Well organized, Clear and specific, Correct units with precision, correct data, well structuring of paragraph, no grammar and spelling mistake	Complete and embarrassed text, difficult to comprehend	Irregular format with wrong facts and figures
Discussion	Well organized, meaningful specification, sound conclusion, logical and concise explanation, highly structured paragraph reference cited	Wordy, unclear conclusion, spurious	Conclusion is not cited, unorganized, difficult to comprehend
References	Complete and correct format, well organized	Beside the point, Incomplete	Wrong format and structuring

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