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RESEARCH ARTICLE



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The Role of Customary Arbitration in the Resolution of Disputes among Nigerian Indigenous Communities

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Abstract

Central to the issue of resolution of any disputes is the mechanism adopted in handling it. Customary arbitration is, thus, one of the recognised methods of resolving disputes among the indigenes of Nigeria. Unlike the Western adversarial method of settling disputes under which the winner-takes-all, customary arbitration aimed at reconciling the parties to disputes after effecting settlement. The question, however, is whether customary arbitration has any relevance among Nigerian indigenous communities and whether it has made any impact on the maintenance of societal equilibrium. This paper, therefore, examined the issues involved in customary arbitration such as the ingredients that make it work, conditions of its validity and its effect on the state of the society with a view to making it work more effectively among the indigenes.

Keywords: customary arbitration, Nigerian indigenous communities, maintaining societal equilibrium, restoring harmony, peace and tranquillity, reconciliation.

Introduction

Customary law, though peculiar to the various ethnic groups in Nigeria, is one of the important sources of the Nigerian legal system. Unlike English law, customary law is unwritten and cannot, therefore, be found assembled together in a code of law. It has thus been judicially described as:

*The organic or living law in Nigeria regulates their lives and transaction. It is organic in that it is non-static. It is regulatory in that it controls the lives and transaction of the community subject to it. It is said that custom is a mirror of the culture of the people. I would say customary law goes further to impact justice to the lives of those subject to it.*¹

At an earlier time, when a lot of controversies surrounded the meaning of customary law, the Nigerian Supreme Court attempted to give what it considered a rather comprehensive definition of customary law when it defined it as a system of law, not being the common law and not being a law enacted by any competent legislature in Nigeria, but which is enforceable and binding within Nigeria as between the parties subject to its sway.² But who are those Nigerians that are subject to the operation of customary law? Are they the ordinary people dwelling in the rural areas or the common folks living in the cities? In honesty, the people that are subject to customary law range from the rural dwellers to the sophisticated and educated lots living in the big cities. It is the way a man arranges his affair that dictates the law to which he is subject. Little wonder then that Obaseki, JSC says customary law controls the lives and transactions of the community that is subject to it in *Oyewumi v. Ogunesan*.³ That is, the people live and regulate their affairs by it. It is a law that

touches on every aspect of their lives. It is a living law, it is not a law of by-gone days and it pictures the exact thing that the people do every day.

However, trial of cases under customary law is not one in which the winner takes all as it is the case under the adversarial system of the western world, rather, it is a system designed to bring about reconciliation among the parties and restore equilibrium in the society. The societal ethos, norms and values must be maintained through this reconciliatory approach to any misunderstanding among the people. This is why the method adopted in ironing out issues that crop up among the people really matters and in this regard, customary arbitration, which is a way of referring disputes or misunderstanding between two warring parties to elders, chiefs or traditional rulers for settlement stands out as a veritable tool for bringing harmony to the society. It would be recalled that before the advent of colonial rule, chiefs were the political and judicial heads of the various African communities and they made the law with which the society is governed. Their duty then was to resolve disputes within their respective communities and they also had power to enforce decisions [p. 201, 212] (Igbokwe, 1997).

With this fact, the various colonial governments, like the British in Ghana, were aware and so also they were of the fact that pre-colonial Africans were governed in their ordinary affairs by bodies of "social norms" which were regarded as binding [p. 143] (Gordon, 1985). This binding force is what crystallised the social norms and values into customary law. It is now essential, therefore, to have a close look at the concept of customary arbitration and see what it connotes, how it operates and the way it impacts on the lives of the people.

Customary Arbitration

Arbitration is a concept under the alternative dispute resolution method whereby disputes or differences between not less than two or more persons are referred to a person or persons, other than a court of competent jurisdiction, for determination after hearing both sides in a judicial manner.⁴ In fact, it has been said that of all ADR processes, arbitration most closely resembles litigation [p. 17] (Sourdin, 2008). It is a process where a neutral (one person or a group) listens to presentations of both fact and law and renders an award (Randolph, 1973). The arbitrator is usually required to observe the rule of natural justice [p. 108] (King *et al.*, 2009). He is an umpire who has the dispute submitted to him by the parties for determination. If he decides something else he will be acting outside the scope of his authority and consequently the whole arbitral proceedings will be a nullity. This includes any award he subsequently makes. This is the western notion of arbitration. We are, however, concerned here with customary arbitration. What is customary arbitration? How does it work among the people? These and other relevant issues will form the basis of discourse in succeeding paragraphs.

Customary arbitration is not a new concept. It is as old as pre-literate society is. The practice of settling disputes through the process of arbitration is never a new phenomenon in Nigeria like it has been with man from creation. Arbitration had been with the various indigenous communities in Nigeria before introduction of the British legal system of court litigation into the country (Gadzama, 2004). It is a means of settling dispute between two or more parties with a view to maintaining harmony, peace and tranquillity in the society. In fact, Emiola (2011) views arbitration, in the context of African judicial system, as a process whereby a neutral person is requested to mediate in a dispute between one person and another, or between one community and another [p. 74].

In Nigeria's traditional setting, there is usually the head of the family who normally heads the nuclear family consisting of a man, his wife or wives and children. Oftentimes, there are members of the extended family who are usually residing in the same locality. From this larger family circle, a head of family is chosen to oversee the affairs of the extended family. Any complaint by a member of a nuclear family against another is referred to the extended family head for settlement and he presides over the dispute in conjunction with other principal members of the larger family. Hence, Coker (1966) posits:

Every man or woman has a duty to perform in the maintenance of the equilibrium of the group, socially, physically and economically. The corollaries of this position must be, and are, both a general deflection of any extraordinary points or rights from the chief or headman and creation of a socio-political group maintained purely as a family unit [p. 23].

To maintain equilibrium in the society will obviously necessitate looking for a means of reaching a sustainable and durable peace, and a peace agreement negotiated in the absence of some form of justice can only bring short-term results [p. 143] (Sarkin, 2001). So, in order to bring about peace and social stability among the many families which make up the society, each member of the family has a duty to perform in ensuring that justice is upheld in every sphere of life.

A combination of many families usually makes up a clan or village and among these a clan or village head is chosen to be at the helm of affairs in the village. He, as the traditional leader of the village, is usually assisted by elders and chiefs of the community in running the village affairs. Each of the various institutions mentioned here plays one role or the other in settling any arbitral dispute that comes up in the African setting. Even then, Ladan, (1997) feels that any of the following person(s) or groups could also constitute customary arbitrators:

- Family or kindred head;
- Religious groups or heads/leaders;
- Village council;
- Group of elders;
- Traditional ruler, subordinate rulers, titled chiefs or respected community leaders;
- Professional groups, trade associations or town unions;
- Special identifiable groups such as women, grand children (*umumu* among the Igbo), age grade, league of daughters (now married to other families and in other places), friends, relations and concerned people, voluntary associations, neighbourhood associations, etc. [p. 262].

Main Objectives of Customary Arbitration

Obviously, the main objective of any system of justice is to achieve a peaceful and harmonious resolution of any dispute in the society and this is not different in the case of customary arbitration. For, it aims at maintaining societal equilibrium whenever it is observed that the ethos and values of the society are being eroded. The feuding parties are normally brought together through compromise and concession so that the arbitrators can make reparation for whatever wrong that has been committed. In spite of the award that is made, however, the arbitrators still make efforts to ensure the continued peaceful coexistence of the parties after the settlement of their differences. This factor, in practical terms, is of great importance and actually looks beyond the legal rights of the parties in order to ensure that the relationship between the parties after the award is harmonious, thus avoiding any damage or rupture to societal ethos, norms and values.

Of importance is the fact that arbitration can still be used to bring about peace among opposing geographical entities in different localities. For instance, a village or clan may be involved in a fight over a parcel of land which, at times, may span over a long period of time. They could submit the matter to the chiefs or traditional rulers of the community. They may involve the leaders of both contending communities, who would both sit as a joint panel and look at the issues involved, taking into consideration the custom of the people.

While considering arbitration from an international trade angle, David (1958) defined it as a process whereby the settlement of a question, which is of interest to two or more persons, is entrusted to one or more other persons regarded as the arbitrator or arbitrators who derive their powers from a private agreement, not from the authorities of a state, and who are to proceed and decide the case on the basis of such agreement [p. 5].

The whole idea of international trade arbitration is characterised by the agreement between the parties. Thus, anything outside the scope of the agreement will not be considered in a bid to find solution to the dispute and it is upon this very fact that they must base their decision. This is, however, in contradistinction with customary arbitration in which the arbitrators must take into consideration the custom, beliefs, ethos, norms, practices and values of the people living in that locality, in coming to a just decision. The communal equilibrium that will bring peace to the community is of paramount importance here and quite often it has to be considered before the arbitrators render their final decision.

By and large, customary arbitration can be applied to different issues, including land matters, boundary disputes, marital conflicts, chieftaincy matters, personal disagreements, religious crises, inheritance and succession issues; but in each case the panelists are drawn from the crop of people

who have the knowledge, skill and wisdom in that particular field of human endeavour. However, it must be noted that the award made after the final decision of the arbitrators is devoid of the force of law until it is pronounced upon by a properly constituted and competent court of law with the appropriate jurisdictional power. It is when the pronouncement is so made by the court that the award becomes enforceable just like the ordinary judgment of a court.

Conditions for Validity of Customary Arbitration

There are certain attributes that a customary arbitration must contain for it to be valid. The principles upon which such factors are found are listed by Elias (1956) when he says:

It is well accepted that one of the many African customary modes of settling dispute is to refer the dispute to the family head or an elder or elders of the community for a compromise solution based upon subsequent acceptance by both parties of the suggested award which becomes binding only after such signification of its acceptance, and from which either party is free to resile (sic) at any stage of the proceedings ... [p. 212].

While articulating these conditions in the case of *Egbesimba v. Onuzuike*⁵ Tobi, JSC fished out the following ingredients:

- There has been a voluntary submission of the subject-matter in dispute to an arbitration of one or more persons;
- It is agreed by the parties, either expressly or by implication, that the decision of the arbitrators will be accepted as final and binding;
- The said arbitration was in accordance with the action of the parties or their trade or business;
- The arbitrators reached a decision and published the award; and
- The decision or award was accepted at the time it was made.

In the same case, Ayoola, JSC expresses the opinion that for an arbitral award to be valid, there must be:

- a voluntary submission of the dispute to the arbitration of the individual or body;
- agreement by the parties either expressly or by implication that the decision of the arbitrators will be accepted and binding; and
- the arbitration must be in accordance with the custom of the parties; also
- the arbitrators must reach a decision and published their award.

The ingredients named above must be present in any customary arbitral proceeding for the award in that proceeding to remain valid. Should there be a failure to fulfill these conditions, such an award will be set aside or declared a nullity if the matter is referred to a higher authority. This could happen if either of the parties to the arbitration later filed an action on the matter in the High court. Therefore, the parties to an arbitral dispute must be willing to and intentionally submit their dispute to some person or persons for settlement. Although, the voluntary submission of the matter to the arbitrators for settlement raises the presumption that they have tacitly agreed to be bound by whatever decision that is handed down by the arbitrator(s), one could not really say such an agreement should be brought out separately, for instance, in a document.

This is particularly more so when one considers that customary law is unwritten and written documents are alien to it. One could just assume that if the parties know that they will not accept the decision of the arbitral panel as binding in the first instance, they would not have submitted their dispute to the panel.

Agreement by the parties to be bound by the final decision is thus crucial to the validity of an arbitral award. Once there is a single element indicating that the parties have accepted the conditions attached to the arbitration by the time it was being carried out, there is no question of opting out any more as pointed out in the case of *Nzeoma v Ugoch*⁶. In that case, the plaintiff alleged that the defendant falsely and maliciously spoke and published certain scandalous words concerning him. The defendant denied the alleged scandalous words, whereupon the plaintiff reported the matter to the *Nwadiali* (the body of elders) who decided that since the slander involved the life of a person, the parties should swear to a juju and this was accepted by them. When they took oath on the Bible, the plaintiff survived.

Following his survival the defendant performed some customary rituals for the plaintiff's age grade as a sort of cleansing. Subsequently, the plaintiff sued the defendant in the High Court claiming damages for slander. The defendant contended that the customary ceremonies which he

performed as cleansing process were sufficient compensation in the circumstance. The Court of Appeal held that the plaintiff, having elected or opted for a mere native arbitration to help assuage his bruised ego and personality, cannot now resort to another mode of channeling his complaints, the remedy for which he had obtained elsewhere.

It is of vital importance that the arbitrators must observe the custom of the trade or business engaged in by the parties while dealing with the matter. Thus, the custom, belief, values, norms, ethos and practices of the people in that locality must be taken into consideration in coming to a decision. So, for an arbitral decision to satisfy the process of customary arbitration, it must be in accordance with the custom and general usage of a particular community. For instance, if the dispute involves the sale of family land anywhere in Nigeria, such rules as the following must be observed:

- If there is a sale or conveyance of family land by the head of the family with some important members thereof but without the consent of some principal members of the family, then the transactions is voidable and those members who should have consented to the transaction but did not do so, can take out an action to set it aside.

- The sale of family land by a member of the family who is not the head of the family should be declared void.

- The sale of family land by the head of the family without the consent of principal members of the family should be declared voidable.

- The sale of family land by the head of the family as his own land should also be declared void.

- If a sale is void, it has to be so declared and set aside if asked to be so done but where it is voidable, whether or not it will be set aside will depend upon the facts and circumstances of the case.

The above is in conformity with the principle of law laid down in the case of *Usiobaifo v. Usiobaifo*⁷ by the Supreme Court of Nigeria and it represents the customary law guiding alienation of family property which must be followed if any family property is sold or is about to be sold.

One other ingredient of arbitration echoed by Ogundare, JSC in the case of *Egbesimba v Onuzuike*⁸ is that neither of the parties should resile from the decision pronounced by the arbitral panel. By this, it is meant that none of the parties should withdraw from the arbitral proceeding. In other word, neither party should reject the decision of the tribunal. The case of *Uwuka v Nwaechi*⁹ illustrated this point. The case shows that both appellant and respondent submitted their cases to the Okwelle Union. Instead of hearing the case, the Union delegated its function to hear the matter to certain persons. The appellant objected to the jurisdiction of the persons nominated. Meanwhile, the persons nominated quickly went into action and found for the respondent as the owner in possession of the land. The appellant rejected the decision.

The trial High Court held that the appellant was bound by the decision of the customary arbitration. On appeal, the Court of Appeal held that although parties are bound by the decision of customary arbitration or mediation by mere submission to its jurisdiction, as the right of appeal is enshrined in the Constitution of the Federal Republic of Nigeria, any person or party who is aggrieved by the decision of the arbitration could seek redress and justice in the highest court of the land.

In other words, rather than any of the party being allowed to resile from arbitral proceedings, he should take the matter to the appellate court. It is strange to expect that a party who has agreed to be bound by the outcome of a proceeding will later turn round to decline being bound by the decision of the arbitrator(s) who decided the matter. Oyewo (2012, p 287) has recommended that customary law should be integrated into the existing law of Cap 8, Arbitration Law of Western Region of Nigeria 1959 which provides in its Section 3 that a submission to an arbitration shall be irrevocable, unless a contrary intention is expressed therein, except by leave of the court or a judge or by mutual consent and shall have the same effect in all aspect. This recommendation seems to have overlooked the important factor that customary law usually evolved from the ethos, custom, norms and values of the people and, as such, it would cease from being customary arbitration any longer once it is merged with statutory law. Therefore, statutory law should not be applied to customary arbitration as, to do so, would take the whole exercise away from the realm of customary arbitration.

Moreover, the Supreme Court of Nigeria had decided in the case of *Ohiaeri v Akabueze*¹⁰ that it is essential that before applying the decision of a customary arbitration panel as *estoppel*, the court should ensure that the parties had voluntarily submitted to the arbitration, consciously indicated their willingness to be bound by the decision and had immediately after the pronouncement of the decision unequivocally accepted the award. Therefore, it is humbly submitted that whenever the issue of arbitral award is raised in a court proceeding, it is necessary that the courts should ensure that the parties voluntarily accepted the award as at the time it was made.

It is very important that the decision of an arbitral panel be certain, reasonable, legal and final in the sense that it should not be contingent on a future occurrence. An instance of this happened in the case of *Ofomata & Ors. v Anoka*¹¹ where the plaintiffs claimed that a customary arbitral tribunal awarded title to a parcel of land to them but the award was subject to their swearing to an oath on a juju which should be produced by the defendants. The parties subsequently failed to meet for the oath swearing exercise. The defendants pleaded that the arbitration ended in fiasco and that no decision was reached. It was held, *inter alia*, that where a decision of an arbitral panel was dependent on a contingency of whatever nature, as in the instant case, the swearing of an oath, the decision although legal, was not final and as the swearing on an oath was part of the arbitration and not an extraneous matter, the arbitration award was not final. At this juncture, it is necessary to examine oath-taking or swearing to an oath as a basis for determining the truth through the process of customary arbitration.

Swearing or Oath-taking as Basis of Arbitration

Swearing or oath-taking is a method of dispute resolution that is commonly used by various ethnic groups in Nigeria and in other part of Africa. People who are connected by the bond of friendship, trade, custom or tradition often resort to this method by which they swear before a juju that 'such and such occurrence or event was not done by them' in the presence of the elders of the community. For instance, under the Yoruba concept of *Imule* (Drinking the Earth together), if a matter involves a dispute as to ownership of land, it will entail drinking a mixture of the soil of that land and water by both parties to the dispute. A condition is normally attached to the oath-taking exercise to the effect that whoever dies among the parties before the expiration of certain number of days actually lied and consequently is not the owner of the property in question.

In the alternative, if dispute is as to ownership of the crops on a particular piece of land, the parties may be required to chew and swallow the bark or root of a particular cash crop planted on the land. The crops will subsequently be awarded to him but if he is not the owner thereof, an unpleasant consequence will normally follow. The reason for this is that the 'goddess of land' (which is *Ile* among the Yoruba or *Ala* among the Igbo) is regarded as a dangerous mystical personality who possesses some spiritual forces by which it sanctions whoever runs afoul of its regulations [p. 126] (Oyewo & Olaoba, 1999).

This oath taking exercise is usually adopted in arbitration processes and criminal trials though some of them are close to trial-by-ordeal when used in criminal proceedings. However, their use in arbitration is our concern here. It would appear that the Nigerian courts are not averse to customary arbitration decided by oath-taking having held in various cases that the outcome of such exercise is binding on the parties. In the case of *Chukwu Obaji & 2 Ors. v Nwali Okpo & Ors.*¹² it was held that in that part of the country, "*the swearing on juju is very much in vogue even in these days among native population. This is native jurisprudence showing a belief which regulates the rural life of the people, a man staking his life to assert his right is the highest appeal to conscience. A decision of the elders embodying this is pure and simple arbitration by native customary law...*" The court later went on to decide that swearing on juju to determine the ownership of the land in dispute and the survival of the binding period of the plaintiffs' representative operate as *res-judicata* in favour of the plaintiffs against the defendant. In a similar case, the Supreme Court described the forum where the oath was taken as one which, by custom, was invested with judicial aura.¹³

To cap it up, the same court recently held that the oath-taking before *Ogwugwu* Shrine, Okija, which is a form of native arbitration in accordance with the custom and tradition of the people is legal and binding¹⁴. Swearing or oath-taking is thus a living and vibrant practice of customary arbitration among the various Nigerian indigenous communities.

However, while it may be said that swearing or oath-taking is a valid method of proof or establishment of a party's case under customary arbitration, this is not true as far as the English adversarial system of justice is concerned. It is a mere pre-requisite or condition precedent to giving evidence under the latter system where the failure to administer the oath renders the court incompetent to attach any serious weight to the evidence of a witness.

Customary Arbitration under Islamic Law

Islamic law has, no doubt, been categorised as part and parcel of the Nigerian customary law. According to Anderson (1970, p 4), during the colonial rule, Islamic law was classified under Native Law and Custom and is enforced throughout Northern Nigeria. Giving the reason for the recognition and enforcement of the Islamic law in Northern Nigeria, Ambali (2003) observed:

It (Islamic law) had become part of their way of life, as the local native law and custom was to the people of the Northern Nigerian origin who adhered to traditional religion [p. 16-17]

Having established that Islamic law is part of Nigerian Customary law, it is now necessary to enquire whether customary arbitration could be found under Islamic law. Akanbi (2007) feels that there is no evidence of judicial pronouncement confirming the application of Islamic arbitration mechanism as a method of dispute resolution in Nigeria, neither is there any on its validity or even legality or otherwise. Falling back on his experience as a judge of a superior court in Nigeria for many years, he declares that since there has not been any reference of disputes relating to Islamic customary arbitration to court for adjudication nor is there any dispute relating to or connected with or arising from arbitration, it follows that customary arbitration does not obtain under Islamic law [p. 39].

Moreover, a peep at Islamic history will reveal that arbitration was employed in the resolution of dispute in Islam at an early stage of the religion. For instance, there was an arbitration following the battle of Siffin between Ali Ibn Abi Tolib, the fourth caliph and Muawiyah Ibn Abu Sufiyan, the rebel governor of Syria in which two arbitrators, Abu Musa Asari and Amari bn al As were appointed for Caliph and Muawiyah respectively (Doi, 1981). Therefore, Islamic customary law of the Maliki school of jurisprudence with laid down arbitral procedure was applied in Northern Nigeria before the advent of colonial administration. In line with that school of thought, arbitration is regarded as *Tahkim* or *sulhu* which is a form of contract in which it is agreed that in case of any dispute or disagreement in the terms of contractual agreement, it will be settled through the appointment of a *harkam* or arbitrator [p. 371] (Doi, 1984). Thus, arbitration is practised in the Northern part of the country in line with the injunction of Islamic law contained in the Quran and Hadith and other sources of Islamic law. Some of such laws laid down by the Quran include:

*And if two parties of the believers quarrel, make peace between them; but if one of them acts wrongfully towards the other, fight that which acts wrongfully until it returns to Allah's command; if it returns, make peace between them with justice and act equitably, surely Allah loves those who act equitably.*¹⁵

Merits of Customary Arbitration

Despite the fact that customary arbitration always lacks the force of law, it has many advantages which we will presently explain. Those who are worldly wise and knowledgeable in the affairs of the world are usually brought together to deliberate over the issue involved in an arbitral proceedings. They are referred to as the sages of the community and they usually put their heads together to arrive at a reasonable conclusion.

Of vital importance is the fact that arbitration allows for self autonomy as far as the parties are concerned. The parties always have the freedom to appoint the judges (arbitrators) themselves. So also are they free to choose the seat of arbitration, the language to be used as well as the applicable law. All these, no doubt, render the whole process of arbitration simple, less technical, flexible and expeditious [p. 74] (Bello, 2004).

Another merit of arbitration lies in its time saving and quick dispensation of justice. No doubt, it is quicker and less expensive than the orthodox litigation. Barring unforeseen circumstances, arbitral process could be completed within one week. Again, the convenience of the disputing parties is often taken into consideration so that each party and his witness would look at their schedule before the date, time and venue of hearing the dispute are fixed.

The conduct of arbitration usually takes place in a friendly and less formal atmosphere. Even the procedure often adopted is less technical, less cumbersome and maintains or preserves friendship after making the final award. Since the equilibrium of the society is often taken into consideration in making an arbitral award, the parties would usually be enjoined to remain friends and be at peace with one another even after the arbitral proceedings have ended.

Shortcomings of Customary Arbitration

Customary arbitration is currently in low demand among disputants who always prefer to go to the regular court for settlement of their disputes. It appears the indigenous people prefer to take their matters to courts (even to customary courts) for settlement. Again, most of the people handling customary arbitration did not have any formal training and, like most customary court decisions, the outcome of customary arbitration could be easily faulted. Such decisions could, therefore, be thrown overboard on appeal. Also, since customary arbitration could only be enforced upon application to the court, the fact that it is inexpensive and quicker is easily defeated.

Being a customary law process, customary arbitration is also infested with the shortcoming of non-codification. It is not written in any book which one could pick up and use as a precedent in future cases. Although Islamic law which is part of customary law is contained in the Holy Quran and thus written, the fact remains that it only deals with Muslims' personal law.

The greatest demerit of customary arbitration is the possibility of any of the parties to withdraw from the proceedings and thus reject the decision of the arbitrator(s). This means that either of the parties could abandon the proceedings midstream and opt out of the whole process. In fact, Ngakwe (2013) declares that not a few people or commentators oppose the requirements of parties 'withdrawing midstream' and or 'rejecting the award after it has been made'. This freedom to withdraw usually makes nonsense of the whole process of customary arbitration as all the efforts of the elders or whoever the arbitrators are to reconcile the parties will be rendered nugatory [p. 151].

Conclusion

Arbitration has now become a global mechanism of effecting settlement of disputes in both domestic and international commercial agreements. It is, therefore, imperative to revitalise customary arbitration and thus make it a veritable tool for settlement of both commercial and other disputes among Nigerian indigenous people. This, will no doubt, relieve the judiciary of the enormity of its work which is presently leading to congestion of cases in our courts.

The idea of withdrawing from arbitral proceedings anytime before its completion is also distasteful. It is, therefore, suggested that since parties usually voluntarily enter the agreement to be bound by the outcome of arbitral decisions, there should no longer be any room for withdrawal from such proceedings.

Finally, the ultimate award or decision of arbitral proceedings should only be registered in a court of record for it to assume the status of the judgment of a court. It is needless to institute a fresh action in the High Court in order to enforce arbitral awards. This will obviously reduce further expenses in initiating court processes for the enforcement of arbitral awards.

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Notes:

1. *Oyewumi v. Ogunesan* (1990) 3 Nigerian Weekly Law Report [NWLR] 182 at p. 202
2. This definition was given in the case of *Zaidan v. Mohssen* (1973). 1 All Nigerian Law Report p. 86 at 101
3. (1990) 3 NWLR (Pt. 137) 182 at 202
4. *NNPC v Lutin Investment Limited* (2006) 25 Nigerian Supreme Court Quarterly Report 77 at 111-112
5. (2002) 15 NWLR (Pt. 791) p. 466
6. (2001) Federation Weekly Law Report [FWLR] (Pt. 48)1299
7. (2005) 3 NWLR (Part 913) 665 at 690
8. (2 002) 15 NWLR (Pt. 791) 466
9. (1993) 5 NWLR (Pt. 293) 295
10. (1992) 2 NWLR (Pt. 221) 1
11. (1974) 4 East Central State Law Report 51
12. (1978) Imo State Law Report 258
13. *Uzowulu v Ezeaka* (2000) All FWLR (Pt. 46) 932
14. *Onyege v Ebere*, (2004) All FWLR (Pt. 219) 98
15. Quran 49 verse 9



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RESEARCH ARTICLE



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Right to the City?
An Analysis of the criminalisation of the informal sector in Harare, Zimbabwe

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Abstract

This paper seeks to examine the criminalisation of informal sector operations in Harare. The responsible authorities have often viewed the informal sector as being atomistic to the formal economy, a development which has led to the harassment, arrests of informal sector operators in Harare. This phenomenon raises many questions which include, whose city is it anyway? Do informal sector workers have the right to the city? To answer some of these questions, the paper makes use of secondary sources of data such as newspapers, journal articles, magazines, research reports among others. The Government and local authorities should view the informal sector as an integral part of the urban economic system and should thus accommodate it for socially just cities to be created.

Keywords: informal sector, Harare, right to the city, socially just city, Zimbabwe.

Introduction

As the world becomes increasingly urban, there is a demand to better understand how the benefits of urbanization can be shared more equitably among its residents and develop inclusive cities where everyone, including the most marginalized, has access to basic services and the opportunity to build a prosperous future.

There are various dimensions of exclusion in the urban areas and these include Physical/Spatial exclusion: intra-urban inequalities between various neighbourhoods in terms of access to land and housing, infrastructure, basic services, and public amenities (slums and non-slum areas); Economic exclusion: inability to enter formal labour markets, obtain capital for business development, or the education necessary to be considered for employment and Social exclusion; on the basis on age, gender, race, caste, religion, ethnicity, or disability impacts an individual's participation and voice in the governance of the city.

This paper seeks to analyse the criminalisation of informal sector activities in the city of Harare, Zimbabwe. It argues that such developments work against the notion of socially just cities and the right to the city.

Study Context

Richardson (1989a) notes that urban areas are places of high efficiency for specialised and essential economic activities and are primary contributors to the national economy. Cities are also important global hubs of finance, manufacturing, trade and administration. Rondinelli *et al.* (1983; 123) postulates that cities offer locations for services that require high population thresholds and large markets to operate efficiently. This is because cities are centres for innovation and diffusion and they facilitate widespread modernization.

For example, Lagos with 5 % of Nigeria's population has 57 % of total value in manufacturing and has 40 % of the nation's highly skilled labour. The idea that cities are national financial hubs has attracted many people to move from rural areas and even from smaller towns to large urban centres leading to high urban population thresholds. On the contrary, Harris (1992) observed that most third world economies have not been able to expand at the pace needed to meet labour force growth as shown in Table 1.

The structures of these economies are rapidly changing, requiring new skills for new economic roles especially in mega cities hence the need for policy initiatives to stimulate greater urban job creation (Karsada, & Parnell, 1993).

Table 1: Harare population against unemployment

Year	Population	Percentage increase	Unemployment rate
1992	1 478 810	5.6%	-
2002	1896 134	2%	12%
2012	2 098 199	1%	88%

Source: Zimstats 2012 census

Table 1 shows that the population of Harare in between 2002 and 2012 increased by 1% when compared to the period 1992 to 2002 population census growth of 2%. On the other hand, the rate of unemployment has increased from 12% in 2002 to 88% by 2012. The difference shows that the rate of unemployment is far much ahead of the rate of population increase. This means that the increase in the rate of unemployment was not merely as a result of the increase in population but it means that the available industries and other sources of formal employment in Harare have diminished. This is a total reverse which can only be explained by an economic meltdown. The closure of companies has been directly related to the increase in informality.

The explosive growth of cities has been accompanied by a plethora of problems of unmanageable proportions (Karsada, & Parnell, 1993). The problems of urbanisation include high rates of unemployment and underemployment as urban labour markets are unable to absorb the expanding numbers of job seekers, soaring urban poverty, insufficient shelter, inadequate sanitation, inadequate or contaminated water supplies, air pollution, environmental degradation, congested streets, overloaded transportation systems and above all municipal budget crises (Devas, & Rakodi, 1993). All the urban challenges that the developing cities are facing emanate from rapid population growth. Yet, Devas and Rakodi (1993) argue that continued rapid urban growth in the developing world is inevitable. In this regard, urbanisation has been condemned on the basis that there is failure to cope with its effects, and that local authorities do not have the capacity to develop infrastructure necessary to meet population growth (Rondinelli *et al.*, 1983). Urban growth can be controlled efficiently using totalitarian controls yet they obstruct the initiative and dynamism that is required for economic growth and inescapably undermines the social, economic and political controls, which contain growth (Harris, 1992).

Zimbabwe is not an exception to the urban miseries that accompany urbanisation. Cities such as Harare and Gweru continue to grow without any apparent limit and this poses a huge challenge to those responsible for the management of urban development and the provision of services (Tibaijuka, 2005). The rapid process of urbanisation seems to be dodgy for the scale of problems it seems to entail. Local authorities in Zimbabwe have been challenged with budget restrictions, decreasing revenues and cuts in public sector expenditures (Chaeruka, & Munzwa, 2009). Urban management issues common in Harare are urban sprawl, squatter settlements, corruption, street

children, inadequate urban service delivery and urban agriculture (Tibaijuka, 2009). The major challenge that has gained popularity in the country's major discussion forums is of the informal sector. The sector expresses itself in many different forms, that is, housing, vending, theatre, transport and urban agriculture. Urban managers have been subdued to the pressures of the informal sector and have criminalized the sector (Brown, 2006).

Theoretical Framework and Literature Review

This section provides an outline of the key concepts that underpin this study. Concepts such as the right to the city and socially just city are explained so as to give adequate theoretical expositions for this study.

Right to the City

The theoretical framework for this paper anchors heavily on the works of Henri Lefebvre (1901- 91). This was a French Marxist philosopher. His works have become prominent in the fields of political science, geography and urban studies (Elden 2007). Lefebvre utilised this notion in his numerous works in urban and rural sociology. His understanding of space was further developed in his *La survie du capitalisme*, which suggested that the reshaping of the global spatial economy was an important historical development (Elden, 2007).

Social space is allocated according to class, and social planning reproduces the class structure. This is either because of an abundance of space for the rich and too little for the poor, or because of uneven development in the quality of places, or indeed both. Like all economies, the political economy of space is based on the idea of scarcity. "Today more than ever, the class struggle is inscribed in space." There are also 60 crucial issues around the idea of marginalisation or regionalisation. This was one of Lefebvre's points in his call for the right to the city [ville]. Segregation and discrimination should not remove people from the urban. Nor are space and the politics of space confined to the city (Elden, 2007).

The right to the city is, therefore, far more than a right of individual or group access to the resources that the city embodies: it is a right to change and reinvent the city more after our hearts' desire. It is, moreover, a collective rather than an individual right, since reinventing the city inevitably depends upon the exercise of a collective power over the processes of urbanisation.

In general terms, when we talk about the right to the city it means ensuring that women, men, youth and children have equal access to basic services in the communities they live. These basic services include access to water and adequate sanitation. The right to the city also implies minimum levels of safety and security so that people do not live in constant fear of being assaulted or of being robbed, the right to the city also affordable energy and public transport to facilitate access to jobs, education and recreation. Moreover, the right to the city include the right to adequate housing and the right for people to participate in decisions affecting their livelihoods. Finally, the right to the city should translate to equal opportunities for all to improve their living conditions and livelihoods without jeopardising the rights of future generations to do the same. The concept of the right to the city is closely linked to that of socially just cities.

Conceptualising the Informal Sector

The term informal sector has various meanings and explanations. There is no universal agreement on what informal sector is. Its definition and understanding varies from country to country. However, informal sector is basically defined as production units that operate on a small scale and at a low level of organisation with the primary objective of generating income for the people involved. In other words, informal sector consists of businesses that operate outside the rules, laws and regulations of any country. Since it was first coined in the early 1970s, the term 'informal' has been used with different meanings for different purposes. Originally, it referred to a concept for analysis and policy-making.

Today it is sometimes used in a much broader sense, to refer to a concept that defines activities not covered by the existing, conventional sources of statistics. Moreover, the informal sector may be broadly characterized as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. These units typically operate at a low level of organization, with little or no division between labour and capital as factors of production and on a small scale. Labour relations – where

they exist – are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees (International Labour Organization [ILO], 2013).

Socially Just City

Socially just city are also referred to as inclusive cities. The concept of an inclusive city has several meanings and explanations. Cleobury (2008) defines an inclusive city as one that provides all its citizens with decent public services, protects citizens' rights and freedom, and fosters the economic, social and environmental wellbeing of its citizens. It strives to produce a beneficial framework for inclusive economic growth and improves the quality of urban living. If a city is inclusive it means that all the citizens have access to basic services, access to employment opportunities, promotes human rights, spatially and socially cohesive among other attributes.

Results and Discussion

There is increasing control over the use of public spaces, especially those within the Harare city centre. The urban zones are always characterised by the 'winners, losers', the 'included' and the 'excluded' which raise questions with regards to spatial democracy in space and land utilisation. It has become survival of the fittest, which those without the political and economic 'muscles' greatly disadvantaged. Informality has become a source of livelihood especially for the urban poor. However, a study conducted by Njaya in 2014 suggests that there is currently no law that protect informal sector players' right to livelihood. Though informality has become a permanent feature of the urban economic system, the players in this sector have become targets of harassment and eviction by both the national and municipal police authorities. These have adopted militaristic ways of responding to urban informality (see Figure 1).



Figure 1: Informal trader fighting with municipal police

Now, there is increased politicisation of public space and now Harare resembles what Brown (2006) referred to as 'contested space'. Different parties are always clashing in as far as the control and management of public space is concerned (Dube, & Chirisa 2012). This raises several questions concerning urban spatial governance. It becomes difficult for players in the urban informal sector

to enjoy their right to the city and thus the notion of 'a fair shared' city cannot be achieved. This in its own sense is an obstacle to effective and meaningful spatial democracy. The urban poor are most severely affected by the erosion of spatial justice and exclusionary citizenship that is accompanied by urban development activities (Lawson, 2008). There is increasing conflict on the use of public space in Harare, which has somewhat created spatial polarization, where city dwellers are spatially sorted into areas of relative privilege and disadvantage.

Informal vending

Harare has been characterised with high population growth, high industry closures and consequently high rates of unemployment and enormous poverty. A huge manifestation of unemployment is seen through the informal vending. Shop fronts in Harare are littered with informal traders of various goods and services such as carrier bags, locks and keys and food items. Foreign currency dealership and airtime hawking has become the most lucrative ventures by most sectors of the public (Chirisa, 2009). Brown (2006) elucidates that Local Authorities (LAs), have criminalized the informal sector. Most informal traders are in a situation of dilemma always, that is poverty at home and police at their workplace (Chirisa, & Dube, 2012).

The informal traders have positioned themselves on strategic points where it is easy to attract customers for example along streets close to transport pick up and drop off points. An issue of concern to most private businesses is that informal traders have cowed them to unfair competition, for instance in Harare Central Business District (CBD), those who sell groceries usually stand in front of shops selling the same goods such as OK and TM super markets.

With this challenge in mind, city residents and the local authority have alternated to the practice of allowing quick gains through promoting "innovation". The practice removes barriers to entry, creates simple networks and challenges government bureaucratic requirements. The above strategy manifests in workplaces that do not have services to cater for the users and customers to those businesses. For example, the new public market along Speke and Chinhoyi Street in the CBD of Harare accommodates huge numbers of clothes sellers and customers but does not have a toilet or water point. Focus is on providing for operating space but little attention is on the provision of infrastructure and services to cater for these operating spaces.

Box 1: Police Clash with Vendors

Police and vendors fought running battles forcing shops in the First Street Mall and Nelson Mandela to close, the stone throwing vendors smashed windowpanes of police post. The police had visited the area following the assault of a member of force by the vendors. Police Chief Superintendent Oliver Mandipaka confirmed that there are some political activists masquerading as vendors or vendors masquerading as political activists who have become so confrontational each time the police want to enforce the law. *The police were armed with teargas, canisters and rifles while patrolling, violence erupted after vendors resisted arrest and pelted the police with stones.* Mr Mandipaka noted that some vendors were hiding behind politics to engage in illegal activities. He further on pointed out that residents should not fear the law enforcing agents, but they should respect what they stand for; confrontational cannot be tolerated because we want tranquillity to prevail. Thus direct confrontation with the police is gross illegality inviting heavy handedness.

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Informal transport system in Harare

The government of Zimbabwe has failed to provide adequate formal public transport. In response to this, informal public transport systems have emerged to take advantage of the demand that has not been met by formal public transport systems (Mbarara, *et al*, 2014). This supports the classical model of the informal sector which states that when the formal sector shrinks, the informal sector expands (Gibson and Kelley 1994). Informal transport relies heavily on

traditional knowledge and resources, family labour and ownership, small-scale operations and labour-intensive techniques, and offers low barriers to entry for potential participants (Rakowski 1994).

The informal transport in Harare uses small cars and minibuses which park willy-nilly blocking other traffic and causing congestion (Mbara, 2015). Chirisa and Dube (2012) reiterated that transport woes in Harare range from congestion, pollution and shortages of transport. The informal transport system in Harare has opened informal bus terminals known '*mushikashika*'. *Mushikashika* means "....an aggressive approach to transport shortages characterised by hitch hiking any mode of transport". The informal transport system has also developed incidental informal bus stops. Both the *mushikashika* type of transporters, formal and semi-formal transport operators have become inefficient in terms of travel time and routing.

The most worrying characteristic of the informal transport system in Harare is that players usually lack formal documentation and experience to transport the public. Reckless driving is also common in the sector. This has led to numerous police blitzes on kombis. There now exist what Chirisa and Dube (2012) termed as the "BMW euphoria", in which police with BMW cars have embarked on a beast-like nationwide crackdown marauding on all transport operators to enforce operational permits and other regulations. This operation by the police prompts radical change of routes as Kombi drivers run away from the BMW.

Informal housing in Harare

People who cannot afford decent accommodation are flocking into informal settlements dotted around Harare as the government has no resources to build houses for the poor. Financial institutions are unwilling to invest in housing in informal settlements. The City of Harare has started to demolish houses that are deemed to be illegal. The move was in line with government's order to demolish illegal structures around the country in a development resident's view as reminiscent of the 2005 Operation Murambatsvina. Such initiatives are considered to be a violation of urbanites' housing rights and a denial for them to enjoy city life. Such activities in the housing sector means that the concept of inclusiveness within the City of Harare has since been dropped as the City is now characterised by the 'included' and the 'excluded'. Figure 2 show woman standing outside after her house was pulled down a bulldozer in the City of Harare, Zimbabwe.



Figure 2: A woman standing outside after her house has been pulled down by a bulldozer in Harare, Zimbabwe

Conclusion and Policy Direction

This paper has argued that the rampant criminalization of the informal sector in Harare is a violation of the citizens' right to the city. Urban residents are entitled to live and enjoy benefits that come with urban life without fear of being intimidated and harassed. However, the City of Harare has unleashed terror in the informal sectors of transport, vending, urban farming and informal housing, thereby going against the notion of inclusive cities as advocated for by organisation such as the UN-Habitat. Sustainable and inclusive urban planning should take into consideration the role of the informal economy in keeping many households afloat in the context of massive unemployment and poverty. Street trading and other forms of informal economic activity have to be factored in as part of the economic reality and spatial dynamic of the City. The acknowledgement of the role of the informal economy as an economic constituency defining the City should be reflected beyond political rhetoric, and genuinely inform the Harare's policies. Its contribution to the livelihoods of millions of people is evidence that it is not only a sector to be tolerated and controlled, but one that should be allocated resources for its development.

It is undisputable that there is need for Local Authorities to have sustainable development mechanisms that improve urban development and management and fosters an economically competitive environment so that there is no decrease in welfare and quality of life of urban populace (Nothnagel, 2011). Local Economic Development can be adopted since it serves the purpose of mobilising the local economic potential by bringing innovation to all its growth dimensions that is infrastructure, local SMEs and their skills, attracting foreign investment, fostering territorial competitiveness and strengthening local institutions (Nothnagel, 2011; 17). Since urban areas in developing countries are concentrated with, the jobless or even the poor there is need for LED so that there is no decrease in welfare and quality of life for urban inhabitants. Nel (1994) further elucidates that the high concentration of persons in cities implies that proper approach to growth can enhance the wide spread of benefits of development.

Implications for social justice

Urban agriculture has emerged as one of the most practiced 'informal' activity in the City of Harare. The majority of the urban poor in Harare continue to rely on urban farming for survival as formal sector employment has since collapsed as a result of serious economic challenges being experienced in the country. However, the City of Harare has continued to criminalise urban agriculture and consider it a trivial activity in the urban system. The Council officials have at some point slashed maize crops planted in open areas in residential suburbs such as Kuwadzana. Some of the Housing development agencies in the form of housing cooperatives were on recorded destroying maize in the name of land development processes (Chimedza, 2015).

Conflict of interest statement

The authors declare that they do not have any conflict of interest.

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RESEARCH ARTICLE



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The Problem of the Truth of the Counterfactual Conditionals in the Context of Modal Realism and the Semantics of the Possible Worlds

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Abstract

The article deals with some aspects of the problem of the possible worlds in the context of David Lewis' modal realism. It is suggested that one of the significant contexts in this respect is the question of truth of counterfactual conditionals.

Keywords: modal realism, the possible worlds, counterfactuals, truth.

Introduction

The concept of the possible world dates back to Leibniz's analytics, in which he claims that God created this world as actual and the best of all possible worlds; thus, he stated the possibility of other worlds that were not actualized. This statement gained attention and significance in the field of analytic philosophy, specifically in an area of necessity or indeterminism of truth, the mind-body problem, truth conditionals for counterfactual statements, etc. Overall, the concept of possible worlds functions in quite a wide range of contexts, those being:

- Philosophical discourse on actual and potential, necessary, random and possible;
- Problems of analytic theology;
- Model-theoretic semantics;
- Engineering of multi-layered computer interface;
- Media culture, fantasy, digital entertainment.

Thus, the concept of possible worlds is widely implemented and ontological and epistemological status possibilities is a subject of investigation in the philosophy of modalities and modal ontology. As for the investigation of ontological and epistemological status possibilities in analytic philosophical tradition, it has developed into at least three main approaches: possibilism, modal realism, and actualism.

Literature review

Supporters of actualism and especially R. Adams, have a lot of doubts about the existence of possibilities and possible objects, possible scenarios or states of affairs. According to them, everything that exists is actual, and there is no object that could exist not actually, factually. Therefore, actualists focus attention merely on the existence of actual entities as a subset of the

class of possibilities. If something does exist, its existence neither depends on experiences nor subjectively realized. Other entities exist only in the area of possibilities (Adams, 1974; 1981).

Supporters of possibilism incline to believe that possibilities and possible objects are ontologically possible in possible worlds, but they do not exist in terms of their actuality [p. 303] (McDaniel, 2006), although some of them have the potential to exist in the physical world. All existing object are ontologically balanced, possibilia exist in the same sense as actual objects. Thus, the sphere of possible coincides with the sphere of existing.

The representatives of modal realism, particularly Lewis, acclaim the actual existence of possibilities and possible objects in possible worlds. The uncountable number of possible worlds exists in reality in the same ways our actual world does. Lewis believes that the necessary nature of true proposition is defined by the fact of this proposition being true in all possible worlds. This criterion, as it seems, enables the differencing of conditional counterfactual propositions in two contexts: in the context of them being true/false and in the context of the existence of presence/absence of the quality.

D. Lewis is convinced that there are a few ways of existence apart from factual existence; therefore, if it is possible to think about the certain world, then this possible world is actual [p. 84] (Lewis, 1970). Overall, one can identify the following general principles of the concept of possible worlds, according to American analytical philosopher Lewis:

- possible worlds are as real as the actual world; they differ only in terms of contents, but not ontologically;
- possible worlds are causally, time-space divided from one another;
- the possible world is a mereological set of elements, it contains everything that is possible to be contained in it and in this perspective it is a sufficient universum;
- as far as going beyond existing leads to a logical contradiction, one cannot logically suggest the impossibility of possible worlds.

In this context, it seems reasonable to review the conception of Lewis on the contrary of Meinong's position on the necessity of the existence of the object of cognition, which correlates with the opinion of the American analytic philosopher of 'anything conceivable to be actual'. Although, in this case, as Lewis believes, the abstract entities should be automatically counted as conceivable, thus existing, even though it is problematic (if not impossible) to define their particular qualities. According to American philosopher, it is qualities that are fundamental in the structure of factual, moreover he did not recognize the hierarchy of the qualities that means that they all acquire the same ontological status.

Later on, after Australian analytic philosopher D. Armstrong had criticized this conception, Lewis had to make some adjustments in his 'expanded ontology' in particular, Armstrong's criticism concerned coextensive qualities. Thus, according to Lewis, two co-extensive qualities of actual world are indeterminate, and Armstrong notices, that in some possible worlds, those qualities can go separately like 'being a creature with a heart vs. being a creature with a kidney'. Although in our actual world, those two coextensive qualities, following the Lewis's logic, are supposed to be indeterminate. Therefore, Armstrong claims, that qualities are not coextensive in each possible world.

Armstrong's criticism of Lewis' "expanded ontology" made the later look for so-called "natural qualities" of actuality. He deduced them to be found in universals that, unlike pure qualities:

- are actualized differently;
- objectify the functionality of entities and determine their causality.

This new hierarchy of qualities, created due to Armstrong's criticism, allowed Lewis to deduce the limitations to the possible worlds. In his time, Immanuel Kant also shared this position. In his view, it seems, at the first sight, that possible is quantitatively bigger than actual, because to produce something actual one needs to add some component to the possible, but something, that is added to possible would not be considered possible itself, thus according to I. Kant, it is impossible. However, the modal realism does not object the existence of possible worlds that are almost entire copies of our actual world, or at least it is safe to say that in this context such propositions are not considered controversial.

Lewis' modal realism is the result of his interpretation of modal logic that is actualizing the category of possibility for all possible worlds. Analyzing conditional counterfactual propositions American philosopher argues that the existence of all the ways things could exist apart from the way in which they actually exist is the possible worlds. Therefore, "possible worlds" do exist, although they are time-space and causally isolated from our actual world.

This position seems to need some clarification, in order not to certify its "antimodal" nature, and, therefore, we incline to call it not modal realism, but the modal relativism, allowing the categories of possible, actual, necessary and indeterminate to be considered at least as relative, relational.

Thus, we can assume that the status of the actuality of the world, according to Lewis (1970) is indexical [p. 184-185], e.i. it is dependent on the linguistic conditions, particularly in which circumstances the question is asked. It is significant to relate to the fact in which of the worlds or in which of the descriptions of the worlds, the question occurs, because other words than the world in question are irrelevant to understanding the actuality of that world. Therefore, the very predicate "actual" becomes occasional, it is necessary to every possible world to be able to make propositions about that world. Moreover, the actuality is represented as a quality of a possible world acquired regardless of its factualness, and it at least does not contradict the possibility of the existence of mermaids or unicorns, or any creature conceivable.

Thus, for this type of factualness of the possible world it is sufficient to incorporate a certain proposition in the frame of this possible world. 'Actuality' of the world is a quality attributed by the proposition from the perspective of this world. This conception appears problematic because we are unable to make propositions concerning possible worlds from the point of view of our actual world since the world in question from such point of view is not considered actual.

Furthermore, there appears to be some epistemological skepticism concerning the given world. In possible worlds, there are only different scenarios for the actual world. Modal realism denies the interaction between different possible worlds. And each of them is neither more, nor less "real" than the one we live in.

Criticism of Lewis's position concerns the fact that modal realism utterly diminishes modality as it is. It is highly plausible that modalities of the actual world are only the representations of other possible worlds, and thus, the ontological status of those modalities is nothingness. It should be noted that Lewis's conception of possible worlds appears to be initially deliberated to resolve problems in the fields of logic and semantics. It was not supposed to be applied metaphysically. As Saul Kripke pointed out, in the discussion on possible worlds, those worlds are not related to our world, because it is not one of the possible worlds, from our perspective, it is the only actual world.

Taking the later in account, the concept of possible worlds can be considered as:

- an abstract object;
- conceivable possible state of affairs;
- the idea of the possible future events, appropriate actions, beliefs, etc.

Thus, the concept of the possible worlds is applied in modeling the actual process of cognition. Moreover, each one of us occasionally has to consider a few possible scenarios that we project in the counterfactual context. And, as a rule, those ideas about the possible state of affairs or future events are expressed through the medium of counterfactual propositions.

Knowledge can be expressed in one or the other form of a proposition: either factual as "Gravity on the Moon is less strong than gravity on Earth", or counterfactual as "If gravity on the Moon was not less powerful than on Earth, its surface would be able to contain some gasses that would impact its temperatures". It means that counterfactual propositions are expressed in conditional sentences. Formally, the counterfactual proposition implicitly contains the proposition that factually differs from the situation implicated in the condition (antecedent) of such statement.

One cannot deny the significance of counterfactuals in scientific cognition, in particular, their role in the procedure of formulating and rejecting hypothesizes. Conditional counterfactual statements are also vital for the proving reduction ad absurdum when the antecedent contradicts factuality. In the process of refutation to appoint the contradictory thesis, e.i. having counterfactual nature, one demonstrates its absurd implications. Thus, the following problems concerning the functioning of counterfactuals can be detected:

–the problem of determination of the possible worlds by structural means of counterfactual statements;

–the problem of equivalence and identity of counterfactual antecedents;

–the problem of truth of counterfactual propositions;

–the problem of logical implications in the structure of counterfactuals;

–the problem of differentiating of indeterminate and nomological proposition;

The relevance of investigating counterfactual statements and conditions of their truth were indicated by Nelson Goodman in his article “The Problem of Counterfactual Conditionals”. Among other things, he notices that analysis of counterfactual conditionals is in no way a grammatical speculation. Furthermore, he implicates the very possibility of adequate philosophical analysis of the phenomenon of science is connected precisely with finding means to interpret counterfactual conditionals since they may give the means to solve “critical questions about law, confirmation, and the meaning of potentiality” [p. 113] (Goodman, 1947).

On the other hand, the analysis of counterfactuals allows to take a different look at the problem of the possible worlds and conception of modal realism, according to which possible worlds deserve the equal ontological status with the actual world. In this context, analyzing counterfactuals makes it possible to find conditions and criteria of the truth of counterfactual conditionals, that narrate the events that have not happened yet (or that cannot happen), and to what it is impossible to empirical correspondence with reality. So, thus, the criteria of the truth of counterfactuals mainly exist in the field of logical analysis.

Therefore, let us initially define the specifics of counterfactuals, and only thereafter try to apply the theory of counterfactual conditionals to the concept of the possible worlds and review the conditions of the truth of counterfactual propositions. Doubtless it is that true/false meanings of counterfactuals cannot be reduced to a true/false meaning of the observed factual propositions. It can be explained by the fact that counterfactuals have sometimes no relation to the events represented in such type of propositions and, therefore, cannot explain them. For example, the true factual proposition:

“Any material object can possess such a quality as extend”

can be rebuilt into the counterfactual with also true meaning:

“If a certain object was material, it would possess such a quality as extend”.

Apparently, propositions like these represent not indeterminate, but necessary qualities of the phenomena they describe; therefore they can be interpreted as laws. Thus, the initial summing up provides the interconnection between true meanings of factials and counterfactuals, that are of a nomological nature.

For the comparison, we may consider so-called ‘indeterminate’ propositions, for example, here is the factual proposition:

“Most of the large European states were colonial”

and the counterfactual:

“If this country had been European, there would have been a major possibility, that it would have been colonial”

As we can see, the true factual does not necessarily predetermines the truth of the counterfactual that can be explained by the indeterminate (not necessary) nature of the factual. On the contrary, we can assume the impossibility of coextensional interpretation of counterfactual propositions since it is improper to conceive them as such that can be attributed to the material implication, in the same way, the factual propositions are.

Goodman and Chisholm (1946) tried to define the implication of the consequent out of the antecedent in counterfactuals, and for this purpose it was necessary to find the relevant conditions (R), that when added to antecedent (A) would make the implication of the consequent (B) possible:

$$(RA) \vdash B$$

In this case, (B) is counterfactually implicated out of the antecedent (A), and ($\neg B$) cannot be implicated. The problem is whether it is possible, assuming the potential infinity of relevant conditions (R), to find the conditions in which (B) would be counterfactually implicated, when ($\neg B$) would not. According to them, adding laws of nature to the list of relevant conditions (R) generalizes interpretation of counterfactuals.

However, it leads to the need to determine how to divide the proposition expressing laws of nature from those that only on the outside seem to have nomological character, but are indeed of indeterminate nature. It appears that Bertrand Russell came close to resolving this problem, offering the following formal rule:

$$\forall x(A_x \vdash B_x)$$

For this rule the following propositions would be considered formally equal:

(1) "All metals are conductive" (Which can be formally represented as «for all (x), if (x) is a metal (A), then (x) is necessary conductive (B); thus, it is a necessarily true proposition expressing the law;

(2) "All my friends have an academic degree" (for all (x), if (x) is my friend (A), then (x) necessarily has an academic degree (B); thus, this proposition can be either false or indeterminately true.

Thus, in the case of (2) there is possible situation, proving the ineffectiveness of formal, rather than meaning-based approach to defining counterfactual conditional:

$$[(\forall x(A_x, B_x)) \rightarrow ((A_x \vdash B_x) \wedge (A_x \vdash \neg B_x))].$$

In the opinion of Nicholas Rescher, an individual operates with a certain system of some true (as he or she believes) propositions. Although, if in the experience there appears a proposition contradicting with some initial propositions within the system, it will lead to formulating the counterfactual. It raises the question: if the new proposition is true, what propositions should be confirmed and which ones should be rejected? The philosopher offers to act according to the principle of confirmation and disconfirmation, which cannot be applied to all the counterfactuals, rather only to so-called speculative counterfactual propositions that are ambiguous by their nature and, unlike laws of nature, do not follow general principles.

Apparently, defining the true/false meaning of the counterfactual is not covered by the principle of contextuality, formulated by Gottlob Frege. According to it, the true/false meaning of the antecedent and consequent of the counterfactual define the truth of the proposition. Furthermore, the connection between antecedent and consequent in counterfactual conditionals can be different, depending on the event it describes and does not always demonstrate the obviousness of it.

Goodman believes that there are other means to reason the truth of a counterfactual. The first component is a set of necessarily true generalized propositions (T), that are nomological. In this set, there should be an antecedent (A) of a potential counterfactual ($A \rightarrow B$). This counterfactual is implicated out of (T) and (A). Thus, the implication is $T, A \vdash B$.

Following this implication, we assume that counterfactual conditionals can be divided into the following types:

- 1) Indeterminate ambiguous counterfactuals;
- 2) Counterfactual concerning abstract logical and mathematical notions;
- 3) "Actual" counterfactual with empirical basis;
- 4) counterfactuals concerning the events of the past.

As an example for the first type, we may have the hypothesis 'Giuseppe Verdi and Hector Berlioz were compatriots'. The following counterfactuals can be implicated out of it:

- a) "If Verdi and Berlioz were compatriots, they would be both Italians";
- b) "If Verdi and Berlioz were compatriots, they would be both French".

It is not clear which of the propositions is true since consequents "they would be both Italians" and "they would be both French" are indeterminate to the hypothesis. In this case, it is best to apply Rescher's the principle of confirmation and disconfirmation.

Research results and conclusion

While dealing with the counterfactual concerning abstract objects of logic and mathematics, they should be considered only in the context of a certain theoretical system. Such type of counterfactuals are an idealized object, the truth of which cannot be implicated correspondently to factualness, but coherently to the theory itself.

"Actual" counterfactuals with the empiric component are only true if they fixate the causal relation of two or more events, and gain, therefore, nomological status. Karl Hempel emphasized the ambiguous nature of such propositions and precedents when nomological and indeterminate

counterfactuals can be confused. In particular, he claimed that the main functions of generalized laws (at least, in natural science) are explanatory and anticipatory. Although, the same can be applied to history and empirical science, the truth of which depends on the general law. Therefore, there might be counterfactuals concerning historical events, the status of which is not yet defined, at least in the respect to criteria of scientific knowledge, and, therefore, truth, and that are only used as figures of speech.

Thus, the problem of the counterfactual conditionals is the problem of defining the conditions for their truth or falseness. The peculiarity of such propositions is the fact that they do not correspond to the factuality, rather we are to define conditions for implicating accessible alternative. In this consideration, depending on the conception we relate to, e.i. actualism, possibilism or modal realism, the non-actual nature of the truth of counterfactual conditionals is confirmed.

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RESEARCH ARTICLE



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The Role and Importance of Local Economic Development in Urban Development: A Case of Harare

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Abstract

The study assessed the role and importance of Local Economic Development as a means of enhancing urban development paying particular attention to the regulators of Local Economic Development in Harare. Local Economic Development is a process which encourages partners from the community, public sector, private sector and non-governmental sectors to work collectively to create better conditions for economic growth and employment generation with the aim of improving the locality economic future and the quality of life for all citizens. The study was premised on the theory of competitive advantage which puts up that prosperity and wealth creation is determined by microeconomic factors and that prosperity means increasing the standards of living for the local people and ultimately their quality of life. Primary data for the research was gathered through observation and key informant interviews. Data on key stakeholders understanding on the concept of Local Economic Development, how it is being practised and how the current regulatory framework enhance or impinge on local people's participation in Local Economic Development was collected. Secondary data was also collected from Harare's 2014 budget, census and existing forward plans. The study revealed that the practice of Local Economic Development in Harare is biased towards the setting aside of land zoned for industrial and commercial uses and implementation of development control parameters. Small to Medium Enterprises and the informal sector have also been identified as the major forms of Local Economic Development that citizens are involved in. However, the study revealed that proper policy frameworks which guide practice of Local Economic Development initiatives were missing.

Keywords: Local Economic Development; Urban Development; Harare; Quality Of Life; Prosperity.

Introduction

"Our world today is predominantly urban. Cities can be prime driving forces of development and innovation. Yet the prosperity generated by cities has not been equitably shared, and a sizeable proportion of the urban population remains without access to adequate infrastructure and the benefits that cities produce" [p. ii] (Ki-moon (2013)).

Exploding urban populations, strains on inadequate and deteriorating physical facilities and social pressures to expand service coverage are all increasing the demand for public services, shelter and infrastructure in cities of many developing countries. This paper seeks to assess how the instrument of Local Economic Development (LED) can enhance urban development in Harare.

Therefore various private, public and community stakeholders have an obligation to perform and maximise their intrinsic roles in a harmonic manner through a participatory and consultative decision making process.

Background of the study

Karsada and Parnell (1993) articulate that accompanying the explosive growth of cities has been a plethora of problems seemingly of unmanageable proportions. The problems of urbanisation are countersigned through high rates of unemployment and underemployment as urban labour markets are unable to absorb the expanding numbers of job seekers, soaring urban poverty, insufficient shelter, inadequate sanitation, inadequate or contaminated water supplies, air pollution, environmental degradation, congested streets, overloaded transportation systems and above all municipal budget crises [p. 65] (Devas, & Rakodi, 1993). As a result, few local authorities have been able to provide services and infrastructure to meet the growing needs (ibid). In addition, overburdened ministries often provide services and infrastructure inefficiently, and they often generate losses rather than revenues (Nel, 2001).

Zimbabwe is not an exception to the urban miseries that urban planners, managers and the inhabitants are facing. Cities such as Harare continue to grow without any apparent limit and this poses a huge challenge to those responsible for the management of urban development and the provision of services (Tibaijuka, 2005). Local authorities have been crippled with budget restrictions, decreasing revenues and cuts in public sector expenditures [p. 23] (Chaeruka, & Munzwa, 2009). The rapid process of urbanisation seems to be dodgy for the scale of problems it seems to entail. Urban management issues common in Harare are urban sprawl, squatter settlements, corruption, street children, inadequate urban service delivery and urban agriculture (Tibaijuka, 2009).

Harris (1992) observed that most third world economies have not been able to expand at the pace needed to meet labour force growth. The structures of these economies are rapidly changing, requiring new skills for new economic roles especially in mega cities hence the need for policy initiatives to stimulate greater urban job creation (Karsada, & Parnell, 1993). In Harare, a huge manifestation of unemployment is seen through the informal sector, which expresses itself in many different forms, that is, housing, vending, theatre, transport and urban agriculture. Urban managers have been subdued to the pressures of the informal sector. Shop fronts in Harare are littered with informal traders of various goods and services such as carrier bags, locks and keys and food items. Foreign currency dealership and airtime hawking has become the most lucrative ventures by most sectors of the public (Chirisa, 2009). Brown (2006) elucidates that Local Authorities (LAs), have criminalized the informal sector. Most informal traders are in a situation of dilemma always, that is poverty at home and police at their workplace (Chirisa, & Dube, 2012).

The informal traders have positioned themselves on strategic points where it is easy to attract customers for example along streets close to transport pick up and drop off points. An issue of concern to most private businesses is that informal traders have cowed them to unfair competition, for instance in Harare Central Business District (CBD), those who sell school uniforms usually stand in front of shops selling the same goods an illustration being school uniform vendors operating in front of Enbee and Nargaji stores in L. Takawira street.

Zimbabwe is one of the few countries in Africa still using the government or municipal system in urban management. A chief hindrance of the municipal system is its susceptibility to unceasing political interference at the expense of efficiency, effectiveness and transparency in service provision. Recently in July 2013, the Minister of Local Government, public works and national housing, Dr Ignatius Chombo gave a directive to all Local Authorities to slash all rates owed by residents and the rates were valued at USD330 million in Harare only. This move by the minister have also induced a dependency syndrome on residents as debts of USD5 million is already in existence three months after bad debts were written off.

From the above analysis, it is undisputable that there is need for LAs to have sustainable development mechanisms that improve urban development and management and fosters an economically competitive environment so that there is no decrease in welfare and quality of life of urban populace. Cities are also important global hubs of finance, manufacturing, trade and administration. Rondinelli (1983) postulates that cities offer locations for services that require high population thresholds and large markets to operate efficiently. This is because cities are centres for

innovation and diffusion and they facilitate widespread modernization. For example, Lagos with 5% of Nigeria's population has 57% of total value in manufacturing and has 40% of the nation's highly skilled labour.

LED therefore has the purpose to mobilise the local economic potential by bringing innovation to all its growth dimensions that is infrastructure, local SMEs and their skills, attracting foreign investment, fostering territorial competitiveness and strengthening local institutions. Since urban areas in developing countries are concentrated with, the jobless or even the poor there is need for LED so that there is no decrease in welfare and quality of life for urban inhabitants. Nel (1997) further elucidates that the high concentration of persons in cities implies that proper approach to growth can enhance the wide spread of benefits of development.

Theoretical and Conceptual Framework for LED

Local Economic Development, Urban development and Competitive Advantage

Porter (2000) elucidated that prosperity and wealth creation is determined by microeconomic factors and that prosperity means increasing the standards of living for the local people and ultimately their quality of life. This view corresponds to LED which hinges itself on improving the quality of life for the local people through economic empowerment (Nel, 2001). The view by Malecki (2007) that regions are the primary spatial units for attracting investment as it is at the grass root level where knowledge and resources circulate is very important when it comes to the execution of LED since community participation, use of indigenous knowledge and locally available resources are at the heart of LED.

As urban development is concerned with agglomeration of industrial sectors, regional competitive advantage can be derived from the ability of agglomeration to reinforce clusters of business and also to attract other businesses (Huggins, Izushi, & Thompson., 2013). Urban development through improving the transport networks, institutional setups, telecommunications and other physical infrastructure improves the determinant of related and supporting industries for local competitive advantage by promoting innovation (Frăsineanu, 2008).

The theory of competitive advantage also highlights how crucial government policies are in making and implementation of decisions for an industry. Government policies and priorities are influential as they are the ones that direct the issues that industries and local authorities should prioritize as well. Nel (2001) put up that in LED it is the government that create the platform for LED programmes to take off, prioritize issues to be dealt with at the local level, give fiscal transfers and most importantly it is the government nature that promote or limit the levels of autonomy that local authorities can exercise.

The evolution of Local Economic Development

Keeble (1969) enthuses that LED originally emerged as a way of responding to industrial cities such as Manchester in England and to come up with answers to the cities' problems. LED did not emerge simply as land use planning nor did it emerge as a sectorial approach but it connects (Blakely, & Bradshaw, 2013). Goodman (1972) shared the same sentiments with Keeble (1969) when he further articulated that planning for LED in early industrial cities was concerned with eliminating the impacts of the communist economy approach that led to congestion, underdevelopment, and unbalanced development. The industrialisation period distorted cities to the extent that poverty, ill health and overcrowding became a prominent feature.

Keeping up with Keeble (1969) LED planning was concerned with creating spatial relationships between rural and urban centres that are conducive for compact development in the improvement of a local economy. LED was aimed at establishing orders which provided regulations for economic planning through designation of "special areas" to act as insurance against unemployment and also to eliminate regional economic imbalances by creating environments conducive for business development in the periphery areas.

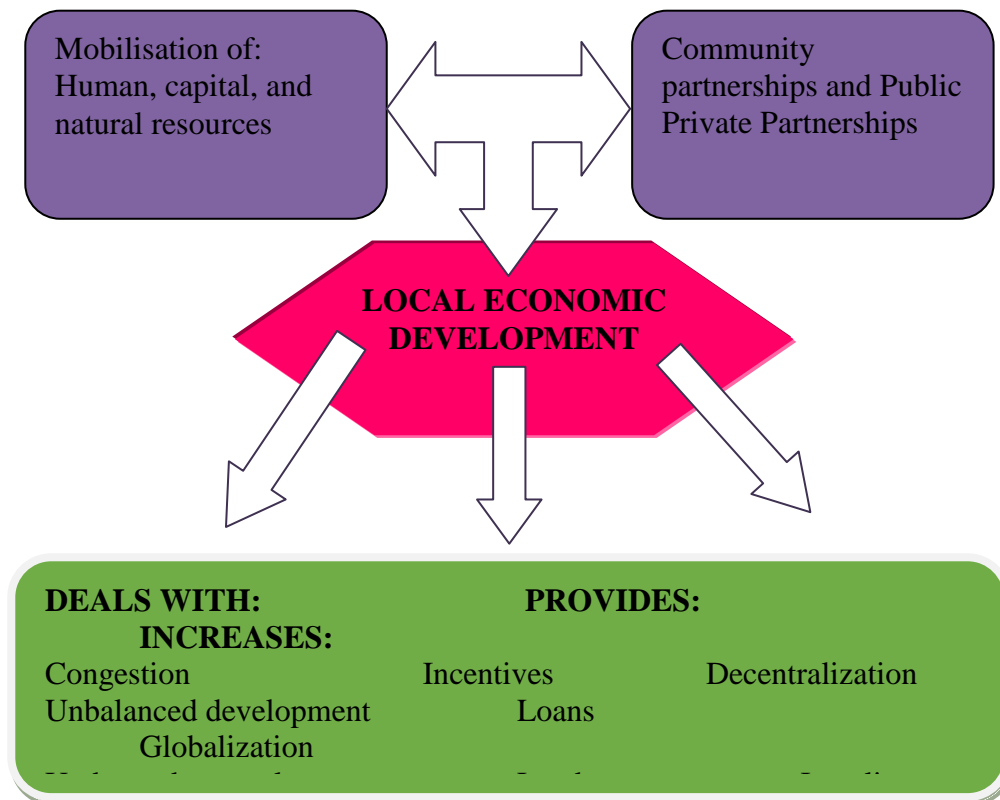


Figure 1: Conceptual Framework for LED

Source: adapted from Keeble (1969), Friedman (2005) and Nothnagel (2011)

Nothnagel (2011) bring up the new dimension that has emerged in recent age that has called for LED. LED has been recognized as a key response to contemporary trends such as increased decentralization, globalization forces, economic change within localities and the unconvincing results of macro-level planning. Markusen (1996) and Friedman (2005) highlight on the influence of globalization to the need for LED. Globalization defines the logical space and calls for measures on how to manage it. Improvements in transport, technology and communications are increasingly flattening the world making the space more slippery and as such reducing the importance of place (Friedman, 2005). On the other hand, globalization has made localities more important for economic growth and prosperity.

In this sense LED is playing a critical role in responding to the three phases of globalization as identified by Friedman (2005). The first juncture brought significant prosperity to LAs by selling and exporting and here LED provides incentives such as loans, tax and hard infrastructure to investors. In the second phase, globalization caused an increase in plant closures as they relocate to areas outside the country where there are favorable operating conditions including cheap labor and materials (export of plant). In phase two, LED focuses on business retention by shifting attention towards creating more indigenous business through promoting entrepreneurship, technical support for Small to Medium Enterprises (SMEs) and micro finance. In the third phase, the Multinational Corporations (MNCs) sell products back home however these goods do not gain the livelihoods of local people. In response to this challenge LED helps to create more conducive and attractive business environments. Friedman (2005) summarized that in the age of globalization, LED can be used to become a proactive measure to globalization effects.

Method

This study was based on the qualitative analysis and employed the phenomenological approach method in conducting the research. This method was used to collect large amounts of data by seeking contextual opinions and subjective interpretations of participants. The study mainly focused on the strategies, structures and methods that have been used by different stakeholders in the planning and implementing LED programmes in Harare.

Purposive sampling technique is also known as judgment sampling whereby it is the conscious choice of an informant according to the qualities that the informant possesses (Bernard 2002). In this nonrandom technique, the researcher came to a decision about what was needed to complete the study and set out to find relevant people willing to provide information by virtue of knowledge or experience. The research solicited data from key informants drawn from the City of Harare, Ministry of Local Government, Public works and National Housing, Department of Physical Planning and Sunway City (Pvt Ltd).

The data collected from the key informants was first transcribed and entered verbatim into a computer as data files for text analysis. Transcribing and analysing of the recorded discussions was conducted with the help of Microsoft Excel qualitative data processing software. Data was analysed using a coding process.

Results

What is the understanding of stakeholders on LED in Harare?

The research established that different stakeholders and individuals have diverse understandings with regards to the concept of LED. The Chief Planning Officer from DPP defined LED as development initiatives that positively transform the economic well-being and improve the per capita income of a community in an environmentally sustainable manner. From the same institution, the Principal Town Planning officer identified LED as the strengthening of a regional community's capacity to make optimal use of the existing and potential characteristics of the area with the aim of improving conditions for job creation and economic growth in order to secure local interests versus central government, to support small businesses, and to deal with challenges affecting the local community. It is evident that even if the interviewees were from the same organization, LED still remains a difficult phenomenon that people have had a tendency of subscribing different meanings and consequently varied approaches to dealing with LED.

The Business development unit officer from City of Harare had a different understanding to LED which he defined as the sum total of activities with a monetary value which are conducted within a defined location. Alternatively, the Secretary General for Urban Councils Association of Zimbabwe (UCAZ) informed that many people understand LED as projects or things that are tangible but he advised that that notion is now being refuted on the basis that it is a process which results in the empowerment of individuals economically. From the above scenario, it is clear that even when CoH and UCAZ are said to be birds of a feather there is actually a divergent relationship between their understandings of the concept. The response from City of Harare is concerned with all things that have a monetary value in a given locality but UCAZ highlights the importance of individual economic empowerment.

The definition from City of Harare remains shallow in that if wealth or income in a given society is owned by a smaller segment of the population yet the rest only share the minority of the wealth, will it still bring the notion held of LED. From the aforementioned responses it can be unequivocally established that there are different perceptions and understanding of LED between UCAZ and its affiliate the City of Harare with regards to LED yet there should be common ground on this matter. This brings out the elusive nature in the understanding of LED amongst local government authorities in Zimbabwe. However, different perceptions of a concept leave a question towards their working liaison.

DPP officials highlighted that their role in LED is simply a supervisory role to all local authorities to ensure that they conform to law and policies. The ministry of Local Government Public Works and National Housing in the Department of Urban Local Authorities also alluded their major role is of policy formulation. They also facilitate forward plan review so that they capture changes in the socio-economic environment. UCAZ comes in to lobby and advocate for local authorities just in case there are laws and policies that hinder their performance. These relationships imply that there is need for intensive stakeholder coordination to ensure that a coordinated LED framework is created. However, none of the key informants illustrated that they play the roles of promoters instead all they revealed was that they enforce regulation measures. This gives a challenge in that regulators only without promotion will lead to a negative relationship with the implementers or owners of LED initiatives.

What are the perceptions of stakeholders towards LED?

a. Spatial planning as the driver for LED

LED in Harare has simply been understood as spatial planning and creation of zones. The Business Development Unit officer from City of Harare cited that, *“Including LED in spatial planning allows for a more effective use of available land resources and promotes a balance between purely economic development and other social needs.”* This response matches with the definition of LED given by the Chief planning officer from Department of Physical Planning, which is, *“LED refers to development initiatives that positively transform the economic well-being of a community in an environmentally sustainable manner.”* These responses indicate that for LED to be sustainable and beneficial, spatial planning is needed first.

Figure 2 illustrates how spatial planning leads to LED. Foremost there is need for the preparation of master plans, which identify different inventory of assets that a region has. The master plan will further identify the needs that are there within that region. Sunway City (Pvt Ltd) believes that it is critical to start a new town with industrial development in order to develop the locality and that all development projects are examples of economic development.

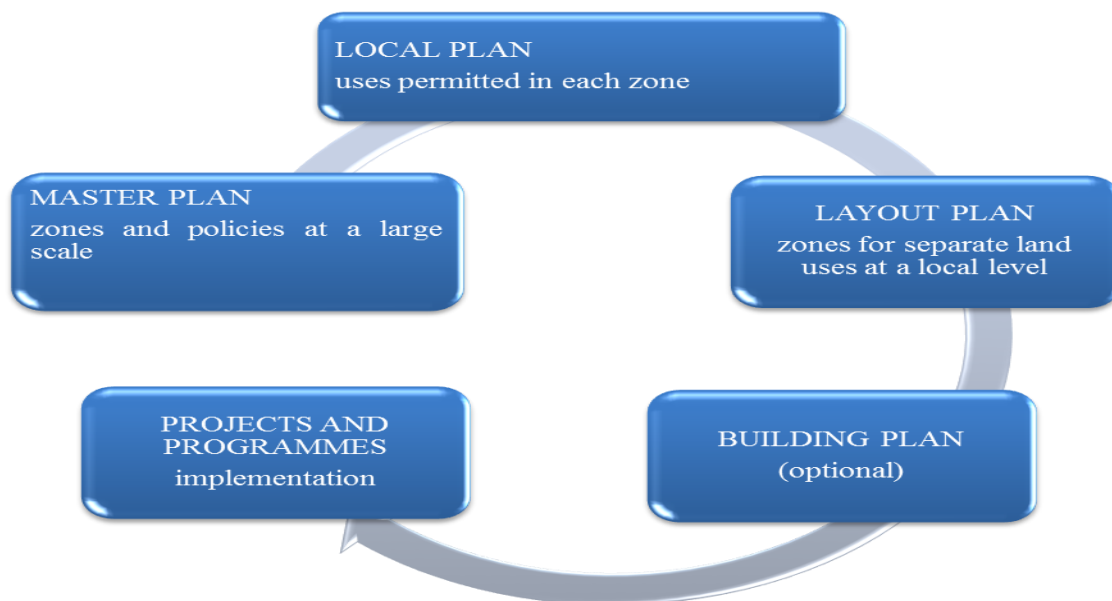


Figure 2: The conception of LED from spatial planning to project implementation
Source: Fieldwork, 2014

b. An ideal situation not applicable to Harare

From the key informant interviews it was noted that most of the people interviewed argued that LED was not easy to adopt in Harare. For example, the Deputy City Planner from the City of Harare actually laughed at the concept of LED *“... why would we want to copy a South African concept”*. The official also noted that it was not practical for LED to take place in Harare. He notes that there is no policy framework making it mandatory for local authorities to implement LED, as compared to the South African scenario whereby LED is mandatory and local authorities are obliged to implement it. The official from the Department of Physical Planning also noted that in as much as LED is a noble idea there lacks a proper policy framework for it to be implemented thereby agreeing with the sentiments from the City of Harare. This gives rise to a situation whereby plans are shelved in offices and are never implemented.

c. LED as a non-planning activity

The department of urban planning services in the City of Harare gave the impression that LED is important but it is not a planner's responsibility. The City of Harare argues that the only responsibility of an urban planner is to create zones for economic development and to impose development conditions that ensure that these activities do not have a negative impact to other land uses and surrounding people. Although City of Harare officials claim not to have a role to play in the promotion of LED in Harare, they play this role since it is part of their job to distribute

resources on space and allocate different conflicting uses to the finite land resource. Planners also stand in as a public sector that protects the marginalized groups of society through promoting public participation, providing public infrastructure and reducing negative externalities from the capitalist developers.

What is the relationship between LED and urban development in Harare?

From the data gathered in the key informant interviews, of note is the fact that currently there are no action plans pursued in relation to implementing LED initiatives. It is imperative to note that the major stakeholders place much focus in creating spatial plans and policies that promote LED but these initiatives seem to be in vain since no measures are in place to make sure that there is achievement of plan or policy objectives. With reference to the response from the Chief Planning Officer in the Department of Physical Planning commenting on the meaning of LED in spatial planning, he notes that, *“LED is simply the outcome of spatial planning. Spatial plans create zones for industries and commerce to promote economic development in an environmentally sustainable manner, hence spatial planning can be identified as ‘socio-economic-environmental planning’.*

From the data gathered it seems the approach to LED in Harare is sound and noble. The major sticking point to the approach is that it does not have benefits on the citizenry of Harare as the plans or policy document are shelved and never implemented. Harare has well-documented plans and well-articulated policies but the problem faced is implementation. As a point of illustration, the City of Harare, Department of Physical Planning and Sunway city officials raised a similar issue pertaining to lack of funds and technical resources for implementation of forward plans.

a). Pro-poor strategies

From the key informant interviews most data gathered indicated that the approach for LED in Harare is pro-poor rather than pro-growth due to shortage of funds as the informants were highlighting. Harare has been characterised with high population growth, high industry closures and consequently high rates of unemployment and enormous poverty. With this challenge in mind, city residents and the local authority have alternated to the practice of allowing quick gains through promoting “innovation”. The practice removes barriers to entry, creates simple networks and challenges government bureaucratic requirements. The above strategy manifests in workplaces that do not have services to cater for the users and customers to those businesses. For example, the new public market along Speke and Chinhoyi Street in the CBD of Harare accommodates huge numbers of clothes sellers and customers but does not have a toilet or water point. Focus is on providing for operating space but little attention is on the provision of infrastructure and services to cater for these operating spaces.

b). Public Private Partnerships

City of Harare, which is the major driver of LED in Harare, is collaborating with private companies such as Old Mutual, ZIMRE Properties, FBC Bank and Central African Building Society (CABS) to provide residential, industrial and commercial infrastructure. The local authority is also working in conjunction with smaller societal groups in the maintenance and upgrading of infrastructure. Of note is a project in Masasa Park suburb, which focuses on road rehabilitation. In contrast, PPPs have been limited due to incompetency that the public sector is blamed for. According to the Quantity Surveyor of Sunway city, City of Harare mostly holds back their projects due to their procedural delays. He reiterated that, *“..fees after dollarization is very high. And procedure for development proposal processing is unnecessarily too long”.* Incidences of delays in plan permit approval affect timeous completion of projects, which means the project cost increases. Another drawback from City of Harare was that the local authority is not willing to provide premature expenses since their focus is on maintaining services already provided for.

c). Small to Medium Enterprises (SMEs) and the informal sector

Table 1: Harare population against unemployment

Year	Population	Percentage increase	Unemployment rate
1992	1 478 810	5.6%	-
2002	1896 134	2%	12%
2012	2 098 199	1%	88%

Source: Zimstats 2012 census

Table 1 shows that the population of Harare in between 2002 and 2012 increased by 1 % when compared to the period 1992 to 2002 population census growth of 2 %. On the other hand, the rate of unemployment has increased from 12 % in 2002 to 88 % by 2012. The difference shows that the rate of unemployment is far much ahead of the rate of population increase. This means that the increase in the rate of unemployment was not merely as a result of the increase in population but it means that the available industries and other sources of formal employment in Harare have diminished. This is a total reverse which can only be explained by an economic meltdown. The closure of companies has been directly related to the increase in informality.

The informal sector as well as the small to medium enterprises now dominates the economy of Harare. The Deputy City Planner from the City of Harare finds fault in the economic turmoil between 2002 and 2009, which he blames to have led to a 'free for all behaviour'. The officer uttered that the local authority did not have resource capacity to enforce development control. This scenario is now manifested through illegal partitioning of buildings in the Central Business District (CBD) to accommodate the emerging small businesses. Taking a closer look at this scenario implies that CoH is losing out on revenue since tenants only pay to the landlord. This manifestation of small-scale businesses has affected property values since the buildings are congested and services are not meeting the new crowded numbers in the building.

Although building partitioning promotes LED initiatives by providing space for small rising business and more rentals to building owners, City of Harare is crying foul on loss of revenue. Another major problem is the flight of high value uses from the CBD since investors are not attracted to the congested and deteriorating buildings and streets in CBD. Small-scale industries are promoted in Harare through the provision of home industry space, for example in Glenview 8, Siyaso and Kuwadzana 1. The informal sector is manifesting itself through illegal traders and manufacturers both in residential and in the CBD.

d). Revitalization of declining neighbourhoods

Harare has many dilapidated and deteriorating residential neighbourhoods such as Mbare and Dzivarasekwa. However, little efforts have been shown towards the revitalization of these neighbourhoods. In contrast, efforts to revitalize the CBD have been shown especially in the downtown areas. Efforts towards revitalization have been seen through redevelopment of buildings such as the Gulf Complex, Chinhoyi Street shopping mall and the AMC building in Union Avenue. Redevelopment of these deteriorating buildings has been in the direction of promoting small scale retail businesses in the CBD.

The deputy city planner from City of Harare noted with concern the flight of high value uses from the CBD to suburban areas such as Eastlea, Milton Park and Newlands. The planner highlighted that they found establishing offices in residential areas such as in Newlands through Local Plan 27 as a means to decongest the CBD. Companies and business people received the idea with pleasure as they regarded office space in the CBD to be very expensive as reflected in Figure 3. This can be seen by the high rental values for both retail and office from 2009 to 2011. However, office rentals have been decreasing from 2011 to 2013 to \$7 while retail rentals remain very high at \$23 in 2013. The decrease in office rentals can be attributed to company incapacitation, eviction and foreclosure. This can be related to the rate of unemployment in Harare.

On the other hand, the high increases in retail rentals are conceived as indicators of the emergence of the small to medium enterprises which is largely involved in retail businesses such clothes selling and smaller food grocery shops. Rentals for retail space grew with more than 100% from 2010 to 2011. This attracts more investment for retail rather than office as the trends exhibit high demand in proportion to supply.

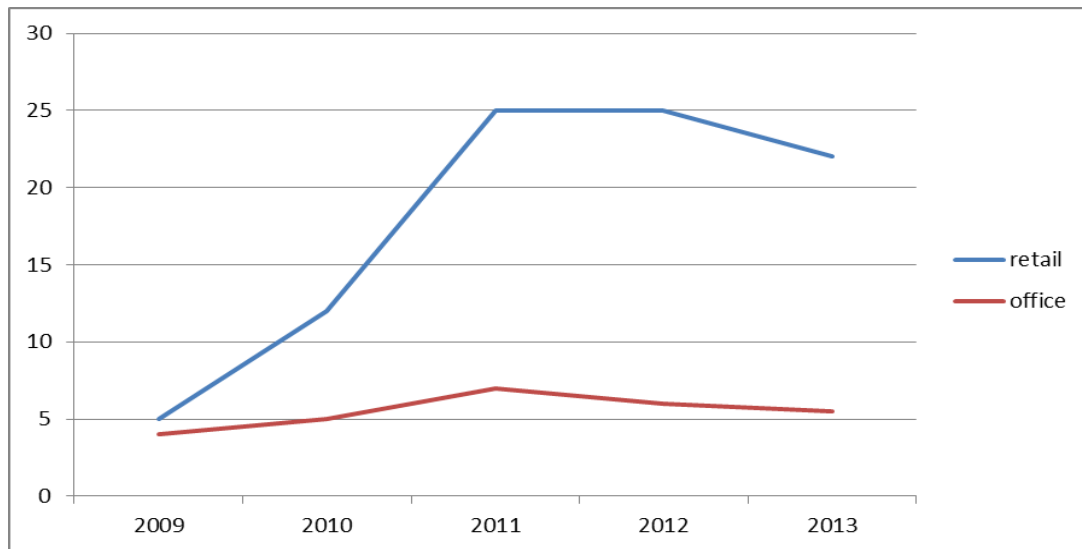


Figure 3: Average retail and office rentals/m² in Harare

Source: City of Harare valuations roll (2013)

As is the case that prices increase with high demand in excess of supply, the decrease in retail rentals in 2013 can be accredited to the responses made by the property owners and the City of Harare for the need for retail space. This is evident in the CBD where there has been massive partitioning and subleasing. Many boutiques and small sized shops have been created in the CBD and in residential areas. City of Harare have also taken advantage of the higher demand of retail space by subleasing their Rufaro marketing beer halls in residential areas to TN Mart (Pvt Ltd). The above entails that LED is being promoted through small scale business units in Harare which are largely involved in the retail sector as compared to commercial enterprises.

e). Infrastructure development

LED depends on viable infrastructure. Little is being sacrificed for infrastructure development in Harare. This entails that Harare can never achieve its vision of being a world class city. Out of the USD 273.7 million 2014 revenue for the City, salaries and allowances consumed 48 %, general expenditure 28 %, repairs and maintenance 9 %, administration charges 8 %, capital charges 4 % and the least of 3 % was allocated for capital outlay. This budget clearly indicates that City of Harare is not anywhere near the investment process since only 3 % was granted towards capital outlay while the rest of the budget was allocated for salaries.

It is evident that macroeconomic challenges have implications on the micro economy. In 2009 there was an economic crisis in Zimbabwe and this was felt in Harare as most of revenues collected (96 %) could only sustain the payment of salaries to the local authorities' workers. Although City of Harare is showing efforts of working towards achieving the mandatory 30:70 ratio, the employment costs are still too high hence compromising on the quality of services offered. Fig 4 shows that employment costs is decreasing from 96 % in 2009 to a constant 48 % in both 2013 and 2014.

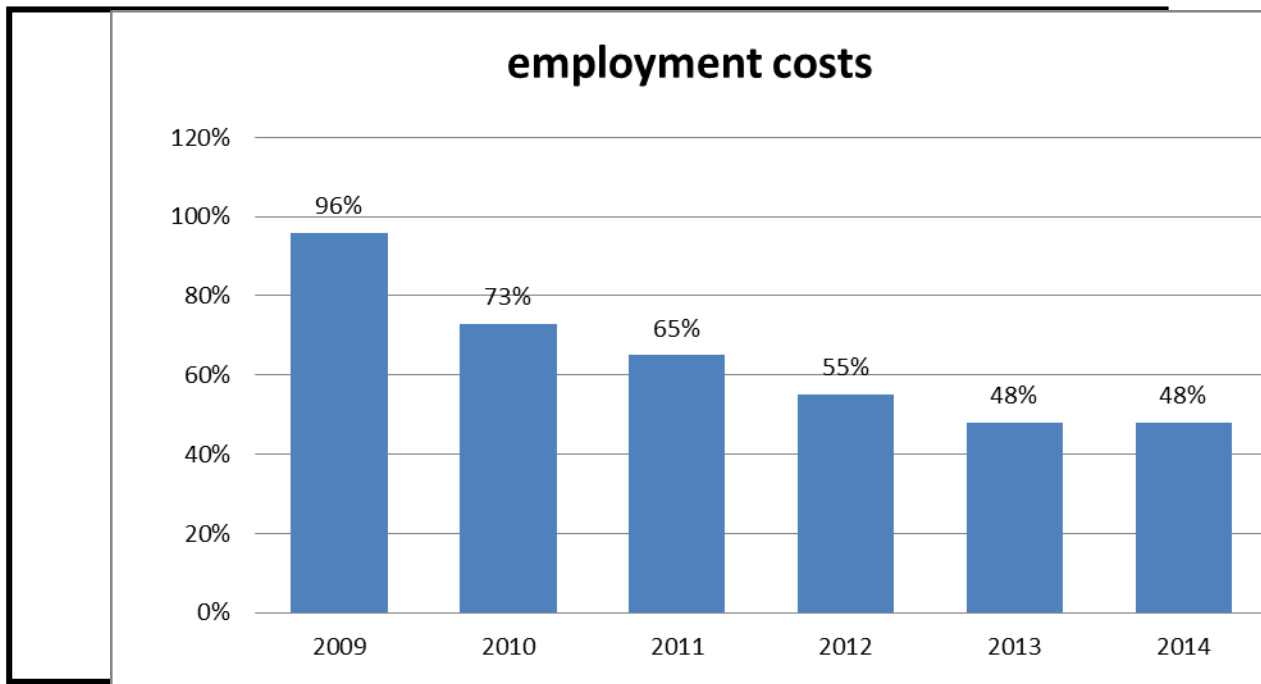


Figure 4: Employment costs in City of Harare

Source: city of Harare 2014 budget

Discussion and Recommendations

The approach to LED planning in Harare is more skewed towards spatial planning. The nature of LED in Harare promotes improvement of the livelihoods for local people but mostly this is done through illegal development channels. Brown, (2006) stated that the formal urban economy has lost glamour in favour of the informal one as actors have taken advantage of its easy of entry and that urban areas have vast human and natural resource endowments. Development control is very important in order to retain sanity for the local area.

In literature, Teitz (2009) advised that devoid of control over land, LED is basically unworkable since land management and land deals form an integral component of LED programming. The study managed to find out that though LED is a noble idea that promote employment creation and improve the quality of life for citizens, in Harare there are no properly documented plans and policies of LED and that the regulators lack competence. Following the study the following recommendations are forwarded:

- The Government of Zimbabwe should formulate a national policy on LED which makes it mandatory for local authorities to implement LED strategies. This will give clear strategies and outcomes expected from implementing LED initiatives.
- There is need for City of Harare to adopt strategies on how to market their forward plans so that investors can come in and assist in implementing the plans. In this sense City of Harare should therefore make implementation plans as their work plans from which performance is measured through results achieved for the master or local plan.
- City of Harare should also device resource mobilization strategies. The current 2014 budget for City of Harare does not match duties and the rate account is the major source of revenue. Resources for planning should be sourced so that plans can be implemented. Technological resources also need to be advanced to improve on efficiency.
- City of Harare should facilitate stakeholder coordination during situation analysis, plan preparation and implementation to ensure that all stakeholders accept and own the plan.
- Monitoring and evaluation of the current practice of LED should be facilitated so that there are no negative externalities to the environment, to fellow citizens and to other businesses.

Conclusion

The study was motivated by the fact that there is consensus among residents, urban practitioners, private sector, the City of Harare and the government of Zimbabwe at large that serious

urban development and management issues haunt Harare. This is observed through indicators such as lack of adequate water provision, burst sewage pipes, dilapidated educational facilities in the city, and refuse not being collected and improper road maintenance leaving roads with potholes. Another major issue of concern is the exacerbation of poverty among the residents due to the shortage of employment opportunities which leads to low quality of life for residents in Harare.

LED in Harare has been mainly achieved through spatial planning. On the other hand, a policy framework have been identified as the missing link for ensuring adherence to LED planning and implementation. Strategies such as PPPs, SMEs, informal sector and revitalization of declining neighbourhoods have been used to solve challenges of poor infrastructure development that Harare is facing.

LED practice in Harare predominantly takes the form of pro-poor strategies but with little efforts directed towards infrastructure development which is pro-growth in nature. Small to medium enterprises and the informal sector have been mainly used to achieve objectives of alleviating poverty and supplementing the formal market which is having challenges in employing the high populations of Harare.

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RESEARCH ARTICLE



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**Reforming Copyright in the Context of Exercise of the Human Right to Free
Expression on the Internet: An Actual Problems of the
Modern International Legal Politics**

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Abstract

The authors discuss major trends in the area of reforming of copyright in the light of full exercise of internationally recognized human right to expression regarding the digital environment, especially the Internet, and demonstrate the significant situation when intellectual property rights, mainly author's exclusive rights, build a lot of troubles for the information human rights. The article also looks at the changes in the understanding the relation between copyright and the human right to freedom of expression and information on the Internet. Much attention is paid to new moments in the modern doctrine of intellectual property that is inspired by process of digitization of author's rights. There is conducted the approach to addressing copyright as one of the digital human rights resulted from property rights and right of creators to protection of their moral and economic interests. However, authors of the article departure from postulate that copyright is the human rights to a certain degree only. Moreover, this article examines the international legal approach to seeking the balance between the human right to freedom of expression, opinion and information, on the one hand, and copyright, especially as regards the Internet, on the other hand. There has been argued that key role in elaborating and adopting the principled standards in this sphere belongs to international law, including international law of human rights. In addition, the latter, as authors have ascertained, must correspond to international law of intellectual property rights, international information law, and international competition law. The study focus on various aspects of solving the problem of adapting copyright to the digital environment.

Keywords: copyright, internet, protection of intellectual property rights, human rights, freedom of expression, digital environment, information society.

Introduction

The digital progress is developing now exponentially, doing great number difficult problems for well-establish moral and legal international and national order. There are frequently shaping the

tension between new contemporary necessities, connected with expanding the digital communication, especially on the Internet, on the one hand, and the legal institutes saving the power of established order, on the other hand. The one of more significant institutes is the system of intellectual property law (IPL) tending to strong enforcement of moral and economic interests of authors, performers and inventors. However, this direction encounters with undoubted fact that the digital environment produces people's rage to communicate and to express of self, especially on the Internet.

Furthermore, in the age of ICT we can see the emergence of digital rights as a specification of international human rights in the context of digital environment arisen from using and, certainly, functioning of ICT. The range of digital rights comprises, for example, access to Internet, data protection, privacy in the digital sphere, e-communication, e-education, e-association, and right to traditional cultural expression in digital environment. These rights are granted by domestic and by international law. Thus, in last decades, the digitization has encompassed not only the civil and political rights, but also economic, cultural and social human rights. That is why we can even view therewith the process of digitization of the property recognized, as well known, in kind of human right under Article 1 of the Protocol No 1 to the European convention on human rights (ECHR) and in other international legal instruments.

As the result, the contemporary international law and its politics are challenged with a necessity to solve the numerous global problems. One of them is a full exercising of international human rights. This problem is closely associated not only with, for example, climate change, but also with the digital environment's expansion, especially the Internet as the online environment generating the new benefits and new threats for humanity. Nowadays, the Internet has become the global transboundary reality of human communication and economics needed in global governing on international legal basis.

Moreover, the exercising of international human rights, especially the right to freedom of expression (or right to freedom of expression, opinion and information), in the digital environment is being collided with such barriers as intellectual property rights (IPRs), first of all copyright. This subject matter is very considerable for the theory of international law of human rights and concurrently for the theory of author's rights. We deem that debated issues in respect to perspectives of compatibility of the human right to information and copyright should not ignore the international law approach postulating the principle of balance. The latter is a significant ideological platform for international cooperation in direction of elaborating the international standards in area of IPRs protection within international law of IP protection that would be harmonized with interests of public and individuals to have access to information contained in protected works of mind.

Methodology

The conversation of future of copyright in the digital and e-innovative environment engages rethinking the legal nature of author's rights. Both protection and enforcement of copyright in the digital environment in general and on the Internet in particularly [1], [2, pp. 548 – 589] are a new area of intellectual property theory and practice. Traditionally, protection of IPRs was connected with defending books, movies and music. However, the digital reality has become vast and total environment where author's rights are exercising now. In a way, this environment generates a renewed sense of copyright. Hence, in this context copyright may be recognized, to a certain degree, as the digital right too conformed to other digital rights, especially the human right to freedom of expression.

Taking into consideration the technological sources or, more precisely, new technological profile of copyright, we also are based on the fact of digitization of the right to expression and information. Therefore, relations between them are, from a certain future methodological perspectives, relations between digital rights that have, however, different legal nature. The first is the internationally recognized human right. The second is a mainly the sort of the right of ownership undoubtedly having a human right profile. Hence, the reforming copyright with regard to digital reality is in focus of not only international legal politics in area of IP, but also of international legal politics in area of human rights protection. The intersecting between the two is second methodological starting point of our examining the reforming copyright in the context of digital environment. Similarly, we need yet to rethink the information and expression rights at digital stage of society evolution in the light of logic of copyright evolution with regard to trends in

development of the digital environment. The recognition of approach to the right to free expression in the digital reality as designed to respect for copyright is the third methodological background of present paper.

Results

Copyright in the digital environment: more significant controversial issues

It is no secret that development of the digital environment, including the Internet, and exercising of digital human rights, chiefly the right to freedom of expression, lead down to clash with author's rights, raising radical questions what is the priority – the freedom of expression or copyright protection? [14]. In essence, issues on priority can also be viewed as core dilemma not only information society, but also as global Internet management [15]. If the Internet is regarded in general terms as the area of expression, communication and exchange of information, the enforcement of author's rights may be interpreted as repressive substance that could be addressed as a tool for interference with self-expression and the privacy respectively. For both users of the Internet and users of new information technology belonging to sphere of recoding and disseminating of copyrighted works the phenomenon fixed in words 'intellectual property' and 'copyright' is a serious encumbrance. Really, the proponents of anonymous and pirate parties, are discouraged by the strong protection and enforcement of author's rights.

Undoubtedly, the digital environment and the online-reality is not relevant to established copyright system fully. This conclusion is a quite reasonable because the copyright system has been made in other technology age. In spite of that, copyright was undergone and is being undergone now the substantive modification at the national and the international level. By the way, updating copyright yet lags behind the growth of the digital environment that, including the Internet, is more than a simple lever of achievement of different aims. It is mainly a sphere for evolving of the freedom of expression and opinion in information society, and it is no tool for exercising of copyright. Therefore, this conclusion should be taken into account as regards the problem of respect for copyright and enforcement it on the Internet. In public opinion, the Internet has become a medium of the freedom of speech, expression and information. Like the digital environment, it affects the economies, society, as well as the evolution of human rights.

The increasing of Internet landscape is closely connected with origin of numerous problem linked, in turn, with protection and exercising of essentially different rights, including copyright. The future of the Internet is directly associated with degree of rights' realization and with overcoming the contradiction between copyright and the right of expression. The solution of this conflict will mainly define the character of progress of the digital environment and future of the Internet.

Internet activists as well as users express some surprise at the strengthening of the Internet regulation with regard to IPRs enforcement. A very many people aiming at self-expression in the digital environment do not understand the relevance of IPRs protection, while they benefit from information and works of mind. As the result, infringements related to copyright on the Internet are as an illegal attempt to disregard the barriers connected with IPRs protection in process of receiving and delivering information. There are many people have a leaning to criticism of author's right on the Internet, and they are unsparing in their criticism. For network activists the Bill of digital rights, if it will be enacted, would push such rights and freedoms as the right to act and assemble in online regime, the right to access to the Internet, the right to protection of free speech, expression and information. Yet, there are a few activists that, without doubts, could include in this rights' list both author's rights and the exclusive rights of broadcasters.

We have to remind that one of widespread justifications of copyright is, for example, the economic approach. The model of modern economy provides protection of IPRs, such as author's, neighbouring and patent exclusive rights. Therefore, analysis of tensions between rights of various sorts as applied to the modern digital reality is being reduced to two models of understanding the digital environment and the Internet, such as economic and noneconomic. In accordance with first understanding, the Internet is a motor of economic development, commerce and job-creation. It is the driver of intensive economic activity. The Internet represents the sphere of economic benefits for rights holders. Thereby, the Internet economy includes intellectual property dimension. We deem that strengthening of copyright maintained by states has economic motivation.

Moreover, we must bear in mind that there is conflict between two industries that lays in foundation of addressed tensions. Content distributors is strongly attracted by free flows of

information in network but content creators intend to achievement of their economic interests. It has been strikingly demonstrated at the fora e-G8 (Paris, 2011). As discussions of e-G8 showed, interim compliance is no elaborated yet. The content industries belonging to 20th-century are moved by economic interests and try to capture created values by putting them into 'containers' of exclusive rights. In contrast, purpose of internet-companies as industry of 21st-century is florescence of information exchange but this purpose also has economic background. Thereafter, conflict of different ranges digital rights includes this industries' conflict. This conflict restrains progress of information society in some degree.

In our days, network is not only transforming to economic spheres, but also to space in which people live, communicate, seek and disseminate the information. Of course, this aspect has economic component but it is no mainspring of the information society. The Internet is mainly space of the free communication and expression on waves of information flows. Simultaneously, the Internet implies noneconomic goals connected with information exchanging for purposes of self-expression, expression of one's own opinion and receiving information. Against this background, copyright tends to gain big costs.

In current situation, there are no consensus on rules of the road for the Internet, including observation of copyright. The world society should try to make harmonized approach in this question. The achievement of this approach will promote understanding that more effective course of information and author's rights is the convergence due to renewal of comprehension of them. The e-industry and government regulation of the Internet have substantial background still connected with comprehension of author's rights as natural human rights (Europe). However, online reality, as we deem, is no the natural background for the human rights and author's rights. Hence, the world society faces need to an elaborate post-natural or digital model of different human rights, taking into account the innovative character of modern economic, social and personal development in the digital environment.

Recently, the innovative process became e-based. Intellectual property is a background of innovation, despite that is not such obvious. Author's moral and exclusive rights should be protected in the field of electronic communication. Indubitably, copyright is a condition of creativity and innovations but direct enforcement of them restricts innovation activity. That, however, must not be interpreted as a decreasing the copyright. That is clear it does not signify the necessity of rejecting copyright in the name of acceleration of innovative process. At once, the creation and use of works of mind and the protection of them are factors of development of network environment.

Indeed, the Internet is innovative sphere and copyright should promote it. The Internet possesses the unique innovative specificity. Online platform has generative nature and allows to people to create in different areas and in different ways. Incentivizing the creativity should be innovative. This proposes new models of copyright and not denies very idea of author's rights. "Copyright laws need to adapt to keep pace with digital technology they need to adapt to consumer demand and cultural practices in this global economy built on ideas and innovation. People have a legitimate expectation that their fundamental right to receive and impart information and ideas will be fostered rather than restrained by copyright" [16]. Users of creative content are interested in creative contributions and must respect the moral and economic interest of creators. As actual task is the achievement of balanced relation between the reducing of copyright infringements and the facilitating the innovations [17, P. 1345 – 1426].

Seeking proper balance between the freedom of expression and copyright in the digital environment

The contradiction between the two groups of analyzed rights appears itself at the worldwide level and demonstrates its own meaning in universal format because of the Internet has become universal reality. The regarded tension is a part of global conversation at the level of various international organizations and international forums discussing the problems of the digital development and of governing the Internet. The participants of these forums call on to seek the effective legal variants of harmonization of mentioned trends at the national and the international level. Eminently, these discussions is intended to elaborate a new paradigm of copyright in the digital environment, especially on the Internet, via appropriate modification of author's rights, namely modification of the system of limits and exceptions. It is clear that this turns back to

explore a new situation connected with subsisting of copyright and the right to expression in the digital environment.

The contradiction between analyzed rights is inspired by certain incompatibility of copyright and the digital environment, and arises from traditional models of protection of author's interests that strive to cover the non-traditional communicative sphere that is characterized by unquenched thirst for information and access to it, including information contained in copyrighted works. This circumstance is a cause of tensions between the information rights, that are universal human rights, and the author's rights.

The most challenge to the open Internet and to the openness of information came when copyright did not regard a specific of online, or digital, reality. Indeed, we can see crash of fundamentals of well-established system of copyright before of attempts to apply the latter to the online environment. As the result, there have been shaped many barriers to full exercising of digital rights. Despite that, the Internet is not another planet where author's rights, as such, is absent. The true approach presupposes that success of digital reality in general and online environment in particularly are backed by realization of interests of rights holders relevant to new stage of technology development. The system of copyright law in the non-digital environment is not similar to appropriate system of copyright law in the online sphere. However, unfounded attitude is to oppose copyright to the right to expression as a certain alien essences. It is most true to say about the imbalance misleading users and rights holders. At the same time, the initial balance is utopia. The setting up of the modern effective balance needs serious discussions and adoption of legislative acts.

Nowadays, the legal system of copyright covers digital environment but the latter often is not considered as a new landscape interested in new principles, norms and notions of both the doctrine and the legislation in area of author's rights. The digital environment resists to classical approach to author's rights. If the traditional copyright spreads oneself on the online environment, this leads to tension between author's rights and the right to information and expression.

The legal doctrine turns vividly that to address the difficult problems included into schedule of more considerable theoretic and practical issues of the information society. The system of copyright law has appeared in the non-digital environment and in the non-information society. Because some states prefer to defend the author's right but not to develop them, this system backs on the traditional idea of natural (Europe) and utilitarian (USA) essence of author's rights. The renewal of idea of copyright should take into account the renewed idea of the balance between various sorts of rights. It could be motor of reforming copyright law in respect of the digital environment, and it could be a new frontiers of changing it.

Copyright for the Internet is a part of problem of the Internet regulation, especially of the control over information flows. Providing free access to information is modern states' obligations added by obligations to provide access to the Internet for expression, assembly and association. Access to the Internet as a technical system implies access to information. The Internet is not a simple technical system. It is an intensively extending and increasing information exchange. The developing of online platforms is a lever for economic wealth. That is an important to endeavor to analyze the barriers as regards intellectual property affecting possible exchange of information. These issues refer to the problem of providing the universal Internet access through balanced regulation of author's rights in the online reality. In case of tensions between mentioned rights the access to the Internet and, accordingly, to information is a hindered too. The Internet that has not the balance of interests is no civilized Internet because of the civilized Internet has the available balance. Such quality of network means its openness.

Modern states, *inter alia*, are obligated to protect the information human rights and must to regulate the access to information. In e-development conditions, governments must not lobby only the interests of rights holders and serve to them solely. The keeping to freedom and openness of the Internet must be submit to providing the right of expression. To gain the full economic benefits of the Internet the governments must admit, to certain degree, the openness of the former.

In last decades, we can see adoption of measures designed to strong enforcement of copyright concerning the digital reality. These trends are reflected in adoption of the ACTA. The trends to increasing the copyright enforcement could be considered not only as an innovation-smothering approach, but also as an expression-smothering approach. Strengthening protection of authors' rights has a many costs. This problematic situation requires that copyright protection would correlate with promoting the right to information and expression in the digital environment.

The regulation of copyright on the Internet is a necessary. But it should not stymie the information rights granted under domestic legislation and international human rights law. The regulation of author's rights ought to follow the Hippocratic Oath: 'first do no harm'. Indeed, legal regulation of IPRs often is hindering the information rights, i.e. serves as an obstacle for receiving the information. The Internet democracy principles mean the freedom of speech and the freedom of expression. The freedom of expression also concerns the political sphere. However, such freedom also concerns copyrighted works because they are works of mind involved to political sphere. Some expressions represent the forms connected with public morals. So, France has introduced the package of laws on internal security (February, 2011) including the possibility of blocking the certain websites, such as displaying child pornography. In some cases, blocking the domain names and Internet censorship could have devastating consequences for the free speech in online environment. The strong protection of IPRs is added by content regulation that has taken place in China. That leads to control over using of content. In democratic countries, copyright enforcement is a component of such control. At the same time, this control is legally limited in democratic societies.

The states still pose as a guard of IPRs in the Internet and as principal actors of network regulation. The government intentions to regulate the Internet strongly have shown a deploying of specific model of observance the copyright. The strong enforcement of copyright is fraught with economic costs in long-term perspective. The excessive restrictions on access to information at copyright basic are the abuse the international legal principles, such as the freedom and the openness of the Internet. The problem of providing information and political rights on the Internet has self-reliant meaning and, besides, intersects with respect for copyright. From this angel, approach of USA is interesting and, simultaneously, contradictory. The cyberspace policy of the White House is to support the Internet freedom abroad and, at the same time, to support consecutively the copyright enforcement abroad too.

The Internet as an 'eighth continent' is a borderless sphere of the free expression. It is relevant for creators and users. Yet, the Internet should not threaten the information rights and author's rights. The initial recognizing the information essence and social worth of the Internet results in mean the recognizing priority of the information rights. As Frank La Rue says, "the Internet has become a key means by which individuals can exercise their right to freedom of opinion and expression, as guaranteed article 19 of the UDHR and ICCPR" [18]. The states must not forget about priority of protection of the information rights, otherwise there can see, in case of French HADOPI, the abuse the information rights. At last years, French legislation has provided for the policy aiming at prosecution of intellectual property infringements. Amidst the states around the world, France had most draconian law of online copyright, including a famous 'three strikes law' that denies the online access for repeated offenders. After having been ruled the HADOPI unconstitutional by the French Supreme Court, the former was amended. However, the HADOPI was revoked by French Government (18 July 2013). This example has shown that government legislation policy is going to approximating to a new model of the balance. However, apart from justifying the failure of the HADOPI, some experts suggest to wait the adoption of a new law HADOPI 2, which would transfer the power to disconnect users to a judicial authority [19, P. 116].

Anyway, we has already pointed out that copyright cannot be a factor of restriction of the freedom of expression. Holding this widely recognized approach, we would like to turn once more to Report of Frank La Rue, having paid attention to cases of copyright application that infringes the right to freedom of expression. The Special Rapporteur has striven to demonstrate that disconnecting of users from access to the Internet on basis of IP law leads to a breach of the freedom of expression guaranteed by Article of 10 of the ECHR. Here has also been stated that cutting off the Internet access, including on grounds of violation of IP law, is to be recognized disproportionate because there is violation of Article 19.3 of the International Covenant on civil and political rights (ICCPR) [20]. The UN's Rapporteur also has urged States to repeal or amend existing copyright law which permit users to be disconnected from the Internet access, and to refrain from adopting such laws. As the result, copyright has been trumped in this Report.

Shortly, government policy in the age of Internet as a new a phase of the information society development faces unprecedented tasks. So, national authorities have targeted tasks not only to refrain from interferences with the freedom of expression – including the freedom of artistic and scientific expression – that are not necessary for democratic society and its development, but also

have positive obligation under international human rights law to protect this rights against by others persons or organizations. Amongst these persons are undoubtedly rights holders striving to control the information flows and self-expression attracting copyrighted content. Could it mean that protection of beneficiaries of the right to freedom of expression is protection against rights holders? It seems that it is so. However, same national authorities are obligated to protect the copyrighted works from their illegal non-authorized application. The balanced protection of the two sort of rights demands both the initial balance between copyright and the freedom of expression and the balance between appropriate interests that are protected by the ECHR and the International Covenant on economic, social and cultural rights (ICESCR).

The Internet is a new sphere of copyright and must not be as some outside limitation on the copyright law. Infringements of author's rights are a one of excesses of the online reality. States must be feared not only for direct exercising of copyright, but also for modernizing the system of author's rights. That admits to intend to the balance of copyright and the information rights via establishing the effective balance. It is obviously that digital space must not be stark trouble for copyright. At first, coinciding copyright and information rights could be presumed as aim and, simultaneously, as result of appropriate policy of the Internet regulation. Therefore, thesis by which governments should not try to establish the balance because of the technological change is a fast and should not try to resolve these problems *per se* is an ungrounded chiefly. We want stress that the balance is a one of major objectives of such policy. These objectives should be included to record of other objectives, for example, regulation of the Internet to protect children, privacy and security, and warding off monopolies.

There has been an above-mentioned storm of new Internet-related laws and regulations designed to protect copyright and internal security, as well as to block some websites in last decade. Unfortunately, given laws does not always fix the balanced relations between the two. However, realization of balanced relations will exactly affect the strengthening of democracy in information society and will allow to avoid risks of democratic chaos. In the information age, one of the law purposes (national, international, and supranational purposes) has become to avoid the collision between copyright and public information interests.

To build the balance of contradictive rights is much more difficult than to contest the IPRs. Furthermore, building of the balance is needed to avoid underestimating the importance of author's rights in order to achieve an unlimited exercise of the right to expression, opinion and information. The main problem is a necessity to overcome the conflict between IPRs, particularly copyright, and human rights, particularly the right to expression. The possible balanced relations between rights holders, on the one hand, and users, on the other hand, intend to revise copyright but not to eliminate it. At the same time, priority of copyright does not conform to information essence of the Internet. It is indispensable to renew the institutes of copyright law. However, such renewal must not be destruction of copyright that also have human rights background, since as prescribed by both article 27.2 of the Universal declaration of human rights (UDHR) and article 15(1)(c) of the ICESCR the author's interests and the author's works are protected. These human rights of authors relate to second generation of international human rights. Indeed, "persistent false distinctions between civil and political rights, and economic, social and cultural rights, and lack of understanding of the legal nature and content of economic, social and cultural rights have undermined effective action on economic, social and cultural rights" [21, P. viii]. Therefore, it is significant that principle of indivisibility and inseparability of human rights must be guideline not only for reforming copyright but also for regulation of the Internet environment in general.

As it is, in modern age of e-based and net-based economy, there is need for a new model of copyright that would stimulate the new model of digital economies and information society. The protection and enforcement of copyright without intention to establishing the effective balance will be tool for to constitute the Internet in kind of territory to conquer in order to the exclusive rights would be exercised for achievement of economic interests of copyright owners solely. If copyright system will be changed, there is a chance for copyright not to be conqueror of network but to be its developing engine. At the same time, this change must covers not only economic, but also information aspect.

The achieving these aims rests on elaboration of new alternative scheme of compensating for copyright owners that can facility the access to information contained in author's works. There is need for revision the models of fair remuneration and revision the image of fairness. The way

trying to impose stronger Internet regulation and stronger enforcement of IPRs is not a proper direction for reducing analyzed tensions. The business models must sense digital environment and its design. Unfortunately, content producers have a scarcity of comprehension this obvious fact.

The increasing of legislative protection of copyright protection has attempted to satisfy the need for equitable author's remuneration. However, as we think, the rational of legal regulation of rights and interests of rights holders should yet promote the information rights. Both new schemes of compensation and new models of licensing of works' exploitation would be tremendously significant for easing the access to information. The opinion on increasing of IP enforcement is premised on the classic arguments that consider copyright to be incentivizing factor of creativity. In our vision, there should be condition when creators would not restrain information flows.

Reforming copyright in the context of international legal perspectives

In view of the global nature of issue on reforming copyright in the light of needs of the Internet-based information society, there is increasing a role of international law. Of course, the latter does provide the general and, concurrently, flexible standards of the balance between copyright and the freedom of expression. More exactly, international law provides for the principled approach that acts as a fundamental ground for resolving one of the core problems of the Internet-based information society, such as harmonization the protection of copyright and the protection of the freedom of expression.

The international law – in situation of seeking the balance between addressed rights – can promote, without exaggeration, the harmonization of diversified interests, constituting digital environment through available standards. The relations between the two sorts of rights are being shaped today under not only the national, but also international law. The regional standards of required balance are contained in instruments of the Council of Europe. In addition, supranational legal standards are contained in acts of the EU. The international, as well as supranational standards of the balance should be implemented further at the national level, including both information law and copyright law existing now in every country. With the aim of exercising the possible balance, the rights granted under national legislation need the international legal standards as certain general guideline.

The information flows now is being transformed in the transboundary context. At short, it means that achieving the steady rights' balance should be revealed at the international level. The modification of copyright and consideration it along with the right to freedom of expression and opinion presupposes that copyright can be asserted over international borders. It demands the elaboration of harmonized and reconciled multilateral approach. The evolution of copyright in the age of digital technology, including the Internet, is becoming a subject matter for international organizations' activity, for instance, the WIPO ([22]; [23, P. 197]; [24, P. 187 – 211]) and the Council of Europe elaborating the suitable standards.

We consider that these standards as basis of coordination of copyright and the freedom of expression are embodiment not only of the balance contained in international human rights law, but also of the balance underscored in the international copyright law. For example, the balance-based approach was claimed in WIPO's instruments. For example, it has been reflected in the WIPO Copyright Treaty (WCT). Its Preamble recognizes the need for maintaining the balance between rights of authors and interest of larger public, particularly education, research and access to information, as reflected in the Bern Convention (BC). Indeed, we can find in the BC large number of provisions reflecting this balance (articles – 9.2, 10.1, 10-bis.2, 11-bis.3, 13.2, 14-bis, 14.2{b}).

It is important that the WCT, aiming at development of and maintaining the protection of the rights of authors to their literary and artistic works in a manner as effective and uniform as possible, departures from recognizing such context of introducing a new international rules and clarifying already existing rules as reflected a new level of economic, social, cultural and technological development respectively. In addition, Preamble directly points out the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works. And lastly, the WCT emphasizes the outstanding significance of copyright protection as an incentive for literary and artistic creation.

In similar vein of accentuating the role of IPRs, the TRIPS discovers meaning of IPRs protection and enforcement. These “should contribute to the promotion of technological innovation and to the

transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in manner conducive to social and economic welfare, and to a balance of rights and obligations". Certainly, the TRIPS says about the protection and enforcement of the right of industrial property but the accents on role of IPRs and their protection as an incentives for development of creativity and dissemination of protected created works or products is fully obvious.

The great contribution to process of development of balanced-approach belongs to the Council of Europe. Most weighty standards have been elaborated by organization in last decades. They are contained in the instruments of 'soft' international law, such as declarations and recommendations of the Committee of ministers [25 – 30], and recommendations of the PACE, chiefly in the sphere of information, culture and education [31]. Pursuant to them, copyright should promote the free flows of information in electronic area and the access to digital forms of protected works, as well as to digital reproduction. Meanwhile, the free access is not a free of charge. That admits the retention of the right to free access to information communicated through electronic channels. Simultaneously, usage of works of mind should respect author's interests and rights.

Standards of the Council of Europe have become a special subject matter of legal studies [32] in the context of protection and enforcement of copyright in the digital environment [33]. The approach of the Council of Europe is consonant with approach of the UN's Committee on Economic, Social and Cultural Rights having issued General Comment no 17 "The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from Any Scientific, Literary and Artistic Production of Which He is the Author (art. 15(1) (c) of Covenant [34]. The Committee has showcased (para 22) the significance of establishing the balance between rights of creators and other rights, granted by ICESCR, and the balance between authors' interests and public interests in area of use of wide access to works (para 35). At that, the Council of Europe takes into account the EU's Directive 2001/29, setting up the balance between interests of rights holders and users as applied to the new digital environment of information society (para 3 and 31 of Preamble, Article 5(3)(d) and Article 5(3)(k)). However, as well known, the EU will revise this key Directive because it is a call of the times, namely call of forming digital single market in the context of the knowledge economic exponentially propelled. As noted by The Copyright Manifesto, the flaw of the Directive is that it has created no harmonization, hence weakening any attempt to truly distil a digital single market. The proposed solution is a harmonization based on a mandatory list of limitations and exceptions that would enable both users and business to understand their rights and obligations across the EU [35].

What is a more effective direction for solution of tensions between copyright and the right to expression and information? Copyright and the freedom of expression and information can be consistent with each another but this exacts the special legal regulation, namely regulation of system of exceptions and limitations. All the more so that the required balance is provided for under copyright limitations and exceptions. The national legislation provides for the balance via exceptions and limitations to copyright elaborated particularly by the WIPO at the level of international intellectual property law, taking into account best domestic practices [36].

Virtually, the principle of balance is directly exemplified in article 10 "Limitations and Exceptions" of the WCT. So, article 10.1 reads that Contracting Parties may, in their national legislation, provide for limitations of or exceptions to the rights that have been granted to authors under this Treaty in certain special cases. These do not conflict with a normal exploitation of copyrighted works and, concurrently, do not unreasonably prejudice the legitimate authors' interests. Additionally, Article 13 of the TRIPS "Limitations and Exceptions" is like article 10.2 of the WCT. At the same time, the TRIPS says on interest of the rights holders which, in essence, may not be authors. Anyhow, regime of exceptions and limitations as detailed in the intellectual property doctrine ([37]; [38, pp. 170 – 212]; [39]; [40]) demonstrates the relative nature of copyright. "Those commentators who see [conflict between copyright and FOE] as only an occasional state of affairs often hope to resolve the conflict by placing discrete limits on copyright – either in the form of constitutionally inspired 'fair use' defenses or through a more explicit First Amendment privilege – that would allow the public to receive all ideas? [41, pp. 891 – 952].

In recent years, the essential standards of exceptions have arisen in the EU. The European trends in copyright exceptions and limitations are the including them in exhaustive list. The European system of author's and neighbouring rights construes the economic rights of holders as broad as possible. That could be considered as impediment to exercise of the information rights.

However, within European Law the framework of limits amounts the fair remuneration. The point is that the problem of the conflict between considered rights is being mitigated. The copyright law really permits to use the protected work for variety of aims (for example, personal purposes), but in form of licenses. We suggest that is not an interference with exercise of the right to information. Statutory licenses provide the access to information included into protected works and the respect the rights and interests of authors and producers. Copyright and the information rights do not collide as long as the licenses make available the information under reasonable conditions.

The better leverage for making these conditions are modernization of regime of exceptions to copyright. And as for EU's resoluteness to modernize the EU's author's law, deriving from the strategy "A single market for IPRs" and the Digital Agenda for Europe, the European Commission in 2011 has set a goal to adapt the author's law to the Internet. It will be interesting the result of establishing renewal balance between copyright and the freedom of expression as applied to the Internet on basis of exceptions and limitations adapted to the reality of Internet.

Obviously, revision of exceptions and limitations on the exclusive right should be allow for position of all main stakeholders – creators, consumer associations, digital rights activists, creative users, universities, research centers, libraries. All they recognize that copyright is a coherent catalyst for innovation and creativity, if and only if it is copyright balanced with public and private interests. And then, Matthias C. Kettemann notes that an example of the ACTA allows us to come to significant statement that a certain sense of ownership of Internet-related legislation has emerged internationally that is much stronger than in certain non-Internet-related fields of regulation, such as tax law. By way of this conclusion he points out that big challenge, that both states and other stakeholders have faced, is an avenues developing clear and legitimate of participation for all relevant stakeholders in international normative process [43, P. 138].

Discussion

In last time, namely in the age of digital technology, copyright are under discussion because of emerging a various contradictions and tensions resulted from insufficient coherence of copyright, on the one hand, and the freedom of expression in the digital environment, on the other hand. The contemporary copyright debates are like flashes illuminating the contradictions of the Internet development. Therefore, it is a necessary to detail the modern approaches to relation between copyright and the human right to freedom of expression with regard to the digital environment.

There are three approaches, such as traditional, radical and reformative. First position insists on strong protection of author's right in the Internet. The radical position is discussed by piracy parties. Third position suggests the new models of realization of the interests of rights holders. In our opinion, the latter, based on the idea and the principle of balance, reflects true position understanding the copyright as an incentive of creativity. In concordance with it, IP is one of main conditions of innovative development ([3, P. 47], [4]) As Michael Gollin expressively emphasizes, "I wrote this book with the goal of helping people understand our intellectual property system as a human endeavor, a social and economic force that drives innovation, a manifestation of creativity and trade, a sometimes crude balance between exclusivity and access, and a topic worthy of study, teaching, learning, and practice. My hope is that such understanding can lead people from crude generalities about what's good or bad the system, toward more productive pursuits like how to make it work better" [5, P. xi].

The idea and, accordingly, the principle of balance gives an impetus to new stage of justification of copyright and are substantial moment of the modern intellectual property theory [6, pp. 43 – 44, 243 – 246]. It is interesting that there are creator-centred, user-centred and community-centred justifications separated out by Michael Spence [7, pp. 45 – 70]. Moreover, increasing the digital environment inspires the information approach within IP-theory and the appearance, for instance, a new model of 'authorship' [8], as well as new models of exploiting and licensing of copyrighted works.

Emphasized evolving of intellectual property doctrine and intellectual property legislation at the national and the international level is parallel to technology progress. It is exemplified in technology-based conception of intellectual property changes ([9], [10]). The modern philosophy and theory of intellectual property proceed from connection between IP and emerging technologies, especially ICT and reality of the Internet [11, pp. 234 – 271]. In this situation, the traditional justifications of IP [12, pp. 11 – 24] have been acquiring some new nuances. It is very

important in case when there is increasing the criticism and 'intellectual property abuse' (this term was used by David Bainbridge [13, pp. 14 – 15]).

Conclusion

As we think, emerging of sensibilities of international legal politics in the area of development of modern standards of the balance between copyright and the freedom of expression, as standards of effective copyright protection, to the universal democratic participation in normative process can open a new era of realization of copyright potential, and meaning of copyright. There need be no doubt that the world community will try to elaborate standards of effective limiting of copyright scope for public interest in information society without prejudice for meaning of IP institute that itself should be modernized in the vein of new age. Of course, there are a numerous frontal challenges to copyright to be adapted to new level of development of self-expression in information society. This can demonstrate once more the possible effectiveness of multi-stakeholder's approach.

Shortly, the key role in elaborating and adopting the necessary standards in this sphere, undoubtedly, belongs to international law, including international human rights law. Simultaneously, the latter must correspond to the international law of IP, the international information law, and the international competition law. In sum, the balanced international law is a pillar of international standards of balanced relations between copyright and human right to freedom of expression that would promote the balanced development of digital environment. The achievement of the balanced international law in appropriate sphere is one of actual directions of international law politics success of which depends not only on coinciding of states' positions but also on harmonization of interests of right holders and public with regard to model of further development of digital environment, especially the Internet. Simultaneously, evolving the international legal standards of relation between copyright and freedom of express as a significant direction of modern international legal politics should be regarded as on the essential focuses of the Agenda on global governing the Internet.

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Conflict of interest statement

The authors declare that they do not have any conflict of interest.

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RESEARCH ARTICLE



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Christian-Muslim Relations in Ghana: The Role of the Youth

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Abstract

All across the world there is a growing interest in interfaith activities especially the one between Christians and Muslims. It has been argued that the nature of the relationship between these two faiths could determine the peace of the world in the future. This essay therefore gives a consideration to the youth of these faiths and contends for a recognition and involvement of these young people in interreligious relations. This contention finds credence in the light of current religious extremist activities especially from the Muslim quarters. These groups do not “view young people as an afterthought.” This essay to some extent reflects my personal experience as a young person growing up in a Muslim-Christian family: my father being a Muslim and my mother and siblings being Christians; it also draws data from research I am currently conducting on youth and interfaith dialogue.

Keywords: youth, young people, christian-muslim relations, interfaith/interreligious dialogue.

Introduction

“This is the great new problem of mankind. We have inherited a large house, a great ‘world house’ in which we have to live together—black and white, Easterner and Westerner, Gentile and Jew, Catholic and Protestant, Moslem and Hindu—a family unduly separated by ideas, culture and interest, who because we can never again live apart, we must somehow learn to live with each other in peace” [p. 1] (Martin Luther King, Jr. 1967 in Patel, & Brodeur, 2006).

There cannot be any better description of the world than this given by the distinguished erstwhile civil right activist, Martin Luther King Jr. So diverse is the world today that even in a single community in a region of a country, people differ from each other in several respects. This diversity comes with its attendant benefits and challenges. Where this diversity has been well managed, it has produced great results in community and nation building. Part of managing this diversity within the human race especially in terms of faith or religion, is dialogue—interreligious dialogue in the context of religion. Dialogue has been acknowledged as helping people with diverse orientations to still “...somehow learn to live with each other in peace,” as King Jr has underscored above. Interreligious dialogue takes several forms and shapes. Dialogue partners could be Muslims and Christians, Christians and Hindus, Christians and Jews etc.

In this essay I explore the dialogue between Muslims and Christians in Ghana in West Africa sub-region. Attention will be given to how the relationship between adherents of these two

dominant faiths has been over the years in politics, education, social and economics. Very central to this essay will be a consideration of the youth of these faiths and to contend for a recognition and involvement of these young people in interreligious relations. The essay will also, to some extent reflect my personal experience as a young person growing up in a Muslim-Christian family: my father being a Muslim and my mother and siblings being Christians; it also draws data from a research I am currently conducting on youth and interfaith dialogue. It is important to note that the terms youth and young people will be used interchangeably as well as interfaith and interreligious dialogue. Having said this, it will give shape to the discussions in this essay by first taking a cursory look at Muslim-Christian relations over the world and Africa.

Overview of Christian-Muslim relations in the world and Africa

The relations between Christians and Muslims date back to many centuries in history. It is conspicuous that Christianity predated Islam. But the nature of the relationship between the two Abrahamic faiths has shaped world history over the centuries. Indeed, it is acknowledged that the nature of this relationship has varied at different points in time in history: violent clashes, confrontation, tolerance and peaceful coexistence (Ayoub, & Omar, 2007). In assessing this relationship in a historical context, it is important to commence from the era of the Prophet Mohammed. Islam came after Christianity in a historical sense, and therefore it makes sense to assess the relationship from the period the initiator, or 'founder' so to speak, of the faith (Islam) lived.

Fredrick N. Mvumbi indicates that there were Christians in Mecca and Medina in the days of the Prophet and they were in the minority (Mvumbi, n.d). He further indicates that the Prophet encountered them in his trade and was friendly to them. Mbillah (2010) has hinted that the Prophet Mohammed in his young life encountered the Christian monk, Bahira also referred to as Nesto or George in some sources. Interestingly, Mbillah indicates that Khadija, the wife of the Prophet had a Christian cousin, Waraqa ibn Naufal whom the Prophet would have encountered. Indeed, it is said that the Muslims in this era considered the Christians as 'people of the Book,' and to that extent, equal with Muslims (Mvumbi, n.d). *"...a relationship of friendship reigned during the Makkan period between Muhammad and the Christians within and outside Arabia"* [p.15] (Mvumbi, n.d). It is worth adding that, in the early days of his prophethood, Mohammed encountered a Christian delegation made up of a bishop, 45 scholars and 15 men who visited him in Medina. This delegation wanted to know what faith the Prophet was preaching. During this encounter, it is said that they could not agree on the person of Jesus Christ. However, their disagreement did not stop the Christian delegation from requesting help from Prophet Mohammed, neither did it bar him from rendering the help requested (Mbillah, 2010).

Close to his death however, he did not look friendly anymore towards the Christians he encountered; this was in part the consequence of his increased sphere of influence and political power in Arabia, during which time he imposed his religion on those he conquered. However, through his conquests, he recognised Christians and did not persecute them, but that only on the terms of a peace pact where they were supposed to pay taxes to him, lest they risk persecution. On this note, one may concur with Mvumbi that Prophet Mohammed had regard for the Christians in the early stages of his encounter with them on the basis of friendship but his *"...attitude changed from friendship to tolerance"* towards the end of his life time [p. 17]. After his death, Mvumbi notes that, the first four Caliphs continued the Prophet's policy of tolerance towards the 'people of the Book' though he argues that Caliph Umar evicted the Christians from Arabia during his time (Mvumbi, n.d).

Moving on in this historical sketch of the relations between Muslims and Christians, still drawing on the work of Mvumbi, it is recorded that in the days of the Umayyad Empire, the Muslim rulers tolerated, just like the Prophet himself, their Christian inhabitants under the same pre-condition of paying tribute to the empire and additionally, not building new churches. On the other hand, there was the Abbasid Empire, another Muslim empire, where Christians living there experienced pockets of persecution especially in places where they refused to pay taxes. Not only that but also fornication, attempt to marry a Muslim or convert a Muslim to Christianity were grounds of severe persecution in the Abbasid empire, Mvumbi has indicated.

The history of Christian-Muslim encounter from the lifetime of Muhammad to the end of the 'Abbasid dynasty is long, rich and important because of its development. Anyone who understands it can paint it as time of struggles, confrontations, negotiations, intimidations, confusions, suspicion,

wars and reconciliations. All these qualifications, optimist as well as pessimist, will help us to [under]stand Islam and Christianity for an effective encounter [p. 21-22] (Ayoub, & Omar, 2007).

One could agree with Mvumi's assertion and recount the days of the Crusades which started against the background that there was no more war to fight in Europe (i.e. the West) and the warring class had to be found something else to do and so there was the need to 'invent' a ground to channel the efforts and blood thirsts of these warriors (Ayoub, & Omar, 2007). Helping to rid the Holy Land (Jerusalem) from the habitation of the pagans, Muslims inclusive, saw great persecution of Muslims by Christians during these Crusades. Of course, there were people like Saint Anselm of Canterbury who did not accept the idea of Crusade wholeheartedly (Slomp, 2009). One therefore observes that, not only were Christians persecuted by Muslims but Christians also have persecuted Muslims; at least looking through the period of the Crusades. This historical observation is very important as it throws light on present relations between adherents of these two major world religions. Indeed, there have been periods of overt clashes just as there have been times of relative peace between the two faiths (Migliore, 2014).

Now, turning to Africa specifically—the continent in the early centuries saw Christian kingdoms such as: 1) Nobatia (al-Maris) 2) Makuria (al-Muqarra) and 3) Alodia (Alwa), all existing in the Nile valley around 580AD (Haafkeens, 1995). They had peaceful relations to the Muslim Egypt for about six centuries, Haafkeens has noted. However, by the 16th century, all these Christian kingdoms were annexed by Muslim rulers, several factors accounting for it (ibid). Moving from this time in the history of Christian-Muslim encounters in continental Africa, during the colonial days, European colonialists adopted pragmatic ways to deal with Christian-Muslim encounters. For instance in Northern Nigeria, they cooperated and used Islamic rulers to administer the territory through a system of Indirect Rule. They limited Christian mission work in such areas while in other places less Islam dominated, Christian mission was permitted and supported (in the areas of education, health etc). Christian-Muslim relations in Africa in colonial days mirrored some aspect of the picture of the global relations as sketched before: "...conflict and rivalry rather than cooperation" [p.305].

In post-independence Africa however, there was a reorientation in Christian-Muslim relations. There were nationalistic calls to cooperate, on political and economic grounds, to build a new independent Africa. Therefore, in places like Nigeria, Senegal etc, Protestant and Roman Catholic churches formulated programs that sort to shape the relations between Christians and Muslims in a positive manner and also contribute to building new states (Haafkeens, 1995). Haafkens has further noted that this re-orientation did not however take away the conflicts and tensions. He observes that after the efforts put forth to foster Christian-Muslims relations in the 1960s, there was however, a turn in a counter direction where revivalist movements especially in Islam, produced more tensions and rivalry in states like Nigeria, Sudan etc.

Despite the picture so far painted on the relations between the two faiths in Africa, Johnson Mbillah has posited that:

"It is well known that it is in sub-Saharan Africa...that one can notice Christians and Muslims living as members of the same family, sharing in the joys of birth and the sadness of death and celebrating religious festivals together; as if there were no stark differences between Christianity and Islam" [p. 93-94] (Mbillah, 2010).

But the rise of extremist groups under the umbrella of Islam in the Middle East, Asia, and Africa and the atrocities they have unleashed on humanity all in the name of Islam and 'Jihad' (holy war)* give much need for the relationship between the two faiths to be taken seriously. Some of these extremist groups which some have classified as terrorist groups include ISIS (Islamic State of Iraq and Syria), Boko Haram (now Islamic State in West Africa; changing of name resulting from its pledged allegiance to ISIS), Al-Shabab (in Somalia), Al-Qaida, Taliban etc. The activities of these groups all over the world under the name of Islam continue the mistrust and suspicion between Islam and Christianity, as Mvumbi, Ayoub and Omar have noted. Further, if one recounts the killing, or say 'slaughtering' of Christians and non-Muslims by ISIS in Libya, Syria, Iraq etc; or the merciless gunning of 147 Kenyan students early this year by Al-Shabab militants, an Islamic extremist group, and the rest of the atrocities in Iraq, Syria, Afghanistan, Pakistan, Nigeria etc by

* Even Ayoub and Omar (2007) has argued that war/fighting is just one part of Jihad and that the meaning of Jihad goes beyond just fighting.

Islamic extremists, it only presses to the fore the pertinence for continued Muslim-Christian dialogue in our world today. Even more pressing in Europe today, I think, given the recent attack in Paris (on November 13, 2015).

Also, one cannot but agree with Daniel L. Migliore that:

"If the ecumenical church today is challenged to a deeper recognition of God's covenant with Israel as an integral part of Christianity's own identity, so too fresh reflection on the complex relationship of Christianity and Islam is necessary, and increasingly so as a result of recent world events" [p.339] (Migliore, 2014).

For Migliore (2014), a promising door to this 'fresh reflection' on Christian-Muslim relations is the issue of "A Common Word." "A Common Word" was an open letter (dated October 17, 2007) addressed to Christian scholars and church leaders by a group of Muslim scholars and leaders (138 in number) inviting Christians to dialogue on the basis of the love command enshrined in both the Qur'an and Bible—love for the one God and love for one's neighbours. The letter did not only iterate but also postulated that "The future of the world depends on peace between Muslims and Christians" (ibid, 340). I assent to a large extent to this postulation given the realities of events across the world following the activities of these Islamic extremist groups.*

In reflecting on the dialogue possibilities occasioned by this invitation, Migliore sees three major areas for dialogue between the two faiths, albeit at a theological level: what in the field of dialogue is technically called dialogue of minds or experts (Küster, 2014). These three areas include: a) how both faiths read their sacred texts i.e. the Bible and the Qur'an, b) how both faiths perceive to be the character of the one God who commands love to the one God and love to one's neighbours: 'radical monotheism' vs. 'Trinity' and c) the last point of dialogue would be on the nature of the love command itself: whether the love to be shown to the one God and neighbours sources from the one God himself as a gift to his people or the people themselves.

From this global and continental sketch of the relations between the two major world religions, let's narrow the discussion towards the main context of this essay—Ghana, by looking at how the relationship between the two faith communities has played out.

Christian-Muslim relations in Ghana and their different forms

Ghana is predominantly a Christian country in terms of having a Christian majority of the total population. The recent Population and Housing Census (in 2010) revealed a total population of about 24 million, of which 71.2 % are Christians (i.e. Catholics, Protestants, Pentecostal/Charismatics, etc) and 17.6 % are Muslims (Ghana Statistical Service, 2012). In geographical terms, Ghana is divided into a Muslim dominated north and a Christian dominated south; similar to Nigeria. From the above statistics, one can notice the population gap between Christians and Muslims. Their interactions have not been as violent as in other African countries like Nigeria or Sudan. In fact, the interaction between the two religions can be conceptualized as a dialogue of life: where people of different faiths interact with each other on a daily basis as people living together in one community or geographical location (Küster, 2014).

In general terms, their interaction fits the description given by Mbillah (2010) as cited before: *"...that one can notice Christians and Muslims living as members of the same family, sharing in the joys of birth and the sadness of death and celebrating religious festivals together; as if there were no stark differences between Christianity and Islam."* The relationship is one of existential reality. In Northern Ghana, one could find households inhabited by Muslims and Christians either as blood relations or as tenants or as married couples. As indicated earlier, I come from a similar background: I have a Muslim father and a Christian mother and siblings. In addition, most of my maternal relatives—both uncles and aunts are Muslims.

This kind of interaction does not only take place at the household level but also in the area of economics and politics. It is not uncommon to visit any public and private institution and find both Christians and Muslims working together peacefully and in harmony (at least on the surface). For instance, the Presbyterian Church of Ghana's Northern Presbytery has an institution called Presby Agric Services. This institution, interestingly, employs both Muslims and Christians alike.

* I like to refer to them in this manner since for me the word terrorist group is controversial.

This is one aspect that reveals the nature of the relations between Christians and Muslims in Ghana, albeit at a general level.

Moreover, because this essay has something to do with youth, it is relevant to add that, Christian-Muslim encounters play out in educational institutions as well. Christian and Muslim students attend the same school, sit in the same classroom/lecture theatres, and share dormitory/hostel facilities. On the political level, since Ghana returned to constitutional democracy in 1992, and especially after the tenure of the first president of the current Republic (Jerry John Rawlings), there have been a Christian president and a Muslim vice president (as found during the tenure of John Agyekum Kuffour: 2000-2008). Even though both the current President and his Vice are Christians, some of their government appointees are Muslims. So one can observe a reflection of the household situation as indicated earlier, in national politics and economics.

This existential interaction between Muslims and Christians goes even further where it is possible to find Muslims in a church during a Christian wedding ceremony and vice versa. For example, during the wedding ceremony of my brother in 2012, his colleague workers and friends, including his clients many of whom are Muslims, formed the majority of the wedding guests in the church auditorium* on that day. The same can be said of other occasions such as funerals, as Mbillah (2010) has hinted in the earlier quote.

This picture of the nature of the Christian-Muslim encounters in Ghana looks very impressive and promising, but it will be an inaccurate depiction if mention is not made to the fact that there have been instances of tension and conflict. These tensions and conflicts arise mainly, but not exclusively, from evangelistic activities of Christians, especially in Muslim dominated areas. For instance, the Outreach Department of my local congregation once reported that they were pelted with stones during an evangelistic venture in a Muslim dominated community in Northern Ghana. Aside from that, earlier this year (February 2015), a group of about 300 Muslims went on a demonstration in the Western Region of Ghana, to register a plight that Muslim students were forced to attend Christian activities and put off their Hijabs (in the case of female Muslims) in the mission founded schools they enrolled (Citifmonline, 2015b). This became a national issue where the President of Ghana at his State of the Nation address to Parliament warned that no educational institution in the country had the right to impose a religious activity on another and that each person under the laws of Ghana had the freedom to choose and practise their religion.

Subsequent to this warning by the President and the demonstration of the Muslim students, the Ministry of Communication issued an official statement on behalf of government to the effect that heads of educational institutions across the country risked their jobs if they limited students in the practice of religion. This evoked a quick response, a counter statement as it were, from the Catholic Bishops Conference of Ghana directing the heads of Catholic educational institutions to be firm and continue their duties as defined by the Catholic Church without fear or intimidation. Now, this was from the Roman Catholic quarters (who form 13.1% of the total Christian population in Ghana). What about the rest of the Protestants? Under the umbrella organization of the Christian Council Ghana (CCG), a statement was issued calling for peace and advising that the issue be left in the hands of the Ghana Peace Council, religious leaders and the Ghana Education Service to handle without political interference (Citifmonline, 2015a). It is worth elaborating further on this incidence in the history of Muslim-Christian encounters in Ghana.

Before the statement of the CCG, it had said earlier that if any Muslim was aggrieved of any infringement on their religious right, they should go to court. This, coupled with the statement of the Catholic Bishops' Conference prompted the National Chief Imam of the Muslim community in Ghana to issue a statement, with the first point as follows:

"We are deeply saddened by the uncompromising position taken by the Christian Council and Catholic Bishops' Conference in the statement issued on 3rd March 2015 as well as other earlier statements coming from certain individuals like the PRO of GES and the Deputy General Secretary of GNAT regarding the Muslim community's demand for freedom of worship in educational institutions and workplaces in Ghana; to the extent that a Constitutional provision could be undermined, and worse than that, potentially undermine the harmonious and peaceful coexistence that we have enjoyed all these years" (Myjoyonline, 2015).

* Presbyterian Church of Ghana, Ridge Congregation, Tamale, Ghana

There was a back and forth conversation on this incident but in the end, both sides agreed to remit the matter to the appropriate institutions to handle it amicably; and that is exactly what happened. This therefore reveals the extent of the relations Christians and Muslims in Ghana have shared over the years. The point that has to be made in this section is that the relations between Christians and Muslims in Ghana have not been extraordinarily different from the rest of the entire continent except that one can talk of Ghana's case being exemplary. What should the role of young people in Ghana, who are said to be the future leaders of the country, look like to ensure that the current state of the Christian-Muslim encounters is maintained and even improved? To this we now turn.

The youth in Ghana and their significance

According to the Population and Housing Census, *"The results show that Ghana has a youthful population... consisting of a large proportion of children under 15 years, and a small proportion of elderly persons (65 years and older)"* [p. 3] (Ghana Statistical Service, 2012). Given this statistical revelation, it goes without saying that youth have a very central role to play in Ghana. Their significance can be seen not only in terms of the potentials they possess to contribute to national socio-politico-economic development, but also how politicians go after them during campaign trails and sometimes channel their youthful exuberance into violent demonstrations and protests. Their significance is further underscored by the fact that both Muslim and Christian communities established structures that rope in their respective youth into their religions. For instance, the Ghana Muslim Students Association (GMSA), which has a nationwide presence in educational institutions; seeks to bring all Muslim students across the country together and manage their affairs. On the other hand, the various Christian denominations also have their youth fellowships and groups in various educational institutions in the country. Examples of this include, the National Union of Presbyterian Students Ghana (NUPS-G), the Ghana Methodist Students Union (GHAMSU) etc.

The importance of young people in the country cannot be overemphasized here. The important point is that given the potentials that youth hold, special attention has to be given to them in a manner that can harness these potentials for fruitful purposes in terms of national development and religious cooperation. This point is made against the background that a greater proportion of the unemployed in the country are youth. This means that in their idleness and frustrations resulting from unsuccessful attempts to acquire jobs and make ends meet in a rather high cost of living society, they could fall prey to religious extremists and violent groups. Especially given the phenomenon of globalization and the fact that religious terrorist groups now recruit their members through the internet and other social media (as ISIS does). One would therefore not hesitate to concur with Patel (2007) that people who engage in religious violence do not *"... view young people as an afterthought"* [p. 127]. If these extremists do not consider young people as an *"afterthought,"* then there should be no way religious bodies not least Christianity and Islam view them (youth) as an afterthought.

The role of the youth in Christian-Muslim relations

What place do the youth in Muslim-Christian encounters have in Ghana? It is to be argued that they really have a great place and their contribution is and could be enormous. Indeed, Patel (2007) has hinted that his reason for initiating Interfaith Youth Core is that young people hold the potential of contributing to "religious cooperation." Therefore, given Ghana's youthful population, structures that can employ effectively the potential of young people need to be put in place by organizations that are involved in interfaith issues in the country. Young people tend to have a different perspective on issues and given the existential nature of Muslim-Christian encounters in Ghana, young people may tend to consider building friendship and relationship with people they meet in school, work places, etc without necessarily being hindered by their religious background. The data that I have collected on young people and interreligious dialogue* reveal that the majority of the youth had either Muslim or Christian friends and in managing these friendships, they tend to put the friendship ahead of religious difference. This demonstrates a positive input into the future

* this data is part of an ongoing project I am working for my MA thesis on youth and interfaith dialogue.

of interfaith relations in the country. Indeed, Jayeel S. Cornelio and Timothy A. E. Salera, in their research on youth in interfaith dialogue in the Philippines have observed that, "*The view[s] of our youth respondents show that... the significance of interfaith revolves around the person (and not his or her religion), friendships, and collective participation in the community*" [p. 41] (Cornelio, & Salera, 2012).

The point need not belaboured, but it is to argue for a recognition that youth hold a unique input in interfaith discourse and given the fact that the future belongs to them, it makes sense to engage their current potential in the area of Christian-Muslim dialogue and not only in politics and other social activities. In other words, youth of both faith communities in the country "*...should be equal participants with adults, not just people participating for the future*" [p.182] (Smith, 2011).

Conclusion

This essay has looked at Christian-Muslim relations in Ghana in attempt to argue for a more involved role for youth in that endeavour. Therefore, in order to set the discussion in perspective, a historical sketch of Muslim-Christian encounters across the world and Africa has been given. The point has been argued that the nature of Christian-Muslim relations in Ghana, and by extension sub-Saharan Africa, has been one of existential reality: where Christians and Muslims intermix and intermingle daily on different levels of community and national life. The importance of the youth in Ghana has been underscored and the argument is that they hold a potential that needs to be pursued for interfaith dialogue by establishing structures that could create space for them to contribute to interfaith dialogue in the country. This is important as Patel has argued that just as young people hold the potential for "religious cooperation," they are also most sought after by religious extremists to use in religious violence.

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