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CONTENTS

MILITARY, POLICING AND SECURITY DURING 2023 GENERAL ELECTIONS IN NIGERIA

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Abstract: *One of the determinants of free, fair and credible election is the security of lives and property before, during and after the electioneering process. Despites the fact that large number of Military and Paramilitary personnel are mobilized for the conduct of Elections, cases of violence, snatching of ballot boxes, loss of lives and property are on the increase in most elections in Nigeria during the fourth republic. In light of the above, this paper examines the challenges and prospects of 2023 general elections with regards to the security of lives and property through the instrumentalities of the Nigerian Police Force and other security personnel. The main objective of the paper is to assess the implications of using the police and other security personnel on national security in 2023 general elections. Methodologically, the paper adopts a qualitative approach for the purpose of obtaining the required materials through the contents analysis of documents from National Independent Electoral Commission, Election (INEC), Independent Observers reports, observations from the participating political parties, the reports of Transparency International and extant laws. The outcome of the paper revealed that the major challenges envisaged from 2023 general elections is the fact that the security of lives and property of citizens may not be guaranteed if the security Agencies carry out assigned responsibilities in an unprofessional and partisan manner. The study therefore recommended that the security agencies should carry out assigned duties and responsibilities in a professional and non-partisan way in order to guarantee the security of life and properties of citizens before, during and after the 2023 general elections.*
Keywords: *Military, Policing, Security, Election, Electoral process, Democracy, Politics*

Introduction

One of the major features of democracy is the conduct of general elections through the popular mandate of electorates from time to time. The outcome of election can only be considered free, fair and credible when all stakeholders in the electioneering process are neutral and unbiased while carrying out assigned duties and responsibility. Specifically, the electoral umpire should be non-partisan while the security agencies should conduct themselves professionally by abiding strictly with the rules of engagement without fear or favour. Also, all aspirants to political offices are to guide against any act capable of discrediting the outcome of the elections. The greatest concern to all stakeholders in the forth coming 2023 general elections in Nigeria is how to secure the lives and property of citizens before, during and after the electioneering process. This may not be unconnected with the high rate of insecurity being witnessed in all the States of the federation in form of banditry, terrorism, kidnapping, bombing, armed robbery, cultism and communal violence daily. Subsequent elections since the successful handover of power to a

democratically elected government in 1999 have witnessed heavy deployment of security personnel in order to forestall the breakdown of law and order. This is in line with the provision of section 27 (3) of the Electoral Law, 2022 as amended which states that "notwithstanding, the provision of any other law and for the purpose of securing vote, the Commission shall be responsible for requesting for the deployment of relevant security personnel for elections or shall assign them in the manner determined by the Commission with relevant security personnel".

According to Ojoye (2019), the Nigerian Police Force deployed over 300,000 personnel nationwide for 2019 Presidential elections. This became necessary in order to prevent a recurrence of the kind of irregularities and violence witnessed in previous elections. According to National Human Right Commission (2015), 915 cases of electoral violence resulting in the death of 3,934 in Nigeria between June, 2006-May, 2014. As a matter of fact, the 2011 general elections recorded one of the worst cases of electoral violence in Nigeria. According to Human Right Watch (2012), 800 people were killed in deadly elections related violence in Northern Nigeria alone. Similarly, it was reported in Vanguard (2022) that 17,374 policemen were deployed for the conduct of gubernatorial election in Ekiti, 2022. Subsequently, Agency Report (2022) confirmed that Inspector General of Police deploys 21,000 Police Officers for Osun, 2022 gubernatorial elections. The above data indicated that the number of security personnel deployed for the purpose of election have being on the onward trends. Nevertheless, elections in Nigeria in the fourth republic have been characterized by allegations of rigging, vote buying, snatching of ballot boxes and thuggery despite heavy deployment of security agencies into election venue. Out of the six (6) general elections in Nigeria (1999, 2003, 2007, 2011, 2015 and 2019) since the return to democratic governance in 1999, there is no one that is entirely free, fair and credible. In light of the above, this paper seeks to determine the challenges and prospects of 2023 generation elections through the deployment of military and police for the electioneering process.

Objective of the Paper

The specific objectives of this paper are:

1. Examine the challenges confronting the conduct of 2023 general elections
2. Articulate pragmatic strategies capable of guaranteeing the success of 2023 general election

Methodology

A qualitative technique was adopted in sourcing for relevant materials obtained from the provisions of electoral law, 2022 as amended, 1999 Constitution of Federal Republic of Nigeria, Universal Declaration of Human Rights documents, publications from INEC, empirical studies, journals, textbooks and monograph. All the above document were subjected to content analysis before drawing valid inference on the challenges and prospects of 2023 general elections

Conceptual Analysis

The beauty of academic research is the ability to chronicle the opinions of scholars on relevant concepts in a given study. Therefore, following terms are conceptualized for readers to fully grasp the gist of the research work.

a. Democracy

The concept of democracy has been defined in various ways by several scholars based on their intellectual orientations and the kind of environment they found themselves. For instance, Abizadeh (2008) conceived democracy as a form of government that encourages the protection of fundamental human rights of citizens. This means that democracy guarantees the rights to life, freedom of speech, movement, assembly and right to own personal properties since the ultimate authority rests in the people. Similarly, the United Nation (2015) says democracy provides an environment that respect human rights and fundamental freedom, and in which the freely expressed will of people is exercised. In the same vein, Omotoso (2021) opined that democracy emphasizes quality of citizens and freedom of expression, such that legitimate power resides with the people while government gains legitimacy only by the consent of the governed. Conversely, Jon (2007) opines that democracy is a government by the people, exercised either directly or indirectly the principle of equality of rights, opportunity, and treatment are practice". By implications, democracy is the process of recruiting political leaders either directly or indirectly through the popular mandate of the people. The direct form of democracy occurred in Greek City State during the formative years when it was possible for all electorates to converge in selected location to form a government while the indirect democracy is a recent development that gives room for the emergence of representative governments. Conversely, Adekeye and Ajape (2021) conceived democracy as any political arrangements which involve either direct referenda of the members of a society in deciding on the laws and policies of the society or it may involve the participation of those members in selecting representatives to make the decisions.. For the purpose of this study, democracy is defined a system of government enthroned by the people, controlled by the people and created for the benefit of the people.

b. Elections

In a simple parlance, election is the process of voting to select a person for public office by the electorates. According to Ali and Ali (2021), election can be defined as an act of choosing or selecting candidates who will represent the people of a country in the parliament and in other positions in the government. This means that election is the process of selecting representatives who will form the government of a given nation from time to time. In the same vein, Benjamin (2009) conceived election as the process that allows members of an organization or community to choose representative capable of holding positions of authorities and governing its administration. By implication, election enables members of a given society to select competent people who will take charge of their affairs. According to Dickerson (1990), election is a democratic avenue through which the people or group express their preference for a particular person or group express their preference for a particular person or group whom they feel can best protect their welfare. This means that election refers to the willingness or the desire of electorates to choose leaders that can best represent their interests in governance. Similarly, Momah (2016) opined that election involves the participation of the people in the act of electing their leaders and their participation in governance. Above all, Nnali (2020) define election as a democratic process by which people select a person or persons for a position by way of vote. To cap it all, this paper conceived election as a democratic process whereby electorates are offered the opportunity to choose leaders that can best represent their interest in government periodically.

Free and Fair Elections

The outcome of any election can only be adjudged as credible, acceptable and dependable if it is "free and fair". However, existing literature reveal that the opinion of scholars are sharply divided on the factors that determine whether an election is free and fair or otherwise. For instance, Goodwin-Gill (2006) identified ten broad criteria and activities as markers' or indices for measuring free and fair election'. These are:

(1) Electoral law and system;
(2) Constituency delimitation;
(3) Election management;
(4) The right to vote;
(5) Voter registration;
(6) Civic education and voter information;
(7) Candidates, political parties and political organization, including funding;
(8) Electoral campaigns, including protection and respect for fundamental human rights, political meetings, media access and coverage;
(9) Balloting, monitoring and results; and
(10) Complaints and dispute resolution

A glance at the above criteria for free and fair election it fails to include issues such; as absences of electoral violence, rigging, electoral malpractices or the non-partisanship of the electoral umpire and security agencies. In view of the above unidentified factors, the Civics Academy, (2022) opined that free and fair election refers to an election that is free from all forms of fraud or malpractices. By implication an election is a said to be free and fair when it is conducted in a peaceful atmosphere free from all forms of individual harassment and other coercive or non-coercive means by political parties to bend the will of voters, which are not in the Constitution or Electoral Act. A cursory look at the above view on free and fair election reveals that issues regarding the provision of a level playing field for participants and whether the declared results actually reflect the number of vote cast by the electorates. Therefore, the Civics Academy, (2022) stated that Free and fair election means that all registered political parties have equal rights to contest the elections, campaign for voters support and hold meetings and rallies. It is an election in which all voters have an equal opportunity to register, where all votes are counted and where the announced results reflect the actual vote cast (Civics Academy, 2022). Above all, free and fair election according to this paper refers to an election whose outcome is adjudged to be in compliance with the provision of extant laws by both local and international observers. Such election must be violence free, electoral umpire and security agencies must be none partisan, level playing field must be provided to participants, the outcome of the election must reflect the actual vote cast while the declared result must be widely accepted.

Security Agency

The security Agencies refer to the officers charged with responsibilities of meaning law and order in the society or the enforcement of the will of the state. They are divided into two broad categories (Armed Forces and Paramilitary). The duty of the Nigerian Army is to defend the country from external attack while the Nigerian Police Force and paramilitary are ensure internal security of the state. According to Kalu, (2020) security agency refer to personnel of the conventional Nigeria Police Force, State Security Service, Nigeria Security and Civil Defence Corps, Nigerian Immigration Service, Nigerian Prison Service (now Nigerian Correctional Service), Nigerian Custom Service, and other similar organizations as well as Nigerian Armed Forces that are assigned to oversee candidates'

activity, day volunteers, electoral materials and poll watching in an apolitical character. In other words, this constitutes state agents employed to ensure elections are conducted in a peaceful, fair and in transparent manner.

According to section 91 (1) of 2022 Electoral Law as amended, "the Commissioner of Police in each State of the federation and Federal Capital Territory, Abuja shall provide adequate security for proper and peaceful conduction of political rallies and processes in their respective jurisdiction and for this purpose, Police may be supported by Civil Defence Corp". The role of the security agency is to protect lives and electoral materials before, during and after the conduct of elections. They are to assist the Independent National Electoral Commission (INEC) to carry out assigned responsibilities as the need arises through the observance of the rules of engagement.

According to Ugwuanyi (2011), the major roles of security agents during election are to:

1. Safeguarding the security of lives and properties of the citizens during campaigns/ voting so that citizens would not feel unsafe on account of holding, associating with or expressing a political opinion.
2. Ensuring the safety of electoral officers before, during and after elections.
2. Providing security for candidates during campaigns and elections.
3. Ensuring and preserving a free, fair, safe and lawful atmosphere for campaigning by all parties and candidates without discrimination.
4. Maintaining peaceful conditions, law and order around the polling and counting centres; and
5. Providing security for electoral officials, voting and counting centres, and ensuring the security of election materials at voting and counting centres and during their transportation thereto. It is the duty of the police and/or security agents to ensure that election materials are not stolen, hijacked, destroyed or fraudulently altered by any group or person.

Suffice it to say that the above activities are to be performed in line the directive of Independent National Electoral Commission as stipulated by the provision of electoral laws. For the purpose of this paper, security agency consist of members of the Armed Forces and paramilitary personnel charged with the responsibilities of maintaining law and order in the society.

Theoretical framework

The proper was anchored on the theory of prebendalism propounded by Richard Joseph in 1987. The proponents of the theory postulated that prebendalism is a political behaviour which reflects as it justifying principles that offices of the state may be competed for and then utilized for personal benefit of the office holders as well as that of their cronies or support groups. Fundamentally, prebendalism refers to the practice of utilizing official positions by public office holders for selfish and personal gain.

This theory is applicable to this paper since the major cause of violence during elections is the desire of aspirants to engage in politics of do or die affair through the use of political thugs, security agencies and electoral body to rig elections and attain political office fraudulently for personal gains and the benefits of their political gladiators.

According to Kalu (2020), a report from Centre for Democracy and Development (CDD) report of 29th March, 2015 indicated that there were record of cases of intimidation

and harassment of voters by overzealous security agents in Sokoto state during presidential and National Assembly elections. Worse still, the group (CDD) also reported that the same security agents from taking photos and recording the voting processes in the same state equally stopped voters. In the same vein, another dimension of excessive and varied impulsively unprofessional acts of security agents during 2015 general elections was captured by a Non-governmental Organisation, the Youth Initiative for Advocacy, Growth and Advancement (YIAGA), the NGO accused the security agents of failing to act while the electoral processes were being disrupted during governorship and House of Assembly polls in Rivers state. The group further reiterated Police's non-response stance to distress tweets by Nigerians regarding snatching of ballot boxes, voters' intimidation, violence and INEC staff harassment (Ademowo, & Ojo, 2015). Similarly, Kalu (2020) stated that, an INEC National Commissioner, Prof. Okechukwu Ibeanu, reported his car broken into and his laptop, tablet and official documents stolen, in an area where security agents attached to the Electoral Commission were present (Nigeria Civil Society Situation Room, 2019). Similarly, Yoroms (2019) observed that security agency during election has been involved in the intimidation of opposition parties by show of presence and force.

Security Challenges Confronting the Peaceful Conduct of 2023 General Elections

The reviewed literature reveals that the following challenges that characterized previous elections in Nigeria have the possibility of being confronted in the conduct of 2023 general elections:

a. Non-compliance with the provisions of Electoral Laws: The signing of 2022 Electoral amended Bill into Law on 25th February, 2022 by President Muhammadu Buhari has raised the hope of witnessing the smooth conduct of 2023 general elections. Therefore, any attempt by the electoral umpire and security agencies to effectively enforce the provisions of electoral laws during the 2o23 general elections may lead to a breakdown of law and order.

b. High rate of Unemployment: According to Endurance (2022), unemployment rate rose to 35% in Nigeria in 2021. The continuous increase in the rate of unemployment in Nigeria is largely responsible for high rate of insecurity in the country since and "an idle hand is the devils workshop". It is common knowledge that unemployed youths are normally used as political thugs by politicians during elections. Therefore, the rising level of unemployment rate posed a great danger to the successful conduct of 2023 general elections.

c. Partisanship by the Security Agencies: The purpose of deploying security personnel for the management of elections is to forestall the breakdown of law and order. It is expected that both the electoral umpire and security agency would discharge their responsibilities without discreetly without fear or favour. However, there are cases whereby the security agencies take side with the ruling party or engage in partisan politics in order to obtain certain benefits or the other. According to (2020), there were high level partisanship of security operatives before June 21, 2015 Gubernatorial election in Ekiti state; stalwarts of the People's Democratic Party (PDP) from Abuja, the capital territory and others from outside the state were given easy access to Ekiti state; whereas former Governor Rotimi Amechi of Rivers State, some other Governors and other stalwarts in the opposing party, All Peoples Congress (APC) were barred by security operatives from entering Ekiti to

attend a rally organized by their party (Ademowo, & Ojo, 2015). According to Yoroms (2019, the arrogance and compromising attitude of the security agencies in elections is worrisome as the debate, as to whether to deploy security agencies for election activities is worth it or not; continue to rage on until the experience with the Edo, Ekiti and Osun elections. Any attempt by security agency to be partisan in their conduct during the 2023 general election would lead to none observance of the rules of engagement or unprofessional conducts.

d. Political Apathy or low turnout of voters during elections

There is no doubt that heavy deployment of security personnel during elections would infringe on the fundamental human rights of citizens to freedom of movement, association, expression and treatment. Any time election is to be conducted in Nigeria, it is like preparation for war due to heavy deployment of security personnel to the election venue. This has led to drastic reduction in the number of voters during elections in the fourth republic. According to Salihu and Yakubu (2021), in 2011, 69.3 million electorates registered to vote but only 40.7 million voted due to previous experiences of violence during elections. As a matter of fact, low turnout of voters during elections could give room for manipulation and outbreak of violence.

According to Kareem (2022), the percentage of voters turnout in 2019 elections stood at 35.66% with a total of 84 million registered voters and turnout rate of 28.6 million. The above statistics was corroborated by Salihu and Yakubu (2021) who opined that voter turnout has been on the decline from 69% in 2003 to 35% in 2019 due to the deployment of violence as electoral strategy by political gladiators. This uufavourably compares to the average voter turnout of 65-70% in other countries and even in West Africa sub-region. In the opinion of Yakubu (2021), the turnout of voters in Nigeria hovers around 30-35% of registered voters (84,004,084) as at 2019 general elections.

e. Loss of confidence in the Electoral process: The electorate may lose confidence in the electoral process if their votes do not count. This may eventually snowball into electoral violence and break down of law and order. Also, the inability of political aspirants' to fulfill electoral promises when elected into public offices may discourage voters from participating in subsequent elections. According to Transition Monitoring Group (2021), Nigerians are losing confidence in the electoral system because of malpractice, manipulation, violence, commercialization and privatization of political parties and offices for self-centred interests. The loss of confidence in the electoral process has the tendency of discrediting the outcome of 2023 general election.

f. Lack of adequate political education: Most citizens who are not properly educated about the numerous benefits inherent in casting their votes during elections may be apathetic and nonchalant in performing their civic responsibilities making themselves available to vote or be voted for. According to the conversation Newspaper (2022) politicians and their paid agents are known to have been involved in violence against opponents and their supporters. This is sometimes done directly, with mobilisation of thugs, or indirectly through hate speech and incitement of violence, against targeted opponents. This became possible because such individuals were not properly education about the danger inherent in participation in electoral violence, manipulation and malpractices

g. Proliferation of Security Agencies

Security agencies in Nigeria consist of the Nigerian Police Force, Members of the Nigerian Armed Forces (Army, Navy, Custom and Air Force), Nigerian Security and Civil Defence

Corp, Traffic Warden, Road Safety, Fire Service, Directorate of State Service, Vehicle Inspector Officers (VIO), Nigerian Intelligence Agencies. However, the Nigerian Police Force and Civil Defence are to be assisted by other security personnel during election based on the provision of Electoral Laws and the 1999 Constitution of the Federal Republic of Nigeria.

Specifically, the responsibilities of the Nigerian Police Force and Civil Defence Corp are to take charge of internal security while the duty of the Nigerian Army is to defend the territorial integrity of Nigeria from external aggression. On the contrary, the Nigerian Army has been saddled with the responsibilities of assisting the Nigerian Police Force in the maintenance of internal security in the fourth republic due to increase in crime wave, insurgency, banditry and kidnapping. The interconnectivity in functions of surety personnel has therefore resulted into role conflict among members of Armed Forces and the Paramilitary during the period of elections.

According to Mahmud (2015), security could improve without the use of the Army. In the most civil of political activities, the presence of the Armed Military personnel makes voting look more like a war than an occasion of civil responsibility. Well trained police equipped with the appropriate tools can handle elections and should be left to do so. The proliferation of security agencies therefore posed a great challenge to the successful conduct of 2023 general elections.

h. Separatist Agitations: The continuous trial of the Leader's of the Indigenous Peoples of Biafra (IPOB), Nnamdi Kanu has lead to violence uprising in most parts of the Eastern region of the country. IPOB has warned on several occasions that elections wouldn't hold in the South Eastern part of the country if Nnamdi Kanu was not released unconditionally. In the same vein, there have been unending agitation that it is the turn of South Eastern part of Nigerian to produce the President in 2023 general elections. The fact that the two dominant political parties (The All Progressive Congress and Peoples' Democratic Party failed to choose South Easterners as their Presidential flag bearers have heightened the security situation in the region in preparatory for 2023 general elections. Similarly, the agitation for Oduduwa Republic by Sunday Ogboho is still very fresh due to high level of insecurity and other unmet expectations. The above agitations by separatist have the potential of affecting the outcome of 2023 elections negatively.

I. Threats from Terrorists, Bandits and Kidnappers: The upsurge of banditry, terrorism and kidnapping in all States of the federation has continued unabated. In-fact, terrorist organizations have threatened that no political activities should take place in some parts of Brini-Gwari Local Government Areas of Kaduna State forth with. Also, states like Katsina, Zamfara, Plateau, Niger, Bornu, Adamawa, Yobe, Taraba and the Federal Capital Territory, Abuja are under the full control of terrorist organistions. Suffices it to say that the activities of terrorists in most states of the Federation may adversely affect the success of 2023 general elections if the current situation is not put under control by the security agencies

Conclusion

The outcome of this paper revealed that none of the general elections (1999, 2003, 2007, 2011, 2015 and 2019) conducted in the fourth republic is devoid of security lapses in one way or the other. This may not be unconnected with the desire of the power that be

to manipulate the electoral umpire and security agencies to do their bidden in order to be returned elected or to become godfathers to their anointed godsons. At times, any Commissioner of Police or resident electoral commissioner who fails to dance to the dictate of state Governors are usually replaced before or during the period of electioneering process. The ruling party or opposition party may equally use thugs to disrupt elections or snatch ballot boxes in order to win election at all cost. All the above challenges posed a great threat to the successful conduct of 2023 general elections.

Recommendations

It is true that no election is perfect anywhere in the world. Therefore, there is always room for improvement. In view of this, the following recommendations are considered fundamental to towards the enhancement of peaceful conduct of 2023 general elections in Nigeria.

1. There is need to speed-up the passage of Electoral Offences Commission Bill. This will go a long way in prosecuting offenders during elections. For instance, the inability to stamp out the menace of vote buying during elections is due to the delay in the passage of the bill.
2. The use of electronic voting has the potential to drastically reduce the level of violence during election to a negligible proportion. It will equally go a long way in reducing the number of security agencies to be deployed for the conduct of general elections as long as the polling centres are well secured. Also, political thugs will have little or no influence over proceedings since results could be transmitted within minutes or seconds to the collation centres. It will equally reduce the number of party agents to be deployed to man each polling units by political parties. Above all, the judiciary may record lesser litigation notices.
3. The security agency agencies and electoral umpire should be neutral and none partisan in the 2023 general elections. This will guarantee a level playing ground for all aspirants and peaceful conduct of elections. Any attempt for them to compromise the electoral process could lead to a breakdown of law and order.
4. The provisions of 2022 Electoral Law as amended should be strictly adhered to by all stakeholders in 2023 general elections. This will go a long way in conducting free, fair and credible elections.

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ASSESSMENT OF GOOD GOVERNANCE INDICATORS ON THE PERVASIVENESS OF SHADOW ECONOMY: EMPIRICAL INSIGHTS FROM NIGERIA

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Abstract: *This study focused on the relationship between good governance and the shadow economy in Nigeria from 1996 to 2020. Employing the autoregressive distributed lag modelling approach, the study found that only the regulatory quality index was found to be consistent in taming the size of the shadow economy in Nigeria in both situations. Other indicators, such as the control of corruption, government effectiveness index, political stability index, and perception of the rule of law, had a short-run desirable impact on the shadow economy but portended serious boosters to the prevalence of shadow economic activities in the long run. This points to the prevalence of very weak institutional quality. The Nigerian government should improve more on its legislative quality to consolidate on the gains of regulatory quality. Again, the need for willful desire and action of all Nigerians to build stronger institutions to lay a solid foundation for an enduring system.*
Keywords: *Economic activities, good governance, governance indicators, shadow economy*
JEL Classification: *O16, O17, G34, G38*

Introduction

While the problem of shadow economy may not be a problem of underdeveloped countries to the exclusion of their developed counterparts (who still suffer a significant level of illicit economic activities), the extent and intensity of economic activities of shadow nature tend to be greater in underdeveloped countries (Schneider et al, 2010; Schneider & Enste, 2002). However, there appears to be a conflict of a clear conceptualization of economic activities of shadow nature. It has variously been referred to as the shadow economy, informal sector economy, parallel economy, clandestine economy, hidden economy or black economy (Mughal et al, 2018; Wu & Schneider, 2019). Incidentally, despite its long list of demeaning nomenclature, economists believe that shadow economic activities are accompanied by some economic and social benefits, such as employment creation, income generation and an increase in national output. Activities of a shadow nature, however, thrive best where there is a generally high level of corruption in governance and the public sector (Öğünç & Yilmaz, 2000; Zaman & Goschin, 2015).

According to Schneider and Buehn (2018) and Schneider and Williams (2013), a shadow economy has the capacity for all productive activities that ordinarily would bring about social contributions and yield tax revenue to the government. However, such activities are deliberately hidden from tax authorities to evade tax. Medina et al. (2018) explained that "the shadow economy includes all economic activities which are hidden from official authorities for monetary, regulatory, and institutional reasons. Monetary reasons include avoiding paying taxes and all social security contributions, regulatory reasons include avoiding governmental bureaucracy or the burden of the regulatory framework, while institutional reasons include corruption law, the quality of political institutions and weak rule of law". In Nigeria, all economic activities outside the direct control purview of the government are regarded as shadow economies. These economic activities may include very legal productive economic activities that, if they were recorded, would have contributed to the growth of national output.

Similar to many other developing countries, Nigeria is equally yoked with the problem of poor governance and very weak institutional quality (Utile et al, 2021). Achebe (1983) lamented that "the trouble with Nigeria is simply and squarely a failure of leadership...". This failure of leadership and hence governance may be a breeding ground for shadow economic activities. This is due largely to the fact that good governance is believed to have both "intrinsic and instrumental developmental value" to ensure justice and rule of law, curb corruption and engender accountability in the public financial management of the state (Earle & Scott, 2009). Good governance has been singled out as the way through which the institutional quality of a state can be improved. A higher level of institutional quality of an economy is by no means a lesser panacea for eliminating illicit economic activities and trade (Roy & Tisdell, 1998). Similarly, UNDP (1997) explained that the primordial means to curb poverty and ensure human development on a sustainable basis is none other than good governance. In addition, Andrii and Dmytro (2020) blamed the emergence of the black market economy on a slow rate of economic advancement, a high level of unemployment and ineffective government policies. This underscores the link between good governance and its implications on the preponderance of the shadow economy in Nigeria and even elsewhere and hence the need for this research.

Although economic activities of illicit nature contribute greatly to the growth of Nigeria's national output, it does not take away the fact that such activities have very damaging consequences on general wellbeing. It breeds and fertilizes the informal sector, rendering both monetary and fiscal policies of the government ineffective, just as it leads to loss of tax revenue. Studies by Omodero (2019) and Fleming et al. (2019) have highlighted some of these consequences.

However, focusing on the consequences rather than the root cause of an ailment may not solve the problem. The preponderance of the shadow economy in Nigeria may be linked with the strength or otherwise of different indices of good governance. This link has not been adequately explored in Nigeria, especially within a dynamic modelling framework and hence the need for this study.

The rest of the paper is structured as follows: section 2 focuses on the theoretical framework and a review of the empirical literature, while section 3 focuses on the methodology adopted by the study. Finally, section 4 addresses the analyses and interpretation of the results, and section 5 concludes and makes policy recommendations based on the findings of the study.

Literature Review

Theoretical Framework

There is no clear unified theory linking the prevalence of the shadow economy to good governance. However, a set of theoretical propositions have clearly linked them together. Locke (1689) believed that men could live in harmony within a society according to reason without any need for anyone to superintend over them. However, Hobbes (1651) foresaw that life was a quest and that men could inadvertently be constantly at war with one another due to conflicts of interest on who should get what. This gave birth to "the social contract" where men surrendered some of their rights to form a government to superintend over them. This came with an administrative cost that warranted tax payment (Asue, 2017), but shadow economic activities tend to evade or avoid tax payments.

With the passage of time and following the establishment of the UN in 1945 to avert the experiences of World Wars I and II, there is a constant global push for "good governance" as a vehicle of development. According to the United States Center for International Business (USCIB) (2015), "good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources". The UN (2007) described good governance as "the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation". This implies that the government ought to be very open and predictable, with an ethically imbued professional bureaucracy and a responsible and accountable executive arm, without neglect of civil society participation and adherence to the rule of law (World Bank, 2000). As observed by the UN (2007), good governance and human rights are intrinsically mutually reinforcing, and the former is a sin qua non for the actualization of the latter.

When people's rights are ensured, they tend to obey the laws and do what is generally adjudged to be right. People are born with intrinsic moral traits to obey inherited societal norms to maintain their self-esteem and resent deviants. However, where people perceive the government to be predatory in tax revenue collection without enhancing the supply of public goods and services, they may tend to be more involved in shadow economic activities to avoid taxes (Kanniainen et al, 2004). Shadow transactions could be household production, gambling, illicit drug deals, dealing in stolen goods, dishonest financial reports by firms and neighbourhood help (Schneider & Enste, 2002).

There is a growing consensus that an expansion of the shadow sector of any economy is usually due to ineffective government policies where there is a high level of unemployment and a low level of economic development (Andrii & Dmytro, 2020). Consequently, the World Bank has constructed six Worldwide Governance Indicators (WGIs), which are used to gauge the performance of governance. These are Control of Corruption, Political Stability and Absence of Violence, Voice and Accountability, Government Effectiveness, Regulatory Quality Index and Rule of Law. On the other hand, the shadow economy is measured as a percentage of the contribution of the informal sector to gross domestic product (GDP).

It then follows that, with improvement in the indices of good governance, the proportion of the nonformal sector of the economy should shrink. That is, as man has innate

tendencies to conform to the norms of society and to maintain his self-esteem, he abhors being tagged a deviant except when he feels his rights are not guaranteed and he is cheated.

Empirical Literature

In a study by Kanniainen et al. (2004), the focus was placed on exhuming the causes of the shadow economy in market economies for 21 developed countries that are members of OED for the period 1989/90 to 2002/0. The econometric results indicated that there was a percentage rise of the shadow component to the official GDP from 13.2% in 1989/90 to 16.8% in 1999/2000. The study thus classified the sampled OECD countries into moderate, medium-sized and large shadow economies. Williams et al. (2010) carried out a survey of 331 start-up entrepreneurs between 2005 and 2006 in Ukraine and discovered that 90% of the entrepreneurs operated either completely off-the-books or partially off-the-books. However, even the reluctant entrepreneurs who started their operations off the books due to the necessity to survive in business became more willing to operate legally as they become more established.

Schneider et al. (2010) estimated the extent of the shadow economy in 162 countries of the world for the period 1999 to 2006/2007. The study took the weighted average of the shadow economy as a percentage of official GDP and found that the size of the shadow in Sub-Saharan Africa is 38.4%; in most transition countries of Europe and Central Asia, it was 36.5%, while in the high-income OECD countries, it was 13.5%. The weighted average size of the shadow economy was found to have decreased for the 162 countries from 34.0% to 31.0%. The study also found that the high tax burden, quality of public goods and services, state of the economy and labour market regulations remained the dominant drivers of shadow economic activities. In another study by Ogbuabor and Malaoulu (2013) to determine the magnitude of loss attributed to the informal sector of the Nigerian economy, the focus was placed on the size, causes and development of the shadow economy. The study used the Error Correction Multiple Indicators, Multiple Causes (EMIMIC) model to estimate both short-run and long-run relationships among the variables for the period 1970 to 2010. The study found a huge average size of the informal sector to be 64.6% of the GDP during the period under review. It was also found that unemployment, government regulation, tax burden and inflation remain very key drivers of the shadow economy in Nigeria.

Wu and Schneider (2019) examined the nonlinear relationship between the shadow economy and economic development using annual panel data that covered 158 countries from 1996 to 2015. Using a wide range of econometric techniques, the study found a U-shaped relationship between the shadow economy and economic development (using GDP per capita as a proxy for economic development). The study found that, having controlled for key institutional, economic and policy variables, the underdeveloped countries witnessed an inverse relationship between GPD and the nonformal sector, but where GDP per capita exceeded the threshold, there was a rise in the size of both the nonformal economic sector and GDP per capita. It was also concluded that, with increased levels of economic development, there are usually high levels of institutional quality and quality supply of public utilities such that the proportion of the nonformal economic sector tends to shrink.

Omodero (2019) used annual data from 1996 to 2018 to examine the effects of clandestine economic activities and corruption on revenue in Nigeria. The study adopted

an ordinary least squares approach and found that corruption and the informal economy were inimical tax revenue in Nigeria, thereby rendering most fiscal responsibilities of government ineffective. Medina et al. (2018) used the Multiple Indicators, Multiple Causes (MIMIC) approach to unveil the mean size of the shadow economy for the period 1991 to 2015 in 158 countries. The average size was found to be 31.9% of relative GDP, and the study categorized the causes of the shadow economy as related to policy, economic, institutional and regulatory factors.

Nguyen and Duong (2021) investigated the relationship among the shadow economy, corruption and economic growth in the countries of Brazil, Russia, India, China and South Africa (BRICS) for the period 1991 to 2017. The authors employed the Bayesian regression approach to estimate the effect of corruption, shadow economy and other indicators, such as public expenditure, trade openness, inflation, foreign direct investment and tax revenue, on economic growth. It was found that while public expenditure and trade openness had a very high probability of boosting the GDP of BRICS economies, tax revenue, foreign direct investment and inflation exhibited some form of ambiguous positive influence. It was also found that the control of corruption and the shadow economy had a positive effect on the GDP of BRICS countries.

It is clear from the review of the empirical studies that the issue of good governance on the preponderance or propagation of shadow economy has not been adequately investigated. The present study is a great leap toward filling such a gap, especially as it relates to the Nigerian economy.

Methodology

Data and Variables Measurements

This study relied on annual time series sourced from the World Bank for the period 1996 to 2020. Data on the contribution of the shadow economy to GDP (CSG) measure how much of Nigeria's GDP is contributed by the informal sector of the economy. It is measured as a percentage of the total real GDP per annum. The data on Control of Corruption (COC) measures the perception of the extent to which people use public office to appropriate private gains for themselves both in matters of petty and pronounced forms of corruption. Data on Government Effectiveness Index (GEI) measures the quality of public services, civil service and the degree of independence from political pressures. It is also concerned with the quality of policy formulation and implementation and how committed various government agencies are in keeping the standards high. Data on the Political Stability Index (PSI) measure how the political atmosphere is relatively stable and free from military intervention or politically motivated violence. The Regulatory Quality Index (RQI) measures the ability of the government to formulate and implement policies and rules that permit and promote private sector growth and development. The data on Rule of Law (ROL) measure how all citizens (irrespective of social status), institutions and the state are accountable under the same laws of the land, while the data on Voice and Accountability Index (VAI) measure how citizens of a country can secure their rights, indicate their preferences and place demands on the government for quality service delivery and achieve better results. All the data on the Worldwide Governance Indicators (government effectiveness index, political stability, regulatory quality, rule of law, and voice and accountability) range between -2.5 (weak) and 2.5 (strong).

Model Specification

Given that the preponderance of the shadow economy can be linked with the strength or otherwise of different indices of good governance (control of corruption, government effectiveness index, political stability, regulatory quality, rule of law, and voice and accountability), the functional form of the variables of the model is as follows:

$$CSG = f(COC, GEI, PSI, RQI, ROL, VAI) \quad (1)$$

where: CSG = Contribution of Shadow Economy to GDP, COC = Control of Corruption, GEI = Government Effectiveness Index, PSI = Political Stability Index, RQI= Regulatory Quality Index, ROL= Rule of Law, and VAI = Voice and Accountability Index.

The stochastic form of the model is:

$$CSG_t = \beta_0 + \beta_1 COC_t + \beta_2 GEI_t + \beta_3 PSI_t + \beta_4 RQI_t + \beta_5 ROL_t + \beta_6 VAI_t + \xi_t \quad (2)$$

where - β_0 - β_6 are coefficients and ξ_t is the error term.

Given that these variables are essentially, percentages and indices ranging between -2.5 and 2.5, they need not be logged. Thus, the generic form of the ARDL model $(p, q_1, ..., q_k)$ is specified as:

$$y_t = \alpha_0 + \alpha_1 t + \sum_{i=1}^{p} \psi_i y_{t-i} + \sum_{j=1}^{k} \sum_{l_j=0}^{q_i} \beta_{j,l_j} x_{j,t-l_j} + \varepsilon_t \quad (3)$$

where ε_t stand for innovations, α_0 is a constant, and α_1, ψ_i and β_{j,l_j} are coefficients of the respective linear trend with lags of y_t, while lags of k regressors $x_{j,t}$ are such that $j = 1, ..., k$. Following the general specification to equation (3), it can be stated as:

$$\begin{aligned} CSG_t = \alpha_0 + \alpha_{1t} + \sum_{i=1}^{p} \beta_0 CSG_{t-i} + \sum_{j=0}^{q} \beta_1 COC_{j-q} + \sum_{j=0}^{q} \beta_2 GEI_{j-q} + \\ \sum_{j=0}^{q} \beta_3 PSI_{j-q} + \sum_{j=0}^{q} \beta_4 RQI_{j-q} + \sum_{j=0}^{q} \beta_5 ROL_{j-q} + \sum_{j=0}^{q} \beta_6 VAI_{j-q} + \xi_t \end{aligned} \quad (4)$$

Furthermore, given that, the study seeks to estimate the relationship between regressand y_t on both its lags just as the contemporaneous and lag values of k regressors $x_{j,t}$. Equation 4 can be stated as:

$$y_t = \alpha_0 + \alpha_1 t + \sum_{i=1}^{p} \psi_i y_{t-i} + \sum_{j=1}^{k} \beta_j(1) x_{j,t} + \sum_{j=1}^{k} \beta_j(L) \Delta x_{j,t} + \varepsilon_t \quad (5)$$

where $\Delta = (1 - L)$ is used to denote the first difference. Since the above equation (5) does not clearly solve for y_t, it is simply a regression of intertemporal dynamics. Thus, the ideal regression setting of the above model that uses theoretical coefficients is specified as:

$$CSG_t = \alpha_0 + \alpha_1 t + \sum_{i=1}^{p} \beta_1 CSG_{t-i} + \beta_2 COC_t + \beta_3 GEI_t + \beta_4 PSI_t + \beta_5 RQI_t + \beta_6 ROL_t + \beta_7 VAI_t + \sum_{j=1}^{k} \lambda_{1,j} \Delta COC_{t-j} + \sum_{j=1}^{k} \lambda_{2,j} \Delta GEI_{t-j} + \sum_{j=1}^{k} \lambda_{3,j} \Delta PSI_{t-j} + \sum_{j=1}^{k} \lambda_{4,j} \Delta RQI_{t-j} + \sum_{j=1}^{k} \lambda_{5,j} \Delta ROL_{t-j} + \sum_{j=1}^{k} \lambda_{6,j} \Delta VAI_{t-j} + \xi_t \quad (6)$$

Equally, "the conditional error correction form and the bounds test" is usually expressed as:

$$\Delta y_t = \alpha_0 + \alpha_1 t - \psi(1) EC_{t-1} + \left(\psi^*(L) \Delta y_{t-1} + \sum_{j=1}^{k} \beta_j(L) \Delta x_{j,t-1} \right) \quad (7)$$

From equation (7), the error correction term, is denoted by EC_t and it also serves the purpose of a cointegrating relationship where y_t and $x_{1,t},...,x_{k,t}$ do not drift apart with the passage of time. Given that the there is no trend from cross examination, the study assumes no trend and restricts the constant inside the cointegrating equation, thus, specifying and estimating a restricted constant with no trend. The model with restricted constant and no trend specification can be specified as:

$$\Delta y_t = \alpha_0 + b_0 y_{t-1} + \sum_{j=1}^{k} b_j x_{j,t-1} + \sum_{i=1}^{p-1} c_{0,i} \Delta y_{t-i} + \sum_{j=1}^{k} \sum_{l_j=1}^{q_j-1} c_{j,l_j} \Delta x_{j,t-l_j} + \sum_{j=1}^{k} d_j \Delta x_{j,t} + \varepsilon_t \quad (8)$$

and

$$EC_t = y_t - \sum_{j=1}^{k} \frac{b_j}{b_0} x_{j,t} - \frac{a_0}{b_0} \quad (9)$$

with $H_0 : b_0 = b_j = \alpha_0 = 0, \forall_j$

Where is a vector and the variables in x_t are allowed to be purely I(0) or I(1); α is a Constant b, c and d are coefficients $j = 1,...,k$; p,q are optimal lag orders and ε_t is a vector of the error terms. Thus, the nonasymmetric error correction model can be specified as:

$$\Delta CSG_t = \sum_{i=1}^{p} \beta_1 \Delta CSG_{t-i} + \sum_{i=1}^{q} \beta_2 \Delta COC_t + \sum_{i=1}^{q} \beta_3 \Delta GEI_t + \sum_{i=1}^{q} \beta_4 \Delta PSI_t + \sum_{i=1}^{q} \beta_5 \Delta RQI_t + \sum_{i=1}^{q} \beta_6 \Delta ROL_t + \sum_{i=1}^{q} \beta_7 \Delta VAI_t + \lambda EC_{t-1} + \xi_t \quad (10)$$

Method of Data Analysis

This study employed both descriptive statistics and econometric approaches to analyse the good governance-shadow economy nexus in Nigeria. Thus, the autoregressive distributed lag (ARDL) modelling approach was adopted since it is a dynamic approach that depicts economic reality, as many dependent economic variables tend to explain their own future values. It thus gives room for the data to speak for itself as it makes use of lags. It is also suitable for use where the data size is relatively small.

RESULTS AND DISCUSSION

Descriptive Statistics

Given that our dependent variable is a percentage and all our explanatory variables are indices lying between -2.50 and 2.50, the easiest form of their description is in graphical trend format to bring out an easy view of their behaviour. Figure 1 shows the graphical representation of the variables.

Figure 1 Shadow economy, formal economy and WDI in Nigeria (1996-2020)

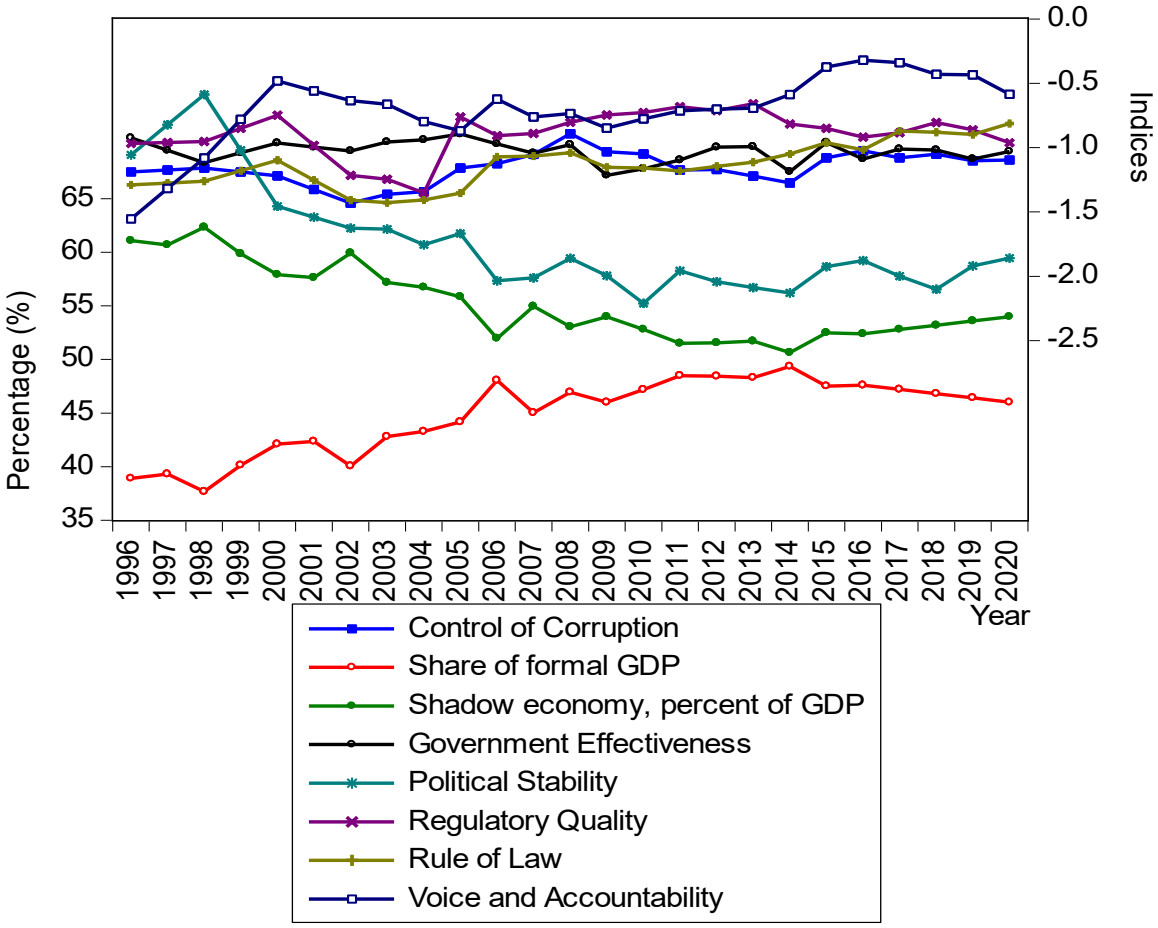


Figure 1 explains the proportion of the shadow economy in Nigeria and the World Governance Indicators (WDIs) over the study period. The trend shows that the shadow economy as a percentage of total annual real GDP declined continually until 2006, when it rose slightly to approximately 55% in 2007, and took another downturn until 2014, when it took an upwards trend throughout the period under study. The proportion of the level of shadow economy declined reasonably between 1996 and 2006, just as between 2007 and 2014. During the period, governance indicators also improved even though none of the indicators recorded a strong index. After 2014, the proportion of the shadow economy increased, implying that there were several sources of income from goods and/or services that are hidden from the government with a view to evading taxes, duties or levies and avoiding complying with particular labour market regulations, such as minimum pay for

employees, social insurance contributions, safety standards, and maximum duration of work hours per period. As highlighted by Gasparėnienė et al. (2016), Loayza and Rigolini (2006) and Medina et al. (2017), workers and firms may opt for informality to avoid taxes and pension or social security payments or labour and product market regulations. It can also be observed that in all situations where the shadow economy declined, the formal economy improved, thereby portending better revenue prospects for the government and a greater likelihood of fiscal and monetary policy effectiveness.

The weak index of rule of law throughout the period shows that agents lost confidence in the system and may even be willing to break the rules of society with regard to the quality of contract enforcement, the police, property rights, and the courts. The continuous negative nature of government effectiveness throughout the period also shows the weak quality of public services, civil service, and the weak quality of policy formulation and implementation as well as the incredibility of the government's commitment to such policies. This is coupled with the weak regulatory quality that indicates the inability of the government to formulate and implement sound policies and regulations that permit and promote private sector development in Nigeria.

From the graph, only voice and accountability had relatively higher improvement in the performance explaining the level of citizens participating in the selection of their government as well as freedom of expression, association, and speech. Political stability depicts a relatively worse index throughout the period, indicating volatility in the governance orchestrated by unconstitutional means and terrorist attacks.

Ng-Perron Unit Root Test Results

To ascertain that the variables used in the model exhibited random walk such that they were consistent with the stochastic process, they were subjected to the unit root test proposed by Ng and Perron (2001). A summary of the results of the unit root test is presented in Table 1.

Table 1: Ng-Perron Unit Root Test Results

Variable	**MZa** **-8.1000**	**MZt** **-1.9800**	**MSB** **0.2330**	**MPT** **3.1700**	**Stationarity**	**Remark**
CSG	-1.8854	-0.9136	0.4846	12.2752	I(0)	Not Stationary
D(CSG)	-9.7319	-2.1964	0.2257	2.5534	I(1) **	Stationary
COC	-5.2741	-1.6025	0.3038	4.6998	I(0)	Not Stationary
D(COC)	-11.4502	-2.3927	0.2089	2.1398	I(1) **	Stationary
GEI	-10.6670	-2.3043	0.2160	2.3170	I(0)**	Stationary
PSI	-1.8727	-0.9193	0.4909	12.462	I(0)	Not Stationary
D(PSI)	-10.6987	-2.3122	0.2161	2.2926	I(1) **	Stationary
RQI	-7.6626	-1.9526	0.2548	3.2147	I(0)	Not Stationary
D(RQI)	-11.1965	-2.3465	0.2096	2.2625	I(1)**	Stationary
ROL	-1.6689	-0.5982	0.3586	10.1338	I(0)	Not Stationary
D(ROL)	-11.3429	-2.3574	0.2078	2.2516	I(1)**	Stationary
VAI	-4.1405	-1.3685	0.3305	5.9938	I(0)	Not Stationary
D(VAI)	-9.0511	-1.9925	0.2201	3.1982	I(1)**	Stationary

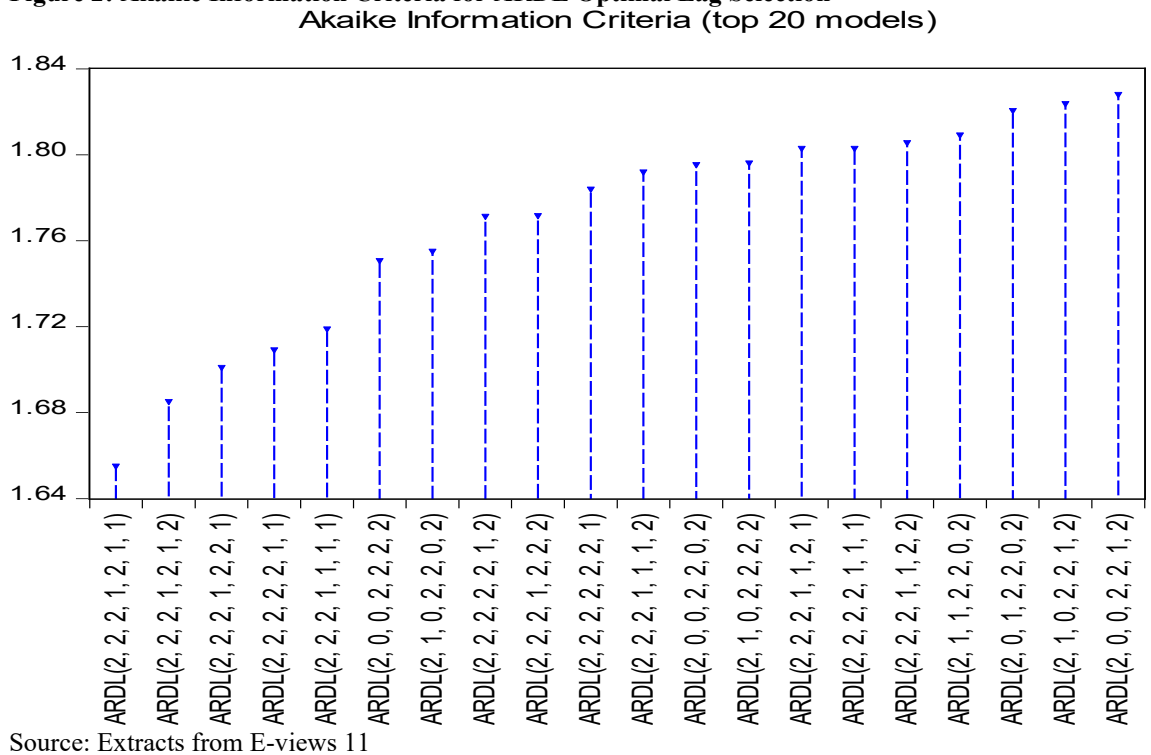
Source: Extracts from E-Views 11

The results of the Ng-Perron unit root test are carried out against the null hypothesis that the variable under examination has a unit root. Stationarity in the Ng-Perron test is attained when all or the majority of the values of MZa, MZt, MSB and MPT statistics are less than their corresponding asymptotic critical values at the 5% level of significance. Thus, it can be observed that all the variables in Table 1 became stationary at first difference except the government effectiveness index (GEI), which was found to be stationary at levels. This shows that there is mixed order of integration. The asterisks (**) indicate that the variable is stationary; otherwise, it is not. Thus, there is a mixed order of integration that is still suitable for use in the ARDL framework.

Optimal Lag Selection

The beauty of dynamic models such ARDL lies in the use of lag values of both the regressors and the regressand in the explanation of relevant economic phenomena under examination. Usually, it is advisable to make use of optimal lag values to obtain unbiased estimates. With the aid of Akaike information criteria, the optimal lag for the model of this study was estimated to be lag 2, as shown in Figure 2.

Figure 2: Akaike Information Criteria for ARDL Optimal Lag Selection



Source: Extracts from E-views 11

Bounds Test Results for Long Run Relationship

As is the case with all-time series analysis, it is wise to check whether the variables of the model will not drift apart with the passage of time before carrying out the proper estimation of the model. The bounds test was estimated in this study, and the results are presented in Table 2.

Table 2: Results of the Bounds Test

Level of Significance	F- Statistic Value	Lower Bound I(0)	Upper Bound I(1)
10%		2.12	3.23
5%	8.3461	2.45	3.61
2.5%		2.75	3.99
1%		3.15	4.43

Source: Extracts from E-views 11

Table 2 shows that the F-statistic value of 8.3461 is greater than both the lower and upper bounds at the 5% level of significance. The study thus rejects the null hypothesis of no level relationship and infers that there is a long-run relationship among the variables of the model.

Results of the ARDL Error Correction Model

The study estimated the ARDL error correction model, and the results are presented in Table 3.

Table 3: ARDL Error Correction (Short Run) Model

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	83.3706	7.3815	11.2945	0.0001
D(CSG(-1))	-0.2142	0.0544	-3.9405	0.0110
D(COC)	-4.2652	1.2874	-3.3131	0.0212
D(COC(-1))	-7.7863	1.4826	-5.2516	0.0033
D(GEI)	8.3781	1.5452	5.4221	0.0029
D(GEI(-1))	-6.2448	0.9476	-6.5899	0.0012
D(PSI)	1.9700	0.4884	4.0337	0.0100
D(RQI)	-4.3656	0.6014	-7.2586	0.0008
D(RQI(-1))	-1.7420	0.8213	-2.1211	0.0874
D(ROL)	-10.0057	1.5295	-6.5420	0.0012
D(VAI)	4.8350	0.8285	5.8362	0.0021
ECM(-1)*	-0.9711	0.0857	-11.3371	0.0001
R-squared: 0.9760		Durbin-Watson Stat: 2.1826		

Source: Extract from E-Views 11

The results in Table 3 are short-run estimates of the ARDL error correction model. The peak of adjustment (ECM (-1) factor) is -0.9711 with a probability value of 0.0001. This result indicates that it is statistically significant since it is less than 0.05 at the 5% level of significance. This implies that in an event of any temporal deviation by the variables from the long-run path, there is a 97% chance that they will revert along the long-run path within a year.

The result also indicates that the lag values of the shadow economy are capable of reducing the preponderance of the shadow economy in the short run. This is because CSG's coefficient (-0.2142) and its probability value of 0.011 indicate that it is statistically significant at the 5% level of significance. This shows that the preponderance of the nonformal sector in the short run in Nigeria may be influenced by factors other than previous values of the shadow economy itself. It was also found that Control of Corruption (COC), which is peoples' use of public offices for private gains, does not aggravate the shadow economy in the short run. The short-run current value of COC has a negative and significant relationship with the shadow economy, similar to its lag value. The COC value

of -4.2652 and its lag value of -7.7863 were all statistically significant at the 5% level of significance. This implies that control of corruption does not worsen the prevalence of the shadow economy in Nigeria in the short run.

The government effectiveness index showed that it has a positive effect on the prevalence of the shadow economy in Nigeria in the short run, while its lag value indicated otherwise. Both values have a significant effect on the size of the shadow economy in Nigeria. This implies that government policies in Nigeria are not effective in curtailing shadow economic activities. It takes at least a year in the short run for such policies to yield the needed results, as indicated by the lag value of government effectiveness. The political stability index has a coefficient of 1.97 with a probability value of 0.01, implying that in the short run, as the political atmosphere improves and appears stable, people tend to indulge more in black market economic activities. This is contrary to theoretical expectations, but it remains true in Nigeria.

The short-run results also indicate that both the current and lag values of the Regulatory Quality Index (RQI) were found to be negatively related to the shadow economy in Nigeria, especially since the current value of RQI is statistically significant. This shows that improvements in the quality of laws in Nigeria could yield desirable results towards expanding the size of the formal economy against informal shadow activities. The results also indicate that, in the short run, improvements in the rule of law lead to a reduction in the level of the shadow economy in Nigeria, which is in line with theoretical expectations. This relationship is statistically significant given that its probability value of 0.0012 is less than the critical value at the 5% level of significance (0.05). Finally, in the short run, as people's inputs and demands for government accountability improve, it exacerbates the volume of informal sector activities in the country. That is, they tend to abuse it and indulge more in shadow economic activities.

The ARDL Long Run Results

Ultimate economic analyses reside in the long run and hence the need for the long run results, as presented in Table 4.

Table 4: Results of the ARDL Long Run Model

Variable	Coefficient	Std. Error	t-Statistic	Prob.
COC	6.3476	4.5701	1.3889	0.2235
GEI	21.1118	6.1831	3.4144	0.0190
PSI	4.5809	1.0647	4.3025	0.0077
RQI	-9.4004	2.6759	-3.5130	0.0170
ROL	3.5370	3.4815	1.0159	0.3563
VAI	-2.7286	2.2496	-1.2130	0.2793

Source: Extract from E-Views 11

The long-run result of the model indicates that the control of corruption (COC) has a positive though nonsignificant effect on the level of the shadow economy in Nigeria. However, this clearly shows that as people use public offices to advance their private gains to the detriment of the generality of Nigerians, it increases the volume and tempo of nonformal economic activities in Nigeria in the long run. Contrary to expectations, the government effectiveness index (GEI) has a positive and very significant positive effect on the preponderance of the shadow economy in Nigeria. This, however, is in agreement with

the empirical reality given that institutional quality in Nigeria is very weak, as already shown in the trend analysis. Thus, it does not tame but aggravates the level of informal sector activities in Nigeria.

Again, it was found that political stability worsens the problem of informal sector activities. Given the weak nature of institutional quality in Nigeria, an improved level of political stability opens up more room for political office holders, their associates and family members to perpetrate shadow economic activities the more fully knowing that the law will not catch up with them. The coefficient of the regulatory quality index (RQI) was found to have an inverse significant control over the shadow economy in Nigeria. This implies that once the quality of legislation in Nigeria improves, people are willing to give up informal economic activities. This is in line with the human self-esteem instinct of man, as highlighted by Kanniainen et al. (2004).

Concerning the rule of law index (ROL), there is a positive relationship between the rule of law and the prevalence of the shadow economy in Nigeria. ROL has a coefficient of 3.5370 with a probability of 0.3563, implying that it is not statistically significant. However, this is expected because the general perception of Nigerians is that the law in Nigeria favours only the rich, and as such, improvements in the rule of law may not necessarily influence many people to give up informal sector economic activities. The Voice and accountability index is negatively related to the shadow economy in Nigeria. Although this relationship may not be statistically significant, it implies that as an increasing number of people perceive that they have a say in the affairs of governance as it affects them, they tend to operate their business formally.

Post Estimation Test Results

It has become a custom to subject econometric models to some basic post estimation tests to ensure that the relationship estimated by the model was correctly specified and to examine whether the residuals did not violate basic assumptions of the least square methods.

Table 5: Ramey RESET, Heteroscedasticity and Serial Correlation Tests

Ramsey RESET Test	Value	df	Probability
t-statistic	0.849820	4	0.4433
F-statistic	0.722194	(1, 4)	0.4433
Heteroskedasticity Test: Breusch–Pagan-Godfrey			
F-statistic	0.274262	Prob. F(17,5)	0.9799
Obs*R-squared	11.09827	Prob. Chi-Square(17)	0.8514
Scaled explained SS	0.337656	Prob. Chi-Square(17)	1.0000
Breusch-Godfrey Serial Correlation LM Test			
F-statistic	7.204084	Prob. F(2,3)	0.0715
Obs*R-squared	19.03634	Prob. Chi-Square(2)	0.0001

Source: Extracts from E-views 11

The results in Table 5 indicate that the relationship between shadow economy and the WGIs was correctly specified given that both the t-statistics and the F-statistic values have their probability values of 0.4433 each. Once the probability values are greater than the 0.05 level of significance, the relationship is correctly specified; otherwise, it is not. Similarly, the result of the heteroscedasticity test shows that the residuals exhibited constant variance in line with the stochastic process and as such can be adjudged to be

homoscedastic. This conclusion also stems from the probability values of the F-statistic (0.9799), observed R-squared (0.8514) and scaled explained SS (1.00), which are all above the 0.05 threshold level. Finally, the serial correlation test indicates a case of partial correlation given that the probability value of the F-statistic is 0.0715 but that of the observed R-squared is 0.0001. However, this does not invalidate the results since the estimates are still unbiased and consistent. All these results confirm that the model performed well and fits the data.

Conclusion and Recommendations

Based on the results obtained by this study, it is clear that if Nigeria must get it right towards taming with the size of the shadow economy in the country, it must continually improve the quality of legislation in the country. It is one indicator with a negative significant impact on Nigeria's informal sector for both short- and long-run analyses. Again, since ultimate economic analysis targets the long-term impact, it can be concluded that WGIs in Nigeria are largely very weak and cannot effectively tame the size of informal economic activities in the country. For instance, COC, GEI, PSI and ROL were all found to have positive impacts on the prevalence of the black market economy. This shows that they are weak and do not effectively translate into convincing the general public to eschew shadow economic activities and operate formally to boost government revenue. Again, with a large nonformal sector, it becomes increasingly difficult for the government to achieve set monetary and fiscal policy targets due to the presence of a largely unregulated sector.

On the basis of the findings of this research, it is recommended that:

Nigeria must improve the quality of its legislation in a way that people will truly believe their interests are protected. The legislative process must be transparent with inputs from a wide spectrum of the public (both low and high class). Again, the minimum requirements for legislative positions in Nigeria must be raised to certificates higher than school certificates or equivalent. It takes a well-developed mind to conceive, debate and pass high-quality laws as it is done in advanced democracies.

The long-term effects of the Worldwide Governance Indicators (WGIs) on the preponderance of the shadow economy in Nigeria have more explicitly exposed the weak nature of Nigeria's institutional quality. This calls for a change in the altitude of both the rulers and the rule towards ensuring that the right thing is done at each point. Let the conscience of all Nigerians stay alive towards administering public offices and holding public office holders accountable for their actions and inactions. Stronger institutions need to be built rather than building stronger individuals because enduring sane systems survive on the platform of institutions and not individuals.

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GUARANTEEING THE RIGHT TO HEALTH THROUGH THE COMPULSORY HEALTH CARE INSURANCE FUNDS IN THE REPUBLIC OF MOLDOVA

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Abstract: *Health, like education, defense or social protection, represents a field of particular importance, which requires a significant volume of resources, a large amount of services, as well as the entire population as a consumer. The actuality of the article resides in the complexity of the compulsory health care insurance funds, especially in conditions of crisis and financial stress. The aim of the article is to highlight the existing problems in the effective execution of the compulsory health care insurance funds, but also their reconfiguration in the context of the reduction and aging of the population as a demographic indicator, which greatly affects the consumption of medical goods and services. The main results obtained as a result of the investigations, consist in performing a broad diagnosis of the compulsory health care insurance funds, as well as offering practical recommendations for improving the respective process. Regrettably, the uncertainty and financial tension we are in, requires us to find new opportunities to maintain and develop the financing mechanisms of the healthcare system, but also to control costs.*
Keywords: *compulsory health care insurance funds, accumulated income, expenses executed, financial tension, crisis.*
JEL Classification: *H51; H61; H75; I15.*

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Introduction

The financing of the healthcare system continues to be an acute problem for the whole society, determined by the place it occupies in the structure of the national public budget. Financing, being one of the main factors that ensures the sustainable functioning of the healthcare system, creates favorable conditions for satisfying the population's need and demand for qualitative and sufficient medical services. The opportunity of this research is also motivated by the fact that the Republic of Moldova requires the intelligent use of the financial and administrative possibilities of the healthcare system. The Republic of

Moldova ranks unfavorably in most of the population health evaluation indicators, including demography, which indicates both the existence of deficiencies in the healthcare system and the need for increasing financing of this system. Moreover, the share of health expenses in GDP is higher in Moldova, compared to the countries in the region, but public expenses cover only half of the total expenses. Certainly, such a high share of health expenses in GDP, especially private expenses, may reflect both the very high financing needs and the inefficiency of public expenditures. As mentioned before, the financial strain on the compulsory health care insurance funds (hereinafter CHCIF) is largely generated by the aging of the population, quality of life, as well as the health situation of the population. A good state of health is a value and a true source of economic and social stability and sustainability. This is a key factor for reducing poverty, an element that contributes to the sustainable development of the healthcare system and the country, and every citizen only has to benefit from it. The most important thing is that good health indicators are no longer the result of a single field: the sustainable improvement of population health respecting the principle of social equity is, in fact, a product of effective policies promoted at all levels of the state and collaborative efforts from all segments of society [16].

The financial resources allocated to the healthcare system are considered short-term costs and not long-term investments, therefore, a budgetary amendment is required to accept, by all the decision-making components, that health is not a cost, but an investment. Health is not only a concern of the Ministry of Health, the National Medical Insurance Company and the medical institutions, but of all the authorities responsible for economic growth and sustainable development. As a result, by investing in health, benefits will be obtained in favor of economic development and, finally, it will contribute to the increase of the general budget of the country [2].

Data sources and used methods

As sources of information, the authors have used the statistical data of the World Health Organization, the Organization for Economic Cooperation and Development, the Ministry of Health of the Republic of Moldova, the Ministry of Finance of the Republic of Moldova, the National Bureau of Statistics, the National Medical Insurance Company, etc. In the paper, the authors have used classical methods of analysis and synthesis, induction and deduction, history and logic, comparative and systemic analysis, as well as a contemporary approach to health care revenue and expenditure trends.

Analysis and interpretation of results

The pandemic has generated emerging and unprecedented challenges for both human health and the well-being of healthcare systems, which is why financing mechanisms are becoming vital to promote health and support health equity and accessibility. According to specialized literature, the most widespread ways of financing health systems at the international level are [1]:

1. The national health care system, which is based on financing from taxes (Great Britain, Italy, Greece, Norway, Israel);

2. The health care system, based on medical insurance that is financed from the contributions of employers and employees (Germany, Austria, France, Czech Republic, Japan, Romania, Russia, Armenia, Republic of Moldova);
3. The private health insurance system, which is largely based on voluntary health insurance made at insurance companies (USA). To begin with, one can address the notion of compulsory health care insurance, which is found in the Law on compulsory health care insurance [8], namely "Compulsory health care insurance is an autonomous state-guaranteed system of financial protection of the population in the field of health protection by establishing, on the principles of solidarity, from the account of insurance premiums, some monetary funds intended to cover the expenses of treatment of states conditioned by the occurrence of the insured events (illness or condition). The system of compulsory health care insurance offers the citizens of the Republic of Moldova equal opportunities to obtain timely and qualitative medical assistance". The object of the compulsory health care insurance is the insured risk, related to the expenses for providing the necessary volume of medical and pharmaceutical assistance, provided in the Single Program. In order to achieve the objectives of compulsory health care insurance, NMIC establishes and mandatorily manages the following funds:
1. the fund for the payment of medical and pharmaceutical services (on medical services sub-programs and, separately, on the pharmaceutical services sub-program intended for the compensation of medicines) (the basic fund); 2. the reserve fund of the compulsory health care insurance (the reserve fund); 3. the fund of preventive measures (prevention of insurance risks) (the fund of preventive measures); 4. the fund for development and modernization of public medical service providers (the development fund); 5. the management fund of the compulsory health care insurance system (the management fund). The financial means accumulated in the above mentioned insurance funds, including the sums of penalties and pecuniary sanctions, are intended for carrying out activities specific to compulsory health care insurance. The breakdowns from all the payers of compulsory medical insurance premiums are accumulated in the NMIC single account [4], which is later used to cover the specific expenses of each individual fund. At the same time, according to the provisions of GD no. 594 of 14.05.2002, the revenues received from the NMIC's single account during the year, except for the amounts with a special destination, are distributed as follows: the basic fund – not less than 94%; the reserve fund – up to 1%; the fund of preventive measures – 1%; the development fund – up to 2%; the management fund – up to 2%.

The CHCIF is approved annually by the Law on Compulsory Healthcare Funds and amended as necessary. During the analyzed period, the changes to the CHCIF were determined by a number of factors, such as: covering expenses for dialysis services, food, public transport for tuberculosis patients, the cost of medicines intended for oncological patients, of compensated medicines, motivation of the staff involved in the treatment of COVID-19, salary increases for employees in medical institutions, etc. Therefore, further, we will examine the CHCIF indicators for the period of 2015-2022, based on the data from the NMIC Reports and the Ministry of Finance.

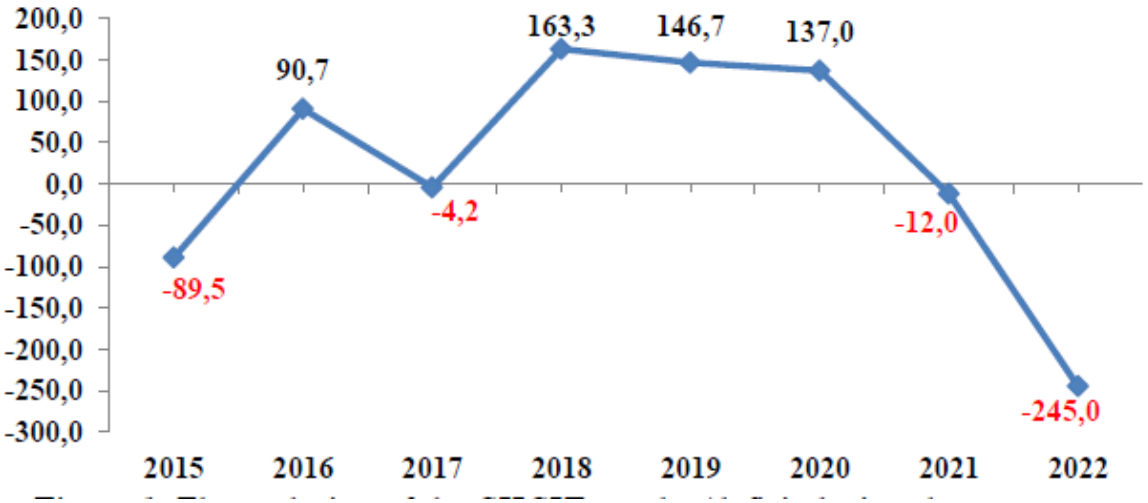
Table 1. The evolution of CHCIF indicators for the period of 2015-2022, million lei

Indicators	Executed							Precise A.2022
	A.2015	A.2016	A.2017	A.2018	A.2019	A.2020	A.2021	
Income	5 062,9	5 764,2	6 256,6	6 877,4	7 636,3	8 542,5	11 540,0	12 373,6
Expenses	5 152,4	5 673,5	6 260,8	6 714,1	7 489,6	8 405,5	11 552,0	12 618,6
Surplus/ Deficit (surplus (+/, deficit (-))	**-89,5**	**90,7**	**-4,2**	**163,3**	**146,7**	**137,0**	**-12,0**	**-245,0**

Source: elaborated on the basis of [3;9;10;11;12;13;14;15]

From the data in Table 1, it can be noted that the revenues of CHCI in 2022 increased by 2.4 times compared to 2015, from 5 062.9 million lei to 12 287.6 million lei, which is positively appreciated for the healthcare system. Also, the CHCI expenses approved for the year 2022 are increasing by 7 135.2 million lei compared to 2015. The CHCIF indicators approved for the year 2022 [6] under the influence of some factors have undergone changes [7], respectively the revenues have increased up to 12 373.6 million lei and, respectively, expenses up to 12 618.6 million lei, with a deficit of 245.0 million lei. The evolution of the CHCIF surplus/deficit during the years 2015-2022 is reflected in Figure 1.

Figure 1. The evolution of the CHCIF surplus/deficit during the years 2015-2022, million lei



Source: elaborated on the basis of [3;9;10;11;12;13;14;15]

From Figure 1, one can deduce that the medical insurance system in 2015 recorded a deficit of 89.5 million lei, this decreasing to 12.0 million lei in 2021 and increasing by 155.5 million lei in 2022 Also, a surplus of resources can be observed in 2016 (90.7 million lei), 2018 (163.3 million lei), 2019 (146.7 million lei) and 2020 (137.0 million lei).

CHCI revenues are made up of [15]:

a) compulsory health care insurance premiums (hereinafter – *CHCI premiums*),

b) transfers from the state budget (hereinafter – *transfers from SB*) and
c) *other revenues*, represented by fines and pecuniary sanctions, bank interest, breakdowns from the single tax levied from residents of information technology parks.

Further, we will analyze the volume and structure of CHCI revenues, for the period of 2015-2022.

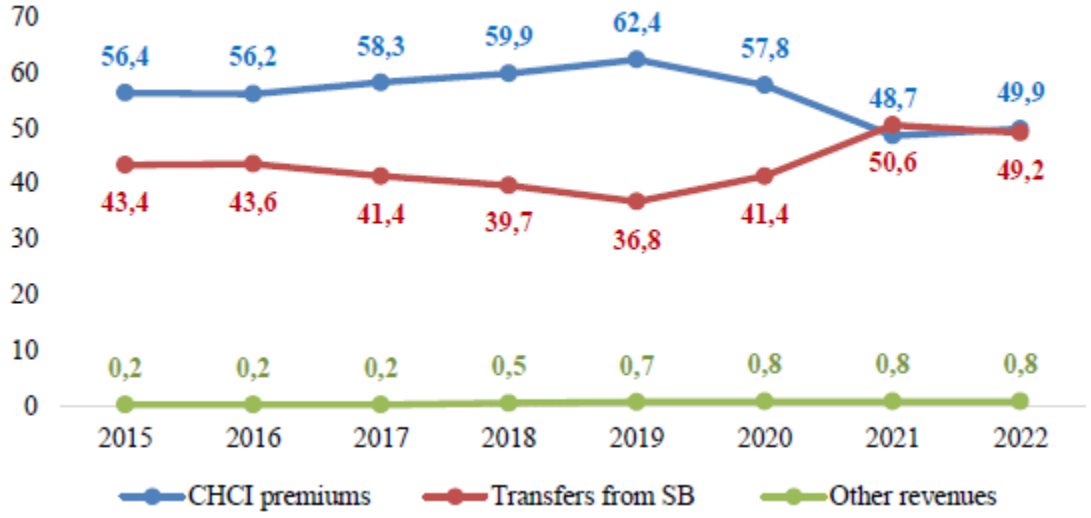
Table 2. The structure of CHCI revenues, for the period of 2015-2022, million lei

Indicators	Executed							Precise A.2022
	A.2015	A.2016	A.2017	A.2018	A.2019	A.2020	A.2021	
Total revenues	5 062,9	5 764,2	6 256,6	6 877,4	7 636,3	8 542,5	11 540,0	12 373,6
CHCI premiums	2 854,5	3 240,2	3 648,4	4 117,6	4 768,1	4 939,5	5 615,1	6 179,9
Transfers from SB	2 197,7	2 512,7	2 593,0	2 728,0	2 813,7	3 533,7	5 835,0	6 095,2
Other revenues	10,7	11,3	15,2	31,8	54,5	69,3	89,8	98,5

Source: elaborated on the basis of [3;9;10;11;12;13;14;15]

From the data in Table 2, it follows that during the analyzed period, the majority share in the structure of CHCIF revenues belongs to CHCI premiums. The CHCI premiums represent a fixed amount or a percentage contribution to the salary and other rewards, which the taxpayer is obliged to pay in the CHCI funds for taking over the risk of illness [9]. It is observed a constant increase of the own incomes and a stability of the transfers received from the state budget. The graphic presentation of CHCI revenues is presented in Figure 2.

Figure 2. The structure of CHCI revenues in the period 2015-2022, million lei



Source: elaborated on the basis of [3;9;10;11;12;13;14;15]

In the structure of CHCI's revenues, the most significant share is owned by own revenues (including other revenues). At the same time, it is observed that in 2021, compared to the other analyzed periods, the revenues transferred from the SB increased significantly, exceeding 50.6% of total revenues, which in our opinion is due to the crises faced by the healthcare system, especially the pandemic crisis (COVID-19). Therefore, the state used all the available levers to reduce the financial strain, which took hold of the healthcare system. In 2022, based on the data specified in the Law on compulsory health care insurance for the year 2022, a slight decrease in transfers from SB to CHCIF can already be observed. Currently, the expenditures for the healthcare system in the Republic of Moldova are at an extremely low level, compared to other developing countries. According to the official data of the National Bureau of Statistics of the Republic of Moldova, starting from 2015 and until 2021, the expenses for health protection in the total expenses of the consolidated budget registered a positive progress of approximately 16.5% in 2021 (Table 3). This aspect is seen as positive for the healthcare system, although the financial tension during the analyzed period was extremely high, in crisis conditions, in national and international post-crisis. In Table 3, the expenses for healthcare protection are analyzed, as well as their share in the total expenses of the consolidated budget and in the GDP, in dynamics for the years 2015-2021, based on the data of the National Bureau of Statistics of Moldova.

Table 3. Analysis of the expenses for healthcare protection, during the years 2015-2021

Indicators	A.2015	A.2016	A.2017	A.2018	A.2019	A.2020	A.2021
The expenses for healthcare protection, mil. lei	6 455,8	6 505,5	7 268,7	7 799	8 935	9 990,2	13 527,8
Share in total expenditure of the consolidated budget, %	13,9	13,4	13,3	13,1	13,1	13,6	16,5
Share of health spending in GDP, %	5,3	4,0	4,1	4,1	4,1	5,0	5,6

Source: elaborated on the basis of NBS data [5]

From the data in the Table, one can note that, in 2021, the expenses for healthcare protection amounted to 13 527.8 million lei, which is 2.1 times more compared to 2015. Likewise, a positive trend of health expenses is attested in the total consolidated budget, which in 2021 registered 16.5%, or practically, the largest share of the entire analyzed period, when this indicator accounted for approximately 13%. Public expenditure on health in relation to GDP amounted to 5.0% in 2018, registering a significant increase of 1.4% compared to 2009 and an increase of 0.3% compared to 2015, when they accounted for 5.3% from GDP. We find that the highest share of spending on the healthcare system was reached during the years 2021 (5.6%), 2015 (5.3%) and 2020 (5.0%). The country's economic recession will have a significant effect on both, the health of the population and expenditures on healthcare protection. Nowadays, for the Republic of Moldova, as a developing country, it is extremely important to make investments in the healthcare system to maintain the stability and security of the country, as well as to accelerate the recovery of the economic situation.

We conclude that in the current conditions of economic, social, political, energy crises, as well as limited financial resources, the share of public expenditures for the healthcare

system in the national public budget is increasingly feeling the financial tension, a situation that requires, of course, undertaking efficiency measures and identifying possible additional financial sources.

With respect to the CHCIF expenses for the period of 2015-2022, one can note that they were executed (planned - 2022), resulting from the amount of existing financial means, as well as the capacity of medical institutions in the healthcare system. Table 4 presents CHCIF expenses in evolution and for each individual insurance fund.

Table 4. Expenses analysis CHCIF for the period of 2015-2022, million lei

Indicators	Executed							Specified A.2022
	A.2015	A.2016	A.2017	A.2018	A.2019	A.2020	A.2021	
Total expenditure	**5 152,4**	**5 673,5**	**6 260,8**	**6 714,1**	**7 489,6**	**8 405,5**	**11 552,0**	**12 618,6**
The basic fund	4 899,6	5 570,2	6 162,9	6 586,4	7 333,7	8 270,1	11 436,2	12 428,8
The reserve fund	14,9	15,1	0,0	0,0	0,0	10,0	0,0	10,0
The fund of preventive measures	12,9	2,5	6,0	11,8	22,0	25,3	19,6	50,0
The development fund	154,3	12,8	18,6	38,1	55,3	19,9	9,5	15,0
The management fund	70,7	72,8	73,3	77,8	78,6	80,2	86,7	114,8

Source: elaborated on the basis of [9;10;11;12;13;14;15]

From the data in the Table, it can be seen that the basic fund (for the payment of medical and pharmaceutical services) annually allocates resources that constitute no less than 94% of the total revenues of CHCI, which ensures compliance with the legal provisions [4]. Thus, in 2021 the expenses allocated to the basic fund recorded the amount of 11 436.2 million lei (99%), which is with 7 529.2 million lei more than in 2015 or by 2.3 times more. The management fund is on the second position, with 86.7 million lei in 2021, followed by the fund of preventive measures with 19.6 million lei, the development fund with 9.5 million lei and on the last position is placed the reserve fund.

According to the Regulation on the manner of constitution and management of the compulsory health care insurance funds [4], the financial means accumulated in:

1) **the basic fund,** are intended for expenses for the realization of the Single Program of CHCI, which includes: pre-hospital emergency
medical assistance; primary healthcare; specialized outpatient medical assistance, including dental; hospital medical assistance; high performance medical services; community and home health care; palliative care; compensated medicines;

2) **the reserve fund,** are used to cover additional expenses related to illnesses and urgent conditions; compensating the difference between the actual expenses related to the payment of current medical services and the accumulated contributions (expected income) in the basic fund;

3) **the fund of preventive measures**, are used to cover the expenses related mainly to: carrying out measures to reduce the risks of illness, including through immunizations and other methods of primary and secondary prophylaxis; performing prophylactic

examinations (screening) in order to detect diseases early; financing events and activities aimed at promoting a healthy lifestyle; the purchase, based on the decision of the Government, the Extraordinary National Public Health Commission, of medical devices, equipment, medicines and consumables for the implementation of measures to reduce the risk of illness and treatment in case of public health emergencies; other activities of prophylaxis and prevention of the risks of illness, accepted for financing on the basis of projects, according to the regulation approved by the Ministry of Health, Labor and Social Protection and the Company;

4) **the development fund,** are intended to increase the quality of medical services, the efficiency and performance of public medical service providers and are mainly used for: procurement of high-performance medical equipment and means of transport; implementation of new heating technologies, medical waste processing and water supply and sanitation; modernization and optimization of buildings and infrastructure; implementation of information systems and technologies;

5) **the management fund**, are used for: salary of the Company's employees and territorial agencies (branches); covering travel expenses; maintenance of the information system and organizational infrastructure; carrying out quality control of medical services and respective expertise; operational expenses; procurement of fixed assets, the necessary equipment with the performance of depreciation breakdowns; household and office expenses; staff training and improvement; other activities related to the administration and management of the compulsory health care insurance funds.

Conclusions and suggestions

In conclusion, one can mention that the low level of funding, especially in crisis situations, exposes the healthcare system to a huge danger, namely: the impossibility of providing medical institutions with medicinal products, food products, utilities and paying the salaries for medical staff. In this context, we consider it imperative to focus on reducing the financial strain on the health system, from the perspective where a series of problems/factors persist in different fields (education, defense or social protection) that directly or indirectly affect the revenues and expenses of the healthcare system. At the same time, it is extremely important that health reforms focus not only on access to medical services, but also on improving the cost control mechanisms. Taking into account the volume of revenues and expenses of CHCI, the purchase of high-performance equipment, investments in the technical-material base of hospitals, better hotel conditions, but also decent salaries for the medical personnel involved in the medical act cannot be fully covered at the moment.

In the context of the aforementioned, we consider it necessary to undertake the following actions:

1. The Republic of Moldova must give a higher priority to the healthcare system, to improve the health of the population, prevent diseases, undertake control actions to reduce threats to the health of the population.
2. Strengthening the capacities of the healthcare system to deal with possible pandemics or crises.
3. Digitization of the healthcare system and modernization of the healthcare infrastructure.

4. A more prudent monitoring of healthcare expenditure in order to reduce financial stress (continuous control of costs, conducting audits, performing resilience tests, financing from mixed sources, strategic planning, etc.).
5. Promoting policies regarding the aging of the population, in order to maintain the quality of life and the sustainability of the healthcare system.
6. Improving the resilience of the healthcare system in the Republic of Moldova.

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JUDICIAL REVIEW OF THE DISPUTE SETTLEMENT BY THE COURT INSTITUTION BETWEEN THE FOUNDATION AND ITS MANAGEMENT

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Abstract: *The organ of the foundation legal entity runs the function of the foundation; therefore the management action should not be based on their personal matters, but supposed to be for and on the behalf of as well as under the responsibility of the foundation. The problem of the research, first, how is the dispute between the foundation and its management? Second, how is the dispute settlement between the foundation and its management by the court institution? The purpose of this research is to know the dispute between the foundation and its management during the internal conflict of the dismissal, replacement and appointment of the foundation management and the procedure of the dispute settlement between the foundation and its management by District Court Institution and the State Administrative Court. If it is found that one manager committed an act which possibly harm the foundation, then according to the agreement of the council meeting, the manager should be dismissed, this matter trigger the internal dispute in the foundation. This settlement should be resolved by filing a lawsuit from the manager who had been dismissed based on the unlawful act of the foundation. This is normative research with qualitative analysis. The summary of this research is that the settlement between the foundation and its management caused by the implementation of the foundation activities is not in accordance with the applicable laws and is not based on the implementation of the article of the association of the foundation, resulting in violation, the dispute settlement between the foundation and its management by the court institution is one of the alternative that can be used and it mentioned in the provision of the foundation, depending on the types of the dispute, the object of the dispute to be settled in front of the court.*
Keywords: *foundation, the management, dispute in the court.*

Introduction

Foundation conducts the activities with non-profitable orientation. Foundation can be established by one person or more, in which the assets of the founder are separated between his/her assets and parts of the prior assets of the foundation. The foundation established by the will in which the message of the will said if the foundation should be established, in this case it is considered as the obligation of the appointed beneficiary to execute the will. In the beginning, foundation is not specially regulated in any regulation,

but only based on the common practice and jurisprudence in certain cases, it is indeed that the foundation is considered as a legal entity. Foundation is one of the forms of the legal entity recognize by the Indonesian government, and its existence had been well known by the Indonesian society since the Dutch Colonization. The term of the foundation is a translation from the term "stichting" in Dutch language and "foundation" in English (Chatamarrasjid, 2000). The rapid development of the foundation is not supported by any clear regulation, resulting in any possibilities of the legal dispute, which can involve the interest of the management as well as any other parties who have their concern for the foundation, in this case, it includes the government (Murjiyanto, 2011).

Based on the recommendation and the pressure from various parties, it is finally that the foundation in which at the beginning only a term and only can be found in the Indonesian Civil Code/KUHPer (hereinafter referred to as KUHPer) or Burgelijk Wetbook (hereinafter referred to as BW) then the government together with the House of Representatives formed Law no. 16 of 2001 concerning Foundations, was later amended by the issuance of Law no. 28 of 2004 concerning Foundations which has been in effect until today. Law Number 28 of 2004 concerning Amendment to Law Number 16 of 2001concerning Foundations (hereinafter referred to as Law on Foundation). Article 1 point 1 explains that a foundation is a legal entity consisting of assets, separated and intended to achieve certain goals and objectives in the social, religious and humanitarian fields, in which it does not have any members.

In accordance with the principle of the foundation that the foundation has no members, unlike companies, in which the party who put his/her capital in the company are basically members of the company, or the owners of the company. While in the foundation there are people who manage the foundation, which in the Law on Foundations is called the organ of the foundation consisting of counsel, management and supervisor (Murjiyanto, 2011). Based on the Law on Foundations, it is explained that each organ of the foundation is not allowed to have more than one positions, for example the member of council may not serve as a member of the board and/or member of the supervisory board at the same time , the management may not serve as counselor or supervisor at the same time , and the supervisor may not serve as a counselor and manager at the same time.

In relation to the authority of each organ of the foundation, the management of the foundation has special powers, duties and obligations based on Article 35 paragraph (1) of the Law on Foundations which stipulates that the management of the foundation has the right to represent the foundation both inside and outside of the court. If the management of the foundation dismissed at any time by the supervisor based on the decision of the council meeting, then the management of the foundation has the right to submit the application to the court for the cancellation of the dismissal no later than 30 days from the date request of the cancellation submitted.

The management dismissed previously is the significant party in which the decision to conduct the meeting regarding the dismissal should be held, because they are the parties affected by the damage of the council decision meeting. This matter can cause dispute in the state court, this type of lawsuit is categorized as an act against the law for the decision of the meeting council. Besides the dispute in the state court, the result of the council meeting regarding the dismissal of the management must be reported to the Minister of Law and Human Rights (hereinafter referred to as Menkumham) and the valid notification must be proven by a valid report. The legal report is the state administrative court' verdict,

therefore it also triggers another dispute for the verdict of the state administrative court which happen in the state administrative court.

Based on the explanation about us, then it is needed to conduct a judicial review regarding the dispute resolution in the state court and state administrative court between the foundation and the management of the foundation dismissed by the decision of the council meeting. Based on the introduction above, the problems of the study this research can be stipulated as below:

1. How is the dispute between the foundation and its management?
2. How is the dispute resolution between the foundation and the management of the foundation by the court?

Research method

Normative legal research is legal research in which the legal foundation is in the form of norm system scheme. This is norm system made to define the principles, norms, the rules in the regulations, court verdict and doctrines (Fajar & Achmad, 2017). This approach is used to determine from which side the object of the research that will be evaluated (Suteki & Gaang, 2018). This research used several research approaches, namely: statute approaches in which this approach was used to review some regulations regarding the settlement between the foundation and the management, and case research approach was used to identify the jurisprudence qualified court verdict regarding the dispute in the foundation. This research was conducted by reviewing the court verdict which used theoretical foundations, such as theory or doctrine, legal principles, legal concepts, and legal adages (Diantha, 2016).

The resources for the normative legal research consist of: primary, secondary and tertiary resources, therefore this research used some legal resources, including: primary legal resources, secondary legal resources, and tertiary legal resources (Efendi & Ibrahim, 2018). The technique used to collect the legal data in this research is the technique of literature study in which this technique is used to collect all of the legal data in this research. During the implementation of the literature study technique, the researcher collects the primary and secondary legal data by recording the data in the form of the document by using filing system (Suwitra, 2009). The technique of analysis for the legal data in this research used descriptive analysis technique, by analyzing the primary and secondary legal data (Ali, 2013). It shows the weakness, the flaw, and the strength of any regulation or rules that was being studied. It is also trying to find the correlation between the pattern of a legal concepts or legal proposition between the terms stipulated in the same rules or regulations.

Results and discussion

A. The Dispute Between the Foundation and Its Management

The enactment of the Law on Foundations is intended to provide legal certainty for foundations, even the Law on Foundations can be used as a basis for taking any legal actions in case of irrelevancy. One of the obstacles to manage the foundation professionally is that there are still some issues regarding the foundation that should be solved both internally and externally. It is not easy as imagine to run a foundation, this is because of

the nonprofit character as the basis of the foundation in conducting their activities. It needs a lot of support from various parties. A good collaboration between external and internal parties could bring massive impact for the financial situation of the foundation. It also impacts the future vision and mission of the foundation as an organization.

Organizing is one of the basic activities from the management, it is needed to manage all of the resources needed including the human element. Human is the most important part of in organizing and through it, human can do their duties which are related. The main purpose of the organization is to guide human to be able to work together affectively (Terry, 1984). A good management of the foundation could not separate from a good managerial system, in which humans do to run the managerial system. Human who run the and managerial in the foundation is the organ of the foundation, consist of councils, management and supervisors. It requires a good cooperation between all of the foundation's organ to run the foundation as well as possible. The authorities, duties and functions of each organ in the foundation regulated in the provisions of the regulation which govern the foundation as well as in foundation's article of the association.

The theory of authority related to the authority possessed by each organ. Indroharto, stated that there are three types of authority from the regulation. Those authorities including: attribution, delegation and mandate (Ridwan, 2008). It is prohibited for the council, management or supervisor to have more than one position in the foundation. This is to avoid the possibility of the overlapping authority, duties, and the responsibility between the organ in the foundation. It is also to prevent the bad impact from the benefit of the foundation or any other parties. Because the authorities of the foundation's organ related to each other, then it is not possible to get more than one position in the foundation. Authority is the capability to carry out certain legal actions.

We can also define the authority as the right that we have to take decision, or to do some action based on the responsibility that had been given. The element of the authority, as stated by Hadjon (2005), included:

According to the Law on Foundations, council is an organ in which their authority cannot be delegated to the management or to the supervisor by law or by the articles of association. Those who can be appointed as supervisors are the founders of the foundation or the one who is considered having high dedication based on the decision of the members meeting to achieve the target and the objectives of the foundation. The council is not allowed to have more than one position nor as the management or as the supervisor. The authorities of the council are: to decide the amendment of the article of the association, the appointment and the dismissal of the foundation's members as well as the members of the supervisor, to enact the general policy of the foundation based on the article of the association of the foundation, to ratify the work program and the draft of the annual budget of the foundation as well as to enact the policy the merger and the dissolution of the foundation.

According to the Law on Foundation, the management is the organ of the foundation who manage the foundation. One can be appointed as the manager of the foundation who have the capabilities to take legal action and he or she is not allowed to have more than one position both for the council nor the supervisor. Foundation manager appointed by the council based on the result of the council meeting for the terms of 5 years, and can be reappointed for another 1 more term, in the other word for another 5 years. The management consist of the chairman, the secretary and the treasurer. They must carry out

their duties in accordance with the aims and the objectives of the foundation. If in any occasions, it is found that the member of the management department takes any action which harm the foundation, then based on the decision of the council meeting, the manager should be dismissed. Basically, the manager is responsible for the management of the foundation or to carry out the duties for the benefits and based on the objectives of the foundation, as well as to represent the foundation inside and outside the court. Nevertheless, the manager is not allowed to represent the foundation if there is a dispute in front of the court between the foundation with the members of the management department or if the members of the management department have any other conflict of interest regarding the foundation. Besides, the foundation is not allowed to put the assets of the foundation as a collateral, and is not allowed to transfer the assets of the foundation except with the approval of the council and also is not allowed to burden the assets of the foundation to any other parties. According to the article of the association, the authority of the management department restrains the authority of the management department in executing legal act on the behalf of and under the name of the foundation. And if in any cases that the foundation bankrupt caused by the negligence or any failure of the manager, and if the asset of the foundation is not enough to cover the loss, then the managers must be responsible together to cover the loss.

The supervisor is the organ in the foundation which responsible to supervise and to advise the management department in conducting any duties for the foundation. The supervisor is not allowed to have more than one position in the foundation both for the council nor for the manager, and the supervisor can be dismissed any time based on the decision of the council meeting. The supervisor organ in the foundation can have this position for 5 (five) years. It is the same with the terms for the manager and can be reappointed based on the provision mentioned in the article of the association. This is to avoid the time gaps in carrying out the duties between the supervisor and the manager, appointed and dismissed at the same time to avoid the extensive time gap, unless it is not stipulated in the provision, the organ of the foundation who resigned or pass away (Panggabean, 2007).

The supervisor has the authority to dismiss the members of the management with the status of temporary dismissal, then the supervisor is obliged to summon the members of the management to defend themselves. The supervisor then can revoke or approve the dismissal. It is the same case with the supervisor that if there is any cases about bankruptcy regarding the foundation caused by the mistake or the negligence of the supervisor, in which the asset of the foundation is not enough to cover the cost of the bankruptcy, then every member of the supervisor must be responsible together to cover the losses, unless it can be proved that the bankruptcy is not caused by the mistake or negligence of the supervisor.

According to the provisions of the Article 31 paragraph (2) and Article 40 paragraph (3) the appointment of the management's members and supervisor's members should meet certain requirements that is the member is a person who are capable in taking any legal action. In this case it means that anyone can be appointed, but by considering various aspects, such as the education and experience, capabilities and responsibilities, managerial and professionalism (Margono, 2015).

Practically there are some foundations in Indonesia indeed have different purposes with the philosophical objectives of the foundation establishment. This is because it is

difficult to define what does it meant by social activities. For example, the foundation run their activities in the field of education and hospital. Whether the education and health, what it meant by social activity, nevertheless, in practice there are many health and education institution which run for profit, and even we have a saying that to get a good education and healthcare one must pay for a very expensive price. Besides, foundation was established to meet a company standard. This kind of foundation was established to get profit directly or indirectly. This kind of foundation was categorized as company which expect to get tax relaxation. This is not only the misconduct on the purpose of the foundation that is a non-profit organization but basically this is also a misconduct to make an organization in the form of foundation. This is happened to the foundation in which they do not reflect an activity which open and accountable. There are many significances from one party and/or a group reflected on the significance of the aims and purposes of the foundation.

The supervisor is an organ who have duties to supervise and suggest the manager in carrying out their duties, they also have the authority to temporary early dismiss the manager. This temporarily dismissal must have a clear reason and it obligate to report it in writing to the council. After the report is received, the supervisor is obliged to summon the member of the management department who is being on the case to defend him/herself, therefore the council might revoke the temporary dismissal or dismiss the member. If the supervisor does not implement the mechanism, the temporary suspension is null and void by law.

The council in this case have dismissed the manager based on the temporary dismissal decree issued by the supervisor and/or in a case in which the council who directly dismiss the manager must be based on the decision of the council meeting. The council decision regarding the dismissal of the manager, in case of the appointment, dismissal and replacement of the management department which conducted outside from the provision stated in the article of the association, then on the request of the interest party or on the request of the state attorney in representing the public interest, the court have the ability to cancel the appointment dismissal, or replacement in no later than 30 (thirty) days since the date when the request of the cancellation submitted.

The management who is dismissed by one party with the interest regarding the authority to apply for the cancellation and replacement for himself/herself, in this case it must be settled by the court's verdict. The manager dismissed by the council meeting has no authority to represent the foundation because if anything happened resulting in a case which must be settle in the court between the foundation with the member of the management department or the member of the management department have conflict of interest with the interest of the foundation. Therefore, in this case, he/she has no authority to represent the foundation based on the provisions mentioned in the article of the association.

This condition is one of the internal disputes occurred in the foundation and the resolution of this case can be settled through litigation process or through the process in the court. The dispute regarding the dismissal of the foundation's manager is sensitive matter, therefore the settlement must be done by the court process in order to obtain the certainty, justice and benefit for all of the parties in the case.

B. Dispute Resolution of the Foundation and the Management of the Foundation by the Court.

Dispute was triggered by differences of opinion, it also leads to fight, disagreement, conflict, problems and legal cases. Dispute or conflict is a form of actualization for the differences of the interest between two parties or more (Sutiyoso, 2006). A situation in which both parties or more was faced by the differences of interest, it will not become a dispute if the losing party only hold the feeling of the dissatisfaction or apprehension. A situation became a dispute if the parties who had been infected confess their dissatisfaction or apprehension both directly or indirectly to the party who caused the losses (Usman, 2002). According to the theory of Pruitt and Rubin (2004), there are 5 resolutions of the dispute, those are:

a. Contending, which is trying to implement a resolution preferred by one of the parties.
b. Yielding, which is lowering aspirations and willing to accept the shortcomings of what is actually desired.
c. Problem solving, which is a satisfactory alternative from both parties.
d. Withdrawing, which is choosing to leave the dispute situation, both physically and psychologically.
e. In action (silent) which is doing nothing.

In the literature, Dispute Resolution Theory is also called Conflict Theory. The definition of conflict itself was formulated by Dean G Pruitt and Jeffrey Z Rubin that conflict is a perception of perceived divergence of interest or a belief that the aspirations of the conflicting parties cannot be achieved simultaneously (Talib, 2013).

The settlement of the disputes between the foundation and the dismissed management is actually can be resolved by non-litigation. However, the party stand to take the litigation process, caused by the differences of the interest between the parties which cannot be resolved amicably. The dismissed management took the litigation resolution process caused by the dismissal decision and the replacement of the management had been occurred, therefore amicable resolution will lead to absolute dismissal. According to Schut,in Dunne & Burght (1988) liability could be resulting from the agreement (precisely define as a default) and from the unlawful act. In the first case, the losses must be covered because of the main or secondary obligation resulting from the violation of the agreement (the obligation of the payment of the performance or the guarantee payment). Meanwhile the second one is the losses must be covered because of the due to a violation of a legal norm (orders and prohibitions).

The Decree of the Dismissal and the Replacement of the Foundation Management is considered a dispute object which can be sued in the court. The category of this lawsuit is a lawsuit against the law. The lawsuit against the law is submitted to the district court which handle criminal case and general civil case. The institution which executed it consist of the district court as the first court level and the High Court as the court chooses for the appeal. Domicile of the District Court is in the capital city or in the capital of the regency which become its jurisdiction. While the High Court is domiciled in the Capital of the Province with the authority to cover the territory of the province. This trial is regulated by Law No. 2 of 1986 concerning General Courts in conjunction with Law No. 8 of 2004 in conjunction with Law No. 49 of 2009 in conjunction with Constitutional Court Decision Number 37/PUU-X/2012.

The dismissed management should file a lawsuit against the law against the foundation due to the Decree of the Dismissal and the Replacement of the Foundation Management based on the council meeting and the reason is the Article 1365 of the Criminal Code, the unlawful act should meet the following elements:

1. There is an action.
2. The act violates the law.
3. There is a mistake from the doer.
4. There is a loss from the victim.
5. There is a causal relationship between the act with the losses.

Munir Fuady (2005) also believes that the act of the perpetrator against the law can be in the form of both doing something or not doing something. It means that the act must against the law, generally it can be interpreted as, first, the act must against the applicable law. Second, the act against other people's right which is guaranteed by the law. Third, the act contrary with the decency, and fifth, the act against good manner which is considered by the society in which it is supposed to respect other people interest. During the presentation of the evidence in the court, when the meeting council decree violating the applicable law, if indeed it is, then it needs to be proofed in the court.

The dismissed management no longer has the authority to represent the foundation inside and outside the court. Thus, it can be said that the dismissed management will represent himself/herself as the plaintiff in the dispute. The Law on Foundations explains that the supervisor has the authority to dismiss the management, therefore since the issuance of the decree of the dismissal and the replacement of the foundation management, the dismissed management had been released from their duty to manage the foundation. The managerial obligation becoming an important part of credibility of the management in the foundation. When the principle of obligation has not met yet, then it will resulting a bad impact (www.researchgate.net/publication/).

The substitute manager who has been appointed by the supervisor is obliged to report the dismissal, replacement and appointment of a new management to the Ministry of Law and Human Right (Menkumham). The substitute manager who has been elected and appointed based on the council meeting has the authority to act outside and inside the court. Thus, all of the authorities, duties and obligations of the dismissed management have been transferred to the new management. The new management has the authority to represent the foundation in court on the dispute. Because the councils and the supervisors do not have the authority to represent the foundation in court.

The notification of the dismissal, replacement and the appointment of the new management based on the council meeting submitted to the Ministry of Law and Human Right (Menkumham), then the notification report to the Ministry of Law and Human Right (Menkumham) will be issued resulting in the changes of the data of the foundation. The notification report to the changes of the data of the foundation is the formal legalization document issued by the Ministry of Law and Human Right (Menkumham) as the State Administration Officer. The definition of the formal legalization document should be noted very well. Because this document does not have to be made or stated formally like any other decree or license to build the building. However, legalization document is only put in writing on the paper. This is because the purpose of the legalization document is that it can be used as evidence in the future (Riza, 2019).

If the dismissed management considered her or his dismissal is not in accordance with both the provisions of the applicable laws nor with the article of the association, and if he or she would like to apply for the appeal for the verdict of the Ministry of Law and Human Right (Menkumham), he or she can apply the appeal for the lawsuit against the law to Ministry of Law and Human Right (Menkumham). With the issuance of the PTUN verdict, the dismissed management can file a lawsuit to the State Administrative Court. The State Administrative Court only handles cases of lawsuits against the officials of the state's administration department, resulting from the decree made previously which harm someone or legal entity's civil right. This court is regulated by Law No. 5 of 1986 concerning State Administrative Court in conjunction with Law No. 9 of 2004 in conjunction with Law No. 51 of 2009 in conjunction with Constitutional Court Decree Number 37/PUU-X/2012.

Thus, the settlement of disputes in the Courts, especially regarding the dismissal, replacement and appointment of the foundation's management can be settled in 2 (two) legal mechanism, those are: by filing a lawsuit to the district court in which the object of the dispute is the decree of the council meeting and by filing a lawsuit to the state administrative court for the issuance of the changes in foundation's data. The verdict has permanent legal force for both of those courts. It will determine whether the decree of the council meeting and the decree from the Ministry of Law and Human Right (Menkumham) have met the proper mechanism. It could be used to settle the dispute internally in the foundation between the dismissed management and the foundation. Therefore, the parties involved in the dispute, must provide the real truth of their opinion and later on the court will decide it.

Conclusion and suggestion

A. Conclusion

1. The dispute between the foundation and the management arises from the implementation of the foundation activities which not in accordance with the prevailing laws and regulations and also it is not in accordance with the implementation of the article of the association of the foundation. Therefore, some violations to the terms happened. If in any cases there is a dispute inside the foundation, then it would become a problem to conduct the foundation's activities, especially the activities which must be done by the foundation for the purpose of the society, religion and humanitarian as well as for the community.
2. The dispute resolution between the foundation and the management of the foundation by court is one of the alternatives resolutions for the dispute, in which it can be used as one of the alternatives and it should prevail on the regulation of the foundation. The dispute resolution by the District Court or State Administrative Court depends on the type of the dispute, it depends on the object of the dispute and the situation in which the verdict depends on whether a person or one party will be considered to fulfill the requirements or not, whether he or she has the right to file a petition to the court regarding the settlement for the dispute or the case in front of the Court.

B. Suggestion

1. The dispute between the foundation and the management of the foundation must be resolved as well as possible. It could be avoided in many ways by each organ of the

foundation. They should use their authority, do their duties and obligations that have been mentioned in the provision of the prevailing law and on the article of the association of the foundation. Foundation is an organization for social, religion and humanitarian purposes. Therefore, the organ of the foundation is needed to execute the duties in the management of the foundation as well as possible.

2. The dispute resolution between the foundation and the management should be resolved amicably. The dispute resolution by litigation alternatives takes sometimes, money and a lot of energy. At the end, the management of the foundation only focusing on the settlement of the case in the court. The understanding of the parties who have their case in the court is needed whether they had done their obligations well, tolerance is needed, it is also needed to understand that the case in the court will bring massive impact to the existence of the foundation.

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EFFECT OF CONFLICT RESOLUTION STRATEGIES ON WORKERS' RETENTION IN THE PUBLIC SECTOR

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Abstract: *The climatic condition of any organisation is usually toxic whenever two or more parties fail to reach a consensus with regard to allocation of rewards or benefits. Such disagreement breeds a dysfunctional conflict that affect both the performance of the warrying parties as well as other colleagues in the workplace. However, in order to bring orderliness to the organisation, administrators and managers need to discover the best conflict resolution strategies that would be used to resolve the disputes. This is the basis for which this study investigated the effect of conflict resolution strategies on workers' retention in the public sector. The sample frame for this study comprises of two hundred and eleven workers drawn from five government parastatals in Ebonyi State, Nigeria. Questionnaire was used as instrument for data collection. Linear regression was used to analyse the research hypotheses. Result of the study revealed that conflict resolution strategies have significant effect on workers' retention. The study concludes that conflict resolution strategies such as compromising and avoidance strategies improves the retention of workers in the public sector. One of the implications of the research is that managers, administrators and supervisors should do everything possible to avoid conflict in the workplace to encourage the retention of workers in the organisation.*
Keywords: *conflict, conflict resolution strategies, retention, workers, government parastatals*

Introduction

Workers' retention is a major issue that most organisations are faced with especially in the Sub-Saharan African work environment (Xuecheng et al., 2022; Zayed et al., 2022; Kundu & Gahlawat, 2016). Thus, retaining workers bring about high performance, effectiveness, efficiency and positive social responsibility (Chatzoudes & Prodromos, 2022). Research has shown that organisation that retains workers are more productive in terms of customer service delivery and societal reputation (Edeh et al., 2021). Biason (2020) assert that workers retention is the result of good leadership such as supervisor support. Corroborating with the above affirmation, Ohunakin et al. (2019) contended that retaining workers is an indication that the organization is healthy and sustainable. Meanwhile, Mahadi et al. (2020) maintained that organisatinal stability is a function of functional conflict whereas dysfunctional conflict affects the smooth running of any organisation. In light of the above, Sija (2022) stressed that retaining workers have promote

affective commitment and enterprise compliance. In addition, Malik et al. (2020) suggested that the rate of retention in any organisation is one of the indices for foreign investors. On the contrary, Adedeji and Obianuju (2018) opined that workers retention in the public service sector is usually determined by supervisor and employee relationship. Fukui et al. (2019) added that albeit, the public sector does not benched retention on performance due to their mandate to provide public services to the society as against private sector that focuses more on profitability. This is what stimulated Zayed et al. (2022) to affirmed that apart from supervisor -employee relationship, employees also pay emphasis on their colleague's support. Thus, Fukui et al. (2019) accentuates that coworker support is one of the major indicators of retaining workers in the public service sector.

From the foregoing, Adilo (2019) maintained that any organisation that does not have a good mechanism for resolving conflict in the workplace have created a vacuum for high workers turnover. In line with the above, Wainaina et al. (2020) asserts that even though conflict has no specific period of erupting in the workplace, administrators need to read between the lines through constant discussion with their workers. Therefore, the deployment of conflict resolution strategies has been affirmed to yield a positive result in settling disputes in the workplace. John-Eke and Akintokunbo (2020) stressed that the conflict that is favourable to smooth functioning of the organization is known as functional conflict whereas the conflict that is destructive is called dysfunctional conflict. This implies that it is not all conflict that has negative effect on the organisation. Conflict resolution strategies has improved employee commitment, employee loyalty and retention of employees (Boateng, 2014). Gwanyo et al. (2020) opined that the conflict resolution strategies promote positive organisational climate. In addition, Dialoke and Edeh (2017) maintained that conflict resolution strategies are instrument for behavioural change which transforms aggrieved parties into new being. In light of the above, Omene (2021) assert that the settlement of conflict in the workplace would prevent workers from leaving the organization to another. However, studies such as Wainaina et al. (2020), Özyildirim and Kayikçi (2017), Dialoke and Edeh (2017) has investigated conflict resolution strategies with other organizational variables but none of them considered its effect on workers retention. This has created a huge research gap which this study has filled. It was this vacuum that stimulated the researchers to embark on this research.

Nonetheless, the problem that most government parastatals are facing is the high rate of employee turnover. This problem is caused by administrators' inability to provide support to their workers thereby leaving them to depend on their own skills which most times affect their performance. It was also shown that due to the structure of government parastatals, workers are not usually appraised based on profit generation thus, their retention is dependent on coworker and supervisor relationships (Omene, 2021). On another hand, Osabiya (2015) stated that the lack of coworker support in most public sector in the society has caused many workers to quit their jobs. Fukui et al. (2019) maintained that workers that attach themselves with their colleagues in the workplace usually request for support in one way or the other. It therefore implies that coworker support encourages other workers to remain with their organization other than moving to another organisation. It was the above argument that brought the attention of Kularathne and Senevirathne (2020) when they argued that supervisor support coworker support is valuable instrument for the prevention of workers from leaving the organization.

Literature review

Conflict Resolution Strategies

Conflict resolution emerged as a result of the disagreement that exist between two or more individuals working in a formal work setting. In this section, researchers reviewed the concept of conflict and conflict resolution strategies. Conflict is any disagreement between to individuals in the same or different organisations (Omene, 2021). Scholars alluded that conflict refers to when one person is aggrieved with another individual (Osabiya, 2015; Olukayode, 2015). In addition, Dialoke and Edeh (2017) stressed that conflict arises in the workplace when there is clash of interest amongst individuals working in the same organisation. It was shown that whenever differences exist, conflict is bound to take place (Osabiya, 2015). On the other hand, conflict resolution strategies are processes of resolving disagreement between employee and employer. Wainaina et al. (2020) argued that conflict resolution strategies include avoidance, compromising, accommodating, collaboration and competing. Ezekiel and Abdulraheem (2022) suggested that conflict in government owned organisations is quite different from those in the private sector and hence, require that administrators use conflict resolution approaches that are appropriate. Research has shown that most effect ways to resolve conflict in any government parastatals are through avoidance and compromising strategies (Olukayode, 2015). Mba (2013) supported the above argument and admitted that avoidance and compromising strategies are the best for conflict resolution. In another perspective, Yusuf-Habeeb and Kazeem (2017) maintained that there is no one best strategy through which conflict cannot be resolved rather, the situation would be determinant factor. Kazimoto (2013) was of the view that dispute resolution is dependent on the behaviour of the aggrieved. What this implies is that disagreement begins and end with the first individual that ignited the conflict. It is against this premise that Mayowa (2015) argued that disagreement between employee and the employer can be resolved when one of the aggrieved parties is ready and willing to shift ground.

However, conflict resolution strategies are the lubricants for peace, harmony and orderliness in the workplace. Thus, the rate at which workers are aggrieved with their employer and coworkers generated a lot of argument amongst scholars (Özyildirim & Kayikçi, 2017). Adeyemi and Ademilua (2012) in their study confirmed that workers usually disagree with their employer whenever there is disparity in pay, uneven distribution of resources as well as favouritism. But Mba (2013) stated that the causes of conflict should be identified when selecting a strategy to avoid visiting same issue in the long-run. Agreeing with Mba (2013), Mayowa (2015) argued that avoidance strategy and compromising strategy should be deployed in order to end conflict respectively. In addition, Yusuf-Habeeb and Kazeem (2017) argued that the use of avoidance and compromising strategies in settling dispute has shown that conflict can be handled amicably. It is based on these submissions that this research utilizes avoidance and compromising as the strategies for resolving conflict in selected government agencies in Ebonyi State, Nigeria. Compromising is also known as reconciliation (Mayowa, 2015). Compromising refers to a situation whereby two parties forfeit some of their major issues for the purpose of reaching a consensus (Akhtar & Hassan, 2021; Uchendu et al., 2013). The outcome of compromising strategy is win-win. Prior research has revealed that employee-employer conflict can be best resolved through a compromise approach (Yusuf-

Habeeb & Kazeem, 2017). Some of the benefits of compromising strategy are job satisfaction, mutual benefits, speed settlement of disputes and cost efficiency (Kazimoto, 2013). On the other hand, avoidance is a process of settling a dispute where one party withdraw his/her demand to pave way for peace (Aja, 2014; Kazimoto, 2013). Abdullah (2015) affirmed that avoidance is a conflict resolution strategy whereby one party decides to avoid anything that could jeopardize the harmony that exists between the parties to a conflict.

Nonetheless, prior empirical investigations have examined conflict resolution strategies and other variables in different industries, countries and different methodologies. Akhtar and Hassan (2021) investigated the effect of conflict management styles on organizational commitment in Pakistan and found that integrating style predicted the commitment of workers compared to other conflict management styles. Omene (2021) explored conflict management strategies as a prerequisite for effective organizational performance found that conflict resolution strategy enhances good relationships with other stakeholders in the organisation. Adilo (2019) examined the relationship between conflict management and organizational performance in selected breweries in south east, Nigeria and discovered that conflict management has significant positive relationship with organisational performance. Dialoke and Edeh (2017) examined conflict resolution strategies and workers' commitment in in Rivers State, Nigeria and found that conflict resolution strategies such as integrating, collaborating and, compromising strategy have significant positive relationship with workers' commitment. Özyildirim and Kayikçi (2017) identified conflict management strategies amongst school administrators state schools in Muratpaşa and discovered that compromising strategy is mostly used while dominating, avoidance and others were found to be the least. Osabiya (2015) examined the best practice in resolving in Nigeria public sector and found that compromising can be used to settle conflict between an employee and management.

Workers' retention

Workers' retention refers to policies that management deploys to keep workers to stay with their organisation. Scholars has argued that workers retention is the process of providing motivational tools to workers that would encourage them to perform their work effectively and efficiently (Edeh et al., 2021; Kundu & Gahlawat, 2016). Workers' retention was also defined as a strategy undertaken by management to keep workers that has potential skills used to solve problems facing the organization (Ohunakin et al., 2019). Adedeji and Obianuju (2018) contended that irrespective of the management policies for retaining workers, if the workers decided to quit, there is nothing anyone can do about it. Biason (2020) argued that retaining employee varies from one business environment to another. Elaborating on the above argument, Mahadi et al. (2020) opined that retention policies are not usually the same in every organization but it behoves on the administrators, managers or supervisors to discover the best motivating factors to employ. It is against this contention that Chatzoudes and Prodromos (2022) assert that worker retention covers every activity that could motivate employees to remain active in their respective job responsibilities without thinking of leaving. In line with the above Edeh and Udensi (2017) are of the view that retention of workers depends on the behaviour of the supervisor. This maybe the reason why Ohunakin et al. (2019) assert that supervisors are the major influencers of retention in any organization.

In light of the above, scholars have validated reliable and affirmed measures of workers retention in different work settings such as good working environment, competitive working condition, pay and other financial rewards (Edeh & Udensi, 2017). Zayed et al. (2022) added that worker retention policies differ in private and public organisations. This is because of the objectives that each of the sector pursue. But research has revealed that in the public sector, employees prefer the supports of supervisors and coworkers as instrument for retention. Some studies that support the above assertion are Iqbal et al. (2020), Kularathne and Senevirathne (2020) and, Danish et al. (2019). This research therefore adapts supervisor support and coworker support as indicators of workers retention. This is based on their reliability and validity as reported by other studies (Kularathne & Senevirathne, 2020; Malik et al., 2020; Fukui et al., 2019). Based on the above review of literature, the study developed the research hypotheses.

Compromising strategy and supervisor support

Compromising strategy has a positive effect on supervisor support. For instance, when an employee perceives that administrators or managers are able to settle the conflict between the warrying parties, such employee would be willing to take instructions from the supervisor. But, if the conflict is not settled, the employees would withdraw their loyalty which would result to counterproductive behaviour in the workplace (Adeyemi & Ademilua, 2012; Hotepo et al., 2010). Thus, the relationship between an employee with a supervisor is like a ligament that hold the organization. It was this argument that motivated Owsiak (2021) when they assert that conflict in the workplace usually take place amongst the subordinates and supervisors. But Malik et al. (2020) pointed out that since the supervisors represent the interest of management thus, they are not bound to implement the policies that would favour the subordinates. Kularathne and Senevirathne (2020) deviated by accentuating that the supervisor is also an employee who can be removed at any possible time by the management and should not engage in any action that could trigger conflict in the organisation. Research has proven that compromising strategy has yielded positive result in settling disputes in different countries and workplaces (Uchendu et al., 2013). It is against this assertion that Gwanyo et al. (2020) maintained that administrators and managers can settle conflict in their organisation through the application of compromising strategy. John-Eke and Akintokunbo (2020) accentuate that compromising strategy is the best instrument for settling misunderstanding. Following the above submissions, Adilo (2019) admitted that compromising strategy makes parties in conflict to give up their interest and embrace win-win approach. It is based on this premise that the first research hypothesis is formulated.

H1: Compromising strategy has a significant effect on supervisor support

Avoidance strategy and coworker support

Employee prefer work environment that promote the spirit of oneness where coworkers can always assist each other. Such type of work culture is what engenders tranquility and discourages employees from quitting their jobs. Adeyemi and Ademilua (2012) opined that it is better to avoid conflict than to allow it escalate. Omene (2021) added that good administrators do not encourage conflict because they understand the consequences it could have on the image of the organisation. Meanwhile, Mba (2013) advised management and other top leaders to discouraged disagreement that may arise

between them and subordinates as the end would result to high turnover. Therefore, public service administrators should always employ avoidance strategy to resolve any conflict that tend to surface in the workplace. Abdullah (2015) also suggested that administrators should take conflict very seriously because it can manifest anytime. In light of the above, Özyildirim and Kayikçi (2017) is of the view that conflict avoidance has the capacity of motivating workers to support each other in the organization. Sija (2022) stressed that what employees support each other in a work atmosphere that is free from hatred, anger and frustration. Dialoke and Edeh (2017) affirmed that managers and administrators that avoid conflict are preferred by employees to the one that do not understand how to resolve disputes. Thus, in order to retain workers in the public organisations, administrators need to embrace avoidance strategy which would in turn promotes worker support. Based on the foregoing arguments, the second research hypothesis is formulated.
H2: Avoidance has a significant effect on coworker support

Theoretical underpinning

The theory that supports this research is social exchange theory (Homans,1958). Social exchange theory assumed that the relationship between an employee, employer, coworker and supervisor is based on cost-benefits. What this relationship means is that each stakeholder is dependent on one another for survival (Xuecheng et al., 2022; Jahan & Kim, 2021). Thus, in the psychological contract, an employee objective is to ensure that the objective of the organization is accomplish by performing assigned responsibilities while expecting some rewards from the management (Ogbonna & Mbah, 2022). Regarding employee retention, an employee that does not have good relationship with supervisor and coworkers would not be effective in discharging his/her responsibility. Therefore, to avoid conflict in the workplace, an employee would adhere to the prescribed rules and regulations guiding the work culture with an expectation from the management. However, once the expectation of the employee is not met, the employee would not be effective in the discharge of his/her duty. Once this counterproductive behaviour set in, the employee would start thinking of how to leave the organization to another (Xuecheng et al., 2022).
Research objectives

The broad objective for this research is to investigate the effect of conflict resolution strategies on workers retention in selected government parastatals in Ebonyi State, Nigeria. From the review of literature, the following specific research objectives were enumerated.

1) To investigate the effect of compromising strategy on supervisor support
2) To determine the effect of avoidance strategy on worker support

Research methods

Research design used in this study is cross-sectional survey as it supports the use of primary instrument such as questionnaire for data collection within a specified short period of time (Zikmund et al., 2013; Saunders et al., 2009). The target population of the study comprises of Ebonyi State government parastatals. Specifically, convenience sampling was used to select five Ebonyi State Government Parastatals headquartered at Abakaliki. Sample frame for the study are two hundred and eleven (211) workers from the

five parastatals. Conflict Resolution Strategy Questionnaire (CRSQ) was adapted from Dialoke and Edeh (2017) and modified to fit the sample frame of the current study. On the other hand, Employee Retention Questionnaire (ERQ) was also adapted from Zayed et al. (2022). Sample size of one hundred and thirty-eight (138) was determined from the sample frame using Krejcie and Morgan (1970). Researchers followed the ethical principles guiding investigations that involve humans. Therefore, the consent of the participants was sought. Participants were informed that their participation in the research would not in any way harm them and, that their personal identities as well as the identities of their parastatals would not be reported in the research. Thereafter a meeting was scheduled with the researchers to provide explanations on the aim of the research which the researchers provided. It was after the explanations that the researchers administered one hundred and thirty-eight (138) questionnaires to the participants. Participants agreed to complete the questionnaire within one month. After the expiration of the one month, the researchers went to retrieve the questionnaire. During the sorting of the questionnaire, it was observed that only one hundred and twenty-six (126) copies were filled correctly while twelve (12) copies were wrongly filled. Copies that are wrongly filled were marked "invalid" while those that were correctly filled were marked "valid". Linear regression was used to analyse the formulated research hypotheses with the aid of Statistical Package for the Social Sciences (20.0).

Results

The demographic profiles of the participants in table 1 indicated that 53 respondents representing 42.1% are females while 73 respondents representing 57.9% are males. Age of the respondents revealed that 18 participants representing 14.3% fall within 18-33 years; 34 participants representing 27.0% fall within 34-43 years and, 74 respondents representing 58.7% fall within 44 years and above. Educational level of the participants shows that 15 respondents representing 11.9% attended primary school; 31 participants representing 24.6% attended secondary school and; 80 participants representing 63.5% attended tertiary institutions. Work experience of the respondents revealed that 38 participants representing 30.2% have worked between 1-10 years and; 88 respondents representing 69.8% have worked between 11 years and above.

Table 1 Demographic profiles

Variable	Frequency	Percent (%)
Gender		
Female	53	42.1
Male	73	57.9
Age (years)		
18-33	18	14.3
34-43	34	27.0
44 & above	74	58.7
Educational level		
Primary	15	11.9
Secondary	31	24.6
Tertiary	80	63.5
Work experience (years)		
1-10	38	30.2

11 & above	88	69.8

The result of research hypotheses in table 2 revealed that conflict resolution strategies (compromising strategy, avoidance strategy) have significant positive effect on workers' retention (supervisor support, coworker support). From the table, it was shown that compromising strategy has significant positive effect on supervisor support (0.570) while avoidance strategy has significant positive effect on coworker support (0.592). The results of the model also show that the distinction between R2 and adjusted R2 are < 5%, which affirmed that there is no sample error. In addition, the R2 of the models indicated that 33%and 35 of the total variation in compromising strategy and avoidance strategy can be explained by supervisor support and coworker support. Lastly, Fstat (59.806; 66.782) > (3.91) which confirm that the null research hypotheses are rejected while the alternate are accepted.

Table 2: Result of hypotheses

R	0.570	0.592
R^2	0.325	0.350
Adjusted R^2	0.320	0.345
T-stat.	7.733	8.172
Fstat.	59.806	66.782
Std. error	0.086	0.062
Sig.	0.000	0.000
N	126	126
d.f	3.91	3.91

Predictor: Conflict Resolution Strategies (Compromising, Avoidance)
Criterion: Workers' retention (Supervisor support, Coworker support)

Discussion

It was revealed from the results that conflict resolution strategies have significant positive effect on workers' retention. This finding implies that an increase in conflict resolution strategies increases workers' retention. In other words, when managers, administrators or any constituted authority resolves conflict using compromising strategy and avoidance strategies, workers' intention to leave would be changed and thus making them to remain with their parastatal. In terms of specificity, the study found that compromising strategy predicted supervisor support while avoidance strategy has significant positive effect on coworker support. These results corroborated with some prior studies on conflict resolution strategies as shown in the literature while others oppose the findings due to the industry, participants and geographical location where the researches were carried out. A study carried out by Dialoke and Edeh (2017) on conflict resolution strategies and workers' commitment in revealed that conflict resolution strategies measured in terms of integrating and compromising strategies have significant positive correlation with workers' commitment. On the contrary, Akhtar and Hassan (2021) result on conflict management styles and organisational commitment in Pakistan show that integrating style has significant effect on the commitment of workers. In addition, Adilo (2019) determined the relationship between conflict management and enterprise performance in Nigeria and found that conflict management has significant relationship with enterprise performance. Again, Özyildirim and Kayikçi (2017) investigation on

conflict management strategies and school administrators' performance show that compromising strategy is used often to settle conflict in the workplace. Even though compromising was found to be effective in retaining workers as shown in this study, the environment in which the research was conducted can also affect the outcome which means that in another work environment, the result may be different. In addition, since the participants are mostly civil servants, their responses maybe based on the rules governing civil service rules which differs from the private sector work environment. This is because if the study was conducted in the private sector where profit making is rated high as one of the performance indices, the respondents in that work environment may provide different responses on whether compromising and avoidance strategies would have prevented workers from leaving the organisation or not.

Conclusion and implications

Drawing from the discussion above, this research concludes that conflict resolution strategies that administrators' or managers consolidates on compromising and avoidance strategies enhances workers' retention that is measured with supervisor support and coworker support. The implication of this study is that administrators and managers of government parastatals should avoid conflict in the workplace to encourage workers to remain in the organisation. Secondly, peradventure there is disagreement between one or more employees, administrators, directors or managers should utilize compromising strategy to resolve the dispute. In addition, managers, directors and administrators of government agencies should provide maximum support to workers as it has proven to strengthen their retention in the organization. One of the limitation of this research is the use of one method of data collection other than the combination of interview. Another limitation is the target population. Therefore, the results of this study would be generalized especially as the target population was government parastatals as against the private sector.

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BANKRUPTCY PREDICTION USING MACHINE LEARNING – A META-ANALYSIS

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Abstract: *This study is based on a meta-analysis of 64 studies in bankruptcy prediction using machine learning. The data on these studies was collected on six levels: algorithms, data balance, variable categories, variables types, industry, and region. The aim of this paper is to analyse the determinants of accuracy in bankruptcy prediction models. To achieve this aim, five Linear Mixed Effects models were developed. The results obtained show that while some factors are significant determinants for the accuracy of machine learning models in bankruptcy prediction (algorithm, data balance, industry, region), some factors as data type (continuous or continuous and categorical) and data category (financial or financial and non-financial) do not have an impact on accuracy prediction.*
Keywords: *Bankruptcy Prediction, Machine Learning, Meta-Analysis*

Introduction

Bankruptcy prediction is and always was of interest to investors, creditors, and governments. The timely identification of the imminent state of bankruptcy of a company is undoubtedly desirable. Initially discussed by FitzPatrick (1932), the problem of bankruptcy prediction is a classic one in the economics literature. At the same time, bankruptcy maintains equilibrium in an economy (Filipe Martins-da-Rocha et al., 2022). The most significant impact of accurate bankruptcy prediction is on the case of lending institutions. Banks are a good example because they must predict the possibility of default of a counterparty before deciding to grant or expand a loan. An accurate prediction will lead to better lending decisions and thus the avoidance of significant losses. In consequence, the extensive research into this field is unquestionably justified (Alaka et al.,

2018). Initial studies on bankruptcy prediction models (BPM) are mostly focused on methods such as logistic regression or discriminant analysis. However, in the last 30 years, the landscape drastically changed, mainly because of the quick development of machine learning (ML) techniques.

There has been an increasing number of research papers addressing the topic of bankruptcy prediction through ML (Shi & Li, 2019). The main advantages of ML methods in BPM are the increased prediction accuracy over classical statistical methods (such as Z-Score) and the ability to handle large volumes of data (Hosaka, 2019). Although the vast majority of researchers and practitioners agree on the benefits of utilizing ML methods for predicting bankruptcy, there is little to no consensus on what method should be used for which use case. These models' performance is highly dependent on the algorithms chosen and the tweaking of their respective parameters. According to Alaka et al. (2018), the model choice is not objective and is often based on popularity or professional background because researchers do not have any evaluation material guiding them through which criteria a BPM should satisfy. In this context, there are significant differences in the reported results of studies without any apparent motivation for why this happens. Indeed, discrepancies between results can be generated by multiple factors such as different datasets, different tunning methods, or by particular characteristics of each method and their fit to a dataset. Methods such as Artificial Neural Networks (ANN), for example, are frequently misused due to the lack of guidelines and frameworks that would help researchers and practitioners identify which methods best suit their data conditions or research situation (Alaka et al., 2018). Moreover, the improper use of methods makes it very difficult for researchers to understand the strengths and limitations so they can adapt their choice of method to the research goals. Finally, the wrong choice of methods determines different studies to have a wide dispersion of performance results for the same method. Understanding these methods' performance drivers will help in choosing the right tool for the specific research data/purpose/situation.

In the context of scattered performance results (bankruptcy prediction is usually measured by accuracy, the area under the curve, and the ROC curve), this study aims to analyze the relationship between the bankruptcy prediction accuracy of different ML techniques and the factors that influence it through a meta-analysis. The meta-analysis on bankruptcy prediction accuracy enables to bring coherence in a field with inconsistent findings and explore what generates these differences. To the best of our knowledge, this study contributes by being the first meta-analytic study in the field of bankruptcy prediction models. As we detail in the literature review section, multiple studies address the topic through a review methodology but not through a meta-analysis. The fit of the methodology for the topic, the increasing number of studies, and the absence of agreement in the literature motivate the development of a meta-analysis of studies on machine learning methods applied to bankruptcy prediction. This will help see the problem through a quantitative lens and facilitate the enhancement of the model selection framework started by Alaka et al. (2018). The latter authors initiated the creation of a framework for model selection while briefly describing the advantages and disadvantages of the models. However, the decision on the type of model and its accuracy would depend upon factors such as sample size, data balance, variable category (whether the authors used financial or mixed variables), industry type (for example, construction or manufacturing), or data source region. None of the previous review studies analyse the prediction accuracy in

relation to factors such as variables category, industry type, or data source region, which are included in our study.

The remainder of the paper is structured as follows. Section 2 provides an overview of the existing literature analysing the differences between the results of bankruptcy prediction studies using ML techniques. Section 3 describes the review process and the methodology adopted for the meta-analysis. Section 4 the results of the meta-analysis are shown. The paper ends with concluding remarks and references.

Previous research in bankruptcy prediction

Currently, both academics and professionals are applying ML methods to predict bankruptcy, and their use in BPM is rapidly increasing. According to Gissel et al. (2007), the main models utilized for BPM development are multiple discriminant analysis (MDA), logistic regression (LR), probit analysis, neural networks (NN), and, due to their frequent use in recent studies, we would add decision trees (DT), Ensemble Models (EM) and support vector machines (SVM) to the list. Among the classic methods, LR is frequently used in practice and academia because it is easy to implement and proves to provide users with satisfactory results (Hauser & Booth, 2011). One of the drawbacks of regression models is the incapability to manage the data imbalance that frequently occurs with bankruptcy databases due to the rarity of the phenomenon. Another class is "lazy algorithms" first mentioned by Aha (1997), here including k-Nearest Neighbor (kNN) and Case-Based Reasoning (CBR). Chen et al. (2011), Liang et al. (2016), and Le & Viviani (2018) use k-NN with promising results as a new candidate for powerful early warning systems for bankruptcy prediction. Furthermore, due to the large access to computing power, neural networks started to pick up at the beginning of the year 1990. Odom & Sharda (1990) and Tam & Kiang (1992) introduced artificial neural networks (ANN) for the prediction of corporate bankruptcies. Moreover, of all the methods used to predict bankruptcy, some of the simplest, in terms of mathematical complexity, are the methods based on decision trees. Frydman, Altman, & Kao (1985) were the first to use decision trees with positive results. Chen (2011) argues that decision trees are superior to logistic regression, especially for short term predictions.

The development of ML models is without a doubt a big leap forward for the bankruptcy prediction domain. However, the multitude of models is overwhelming, and the scattered results presented in the literature make model choice very difficult. Moreover, the improper use of these models, regularly due to not fully understanding their strengths and limits (Chung, Tan, & Holdsworth, 2008), leads to different or even biased results on the bankruptcy prediction accuracy. Therefore, BPM developers should choose a tool based on data characteristics/variable types/purposes/situations rather than just arbitrarily. Based on this lack of clarity, this study thus aims to evaluate the relationship between accuracy and a set of external factors (such as algorithm, variable's category, variable's type, industry, data balance, and region). In order to achieve this aim, this research adresses the results of recent studies which were not reviewed previously and examining the determinants of the differences in results.

As most studies conducted in this area apply a systematic review for analyzing the results, our approach aims at minimizing the subjectivity and have a base on a quantitative analysis with the ultimate goal of replicability and reliability of empirical results. In this

respect, a meta-analysis of BPM studies is employed as it can integrate the results and provide a quantitative overview of the differences between results.

According to the Research Papers in Economics database, more than 2,000 meta-analyses are conducted, approaching very diverse topics (Havránek et al., 2020). Meta-analysis on finance, contrary to economics, is a relatively new research field that has been highly influenced by the meta-analytic research methods in management and economics (Geyer-Klingeberg et al., 2020b). Until December 2019, Geyer-Klingeberg et al. (2020) found 61 meta-analyses aggregating and comparing finance results. The authors' findings show that meta-analysis has been used as a tool that can facilitate progress in financial research, especially in areas with mixed evidence and controversial theoretical concepts.

To the best of our knowledge, on bankruptcy prediction, there was no meta-analysis developed. Although the literature on the subject is abundant, there are only systematic reviews on the topic. Clement (2020) presents a systematic review of the papers written on bankruptcy prediction between 2016 and 2020 and concluds that there is no clear path that a researcher should follow in addressing a bankruptcy prediction problem as the literature is very dispersed. Intending to create a tool selection framework, Alaka et al. (2018) study 49 journal articles on BPM published between 2010 and 2015 and concludes that there is no clear delimitation of which machine learning method is better than others, and there is still plenty of room for research. Shi & Li (2019) did a comprehensive systematic review on BPMs by analysing 496 academic articles published between 1968 and 2017. Their study has three main findings: (1) there is an abundance of academic papers, especially after the 2008 financial crisis; (2) there is little co-authorship in the research area as influential researchers were not working together for the development of the domain; (3) by far the most used and models for BPMs are LR and NN.

Methodology

Data sources and search strategy

A comprehensive search strategy was designed and completed within the Web of Science, Scopus, and ScienceDirect databases covering the full timeframe from 1968 through 2021. Google Scholar was also considered initially, but as in the case of Alaka et al. (2018) there was no filtering capacity and a significant number of papers loaded on various mixed topics hence this database was excluded. No search filters provided by the databases were used as well as no restriction by publication type (e.g. journal articles, conference proceedings). No studies other than those written in English are included in this study as we did not identify studies in other languages through the databases. We used the keywords “BANKRUPTCY PREDICTION” OR “FAILURE PREDICTION” OR “INSOLVENCY PREDICTION” AND “USING MACHINE LEARNING” OR “INTELLIGENT TECHNIQUES” to search for papers relevant to our study. We identified a list of 183 studies but selected only 64 for this study. No restriction was applied based on the type of machine learning algorithm used. A process flow of the methodology is presented in Figure 1 and the final sample of our selected literature is listed in Table 1.

Figure 2. Search Methodology

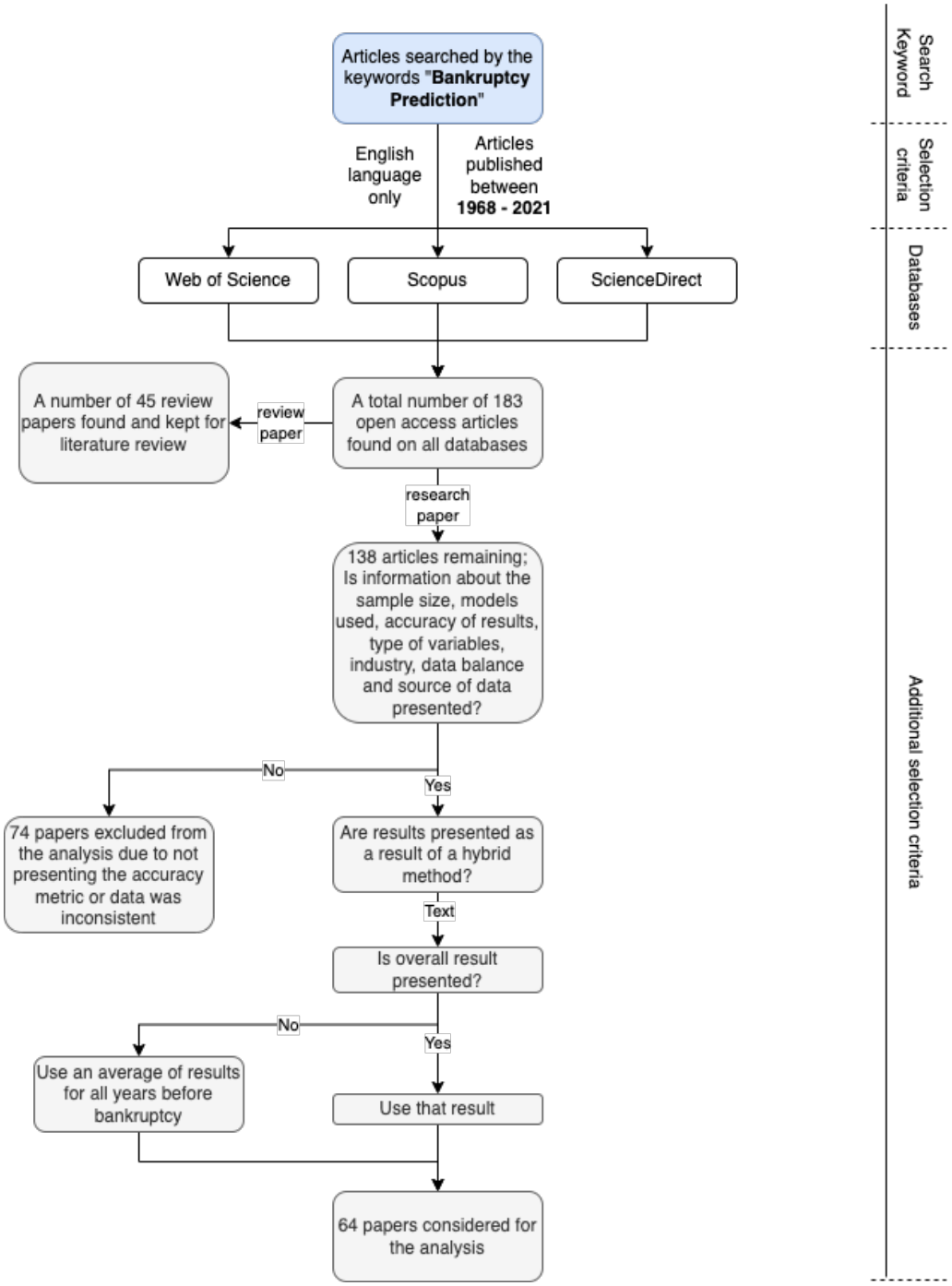

Table 1. List of selected studies

#	Authors	Year of study	#	Authors	Year of study
1	Altman	1968	33	Alifiah	2014
2	Fletcher, Goss	1993	34	Geng, Bose, Chen	2014
3	Canbas, Cabuk, Kilic	1997	35	Heo, Yang	2014
4	Dimitras et al.	1999	36	Kim, Kang, Kim	2014
5	Atyia	2001	37	Kim, Upneja,	2014
6	Lin, McClean	2001	38	Liao et al	2014
7	Min, Lee	2005	39	Lopez-Iturriaga, Pastor-Sanz	2014
8	Tsakonas et al.	2006	40	Tsai	2014
9	Alfaro, Garcia, Gamez, Elizondo	2007	41	Wang, Ma, Yang	2014
10	Hua et al.	2007	42	Gordini	2014
11	Guo	2008	43	Yu et al.	2014
12	Chen, Huang, Lin	2009	44	Alaminos, Del Castillo, Fernandez	2016
13	Cho, Kim, Bae	2009	45	Du Jardin	2016
14	Hung, Chen	2009	46	Sun et al	2016
15	Cho, Hong, Ha	2010	47	Liang et al.	2016
16	Kim, Kang	2010	48	Sartori, Mazzuchelli, Gregorio	2016
17	Tseng, Hu	2010	49	Antunes, Ribeiro, Pereira	2017
18	Van Gestel, Baesens, Martens	2010	50	Zelenkov, Fedorova, Chekrizov	2017
19	Yoon, Kwon	2010	51	Carmona, Climent, Momparler	2018
20	Chaudhuri	2011	52	Mai el al.	2018
21	Chen	2011	53	Gogas, Papadimitrou, Agrapetidou	2018
22	Li et al.	2011	54	Le, Viviano	2018
23	Sun, Jia, Li	2011	55	Obradovic et al.	2018
24	Hauser, Booth	2011	56	Affes, Hentati-Kaffel	2019
25	Yang, You, Li	2011	57	Agrawal, Maheshwari	2019
26	Huang et al.	2012	58	Chang	2019
27	Li, Sun	2012	59	Charalambakis, Garett	2019
28	Marques et al.	2012	60	Korol	2019
29	Xiao et al.	2012	61	Lukason, Andersson	2019
30	Olson, Delen, Meng	2012	62	Munoz-Izquierdo et al.	2019
31	Fedorova, Gilenko, Dovzhenko	2013	63	Aliaj, Anagnostopoulos, Piersanti	2020
32	Lee, Choi	2013	64	Filetti, Grech	2020

We selected studies based on the following inclusion criteria. Firstly, studies should use one statistical or intelligent technique for an empirical study predicting bankruptcy.

Secondly, studies should report an accuracy metric for the efficacy of the model tested in the empirical study. Third, studies were filtered for a specific time frame, following same approach as Alaka et al. (2018). From this perspective, this study is also similar to Balcaen & Ooghe (2006). Finally, studies reporting multiple accuracy rates for the same method or for different times before the bankruptcy event were included but the accuracy rate was calculated as an average.

We excluded papers reporting an efficacy metric other than accuracy (ROC Curve, AUC, etc.) as for keeping the consistency of the effect size in our study. Furthermore, we excluded papers predicting bankruptcy with other methods than the ones presented in the introduction due to some of them being only presented in one or two studies and thus making it difficult for comparative analysis. Finally, we did not include review studies presenting aggregated results of previous studies. Along the 64 papers studied there are 13 different algorithm types as shown in Table 2.

Table 2. Frequency of use of different types of algorithms in selected studies

	Algorithm Type	Algorithm variations
1	Bayesian Methods	3
2	Case-base reasoning	1
3	Clustering	1
4	Decision Trees	9
5	Discriminant Analysis	6
6	Ensemble Models	18
7	Genetic Analysis	1
8	KNN	1
9	Neural Networks	12
10	Regression Model	5
11	Revise	1
12	Rough Sets	2
13	SVM	4
	Total	**64**

Coding of data

Each paper was read thoroughly and a coded set of characteristics and statistical estimates was reported from each study. The coding was done by one coder with a second coder independently reconciling any inconsistencies. Research questions, research literature searching, compilation and coding were all done according to the guidelines from the Meta-analysis of Economics Research Reporting Guidelines of Stanley et al. (2013).

We collected the simple arithmetic mean-based accuracy ratio for the dependent variable, this metric being the most used across all papers. Hossin et al. (2011) argue that accuracy is mostly preferred by researchers because of its ease of calculation. Accuracy is calculated as below:

$$Accuracy = \frac{TP + TN}{TP + FP + TN + FN}$$

The confusion matrix below (Table 3) highlights how each element from the accuracy equation is measured.

Table 3. Confusion Matrix

		PREDICTED CATEGORY	
		Positive	**Negative**
ACTUAL CLASS	**True**	True Positive (TP)	True Negative (TN)
	False	False Positive (FP)	False Negative (FN)

The included studies have been coded according to a number of factors listed out in Table 4. They included recording the (1) the prediction accuracy of the method, (2) the type of algorithm used for analysis, (3) the category of variables included in the selected studies, i.e. whether the data are financial or mixed, (4) the type of variables used for the analysis, i.e. whether the variables are continuous or mixed, (5) the industry the data belonged to, i.e. banking, mixed, or other (including construction, industrial, and restaurants), (6) the data balance, i.e. wheter the selected study used balanced or unbalanced data sets, and finally (7) the region where the study was performed or where the data belonged to. The information was collated for all 64 studies which resulted in the collection of 242 unique rows of information.

Table 4. Factors extracted from the literature review and the variables used for the meta-analysis

VARIABLES	DESCRIPTION
Dependent variable	
Accuracy	Simple arithmetic mean-based accuracy.
Independent variables	
Algorithm	Dummy variable denoting the use of Decision Trees; 1=yes; else 0; Dummy variable denoting the use of Discriminant Analysis; 1=yes; else 0; Dummy variable denoting the use of Ensemble Models; 1=yes; else 0; Dummy variable denoting the use of Neural Networks; 1=yes; else 0; Dummy variable denoting the use of Decision Trees; 1=yes; else 0; Dummy variable denoting the use of SVM; 1=yes; else 0; Dummy variable denoting the use of Other ML techniques; 1=yes; else 0; Where Bayesian Methods represents the reference category.
Variables' category	Dummy variable denoting the use of data from mixed (banking and non-banking) industries; 1=yes; else 0; Where financial data indicates the reference category.
Variables' type	Dummy variable denoting the use of mixed variables; 1=yes; else 0; Where continuous variables represents the reference category.
Industry	Dummy variable denoting the use of data from mixed industries; 1=yes; else 0; Dummy variable denoting the use of data from non-banking industries; 1=yes; else 0; Where banking industry represents the reference category.
Data balance	Dummy variable denoting the use of balanced data sets; 1=yes; else 0
Region of data	Dummy variable denoting the use of Asian datasets; 1=yes; else 0; Dummy variable denoting the use of Australia datasets; 1=yes; else 0;

	Dummy variable denoting the use of European datasets; 1=yes; else 0; Dummy variable denoting the use of Global datasets; 1=yes; else 0; Where American databases indicate the reference category.

Conducting the meta-analysis

Following the study of Varghese et al. (2020), the meta-analysis on the prediction accuracy was employed using linear mixed effects models. The advantage of using linear mixed effects models is that it allows for random effects to account for unobserved heterogeneity in bankruptcy prediction accuracy across studies. In addition to random effects, the fixed effects of the determinants of prediction accuracy listed in Table 4 were estimated.

In conducting the meta-analysis, five separate models were developed. In all models, all 64 studies were included (N = 220) and the main independent variable considered was the type of algorithm used in the analysis of the selected studies. In this respect, Model I tested the differences between methods and their impact on prediction accuracy. Model II examined the effect of data balance, along with that of algorithm type and their interaction, on the bankruptcy prediction accuracy. Model III investigated the impact of the type and the category of variables used in the selected studies on prediction accuracy. Model IV includes the industry's impact and the region where the data belong to in the studies addressed. Finally, Model V tested the effects of all fixed effects from the other models and the random effects generated by the studies. The results of the meta-analysis are discussed in Section 4.

Empirical results

Random effects: study

The use of mixed effects linear model allowed to account for intrinsic heterogeneities among studies. The results (provided in Table 5) indicate that there is a substantial degree of variance in the random effect of studies and that the variation between them had a major impact on prediction accuracy. Additionally, it was found that the variance of the random effect parameter was greater than the variance of the residual variance. The R^2 of Model V is higher than the R^2 of the other models including some of the fixed effects. This difference demonstrates that the accuracy is impacted significantly by the determinants studied.

Table 5. Results of the meta-analysis for all models

	Model I		Model II		Model III		Model IV		Model V	
Predictors	*Estimates*	*std. Error*	*Estimates*	*std. Error*	*Estimates*	*std. Error*	*Estimates*	*std. Error*	*Estimates*	*std. Error*
(Intercept)	0.70***	0.03	0.66***	0.04	0.70***	0.03	0.76***	0.05	0.73***	0.05
Fixed Effects										
Algorithms										

Decision Trees	0.13***	0.03	0.16***	0.04	0.13***	0.03	0.13***	0.03	0.16***	0.03
Discriminant Analysis	0.08*	0.03	0.14***	0.04	0.08*	0.03	0.08**	0.03	0.14***	0.04
Ensemble Models	0.15***	0.03	0.22***	0.04	0.16***	0.03	0.15***	0.03	0.22***	0.03
Neural Networks	0.12***	0.03	0.17***	0.04	0.12***	0.03	0.13***	0.03	0.17***	0.03
Other	0.11***	0.03	0.17***	0.04	0.11***	0.03	0.11***	0.03	0.18***	0.04
Regression Model	0.09**	0.03	0.12***	0.03	0.09**	0.03	0.09***	0.03	0.12***	0.03
SVM	0.11***	0.03	0.16***	0.04	0.11***	0.03	0.10***	0.03	0.16***	0.03
Data Balance										
Unbalanced			0.12*	0.06					0.13*	0.06
*Algorithms*Balance*										
Decision Trees * Balance Unbalanced			-0.12*	0.06					-0.12*	0.05
Discriminant Analysis * Balance Unbalanced			-0.18**	0.06					-0.19**	0.06
Ensemble Models * Balance Unbalanced			-0.18**	0.06					-0.17**	0.05
Neural Networks * Balance Unbalanced			-0.15*	0.06					-0.15**	0.06
Other * Balance Unbalanced			-0.17**	0.07					-0.18**	0.06
Regression Model * Balance Unbalanced			-0.13*	0.06					-0.12*	0.05

SVM * Balance Unbalanced		-0.17 **	0.06				-0.16 **	0.05
Variables types								
Mixed				-0.14	0.08		-0.13	0.08
Variables category								
Mixed				-0.01	0.04		0.01	0.05
Industry								
Mixed						-0.11 *	0.04	-0.11 *	0.05
Other						-0.14 *	0.05	-0.14 **	0.06
Region								
Asia						0.05 *	0.02	0.04 *	0.02
Australia						0.02	0.02	0.02	0.02
Europe						-0.03	0.02	-0.04 *	0.02
Global						-0.00	0.05	-0.00	0.05
Random effects (variance)									
Study	0.008	0.009		0.008		0.009		0.009	
Residual	0.003	0.003		0.003		0.003		0.002	
Model performance parameters									
Sample size (cases)	242	242		242		242		242	
Sample size (study)	64	64		64		64		64	
AIC	-543.87	-545.35		-567.16		-544.58		-570.68	
Log likelihood	281.94	284.67		299.58		290.29		311.34	

R2 (only with fixed effects)	0.067	***	0.092	**	0.121	***	0.182	***	0.230	***
R2 (with fixed and random effects)	0.721	***	0.754	***	0.725	***	0.793	***	0.818	***

** p<0.05 ** p<0.01 *** p<0.001*

Notes: The reference category for each variable is: Algorithm: *Bayesian Methods*; Balance: *Balanced*; Variables type: *Continuous*; Variables category: *Financial*; Industry: *Banking*; Region: *America*. The *Other* category for the variable Algorithm includes Case-base reasoning; Clustering; Genetic analysis; Revise; Rough sets. The *Other* category for the variable Industry includes: *Construction*; *Industrial*; *Restaurants*.

Model I: impact of algorithms on prediction accuracy

Prediction accuracy was found to have a significant relationship with algorithms. This confirms the hypothesis that the machine learning models used in bankruptcy prediction models have significantly different accuracy results. All algorithms display statistically significant differences from the reference method, the Bayesian Method, at the risk level of 0.05. The estimate's positive sign indicates that, when measured against the reference algorithm, the average accuracy of all algorithms is higher. The Ensemble Methods algorithm showed the most significant positive impact on prediction accuracy, followed by Decision Trees and Neural Networks.

Model II: impact of data balance on prediction accuracy

We tested the effect of data balance on algorithms' accuracy in this model. In light of the interaction between the data balance and the algorithm, the corresponding estimates are similar in sign and significance to Model I, indicating robust results. We found that the data balance has a substantial impact, and the estimate indicates that accuracy on unbalanced datasets is generally worse than accuracy on balanced datasets (0.12). We took into consideration the relationship between Bayesian Methods and Balanced data for the fixed effect of data balance. With the use of this, we were able to determine how various machine learning techniques and data balance ultimately affected accuracy. All machine learning models' prediction accuracy was revealed to be severely impacted by data unbalance when compared to the reference algorithm. All estimates are at least 0.05 level significant.

Model III: impact of both category and type of variables on prediction accuracy

Dummy variables for the category and type of variables were also utilized as predictor variables in Model III, in addition to the algorithms. We did not identify a statistically significant relationship between accuracy and the category or type of variables used in studies. This finding leads to two conclusions. First, the studies with mixed data (financial and non-financial data) failed to significantly outperform those only using financial data. Second, studies using mixed variables (continuous and categorical) failed to significantly outperform those only using continuous variables. These results seem contradictory in a way because non-financial data is frequently used in research today, and are mostly presented as a fruitful research direction. Note that these findings do not suggest that the use of mixed non-financial and financial data or a mix of continuous and non-

continuous data is to be avoided but that a quantitative analysis does not show the benefit of doing so.

Model IV: impact of industry and region on prediction accuracy

Data region and industry impact on accuracy were also investigated. It was observed that studies focusing on the banking industry have better accuracy than the ones focused on mixed industries. Also, datasets focused on other individual industries have a positive impact on accuracy. Moreover, with respect to the region of the datasets, only datasets from Asia and Europe exhibit significantly better accuracy performance than datasets from America. These findings show that models do not differ significantly in performance based on the region of data.

Model V: impact of all factors on prediction accuracy

Model V, which takes into account all factors, shows that the studies random effects had a large variation and that the differences between them have a considerable influence on prediction accuracy. Furthermore, the highest contribution of the random effect is shown by comparing the R^2 value associated with fixed effects and the R^2 value associated with both fixed effects and random effects (0.230 vs. 0.819). The AIC shows that Model V is better at explaining the variation of prediction accuracy. Moreover, after the inclusion of every variable in the final model, the estimated coefficients keep their sign and significance and are not significantly different in magnitude.

Conclusions

The use of ML techniques in bankruptcy prediction research was thoroughly surveyed in this meta-analysis. Sixty-four studies were reviewed and data were extracted on a number of six variables. With regard to data balance, variables' category, variables' type, industry, and region, this meta-analysis sought to explain the prediction accuracy of several machine learning algorithms. This study adds to the body of literature in several ways. First, our results demonstrate that there is a statistically significant difference in accuracy performance between machine learning models in the studies on the subject of bankruptcy prediction. These differences are mainly driven by the algorithm model, industry and region of data. Second, we were able to pinpoint some of the key factors that influence machine learning prediction accuracy by examining studies in relation to some variables that, to the best of our knowledge, have never been considered before in BPMs (data type, data category, industry, and region). Third, as far as it came to our attention, there are no studies that examine the factors that affect the accuracy of bankruptcy prediction models.

Disclaimer

This research is part of an expanded research presented in the PhD thesis of Claudiu Clement titled "Machine Learning Methods in Bankruptcy Prediction".

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INVOLVEMENT OF ESG IN THE FOUNDATION OF RESPONSIBLE FINANCIAL DECISIONS

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Abstract: *The topic we address in this research is highly topical and is of concern to all governments at the highest scientific, environmental, decision-making, and financial levels. The major challenge we face today is climate change, which is one of the greatest threats to the environment, the social framework, and the economic framework. The effects of climate change are increasingly visible globally and can be seen with the naked eye in the intense heat waves, droughts, floods, and fires that have been caused in recent years. There is therefore an urgent need to take effective and accelerated action to reduce greenhouse gas (GHG) emissions. The European Green Deal recognizes the crucial role of taxation in the transition to a green economy, and this could lead to the implementation of various financial instruments that can be significant in meeting the proposed targets. One such instrument is environmental taxes, also known as green taxes. Although these taxes have been introduced to reduce pollution, these fiscal measures have not always had the desired effect. In addition, the existence of the 'polluter pays' principle means that large sums of money collected for the budget 'overlook' the serious effects of climate change. Also, the existence of contradictory results in the studies analyzed leads us to undertake our statistical investigation.*
Keywords: *ESG, climate change, corporate social responsibility, governance, climate risk*
JEL classification: *Q01, Q53, Q54*

Introduction

"The issue of climate change and what we do about it will characterize us, our era, and ultimately our global legacy" Ban Ki-moon, Secretary-General of the United Nations, 2007

The last two decades have seen an increased focus on climate and sustainability issues. As well as being a considerable concern for institutions concerned with the environment, they have given rise to much debate and dispute in the economic literature about the causes of rising emissions, their impact on sectors around the world, and, by implication, how to reduce them. Climate change is the main challenge we face today, but only together can we act and solve this situation, as human activities have been the main cause of these events. As we all know, the negative effects of global warming are a threat to the entire population, but especially to countries with low economies, as they cannot afford the costly programs needed to adapt to climate change. In this case, rich countries are best placed to develop various innovative solutions to mitigate global warming.

In this context, the European Union has set itself an ambitious target: zero emissions by 2050. The European Union has expressed its vision in the Green Deal, which sets out, in a nutshell, a goal: "zero greenhouse gas emissions in the European Union in 2050, by stimulating the economy through environmentally friendly technologies, developing sustainable transport and industry and mitigating pollution". It all sounds difficult, but it is. If we continue to release huge amounts of greenhouse gases, the average

global temperature will continue to rise, and the consequences can be far greater for both the global economy and the future of humanity.

Methodology

The sources used for this research are a series of academic studies (books, specialist publications, and scientific articles). The articles used can be accessed on Google Academic, MDPI Journals, and The Journal of Finance - Wiley Online Library.

Decision-making under the influence of climate change

Global warming poses a severe threat to global sustainability and the speed at which it is increasing is a real challenge of our time. Today, climate change is no longer seen as a new phenomenon, having been caused and exacerbated by human activities since the industrial revolution. Greenhouse gas (GHG) emissions caused by human activities have posed an unprecedented global challenge to social development and impact on the natural environment. Every year the concentration of carbon dioxide in the atmosphere increases and even though energy is a fundamental driver of economic development, the evolution of demand at different stages of economic development requires a viable solution to environmental problems (Onofrei et al., 2022). Sustainability, also referred to in the literature as sustainable development, is changing the way we manage our economies and interact with changing ecological systems and environments (De Lucia et al., 2020). The interdependence of society, economy, and environment was included in the definition of sustainable development in the Brundtland Report (entitled "Our Common Future") in 1987. The report defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". However, it should be made clear that the 'needs' referred to in the definition are not only economic interests, but also the social and environmental foundations that underpin global prosperity. A few years later, in Rio de Janeiro in 1992, 172 countries met at the United Nations Conference on Environment and Development. That year's summit was a pivotal moment in bringing environmental and sustainable development issues to the public's attention. The context in which sustainable development was defined at this time was that the Earth, despite having countless natural resources, is in danger because of the way companies, particularly greenhouse gas-producing companies or those that clear forests uncontrollably, organize their production and distribution of goods. The conference in Rio de Janeiro resulted in an agreement on the United Nations Framework Convention on Climate Change (UNFCCC) to reduce greenhouse gas emissions.

We can say that one of the most important steps towards a sustainable global economy was the signing of the Paris Agreement to the United Nations Framework Convention on Climate Change (the Agreement was signed by 195 countries and organizations on 12 December 2015 and entered into force in 2016). To mitigate the impact of climate change claims, the Agreement agreed to reduce global temperatures well below 2°C, preferably below 1.5°C. To reach the target, greenhouse gas emissions must be reduced to zero by 2050, and EU countries have agreed to this ambitious target. As a result of these developments and the fact that we are in continuous evolution, the term ESG has emerged, which stands for environmental, social, and governance factors. ESG is an

acronym that was developed by 20 financial institutions in a 2004 United Nations (UN) report - "Who Cares Wins" - in response to a call by UN Secretary-General Kofi Annan. ESG refers to how corporations and investors integrate environmental, social, and governance concerns into their business models.

The ESG criteria are broadly divided into three groups, as the name of the concept suggests. Thus, the environmental criteria focus on issues related to climate change, water, biodiversity, energy, and everything related to environmental pollution. The social criteria deal with employee protection and involvement, safety, health, and how we make society fairer. Finally, governance criteria look at risk and reputation management, compliance, and corruption in the company.

Finally, corporate social responsibility (CSR) was the forerunner of ESG, and there is now a growing shift from the concept of corporate social responsibility to the use of criteria specific to the concept of ESG. But corporate social responsibility has traditionally referred to corporate activities in terms of being more socially responsible and being a better corporate citizen. ESG tends to be a broader terminology than corporate social responsibility, as ESG includes governance explicitly and CSR includes governance issues indirectly, as it relates to environmental and social considerations.

Using this non-financial indicator, all companies issue ESG reports disclosing their environmental impact. In this context, reporting has become an essential means of assessing how companies manage their climate and sustainability risks. In addition, it has been found that all companies that incorporate ESG into their business models have better governance, and care more about the environment and sustainability (Kumar, 2020).

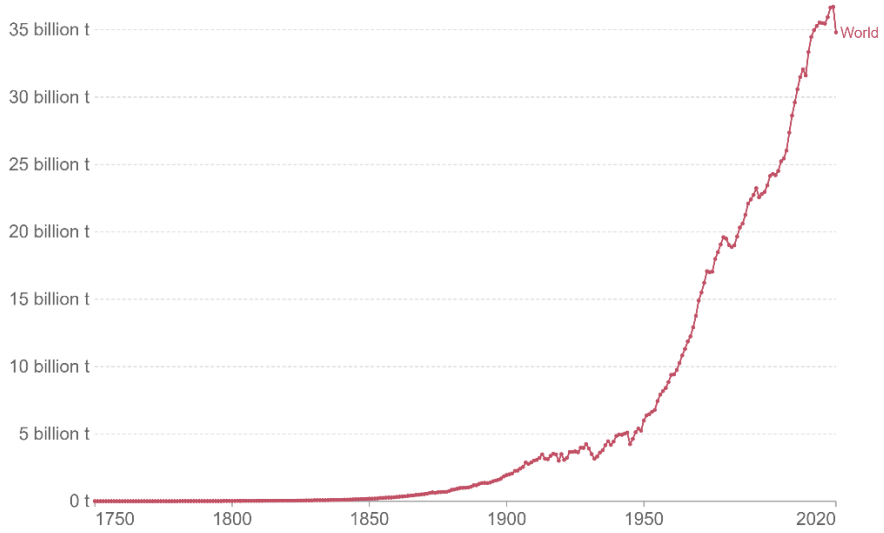
Today, climate change, sustainable finance, the integration of ESG factors into corporate financial reporting and the impact companies have on the climate are major topics being discussed and addressed at national and international levels.

It all starts with the fact that all the gases in the atmosphere that are responsible for maintaining a normal Earth temperature, namely carbon dioxide, nitrous oxide, and methane, are present in far too high quantities, at which point the atmosphere absorbs too much heat and thus increases the global average temperature. Although greenhouse gas emissions have been occurring since the beginning of the industrial era, they have increased sharply since the beginning of 1940 (Neagu et al., 2018).

Although it is almost impossible to accurately estimate the number of emissions that are produced each year, it is known that CO2 is the main greenhouse gas, and as such is the main target of emission reduction efforts. Huge amounts of CO2 are released by waste burning, industrial processes, agriculture, and most importantly by burning fossil fuels. Around 50 billion tonnes of CO2 are emitted each year, and the transport industry and power generation account for about a third of all carbon dioxide emissions. In this case, when we talk about emissions, we have to think of two figures: 50 billion and 0. The number 50 represents the tonnes of gases that are emitted annually. This figure could go up or down from year to year, but the general trend is up, up. As for the second number, zero, that is our target to succeed in stopping global warming.

In the attached picture we have reported the evolution of CO2 emissions at the global level, where you can see that before the Industrial Revolution emissions were very low (for example: in 1750 globally 9.35 million tonnes of CO2 were emitted), but since the beginning of 1860, they have been increasing year by year. In 2020, around 34.81 billion tonnes of CO2 were emitted.

Figure 1. Evolution of global carbon dioxide emissions, 1750-2020, in billion tonnes



Source: Global Carbon Project

An interesting observation from the attached picture is that small decreases in CO2 emissions have occurred around events with a negative global impact, such as wars, recessions, the 1945 famine, the 1973 oil crisis, including pandemics (as an example we could mention the most recent global event, the SARS-CoV-2 pandemic. In the year 2020, when we are fighting the pandemic, there is a significant decrease in CO2 emissions, a greater decrease than during the Financial Crisis and the Oil Crisis. Despite all the efforts made in recent years to reduce greenhouse gas emissions, except in 2020, they have seen year-on-year increases (Fridlingstein, 2019; Minx, 2021). Looking at the evolution of greenhouse gas emissions, we ask where these huge amounts of emissions come from and who is responsible for the year-on-year increases. Whether we assume it or not, climate change is the result of all human activities and we as a population are responsible for these huge increases.

Globally, the main producer of most greenhouse gas emissions is the energy sector, which accounts for about 73.2% of total emissions. Annex 1 shows the largest emitters by sector. As can be seen, most of the largest emitters are large economies, together accounting for more than 50% of the global population and 65% of the global GDP. The top three countries - China, the United States, and India - contribute around 43.6% of global emissions.

The European Union ranks fourth in this ranking, and this is because over the years it has managed to meet some of its emission reduction targets. For example, by 2020 it has set itself a target of a 30% reduction in emissions compared to 1990 levels, which by the end of the year had been achieved. In addition, 56% of electricity in the European Union comes from CO2-free sources. The proportion of clean energy in the EU is increasing year after year as the EU meets its targets and, in particular, as coal and gas-fired power stations are replaced by renewable energy sources.

To combat climate change, the European Union adopted at the end of 2021 the "European Climate Act" which promotes the objectives set by the "European Green Pact", namely:

➢ Reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels;

➢ Achieving climate neutrality by 2050.

In addition, to mitigate the risk of catastrophic events, in 2015 the United Nations set 17 Sustainable Development Goals that indicate the directions that the world's countries will follow to ensure a cleaner and healthier future for future generations. Goal 13 states that climate action is explained as a green transition, green economy, and the introduction of the principle that polluters will pay for the costs of the environmental damage they cause, more specifically, the polluter pays principle (PPP). This principle can be used to collect tax revenues from polluters through carbon pricing instruments, which can then be reinvested in maintaining environmental standards to reduce carbon dioxide emissions.

In this context, governments around the world have started to adopt various environmental policies to mitigate their effects, and here environmental taxation plays a key role, as it is seen as the right way toward a green economy and sustainable development. Environmental taxes are therefore increasingly seen as powerful tools to promote the transition to sustainable economies. Some authors (Bosquet, 2000; Do Vallet et al., 2012; Bostan et al., 2016) argue that environmental taxes contribute mostly through CO2 taxes to global warming mitigation. For example, according to a study done on Iran, data shows that imposing a green tax will significantly reduce pollution, and also collecting such taxes will reduce fuel demand and act as a barrier to excessive energy consumption (Yu, 2019).

In the last two decades, most European countries Belgium (1996), Finland (1997), Denmark (1998), Germany (2000), and Italy (2000), have introduced various environmental taxes to help meet emission reduction targets. In countries such as Denmark and Belgium, green taxes account for more than 4% of GDP, while for Canada this figure is no more than 1% of GDP. Many researchers (Albrecht, 2006; Bruvoll, 2009; Fernandez and Colb, 2011; Heine et al., 2012; Oueslati, 2013) have paid particular attention to environmental taxes by analyzing them from different perspectives. An example could be Ding and Colab (2019) who studied the long-term scope of environmental tax scenarios and concluded from their research that the introduction of environmental taxes reduces carbon dioxide emissions by 28% in highly polluted economies. These findings are similar to the research results of author Yu et al. 2018.

Conclusion

The 2015 Paris Agreement and the Kyoto Protocol on climate change are international treaties that oblige world economies to reduce gas emissions and keep average temperatures below 1.5℃. In this context, integrating ESG factors into companies' business strategies is of paramount importance as achieving climate neutrality has to come as a priority for companies. Through non-financial reporting, all companies will issue ESG reports disclosing their environmental impact. So, as we have argued before, reporting has become an essential means of assessing how companies manage their climate and sustainability risks.

Businesses are going through a difficult period, a period of intense effort and major transformation to make the shift to responsible operating models by complying with new non-financial reporting requirements - ESG. Investors and shareholders are therefore becoming more aware of environmental issues, so the focus has been increasingly on sustainable models for the companies in which they are involved. ESG is about our and future generations' future on this planet to function better on a personal level and of course on a company level. I, therefore, see ESG as an area of great interest because mitigating climate change is a huge activity that requires collective action and no matter what measures states impose to reduce greenhouse gas emissions, without the participation of businesses and consumers as major players in the market, it is highly unlikely that the proposed goals will be achieved. In addition, imposing optimal carbon taxes is a sustainable tool that economies could use to reduce CO2 emissions.

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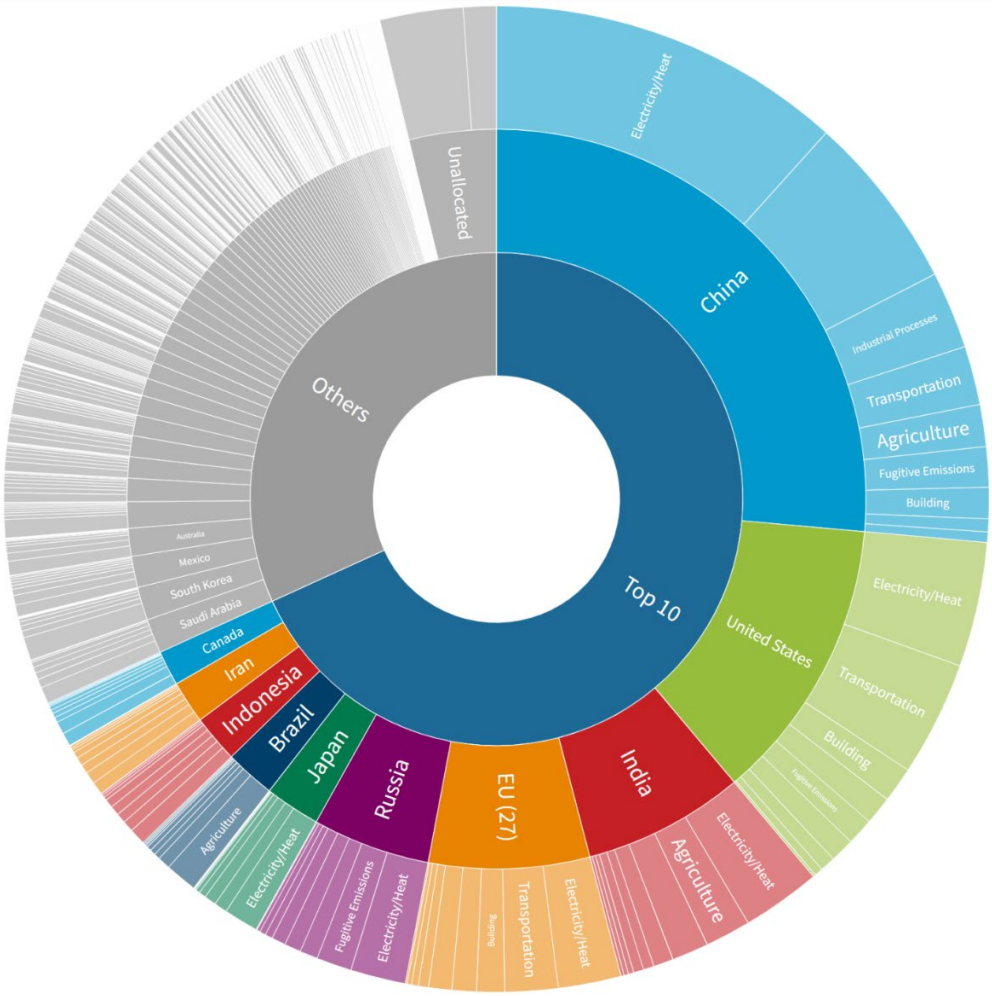
18. https://www.climatewatchdata.org;
19. https://www.eea.europa.eu/ro;
20. https://www.eia.gov
21. https://www.iea.org
22. https://www.statista.com

Annex 1. Main emitters of greenhouse gas emissions, June 2022



Source: World Resources Institute

THE LEGAL CONSEQUENCES OF THE GOVERNMENT'S POLICY OF ATTRACTING FOREIGN INVESTORS BASED ON THE OMNIBUS LAW

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Abstract: *Legal issues have arisen regarding the existence of an article that is quite controversial among law enforcers, economic, social and political, regarding the granting of a period of Management Rights over HGB and HP land which is granted within a period of 90 years as regulated in the Job Creation Act: Omnibus Law in Proglegnas so as to reduce the authority of the Land Bank then by the procedure for granting it is carried out through derivative regulations which will then be formed by Members of the Legislative Formation Commission in the DPR, this raises pros and cons over the issue of supremacist violations against foreign investment business entities that violate the decision of the Constitutional Court. because then the HGU or Right of Use on HPL land can be given an extension at once as well as the authority to cancel regional regulations through presidential regulations which have indirectly violated the constitutional obligations of the State and Government over agrarian resources in the country so that they are managed as much as possible for the prosperity of the people through the principle of the democratic pattern of the Indonesian economy, in the form of a business entity or cooperative with the spirit of gotong royong. because the setting at least does not refer to this principle. Besides that, there is also a violation of motives in the monopoly speculation of the land bank. To accommodate, manage and carry out transactions for buying and selling state lands, the Land Bank (BT) institution was formed. BT manages the lands claimed by the state as a result of the implementation of the domain verklaring above, and then they are designated as assets of the Land Bank in the form of HPL. Even though it is claimed to be a non-profit institution, in fact the source of its funding can come from third parties, including debts from foreign institutions. so that this gives the authority flexibility over the limits of state authority through the practice of conflicts of interest violating the elements of the provisions of the granting of management rights.*
Keywords: *Government Policy, Foreign Investors, Omnibus Law*

Introduction

Analysis of the factors that determine economic growth can be concluded that the level and rate of growth of an economy is determined through the theory of growth, the rate of economic growth is mainly determined through population development, investment development and technological progress. With regard to the issue of increasing foreign attractiveness to invest in indonesia, the government is competing with other countries to formulate strategies and provide answers to the question, what is the appropriate pattern to increase economic growth through investment? Can improve the

efficiency and effectiveness of investment activities to be implemented. Efforts needed to increase development certainly require investment in such a way, so that throughout the development process there will be no obstacles originating from supply or demand. This relates to the terms balanced and unbalanced development. Which is inversely proportional to the obstacles that come from supply as described above. These terms are used to indicate that development programs and policies are structured in such a way that there is an excess and shortage of economics in various sectors, resulting in distortion and instability in the economy. According to one expert who developed the balanced and unbalanced theory, hirschman, if the economy wants to be maintained so that it continues to advance, in its existence, development policy can serve as a defense against shocks, disproportions and imbalances (sakino, 2007).

A balanced development program is implemented, the amount of investment that must be made far exceeds the level of investment in the period before the development effort was carried out. This theory of development, which is also called balanced and unbalanced, has the aim of emphasizing the capacity of the need for large amounts of investment for the benefit of development programs so that in the long term the rate of economic growth is always greater than the rate of population growth, so that the level of community welfare can be realized. To achieve public welfare, the government has issued various rules and policies to achieve this. Indonesia itself is well-known among ASEAN countries as the owner of a convoluted regulatory system, policy and bureaucracy, and there are other things that hinder investment/investment such as political turmoil, legal certainty, infrastructure. This is due to the quality of human resources. until now it is still inadequate and infrastructure in remote areas that are famous for their tourism is still lacking. This is contained in the index on the coordinating body for foreign investment which states that there is a decline in PMA. The economic growth system in the year of SBY's government stated that the realization of foreign investment reached 16.21 billion in the first period and in the final period in 2014 the realization reached 28.53%, namely there was a jump of around 14%, this is inversely proportional to only an increase of 0.1% which was initially in 2015, 29.27 billion and 2018 the realization reached 29.30. Another factor that is still worsening is that it is said that for every 1 million US dollars that enters Indonesia, this only results in the achievement of job openings of 32 people. With the decline in human resources and investment, it is impossible to increase economic development growth (gumiwang, 2019).

Companies in several trade sectors that make Indonesia an attractive place for foreign investment, such as Europe and the United States, are capital-intensive sectors (automotive, logistics, and pharmaceutical). One of the government's efforts in increasing economic growth is to form various arrangements that have global competitiveness, which summarize the bureaucracy and ease of licensing. Regulations in the field of job creation laws and increasing the growth of foreign investment investment, namely: omnibus law. According to the chairman of the legislative body (Baleg) of the DPR, Supratman in his presentation at the plenary meeting explained that the work creation bill was discussed in 64 meetings from April 20 to October 3, 2020. The law, which before being ratified, consisted of 15 chapters and 174 articles, which were later ratified in October 3, 2020. One of the things discussed in the articles of the omnibus law is the management right as one of the foundations of a right granted to certain legal subjects by the government in managing the type of concession land owned by the state, based on article 127 paragraph

(3) management rights are granted for 90 years. Which then can be granted the right to use the right to cultivate (HGU), the right to use the building (HGB) and the right to use (HP), use rights on land (HPL).

This has pro and contra impacts, one of the contra effects is the deviation of the right to control from the state (HMN) and has a high potential to misuse power or terms in the dictionary (abuse of power). This management right, if seen in history, is a land right which has no term at all in the basic agrarian law and specifically for rights as well as its extent is outside the provisions of the UUPA. Indirectly, Article 2 paragraph 4 states that the implementation of the state's right of control above can be delegated to autonomous regions and customary law communities, only as necessary and not contradicting the national interest, according to the provisions of government regulations. for the delegation of authority to exercise the right to control the state it is referred to by existing regulations as management, while for the delegation of the exercise of authority to exercise the right to control the state to indigenous peoples there is no regulation that regulates it so that it is still a das sollen, even though the law is flexible enough to accommodate a provision in the future. management rights for rural areas listed in a particular legal community. This is closely related to the level III area of autonomy that is being planned by the government. Perhaps in the future, to make it easier to understand, let's call it a village management right, in addition to a general management right. In Article 3 of the UUPA (Basic Agrarian Law), certain rights are given to customary rights which are recognized by the UUPA as an institution which even though it existed before the UUPA, the right to life and its role are given a place in the national agrarian law system.

Article 2 of the UUPA further explains that Article 33 paragraph 3 of the 1945 Constitution reads: "Earth, water and natural resources contained therein are controlled by the state and used for the maximum benefit of the people's prosperity." Meanwhile, Article 2 paragraph 1 of the UUPA states that: based on the provisions in Article 33 paragraph 3 of the Constitution and the matters referred to in Article 1, the earth, water and space, including the natural resources contained therein, are at the natural level. contained in it is at the highest level controlled by the state, as an organization of power for all the people.
As noted in UUD 45 it is stated that the earth, water and natural resources contained therein, while in Article 2 paragraph 1 it is stated that the earth, water, space and natural resources contained therein are controlled by the state. This broad understanding, as a clear attitude that the three understandings are an integration and should also be arranged and resolved in an integrated manner.

Based on the explanation above, the writer formulates two problem formulations, including how is the right of management applied in Indonesia? And what are the solutions and policies for the application of management rights for a period of 90 days which are contrary to the constitutional rights of local governments in managing foreign investment that enters Indonesia?

Research method

The research method used in this paper is a normative research method. Meanwhile, according to an expert in the field of research methods, legal research methods are systematic and certain thoughts that have elements to analyze all the symptoms and problems being studied. As for this research method, it is more specific to discuss the

dilemmas that occur in legal arrangements and principles, legal history and legal comparisons (marzuki, 2011).

Result and discussion

The Breadth Of The Meaning Of The Right To Control The State And Its Regulation In National Agrarian Law

How the extent of the state's right to control is stated in article 2 paragraph uupa, while the state's right to control as referred to in this article gives the authority to:

a. Regulate and administer the designation, use, supply and maintenance of the earth, water and space.
b. Determine and regulate legal relations between people and the earth, water and space.
c. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

The various kinds of rights contained in the law, precisely in Article 4, have provided a detailed explanation of the rights to the earth's surface, which are referred to as the right to control by individuals or collectively, thus the government in carrying out this law will try to create several legal institutions. to comply with the provisions of this article. From the above description it is clear that the authority of HMN is the authority of the central government and this is proven as stated in Article 2 paragraph 4 which states that the implementation of HMN can be authorized to autonomous regions and customary law communities.

History And Concept Of Management Rights

This HPL has properties and characteristics that are not easy to understand, it can even lead to misinterpretation when juxtaposed with land rights regulated in Article 16 of the UUPA (ownership rights, cultivation rights, building rights and use rights) (Maria, 2008)). Management rights from the beginning were a translation of the Dutch language Beheersrecht, so at that time it was translated with tenure rights and for a long time this term survived and was used which we will know from the descriptions below:

If it is read to PP 8/53, the original term was control rights which contained:

a. Plan, designate, use the land.
b. Use the land for the purposes of carrying out their duties.
c. Receiving income/compensation and/or annual mandatory money.

The government's determination at that time was to change all land regulations with the aim of obtaining the status quo in the issuance of new eigendom rights (before the enactment of our UUPA, because it was still controlled by the b.w. regime) but apparently due to urban development, the city government needed land for land use. the implementation of their duties, as well as many deviations from the land purchased by the people for the purposes of the government, including the occurrence of lands belonging to the right of control from the regional government that are sometimes sold/exchanged without the government issuing government regulation no. 8 of 1953.

Land designation and use can be interpreted as use planning or in the city it is called zoning planning, and designation is a special bestemming of a use planning. In the agrarian minister's decree no. Sk vi/5/ka dated January 20, 1962, which mentions:

1. The right of control (beheer) by a department, agency or autonomous region over land controlled directly by the state, based on government regulation no. 8 of 1953 (l.n. of 1953 no. 14) or other laws and regulations that are enacted by government regulations regarding this matter.
2. Right of use with a period of more than 5 years with the understanding that if the period of time is not specified, it is considered as more than 5 years..

Meanwhile, regarding eigendom rights through a circular letter from the Minister of Agrarian Affairs cq Head of the Planning and Legislation Bureau, which was addressed to the Head of West Java Agrarian Inspection dated March 1, 1962 number ka.3/1/1 it was stated that:

1. If the eigendom right is affected by the law on the abolition of particular lands, the land in question will be granted by a decree of the minister of agrarian affairs with the right of control (beheer) to the municipality which previously had the eigendom right.
2. In the case of eigendom lands which are only in the form of small parts which are imposed in the law on the abolition of particular lands, then as it is known based on the conversion provisions of the basic agrarian law, the egendom rights have been converted into building use rights. Since such lands have generally been encumbered with erpacht or postal rights, they should be converted into tenure rights, the confirmation of which is carried out by a decree of the agrarian minister as a conversion of the basic agrarian law article 1 paragraph 5.

Furthermore, regarding lands controlled by regions that do not yet have any rights, derived from the liberation of people's rights, the lands will also be given to the region concerned with the right of control. The right of control itself is given to the municipality/regency with the following provisions:

1. Municipalities/districts are given the authority to determine the allocation and conduct verification.
2. The granting of property rights, building use rights and other rights is still carried out by agrarian agencies according to sk 112/ka/61.
3. Compensation for other payments is still received by the municipality/regency.

Similarly, we can read about the decision of the minister of agriculture and agrarian no. Decree 12/ka/1973 regarding the conversion of opstal and erfpacht rights on municipal eigendom lands, then in deciding to stipulate, first confirming that postal and erfpacht rights on municipal eigendom lands, on the basis of the provisions of article v (the provisions of Article v) the conversion of the basic agrarian law, according to the law it was converted into building use rights, since September 24, 1961.

The concept of management rights was introduced in Governement Regulation (PP) no. 9/1953 concerning the control of state lands (Parlindungan, 1989), according to its title, PP no 8/1953 regulates the control of state land that:

a. Control over state land can be handed over to the ministry in the egari (Kemendagri), except when the state land has been handed over to the ministry/office or autonomous region. (articles 2 and 3).
b. Land control over state land can be given and handed over to the ministry/service or autonomous region. To organize the public interest in the area itself. (article 4)
c. If the land in point b is no longer used, the ownership is handed back. To the Minister of Home Affairs (Article 5).

d. Ownership of land granted to a ministry/service or autonomous region can be revoked if the first handover has not been or is not in accordance with the relationship of the intended purpose. The two areas of land that were handed over exceeded their needs, and the three lands were not maintained or not used properly. (article 8).
e. State land whose control is handed over to a ministry/office can be handed over through a ministry permit to another party with a short period of time that must be determined.
f. The head of an autonomous region may be granted control over state land to be given to other parties a right in accordance with the regulations of the Minister of Trade of the Republic of Indonesia.

Characteristics Of Management Rights In Participation In Economic Growth Policies Through Investment

Reviewing the provisions in the UUPA, it can be seen that hpl. It is not a land right, because it is not stated in Article 16 paragraph (1) of the UUPA which regulates the types of land rights (Winahyu and Fakhrizya. 2019), nor is it an entity of its own right of control, because in the general explanation III, the UUPA only mentions 3 (three) land tenure rights, namely HMn, land rights, and ulayat rights. The legal basis for management is stated in the UUPA, whose existence is an interpretation of the provisions of Article 2 paragraph (4) of the UUPA, which states that: "The right to control The implementation of the above mentioned state can be delegated to autonomous regions and does not conflict with national interests, according to the provisions of government regulations. In 1972, HPL was regulated in a concrete manner, namely in Article 12 of the Minister of Home Affairs Regulation No. 6 of 1972 concerning the delegation of authority to grant land rights mandated by the Ministry through the issuance of decisions on applications, renewals and the release of cancellation transfer permits in Perkaban No. 1 of 2011 and its amendments (Perkaban No. 3 of 2012) which HPL is given by the National Land Agency or abbreviated as HPL.

The granting of land rights with management rights or HPL is approved by the government, if on the land given HPL there are still other land rights. Before giving HPL to certain legal subjects, it must be noted that the land to be given HPL must be in a clear and clean condition. As explained that the implementation of the HPL is of course carried out by the competent government officials where the area lives, as in some areas the GSBK is, a stadium that was started to be built in the middle. For the first time this GBSK was completed in 1962 which was intended for the Asian Games IV in Jakarta and was managed by authorized officials in accordance with applicable laws and regulations.

As for the authority of the management right holder, substantially from the various laws and regulations governing HPL, the authority granted to HPL holders includes, among others:
a. Planning the allocation and use of the land in question;
b. Use the land for the purposes of carrying out its business;
c. Handing over parts of the land to a third party according to the requirements determined by the company holding the right, which includes aspects of designation, use of time period and financial system. And given the authority by the official in accordance with applicable regulations and not contradictory.

The detailed authority in granting management rights over state land is then limited, namely:

a. Land with a maximum area of 1000m² (one thousand square meters);
b. Only Indonesian citizens and legal entities formed under Indonesian law and domiciled in Indonesia;
c. Granting rights for the first time only. Provided that the change, extension and replacement of the right will be carried out by the agrarian agency concerned, in principle it does not reduce the income previously received by the right holder (article 6 paragraph (2)).

Along with the dynamics of regulation in the field of hpl, there is a shift in the nature of hpl that tends to return to the public, therefore after a long time there are various confusions of understanding about hpl, and various implications, the correction of the position of hpl began in 1996. What can be seen in pp no. 40 of 1996 which states that the right to cultivate, the right to use the building and the right to use the land, in article 1 point 2 hpl are the control rights of the state authorized to exercise part of the state's abundance authority to the holder. In the concept of land itself, the assignment of land rights can be carried out on it with HGB and HP. The three provisions are regulated in:

a. For building use rights, it can be found in article 21, 22 paragraph (2), article 26 paragraph (2), article 30 letter d, article 34 paragraph (7), article 30 letter d, article 34 paragraph (7), article 35 paragraph (1) letter b, article 36 paragraph (2) and article 38.
b. Right of use, for the provisions on the use of the right to use and all aspects regulated are contained in article 41, 42 paragraph (2), article 46 paragraph (2), article 50 letter d, article 54 paragraph (9), article 55 paragraph (1) letter b, chapter 58.

In essence, HGB and HP occur on HPL, HGB and HP land which are given a decision through rights approval by the minister and by an appointed official at the proposal of the HPL holder. The later officials who can be given the authority to manage HPL, namely:

a. Government agencies including local governments;
b. State-owned enterprises;
c. Regional owned enterprises;
d. PT. company;
e. Authority body:
f. Other government legal entities appointed by the government.

Relationship Between HPL Holders And Third Parties

The legal relationship that forms the basis for granting land rights by HPL holders to third parties is stated in the land use agreement (SPPT). In practice, the SPPT can be referred to by another name, namely a letter of agreement for the transfer, use and management of land rights. Agreements are made in the context of implementing development agreements, ownership and management, handover of land, buildings and supporting facilities, also known as bots or build, operate and transfer. Regarding the bot agreement, it can be interpreted as an agreement between two parties, where the first party surrenders the use of its land to build a building on it by the second party, and the second party has the right to operate and manage the building for a certain period of time. The things that make up the content/substance of the agreement are broadly the same as the agreement. Broadly speaking, the meaning is the same as the content of the BOT agreement.

If then the party is unable to keep the agreement, breach of contract or default. Then the HPL holder submits the use of the land as well as the management and implementation of any and all obligations contained in the agreement. While the legal consequences in the form of the application of sanctions in the form of:

a. Written warning to correct or recover the event of default within a certain period of time (recovery time);
b. If point a cannot be implemented, a deliberation will be held at a certain time (deliberation time);
c. If point b is not achieved, the party who breaches the contract is obliged to pay compensation within a certain time.

For the expiration of the HPL agreement, it ends due to the expiration of the term and is terminated by the decision of the parties in the BOT agreement.

State Land Assets

Law no. 1/2004 states that state property is all goods purchased or obtained at the expense of the state budget originating from other legitimate acquisitions. Regarding state assets in the form of land, it is regulated in the circular letter of the minister atr/bpn no. 500-468 dated January 12, 1996 regarding the issue of Ruslag on government lands. In the provisions of the circular, it is stated that (Harsono, 1997):

a. Lands that are not lands of other parties and which have been physically controlled by the state;
b. These lands are managed and maintained/maintained through the government's budget;
c. The land has been registered in the inventory list of the relevant government agency;
d. Physical land is controlled or utilized by other parties based on legal relationships made, among others, by the parties and government agencies.

Through other provisions governing the management of state/regional property, the granting of HP and HGB over HPL to third parties can still be carried out according to the procedures stipulated in the laws and regulations in the land sector. It can be seen that the framework of the mindset of HP/HGB over HPL is based on the basis of cooperation in the use and use of it through the principle of efficiency in the management of state property, with standards for the use of needs that are directed at optimally carrying out main tasks and government functions.

Foreign Investment in Indonesia

The theory of development regarding foreign capital takes the position that foreign capital provides many benefits to countries receiving capital, which are almost entirely developing countries. The arrival of foreign capital into a country makes that country allocate its limited funds for other purposes. Foreign capital will open up new jobs. Thus the problem of unemployment can be resolved and workers will get wages as expected.

The beneficial aspects of foreign capital bring the argument that foreign capital from the point of view of international law must be protected. Protection will facilitate the flow of foreign capital to a country which encourages economic development, especially for free market developing countries from America and Europe to ensure the flow of foreign capital coming to these countries (Guguk, 2011). In order to ensure that capital inflows through

developing and developed foreign countries urge GATT/WTO which contains TRIPs, TRIM's dan GATs. The attitude of world bodies such as the world bank and the IMF encourages economic liberalization, which means that it is left to market forces managed by third parties, namely the private sector, for a climate of privatization.

In fact, the theory of development can advance developing countries with evidence that says otherwise, developing countries continue to depend on developed countries, so that developing countries rely on foreign exchange from their exports to developed countries, making developing countries dependent on developed country markets. In order to promote economic growth so that it does not depend solely on developed countries, the government devises a strategy to attract foreign capital, developing countries need political stability. One of them in the middle of the end of yesterday, the government passed the regulation on job creation which aims to attract foreign investors to invest their capital in Indonesia. In order to increase competitiveness and encourage investment in Indonesia.1 the problem is whether the number of regulations is a problem or there are other things, such as disharmony regulations that are actually a problem. If many regulations are a problem, then simplifying regulations through the omnibus law concept is certainly the right step. This is because the omnibus law is a law that focuses on simplifying the number of regulations because it revises and revokes many laws at once. Which aims to promote economic growth in increasing local and international competitiveness. The things that are feared then include the rights that are taken away through material facts in the field through the aspect of examples of workers who do not allow the right to strike, both goods must be sold cheaply and reduce production costs. This is then what the public in general is afraid of.

Another thing is allegedly regarding management rights as the root basis of the monopoly liberalization system in the interest of land rights control which is feared to occur in the government system later after all elements of the omnibuslaw mechanism legal system are running and its derivative regulations, especially on the land tenure system in national agrarian law.

Conclusion

As for the related issues regarding the management of the sale and purchase of state land formed through a land bank institution or abbreviated as bt, it is necessary to note that the land claimed by the state or domain verklaring above, is then designated as a land bank asset in the form of hpl, this creates a monopoly in inequality of control over Assen land bank land plus a fairly long period of time which can be up to 90 years and can be extended. So that it gives rise to supremacist rights and government institutions can be easily controlled by the role of investors in creating policies that are more pro to foreign investors which are generally aimed at making profits. This certainly robs people of their constitutional rights in business competition, plus inequality in society is still ongoing and very difficult to solve.

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GEORGIA OMBUDSMAN: THE ASPECTS OF STRUCTURAL-INSTITUTIONAL AND FUNCTIONAL

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Abstract: *The concept of ombudsman is an organization that receives complaints and resolves complaints about issues that citizens face in public bodies. It refers to a representative person in the Swedish language. It is more related to parliament and in this respect is a democratic legitimacy. Founded in all continents of the world, this organization has found its place in various country levels. In this study, it is aimed to explain the Georgia Ombudsman with its structural-institutional and functional aspects. The main aim of this study is to introduce the ombudsman organization of the state of Georgia in the institutional and functional areas and to determine its general characteristics.*
Keywords: *Ombudsman, Georgia, Democracy, Auditing.*

Introduction

With a general definition, the Ombudsman is a public organization that receives complaints from citizens about violations of rights against public bodies in a state and reaches a decision by solving the problem with certain legal regulations. This organization, which was first established in Sweden in the 18th century in the World, it continued to develop after the World War II and today it is applied in many states on different continents. Strengthening democracy, institutionalizing the rule of law and defending human rights are among the main features of the Ombudsman. In this respect, the ombudsman is a contemporary organization that defends individual rights and freedoms with a citizen focus.

In this study, it is desired to examine the Georgia Ombudsman with its institutional and functional qualities. Therefore, the aim of this study is to draw a general view of the ombudsman organization in Georgia within the literature. The method of the study is a descriptive evaluation based on literature review. After giving general conceptual information about the ombudsman in the first part of the study, in the second part, firstly, the Georgian political system and public administration structure were expressed in general terms, and then the Georgia Ombudsman was explained with the aforementioned dimensions.

The Ombudsman Concept

The word Ombudsman is Swedish in origin. “Ombuds”, representative; “Man” also means person. In other words, it means "representative person" in Turkish. As a scientific concept, the ombudsman is the name given to a public institution/organization that receives the complaints of the citizens of the country against the public administrations and

evaluates them by passing them through a certain procedural process (Özden, 2010). The Ombudsman organization works mainly on behalf of the parliament. However, it is also independent from all other state institutions and bodies (Fendoğlu, 2011). The origin of this organization in the world is Sweden. At the beginning of the 19th century, it increased its power by entering the Swedish Constitution. Ombudsman, especially it increased its development after World War II. As a matter of fact, there are approximately 190 countries that make up the ombudsman organization at the country level. Therefore, this organization has spread to all continents of the world and continues its activities at different levels with each passing time (Parlak and Doğan, 2016).

Ombudsman in Georgia

Georgian Political System and Public Administration

Georgia gained its independence on April 9, 1991 with the dissolution of the Soviet Union (Aprasidze, 2012: 219; Tsitsishvili, 2010). There are two autonomous republics (Abkhazia and Ajara), eight provinces and 67 districts in the Georgian state, which is governed as a democracy as a political regime and as a republic as a form of government (DESA, 2004: 2). In the legislature, deputies are elected by the people for four-year terms. The President, who has important powers over the executive, is elected by the people for five-year terms. The President is also the commander-in-chief of the armed forces. The government is directly responsible to the President (DEİK, 2012: 3). The Georgian judicial/court system consists of the following (DESA, 2004: 6): Georgian Supreme Court, Supreme Courts of Autonomous Republics, Courts of Appeal, Circuit Courts, District and City (city districts) Courts.

Ombudsman of Georgia in terms of Historical Development, Duties, Appointment, Investigation and Evaluation of Complaints

In Georgia, the ombudsman takes the name of "Public Defender" and after it was stipulated by the Georgian Constitution of 1995 and the Law on Public Defender of 1996, the organization took office in 2001 (Vangansuren, 2002: 43; Reif, 2004). This organization is the Parliamentary ombudsman at the national level (Kofler, 2008: 197; Giddings et al., 2000: 443). As it is accepted in the literature, from now on, the Georgia Public Defender will be referred to as the ombudsman. Georgia Ombudsman is the constitutional institution that oversees the protection of human rights and freedoms in the territory of Georgia, reveals the facts of violations and facilitates the restoration of violated rights (https://ombudsman.ge/eng). Georgia Ombudsman performs his duties independently, and these duties are bound only by the Constitution, international treaties and conventions, internationally recognized principles and rules of international law, the Organic Law of the Public Defender, and other legal regulations. Any influence or interference by other state bodies regarding the activities of the ombudsman is prohibited by law (ENNHRI, 2019).

The strategic objectives of the Georgia Ombudsman are (ENNHRI, 2019):

• To actively monitor and advise the human rights situation and assist the Georgian authorities in complying with their human rights commitments,

• To provide human rights education activities of the highest professional and academic quality and to increase the role of the ombudsman as the primary institution in human rights education and research.

In this respect, the defense of human rights and freedoms within the territory of Georgia is overseen by the ombudsman elected for a five-year term by the absolute majority of the Parliament (DESA, 2004: 10; Welt, 2009: 204). If the Ombudsman does not fulfill his duties for four consecutive months or carries out an activity that does not comply with his position, he can be dismissed by a simple majority decision of the Parliament (Kofler, 2008: 199). The duties of the Georgia Ombudsman include advising the authorities. The Ombudsman may also seek information from any government body that may be suitable for the defense mission. In addition, the ombudsman has the right to enter any civil or military prison center to compose his report (DESA, 2004: 10). The scope of the Ombudsman's control covers the activities of state institutions, local governments, authorities and legal entities (Kofler, 2008: 199).

If your rights are violated, the ombudsman can (https://ombudsman.ge/eng):

• Send recommendations to the state body, official or legal person, whose actions violated your rights;

• If the ombudsman feels a crime has been committed, submit materials possessed by him to the investigating unit;

• Submit proposals to relevant agencies regarding disciplinary or administrative procedures of its employees whose action(s) violated your rights and freedoms;

• Inform mass media about violations of human rights and freedoms;

• Publish information on violations of human rights in special reports and annual reports.

The Ombudsman takes into account the complaints and objections of citizens, foreigners and NGOs. The complainant can convey his/her complaint to the organization in cases where he/she thinks that human rights and freedoms have been violated. The complaint is exempt from state taxes and the assistance of the ombudsman given to the persons concerned is free of charge. The Ombudsman informs the claimant of the results of the investigation. The Ombudsman cannot bring a formal legislative initiative before the Parliament, but can make proposals for improving legislation to secure human rights and freedoms. Its decisions are advisory in nature. The Ombudsman presents an annual report to the Parliament on the situation of protection of human rights and freedoms in Georgia and also publishes special reports on the protection of human rights and freedoms. The annual report is published in the official gazette (Kofler, 2008: 199-201).

Conclusion and Evaluation

The ombudsman in Georgia is a democratic organization established after the Soviet System, mainly for the protection of human rights and public freedoms. The Ombudsman is a Parliamentary ombudsman at the national level, and besides its defense duties, it also has a mission to educate the public, especially on human rights and freedoms. After examining the complaints received from citizens and other persons within the framework of the relevant legislation, the Ombudsman arrives at a decision, makes recommendations to the parliament and can issue reports.

As a result, the ombudsman organization, which is extremely important for the development of Georgian democracy and human rights, has been operating in Georgia for years and seems to have completed its institutionalization phase.

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EFFECT OF SHORT SELLİNG ON RİSK AND RETURN İN THE NİGERİAN STOCK MARKET

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Abstract: *The study looked at the effect of short selling on risk and return in the Nigerian stock market. Purposive sampling was employed throughout the study period 2005 to 2020 to determine the sample size for the stocks of 113 companies' stock. The monthly stock prices, market index, risk-free rate, ownership shareholdings, market capitalization, book value of equity, earnings before interest and taxes, and total assets were the data used in this study. The sub-sample period, 2005–2008, 2009–2012, 2013–2016, and 2017–2020, were covered by the study. The data was extracted from the Nigerian Group of Exchange (NGX) website, the Central Bank of Nigeria (CBN) website, and the Standard and Poor (S&P) database. The Fama-MacBeth two-step regression method was employed. It was found that the short selling strategy has a negative and insignificant effect on returns in the Nigerian stock market. On the other hand, it has been documented that short selling has a negative but significant effect on risk in the Nigerian stock market. The study concluded that short-selling strategies could be used as investment strategies that could promote efficiency if properly monitored and regulated in the Nigerian stock market. If not, they could lead to price pressure and volatility in the Nigerian stock market. The study recommended that a well-regulated short selling investment strategy promotes stock market efficiency through an increased liquidity and minimized volatility in the Nigerian stock market.*
Keyword: *Short selling, Return, Risk, Fama-MacBeth two-step regression, Nigerian stock market*

Introduction

Short selling is a crucial tool in the stock market because it boosts market performance, contributes to price discovery (toward fundamental values that all information should be reflected in), and provides liquidity to cut down on transaction costs (Kim, 2020). As a result, short selling is permitted in the majority of stock markets around the world when the financial market is functioning normally. However, during market crises, short selling may be accompanied by a poor attitude toward investing, which could result in a sudden decline in stock prices, an unnecessarily high level of volatility, and eventually a stock market crash. This supports the findings of Jain et al. (2013) that one of the causes of the financial crisis of 2007/2008 was short sellers' activities in the financial markets, which increased market volatility and, in some cases, destabilized the markets, leading to a ban on short selling in some markets. Additionally, despite the fact that institutional investors are frequently the main participants in short selling, due to the informational disparity between individual and institutional investors, individual investors may still be harmed by institutional investors' short sales. Due to these factors, despite being crucial to raising market quality, short selling frequently receives a bad rap.

Despite the negative impact, short selling is still a very risky and aggressive investment strategy used by traders in the financial markets. This is because short sellers are occasionally perceived as dishonest and callous individuals who are out to destroy businesses and drive down stock prices. According to Velde (2019), buying a stock with the hope that it will rise in value and then selling it at a higher price to make a profit within a short time frame is known as taking a long position in the stock. Short selling is a riskier investment position. Short selling can be used for speculative, arbitrage, and hedging purposes to generate large profits quickly, avoid market mispricing issues, and off-set trading positions to lessen the impact of potential losses (Velde, 2020).

Furthermore, academics and traders contend that short-sellers serve to stabilize security prices by selling stocks when they surpass fundamental values, thus assisting in the correction of market overreaction. According to Rahim (2018), limited short-selling prices convey negative information, resulting in overpriced stock prices. As a result, the unrestricted ability to sell short plays a critical role in determining stock prices and market efficiency. In light of this, the impacts of short-selling activities on the stock market have been investigated in both developing and developed countries by researchers across the globe. Some of the researchers include but are not limited to (Bohl, Reher & Wilfling, 2016; Lee & Wang, 2016; Chague, De-Losso & Giovannetti, 2019; Wu & Zhang, 2019; Hu & Chi, 2019; Sahin & Kuz, 2020). The findings of these studies revealed mixed findings because some of the studies documented positive effects on return and negative effects on risk, while some of the studies showed that short selling reduces profitability and increases risk. It is, however, still unclear the extent to which short selling activities have impacted the risk and return. Thus, this study attempts to shed new light on this hotly debated issue by examining the effect of short selling on the risk and return in the Nigerian stock market.

The contribution of this paper to the existing body of knowledge is three folds. First, an examination of the effect of short selling on risk and return within the context of Nigerian stock market. Second, the estimation approach is conducted using Fama-MacBeth two step regression approach under the Fama and French Five factor model. Third, the study considered effect of short selling as a useful tool of investment performance strategy under the long and short period. In view of this, the remainder of this study proceeds as follow; section two documents the literature review, section three details the methodology, section four presents the results and section five proffers the conclusion.

Literature Review

Zhu, Duan, Sun and Tu (2019) investigated the relation between short selling and momentum in USA. The Fama-French three factor regression model was used and it was documented that a consistent momentum strategy that buys lightly shorted winners and sells heavily shorted losers exhibits strong short-term momentum and no long-term reversal. The study concluded that stocks with more binding short-sale constraints have sting effect on momentum while a risk-managed version of the consistent momentum appears to be crash-proof. However, the study fails to subject the models to diagnostic tests and the result of the estimates may be biased and spurious. Chague et al. (2019) Using market-wide data from the Brazilian stock lending market at the deal level examined the short-selling skill of institution and individual. Panel data regression was used and it was

documented that strong evidence of short-selling skill for institutions and individuals and skilled short-sellers present out-of-sample performance persistence. The study concluded that skilled short-sellers do not display the disposition effect, liquid, high-volatility, and losing stocks, and to initiate a short position before earnings announcements. However, the study fails to subject the methodology to the following pre-estimation tests such as hausman test, poolability test and breauch pagan lagragian multiplier test in order to determine the appropriate model for estimation. Hendershott, Kozhan and Raman (2019) assessed effect of short selling in corporate bonds to forecasts future bond returns. The study employed Fama-MacBeth two stage regressions as the estimation tool. The study found that short selling predicts bond returns where private information is in high-yield bonds and when informational uncertainty is higher. The study concluded that bond short sellers contribute to efficient bond prices and those short sellers' information flows from stocks to bonds but not from bonds to stocks. However, the study fails to subject the models to diagnostic tests and the result of the estimates may be biased and spurious.

Baidoo (2019) researched the impact of stock short selling on the volatility of the US stock market and its sectors. The study used a multivariate DCC GARCH Model on the NYSE US 100 Index. It has been proven that investing in a few select companies on the market reduces market volatility and increases short selling activity reduces market risk. Portfolio managers can raise their shorting position, resulting in a larger projected return with less risk, according to the findings. One of the study's flaws is that it does not run diagnostic tests to determine the model's fitness. Zhu, Duan, and Tu (2019) evaluated the impact of trend in short selling on a cross-section of stock returns. The estimation technique employed was Fama-MacBeth regressions, and it was found that equities with a falling (rising) trend in their short selling have significant and positive (negative) anomalous returns. Positive abnormal returns also have bigger absolute values and are more durable. According to the findings of the study, market players underreact to public information on short interest, and short sellers are sophisticated investors.

Kim (2020) recognized the impact of short selling on market efficiency, volatility, and pricing. The estimating techniques used in the study were the Granger causality test, impulse-response analysis, and variance decomposition. The estimation revealed that short selling improves market efficiency by lowering trading expenses. Furthermore, it was discovered that short selling has no meaningful effect on stock volatility or price. This analysis confirms that short selling increases market quality while having no detrimental impact on volatility or pricing. As a result, it was established that short selling has a constructive role in improving market quality without raising volatility or decreasing average prices. However, no pre-estimation test, such as the unit root test, was documented to confirm the granger causality test's appropriateness

Goyenko and Schultz (2020) examined the relation between short selling costs, idiosyncratic volatility and stock returns. Fama-french two step regression was used and the idiosyncratic was estimated from the standard deviation residuals from Fama-french three factor and Fama-French-Carhart model. The study found that stocks with high idiosyncratic volatility are likely to be hard-to-borrow than stocks with low idiosyncratic volatility and in absence of hard-to-borrow stocks, the relation between idiosyncratic volatility and stock returns disappears. The concluded that that the relation between idiosyncratic volatility and returns is primarily a relation between ability to short and returns. However, the study fails to subject the models to diagnostic tests and the result of

the estimates may be biased and spurious. Luoa, Nib and Tianc (2020) proposed and tested a financial constraint hypothesis that short selling trigers corporate insiders' incentive to avoid taxes for funding investment opportunities. Regression analysis was employed and it was found that the deregulation of short sales significantly reduces firms' cash effective tax rates and effective tax rates. The study concluded that in emerging markets with lax law enforcement and ineffective shelters from downside risk, short-sale deregulation induces firms to engage in more aggressive tax avoidance activities because avoiding taxes is cost-effective for them in mitigating the downward price pressure of short selling. However, the study fails to test the assumptions of independence, homogeneity of variance, and normality of the model. Nia and Yin (2020) explored unintended real effects of allowing short selling in an emerging market with an emphasis on concentrated ownership and weak investor protection. The study adopted difference-in-differences regression as the estimation tool. The study revealed that that the removal of short-sale bans induces firms to adopt more conservative investment and financial policies, which contributes to reduced risk-taking and decreased firm performance. The study concluded that that short selling can result in value losses by inducing firms to forgo profitable risky projects in a representative emerging market such as China. However, the study fails to test the assumptions of independence, homogeneity of variance, and normality of the model. In Chinese market, Chen, Chou, Liu, and Wu (2020) looked at how short selling costs were affected by deregulation of the practice. The study used difference-in-difference regression analysis which revealed that bank loan spreads for treated firms dramatically decrease when compared to control firms. The investigation came to the conclusion that after the prohibitions on short-selling were loosened, pilot enterprises' bank loan costs were much lower. The study, however, does not show if the model is properly specified. Ye, Zhou and Zhang (2020) examined the impacts of two forms of leveraged trading—margin trading and short selling—on the trading liquidity of individual stocks in China. Regression analysis was used and it was found that trading liquidity for relevant stocks generally improves after restrictions on leveraged trading are removed but margin trading and short selling have opposite impacts on liquidity. The study concluded that that short sellers are informed traders in China and that short selling reduces stock liquidity because of the increased risk of adverse selection faced by uninformed traders. However, the study fails to test the assumptions of independence, homogeneity of variance, and normality of the model. Hackney, Henry and Koski (2020) explored the effect of either informed or arbitrage short selling on equity markets. The study found that convertible arbitrage short selling is associated with negative contemporaneous returns and positive future returns in the stock market and it is consistent with temporary price pressure from uninformed arbitrage trading. The study concluded that firm-specific characteristics related to the cost of short selling similarly affect both informed and arbitrage short selling while deal-specific characteristics capturing hedging demand also strongly determine convertible arbitrage short selling. However, the study fails to test the assumptions of independence, homogeneity of variance, and normality of the model.

In a special policy environment in Korea during the 2008 global financial crisis, Eom, Hahn, and Sohn (2021) looked at changes in volatility and market quality surrounding the shorting prohibition. Ordinary least regression was used. It has been established that the shorting prohibition reduced liquidity or increased volatility, and that the patterns of volatility and market quality were consistent across non-financial and

financial equities once the ban was lifted. As a result, the study came to the conclusion that the shorting ban is ineffective in reducing rising volatility and worsening liquidity, and that the 2008 global financial crisis' increased uncertainty—rather than the short sale ban—is more likely to blame for the declining market quality that followed the ban. However, this methodology does not take into account the linear regression assumptions of linearity, homoscedasticity, and independence, which might raise the variance in the error term and the estimate's output. Sahin and Kuz (2021) investigated the effects of short selling on the price discovery process in the Borsa Istanbul (BIST). The study employed the Fama-MacBeth regressions with Newey-West standard errors as an estimation technique. It was confirmed from the study result that the short selling improves information efficiency of price discovering process by reducing the information delay. The study concluded that a ban on short sale may lead to overvaluation and reduced liquidity through supporting stocks artificially. However, the study fails to subject the models to diagnostic tests and the result of the estimates may be biased and spurious. Chena, Da, and Huang (2021) evaluated how effectively short selling is distributed among equities and its impact on overall price movement. Cross sectional regression analysis was used in the study, and it was suggested that short selling efficiency had better predictive power than aggregate short interest because it lessens the impact of noise in short interest. The analysis came to the conclusion that low short selling efficiency causes a considerably positive relationship between beta and stock returns, whereas high short selling efficiency appears to cause a negative slope in the security market line. However, the methodology does not take into account the linear regression assumptions of linearity, homoscedasticity, and independence, which may raise error term variance and impact the output of the estimate. In Taiwan, Tsai, Chang, and Tsai (2021) investigated the connection between lottery choice and retail short selling. The analysis method employed was a two-step Fama-MacBeth regression. According to the study, Taiwanese retail short-sellers can forecast stock prices and outperform the market when trading stocks that are predominantly held by retail investors who like lottery-style payouts. The study came to the conclusion that short-sellers involve experts in the process of making money through short-selling. The study does not, however, put the models through diagnostic tests like the assumption of normality and the assumption of serial correlation, among others. As a result, the model estimation's outcome may be inaccurate and biased. Previati, Galloppo, Aliano, and Paimanova (2021) looked into how various bank prices respond to a restriction on short sales depending on the nation and stock market conditions. The study used difference-in-difference regression analysis was employed for the estimation, and it was discovered that banks respond differently to ban limits mostly because to variations in their core variables. Thus, it was established that negative volatility rose in some nations whereas short-selling regulations had no impact on the volatility of financial equities. One of the methodology's flaws is that the study does not verify whether the additive structure of the model is accurate or not. Dang (2021) used monthly data from the NASDAQ 100 from February 2000 through December 2020 to investigate the impact of short selling on market efficiency. The dynamic conditional correlation (DCC) model is used to find dynamic relationships between the variables being studied. According to the findings, a high level of short selling can reduce illiquidity and volatility. During the 2008 financial crisis, this relationship deteriorates. Short selling does not destabilize the stock market, according to the study. However, the study fails to undertake a pre-estimate test to determine whether or not the model is adequate for estimation.

Short selling has been identified as an active investment strategy that plays an important role on risk role for a firm's performance among developed, emerging and developing economies. Specifically, studies outside Nigeria (Bohl, et al., 2016; Lee & Wang, 2016; Chague, et al., 2019; Wu & Zhang, 2019; Hu & Chi, 2019; Sahin & Kuz 2020 among others) have examined the impact of short selling on stock return. Short selling is a legitimate trading strategy on the floor of Nigerian Group of Exchange which investors used to profit from a decline in the price of the assets between their sales and repurchase (NGX outlook, 2012; 2021). However, none of these past studies were documented in Nigeria despite the fact that the short selling has been recognized in the Nigerian stock market as important investment strategy. Also, evidence from past studies revealed that very few studies have examined the effect of short selling on the risk and return. Therefore this present study intends to fill the gap in knowledge and contribute to scanty literature on the effect of short selling on the risk and return in Nigeria. To fill in the gap in knowledge and contributes to scanty literature within the Nigerian context. Thus, the study formulates the null hypothesis as follow:

H0: Short selling has no significant effect on risk and return in the Nigerian stock market.

To test the formulated hypothesis, the study is anchored on modern portfolio theory. The theory emphasized that every investor seeks to maximize their utility (satisfaction) by maximizing expected return and minimizing risk (variance).

Methodology

The study's population covers all 161 businesses registered on the Nigerian Stock Exchange (NSE) as of December 2020, and an expo-factor research methodology was employed to conduct the study. Purposive sampling was employed to determine the sample size through Krejcei and Morgan (1970) Table. The sample size for 113 companies' stocks selected but 90 regularly traded companies' stocks were used. The monthly stock prices, market index, risk-free rate (which was substituted with the treasury bill rate), ownership shareholdings, market capitalization, book value of equity, earnings before interest and tax, and total assets were the data used in this study. The entire whole sample period covered from 2005- 2020 which was grouped in to sub-sample period; 2005–2008, 2009–2012, 2013–2016, and 2017–2020, were covered by the study. The data was obtained from the websites of the Nigerian Group of Exchange (NGX), the Central Bank of Nigeria (CBN), and Standard and Poor. The study used ordinary least square through two-step Fama-MacBeth regression method. Consequently, the baseline model chosen for this investigation was Five-Factor Fama and French model and this is specified as follows:

$$R_{it} - Rf_t = a_i + b_i(Rm_t - Rf_t) + S_i(SMB_t) + h_i(HML_t) + u_i(RMW_t) + v_i(CMA_t) + \varepsilon_{it} \quad \text{.....3.1}$$

Where: R_{it} -Rf_t is the excess return of the individual assets. Rm_t - Rf_t is the excess market return, SMB_t is the size factor premium, HML_t is the value factor premium, RMW_t is the profitability factor premium, CMA_t is the investment factor premium, a_i is the intercept, b_i is the regression parameter, S_i is the loaded factor of the size, h_i is the loaded factor of the value, u_i is the loaded factor of the profitability, v_i is the loaded factor of the

investment and ε_{it} is the residual term. This model is augmented by incorporating short selling and that led to the equation 3.2

$$R_{it} - Rf_t = a_i + b_i(Rm_t - Rf_t) + S_i(SMB_t) + h_i(HML_t) + u_i(RMW_t) + v_i(CMA_t) + f_i(SH_t) + \varepsilon_{it} \quad \text{.....3.2}$$

Where: DR_t is the simulation drawdown premium, f_i is the loaded factor of the drawdown. These model specifications take a lead from the Maximum drawdown-CAPM specified by Baghdadabad and Glabadanisdis (2012) having controlled for size, value, profitability and investment factors. To capture the effect of drawdown on risk in the Nigerian stock market, the drawdown incorporated in the Glosten, Jagannathan and Runkle Generaized Autorregressive Conditional Heteroscedaticity (GJR-GARCH). This showed the effect of short selling on risk in the Nigerian stock market and presence of asymmetric information. The model is expressed in equation 3.3.

$$h_t = a_0 + \sum_{i=1}^{n} a_{1j} h_{t-j} + \sum_{i=1}^{m} a_{2i}\varepsilon_{t-i}^2 + a_{3i}M_{t-i}\varepsilon_{t-1}^2 + \theta_1 SH_t + \varepsilon_t \quad \text{.....3.3}$$

Where a_1, a_2, a_3 are the parameters to be estimated. The conditional volatility is positive when $a_1 > 0$, $a_1 \geq 0$, $a_1 + a_3 \geq 0$, $a_2 \geq 0$, i = 1…., n and m =1….,q, if $\varepsilon_t < 0$, and otherwise 0. ε_{t-1} is the ARCH term while h_{t-1} is the GARCH term. The sum of the coefficient of ARCH and GARCH terms measures the level of persistence in volatility. The volatility is persistent when $a_1 + a_2 \geq 1$. The $a_3M_{t-1}\varepsilon^2_{t-1}$ was introduced in to the GARCH framework to measure the asymmetric effect that is, volatility's response to new information. It proves that when there is negative news, volatility rises, but when there is good news, volatility falls. As a result, M_{t-1} serves as a dummy variable with a value of 0 to 1; it is 1 when t is negative (indicating good news), and 0 when t is positive (an indication of bad news). If the parameter a_3 is significantly different from zero, an asymmetric effect exists; otherwise, it does not. SHt is the short selling premium and qi is the loaded factor of the short selling. These model specifications take a lead from Goyenko and Schultz (2020). The study includes the short selling variable in to the GJR-GARCH in order to show the effect of short selling on risk in the Nigerian stock market. The model is specified in equation 3.16

$$h_t = a_0 + \sum_{i=1}^{n} a_{1j} h_{t-j} + \sum_{i=1}^{m} a_{2i}\varepsilon_{t-i}^2 + a_{3i}M_{t-i}\varepsilon_{t-1}^2 + \theta_1 SH_t + \varepsilon_t \quad \text{.....3.4}$$

The study capture short selling with shorting cost and this is in line with the study of Akbas, Boethmer, Erturk and Sorescu (2013). The study will use level of institutional ownership as a measure for shorting costs because it is correlated with the supply of lendable shares and this conforms to the approach of Akbas, et al. (2013).

Results and Discussion

The result is depicted in Table 1, which reveals the average values of average return, estimated risk premia-market, size, value, profitability, investment, and short selling. It is clear that market risk premium, profitability risk premium, investment risk premium, and short selling all tend to increase average return. On the other hand, the size risk premium, and value risk premium, have a tendency to decrease during the sampling. The return values range from -0.006740 to 0.092572, which implies that there are tendencies to make losses and capital gains on the market's trading activities within the sample period. This indicates that there is a presence of active securities on the market. The values of the market

risk premium range from -0.199242 to 2.013677, and this suggests that investors are not always rewarded. The values of the size risk premium range from 2.078426 to -4.791040, and this implies that investors are not always rewarded for the size of their portfolio. The value risk premium has a minimum value of -4.791040 and a maximum value of 2.078426. This implies that at some point in time, the co-skewness tends to be less volatile than the market, but at other times it tends to be more volatile than the market. The profitability risk premium value ranges from -5.937704 to 8.121966 and this implies that the investment risk premium values range from -3.340886 to 8.696328. More so, short selling has a maximum value of 2.572793 and a minimum value of -4.256864, and this implies that the short selling strategy may not generate a constant return over time.

	AVR	B	S	H	R	C01	SHT
Mean	0.014080	0.717871	-0.097828	-0.358627	0.130323	0.180324	1.74E-16
Median	0.011067	0.749233	-0.122264	-0.360414	0.158229	0.087921	0.330584
Max.	0.092572	2.013677	2.078426	9.281946	8.121966	8.696328	2.572793
Mini.	-0.006740	-0.199242	-4.791040	-12.71657	-5.937704	-3.340886	-4.256864
Std.Dv.	0.016928	0.407010	0.807487	1.830331	1.248830	1.270236	0.995585
Skew	2.741394	0.500754	-1.935529	-1.859732	1.376769	4.119644	-1.481299
Kurt.	12.24622	3.590288	14.37403	32.63727	26.53697	28.90493	6.832025
J.Bera	433.3256	5.067970	541.3263	3345.758	2105.892	2771.068	87.98027
Prob	0.000000	0.079342	0.000000	0.000000	0.000000	0.000000	0.000000

Source: Author's computation, (2022)

The standard deviation in the Table indicates that the value risk premium is the most volatile among the variables, while the least volatile variable among the variables is the average return. Looking at the score of skewness, it reveals that all the systematic risk, profitability risk premium, investment risk premium, and average return are positively skewed, while the size, value risk, and short selling are negatively skewed. The scores of kurtosis show that the variables are platykurtic in nature and they are not normally distributed, as shown by the associated probability values of the Jarque-Bera being close to zero. Having described the characteristics of the variables both in their average return for each portfolio, estimated risk premia, and short selling, the study proceeds to conduct the correlation analysis to show whether the assumption of multicollinearity is refuted among the variables or not.

Table 2 Correlation Analysis on Risk Premia and Investment Strategies

Variables	B	S	H	R	C	SHT
B	1	-0.4964	-0.2753	0.0907	0.4218	-0.0735
S	-0.4964	1	0.8365	-0.4981	-0.2365	0.0079
H	-0.2753	0.8365	1	-0.8341	-0.1417	0.0189
R	0.0907	-0.4981	-0.8341	1	0.2311	-0.0270
C	0.4218	-0.2365	-0.1417	0.2311	1	0.1208
SHT	-0.0735	0.0079	0.0189	-0.0270	0.1208	1

Source: Author's Computation, (2022)

The result shows the correlation coefficients in-between each of the following: risk premia, and short selling. The first column shows the correlation between market risk premium, size risk premium, value risk premium, profitability risk premium, investment

risk premium, and short selling. The first pair has a correlation coefficient of -0.4964, the second pair has -0.2753, the third pair is 0.0907, the fourth pair is 0.4218, the fifth pair has -0.0735. The implication of this is that the market risk premium moves in the same direction as the profitability risk premium, and investment risk premium but the market risk premium moves in the opposite direction with size risk premium, value risk premium, and short selling. The second column reveals that the size risk premium is linearly correlated with the value risk premium, and short selling, but the size risk premium moves in the opposite direction to the market risk premium, profitability risk premium, and investment risk premium.

The correlation coefficients in the third column show that the value risk premium has linear correlation with size risk premium, and short selling, but it has negative correlation with market risk premium, profitability, and investment risk premia. The fourth column shows the correlation coefficient with the following coefficient values; 0.0907, -0.4981, -0.8341, 0.2311, and -0.0027. This signifies that profitability risk premium moves in the same direction as market risk premium and investment risk premium, but it moves in the opposite direction with size risk premium, value risk premium, and short selling. The fifth column of the correlation matrix shows that the investment risk premium moves linearly with the market risk premium, profitability risk premium and short selling, but it moves in the opposite direction with the size risk premium, and value risk premium. The result shows that short selling has linear correlation with size risk premium, value risk premium, and investment risk premium, but it has negative correlation with market risk premium, and profitability risk premium. The result shows that the coefficients of correlation among the variables are very low except in the cases of 0.8365 and -0.8341, and this implies that the assumption of multicollinearity can be refuted. This simply means the variable can be estimated in the specified models. The estimation of the effect of short selling on return is carried out under both the whole sample and the sub-periods. The result of the estimation is presented in the following Tables.

Table 3 Short Selling and Expected Return

Variables	FF5F[1]	FF5F[2]	FF5F[3]	FF5F[4]	FF5F[5]
α	0.0143	0.0338	-0.0142	-0.0009	-0.0099
	(3.5789)	(5.6161)	(-3.3942)	(-0.4551)	(-2.9128)
	[0.0006]		[0.0000]	[0.0011]	[0.6502] [0.0046]
b	0.0032	-0.0225	0.0073	-0.0052	0.0073
	(-0.6101)	(-3.8146)	(0.4669)	(-1.3691)	(1.2129)
	[0.5434]		[0.0003]	[0.6418]	[0.1746] [0.2287]
s	-0.0006	0.0415	-0.0146	5.23E-06	0.0467
	(-0.1021)	(5.3224)	(-0.8366)	(-0.0033)	(-4.4772)
	[0.9188]		[0.0000]	[0.4052]	[0.9973] [0.0000]
h	-0.0044	0.0021	-0.0061	-0.0034	0.0339
	(-1.1427)	(0.3987)	(-1.1142)	(-1.8278)	(3.4079)
	[0.2564]	[0.6911]	[0.2684]	[0.0712]	[0.0010]
r	-0.0051	0.0054	0.0091	0.0034	0.0102
	(1.4056)	(0.9819)	(1.6358)	(1.1848)	(1.5955)
	[0.1635]	[0.3290]	[0.1056]	[0.2395]	[0.0001]
c	0.0055	0.0327	0.0027	-0.0140	0.0070
	(3.3791)	(7.5386)	(1.3604)	(-4.8503)	(0.1691)
	[0.0011]	[0.0000]	[0.1774]	[0.0000]	[0.1145]
Sht	-0.0027	-0.0017	0.7063	0.0024	0.0002

	(-1.6287)	(-0.7911)	(1.3604)	(1.7631)	(0.1691)
	[0.1072]	[0.4311]	[0.1774]	[0.0815]	[0.8661]
R2	0.2186	0.6703	0.706393	0.7897	0.8234
Adj-R2	0.1621	0.6464	0.685169	0.7745	0.8103
P(F-Stat)	0.0018	0.0000	0.000000	0.0000	0.0000

Note: The figures in parentheses () are the standard error and the one in square brackets [] are the probability values. FF5F1, FF5F2, FF5F3, FF5F4 and FF5F5 represents Five-factor model under whole sample, 2005-2008 sub-period, 2009-2012 sub-period, 2013-2016 sub-period and 2017-2020 sub-period respectively.
Source: Author's Computation, (2022)

Under the whole sample, the FF5F model shows that the coefficient values of alpha, systematic risk, size risk, value risk, profitability risk, and investment risk are 0.014384, 0.003208, -0.000604, -0.004466, -0.005120, and 0.005574, which correspond with the probability values of almost 0, 54, 91, 25, 16, and 0 percent, respectively. This means that alpha value and investment risk have significant and positive effects on return, while size, value, and profitability risks are negative and insignificant, and systematic risk has a positive but insignificant effect on return. The probability value of the F-statistic is 0.001866 and this shows that the model is significant at 0.05. The estimation of the FF5F model under 2005 to 2008 sub-period shows that the coefficients of alpha, systematic risk, size risk, value risk, profitability risk, and investment risk are 01.033848, -0.02255, 0.041575, 0.002134, 0.005463, and 0.032738, which correspond to 0, 0, 0, 69, 32, and 0 percent, respectively. This indicates that the alpha value, size, and investment risks have positive and significant effects on return, but the systematic risk has a negative but significant effect on return, and value risk has a positive but insignificant effect on return. The model is significant at 0.05 because the corresponding probability values of F-Statistic is 0.00000.

The estimation of the FF5F model under 2009 to 2012 sub-period shows the coefficients of alpha, systematic risk, size risk, value risk, profitability risk, and investment risk are -0.014298, 0.007341, 0.006106, 0.009105, and 0.008261 with corresponding probability values of 0, 64, 40, 26, 10, and 10 percent, respectively. It appears that alpha value has a negative but insignificant effect on return, while size and value risks have negative and insignificant effects on return, and systematic, profitability and investment risks have a positive but insignificant effect on return. It is seen that the probability value of the F-statistic is 0.000000 which less than 0.05. This suggests that all the model is significant. The report under the FF5F model under 2013-3016 sub-period clearly shows that the coefficients of alpha, systematic risk, size risk, value risk, profitability risk, and investment risk are -0.000952, -0.005240, 5.23E-06, -0.003442, 0.003471, and -0.014098, which correspond with the probability values of 65, 17, 99, 7, 23, and 0 percent respectively. This means that the alpha value, systematic, and value risks have a negative and insignificant effect on return, while the size, profitability, and investment risks have a negative but significant effect on return. The model is significant at 0.005 because the associated probability values of 0.000000 which is less than 0.05.

The coefficients of alpha, systematic risk, size risk, value risk, profitability risk, and investment risk are -0.009945, 0.007347, 0.046761, 0.033987, 0.010217, and 0.007083 which correspond with the probability values of almost 0, 22, 0, 0, 0 and 11 respectively. The alpha value has a negative but significant effect on return while size, value, and profitability have significant effect on the return and systematic risk and

investment risk have a positive but insignificant effect on return under the 2017 to 2020 FF5F model. The probability value of the F-statistics is 0.000 which is significant at 0.05. Having interpreted the result of the estimation, the study presents the diagnostic tests to validate the models.

Table 4 Diagnostic Tests

Statistics	FF5F Whole	FF5F (2005-2008)	FF5F (2009-2012)	FF5F (2013-2016)	FF5F (2017-2020)
LM Test (F-statistic)	2.1263 (0.0911)	0.0443 (0.9566)	0.3520 (0.7043)	0.5607 (0.5730)	0.2598 (0.7719)
Chi-squared	4.4895 (0.0725)	0.0984 (0.9520)	0.7755 (0.6786)	1.2290 (0.5409)	0.5750 (0.7501)
BPG Test (F-statistic)	2.0051 (0.0741)	0.4758 (0.8245)	2.3395 (0.0689)	0.8583 (0.5291)	1.7015 (0.1312)
Chi-squared	11.3940 (0.0769)	2.9927 (0.8098)	13.0192 (0.0727)	5.2582 (0.5111)	9.8503 (0.1311)
Normality Test (Jarque Bera)	479.9499 (0.0000)	0.7496 (0.6874)	0.1126 (0.9452)	4.8770 (0.0872)	0.0959 (0.9531)

Source Author's Computation, (2022)

Table 4.7 reveals that the residuals of the models comply with the assumption of no autocorrelation assumption because their associated probability values of the statistics (F-statistic and Chi-squared) are larger than 0.05 under each models. This complies with the a priori expectation of the models. The assumption of homoscedastic is not violated under each models because the probability values of the statistics (F-statistic and Chi-squared) are larger than 0.05. This implies that the residuals of the models are constant over the time. However, the normality assumption hold under each models except under whole sample because the probability value is lesser than 0.05 but under the sub-periods the probability values are larger than 0.05. Having documented the findings of the study on the estimation of short selling on return, the study proceeds to examine the effect of short selling on risk. The study employs the GJR-GARCH model to estimate the effect of drawdown on risk in the Nigerian stock market. This method is chosen because it also reveals the effect of asymmetric information on the risk. Thus, for proper estimation the study conducts some pre-estimation tests before fitting the data for estimation under whole sample and sub-periods sample. The study documents the effect of short selling on risk after studying the effect of short selling on return in the Nigerian stock market. The study employs the GJR-GARCH model to estimate the effect of short selling risk in the Nigerian stock market. This method is chosen because it also reveals the effect of asymmetric information on the risk. Thus, for proper estimation the study conducts some pre-estimation tests before fitting the data for estimation under whole sample and sub-periods sample.

Table 5 Pre-estimation Test on GJR-GARCH Model

Statistics	**Whole Sample**	**2005-2008**	**2009-2012**	**2013-2016**	**2017-2020**
Normality	1375.299	442.1290	26.9199	0.47314	101.7025
	(0.0000)	(0.0000)	(0.0000)	(0.7893)	(0.0000)
Unit root	-13.64754	-9.116133	-7.1348	-6.0483	-7.0179

	(0.0000)		(0.0000)		(0.0000)	(0.0000)	(0.0000)			
Q-Sat	20.130		16.193		16.964		8.8307		16.812	
		(0.028)			(0.094)	(0.075)		(0.548)		
(0.079)										
Arch Effect	33.47632		15.0298	10.2113	1.4143		1.2455			
	(0.0000)		(0.0001)	(0.0014)	(0.2343)	(0.2644)				

Note: The figures in square brackets [] are the probability values.
Source: Author's Computation, (2022)

Table 4 reports that the normality assumption is rejected under the whole sample period and sub-periods as shown by the probability values of less than 0.05. However, the unit root tests show that the null hypothesis is rejected at the 0.05 level of significance since the P-value is less than 0.05. This implies the whole sample and sub-sample returns have no unit root, i.e., stationary. The study presents the autocorrelation using the Ljung-Box Q-Statistic test since it is assumed to be more powerful due to its consideration of the overall correlation coefficients from lags. The p-values from the Q-Statistic test are not significant for all lags under the sub-periods except for the whole sample. The results show persistence in return series and the presence of serial correlation over the whole period, which is an indication of non-random returns in the whole sample period.

The probability (chi-square) of the observed R-square in the Table is based on a 5 per cent significance level to reject or accept the null hypothesis of the ARCH effect. The p-value of the observed R-square is 0.0007 under the whole sample, which is less than 0.05, and this implies that the residuals of the Nigerian stock market return have an ARCH effect. This complies with the assumption of estimating the GJR-GARCH model. The result reveals that the p-value of the observed R-square is 0.0001, which is less than 0.05, and this means that the residuals of the stock market volatility have an arch effect in the sub-period 2005 to 2008. Similarly, the arch effect is also present under the 2009 to 2012 sub-period since the associated P-value of the observed R-square is less than 0.005. However, this contradicts the results under the periods of 2013 to 2016 and 2017 to 2020 because the associated P-values are larger than 0.05. The results indicate that the returns of the whole sample and sub-period of 2005 to 2008 violate the homoscedasticity assumption, which suggests that innovations in the returns are heteroscedastic, and these tests allow the returns to be modeled on the GJR-GARCH model, which assumes that the variance of the errors is not constant. However, the GJR-GARCH is not applicable to the sub-periods of 2013 to 2016 and 2017 to 2020. Thus, the study presents the effect of short selling on risk in the Nigerian stock market using the GJR-GARCH model.

Table 6 Short Selling and Risk

Variable	**whole sample**	**2005-2008**	**2009-2012**
Constant	0.0001	0.0019	0.0003
	(4.87E-05)	(0.0001)	(0.0002)
	[0.001]	[0.0000]	[0.1458]
Sht	-0.0005	0.0024	0.0017
	(0.0002)	(6.9E-104)	(0.0005)
	[0.0246]	[0.0000]	[0.0028]
ARCH(Alpha1)	0.0664	0.3974	-0.2190

	(0.0323)	(0.1408)	(0.0730)
	[0.0398]	[0.0048]	[0.0027]
GARCH(Beta1)	0.9227	0.5668	1.0115
	(0.0287)	(0.0215)	(3.3E-103)
	[0.0000]	[0.0000]	[0.0000]
GJR(Gamma1)	-0.1477	-0.3695	-0.1718
	(0.0482)	(0.1794)	(0.4027)
	[0.0022]	[0.0395]	[0.6697]
Diagnostic			
ARCH	1.6743	0.9074	0.0041
	[0.1957]	[0.3408]	[0.9485]
Q-Statistic	5.4638	13.532	10.005
	[0.858]	[0.195]	[0.440]

Note: The figures in parentheses () are the standard error and the one in square brackets [] are the probability values.
Source: Author's Computation, (2022)

The result shows that the shot selling strategy has a negative but significant effect on risk, and the Nigerian stock market exhibits persistence shock under the whole sample. However, under the sub-periods, short selling has a positive and significant effect on risk in the Nigerian stock market. The coefficient of gamma has a negative but significant effect on the whole sample and 2005 to 2008 sub-period, and this suggests the presence of an asymmetric effect on the whole sample period and 2005 to 2008 sub-period. Thus, the presence of a negative asymmetry effect reveals that positive shocks or good news associated with short selling strategies increase stock market volatility more than a negative shock under the whole sample and 2005 to 2008 sub-period. However, the result of the 2009 to 2012 sub-period reveals that short selling has a negative symmetry effect on stock market return, which means the stock market volatility response to good news or bad news associated with a drawdown is the same. As part of the study, diagnostic tests were performed, and it was discovered that the model was fit and that meaningful generalization could be drawn from it. After conducting the estimation, proper interpretation was done, and the interpretation was used to test the formulated hypotheses in the following sub-sections.

H03: Short selling has no significant effect on risk and return in the Nigerian stock market.

The study separates this hypothesis into two, which are that tactical asset allocation has no significant effect on return and tactical asset allocation has no significant effect on risk in the Nigerian stock market. The findings of the study revealed that tactical asset allocation has a positive but insignificant effect on return in the Nigerian stock market. The result of the whole sample period aligns with the result of the sub-periods sample, and both sample periods confirm that the introduction of tactical asset allocation does not command a premium in the Nigerian stock market. Thus, the null hypothesis that tactical asset allocation has no significant effect on return cannot be rejected. On the other hand, the estimation of GJR-GARCH reveals that tactical asset allocation has a negative but significant effect on risk under the 2005 to 2008 sub-period, but that tactical asset allocation has a positive but insignificant effect on risk under the whole sample. However, tactical asset allocation had a negative and insignificant effect on risk from 2009 to 2012. Thus, the study cannot conclusively reject the null hypothesis that tactical asset allocation has no significant effect on risk in the Nigerian stock market.

Discussion of Findings

On the other hand, it has been documented that short selling has a significant effect on risk in the Nigerian stock market. The whole sample shows a significant but negative effect of short selling on volatility, and this conforms to the apriori expectation that when short selling is effectively implemented, it will have a significant effect on the stock market through the minimization of volatility. On the other hand, the result of the sub-periods shows that short selling has a positive and significant effect on stock market return volatility in the Nigerian stock market. The explanation for this is that short selling triggers volatility, and this may have a destabilizing impact on the Nigerian stock market during the periods. This sub-period is also characterized by a turbulent global financial crisis, and this may be part of the reason why the introduction of short selling serves as a disadvantage rather than a vital investment strategy that promotes market efficiency. The result of the study is discussed in relation to previous studies, which include but are not limited to Zhu et al. (2019) documented that an increase in short selling has a negative but significant effect on return, and this contradicts the findings of this study. Also, the findings of Mohd et al (2016) confirmed that volatility significantly increased after the introduction of short selling in the Malaysian stock market, which conforms to the findings of this study. The findings of this study are in line with the findings of Bohl et al. (2016), who documented that the financial crisis was accompanied by an increase in volatility persistence and that this effect was particularly pronounced for those stocks that were subject to short selling constraints. On the contrary, Baidoo (2019) affirmed the negative relationship between short-selling activities and stock market volatility in the US market. Also, Kim (2020) found that short selling has a negative and insignificant effect on stock return volatility in the Korean stock market. Similarly, Dang (2021) documented that a high level of shorting leads to greater volatility in the USA.

Conclusion and Recommendations

Furthermore, the study concluded that short-selling strategies could be used as investment strategies that could promote efficiency if properly monitored and regulated in the Nigerian stock market. If not, they could lead to price pressure and volatility in the Nigerian stock market. The study recommended that a well-regulated short selling investment strategy promotes stock market efficiency through an increased liquidity and minimized volatility in the Nigerian stock market. Thus, the Nigerian stock market regulator should always review rules and regulations guiding short selling activities.The assumption of MPT excludes the short-selling strategy. However, based on the findings of the study, it was concluded that a short-selling strategy could enhance the efficiency of the stock market through the minimization of volatility. In addition, investors may use it to enhance investment performance through the maximization of return and minimization of risk. Empirically, this study supports the proposition that short selling could also increase return and spread risk, which is in tandem with the proposition of MPT. Thus, short selling should be included as one of the assumptions of MPT. The accessibility of high frequency data, such as daily data, hourly data, etc., on the NGX, is a major limitation, and this is due to poor data management in the sector. The study was carried out in Nigeria. Further studies should be replicated by comparing Nigeria with other Sub-Saharan African countries to

see whether the effect of these strategies on risk and return is replicated. The study focused on the Nigerian stock market as a whole. Further studies should be carried out on the effects of investment strategies on risk and return within the sectors of the Nigerian stock market. This will allow researchers to compare the results of the findings with individual or sectoral individual effects on the output of the result. The study is limited to monthly data; therefore, future studies can make use of high-frequency data, such as daily data, for the same period of coverage to see whether the result findings will be different from this study's findings.

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CONSIDERATIONS REGARDING THE SPECIFIC RIGHT TO INHERIT OF THE RELATIVES OF THE DECEASED IN LEGAL PRACTICE

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Abstract: *Usually,the succession is based on the principle of ties of blood between the persons in the same family. Not all the relatives of the deceased, no matter their degree, are called to receive an inheritance, because if they are called to receive an inheritance in an indefinite way and at the same time it would lead to an excessive partition of the inherited patrimony, fact which is not desired. In order to know the relatives who have the right to inherit the de cujus, the legislator uses two points of reference in order to establish the persons called to receive an inheritance, namely: the order of heirs and the degree of relationship between the deceased and the heirs. That is why, from the persons with legal rights, the legislator has established a certain specific order to call to receive an inheritance based on three general principles, each of them having some exceptions. Thus, the legislator has created four orders of heirs, establishing between them a priority sequence, according to their degree of kinship to the deceased. As we have previously mentioned, in the Civil Code the relatives of de cujus are classified in four orders of heirs, they being called to receive an inheritance in a pre-established sequence. Thus, if there is a single heir in the first order of heirs, who did not waive the inheritance and who has not been disqualified by conduct, he or she excludes from the succession the heirs in the subsequent orders. The heirs in the second order are called to receive the inheritance only if there are no relatives in the first order or if they have waived the succession or have been disqualified by conduct, the ones in the third order only if there are no heirs in the first two orders and so on. In the case there are heirs from different orders, in order to effectively call to receive an inheritance it is essential to establish the sequence of orders, and not their degree of relationship to the deceased. When we talk about the right to inherit of the relatives of the deceased as a necessary condition of the right to inherit, we must analyse it from two points of view, namely: the general right to inherit and the specific right to inherit. Thus, for a person to be effectively called to receive an inheritance, therefore to have a specific legal right, it is not enough for them to be included in the category of legal heirs, with general rights, but they also must meet a negative condition, namely they must not be excluded from the inheritance by another person called by the law in a priority order. We must take into consideration the fact that the right to inherit as an abstract fitness, becomes potential by the general right to inherit and effective, useful, by the specific right.*
Keywords: *succession, general right to inherit, specific right to inherit, order of heirs, time frame of the right to accept or waive a succession, waiver of inheritance, acceptance of inheritance, request of main voluntary intervention, intervenors.*

The idea to elaborate the present paper was suggested to us by the hearing of a complex dispute regarding inheritance, which involves several specialized debates, dispute solved by Lugoj Court in the Case no. 1469/252/2019, whose hearing began on September 19th, 2019 and ended on November 19th, 2021 (a period of 2 years and 2 months) and during which, among many other aspects of material and procedural law, the idea of the specific right to inherit of the relatives of the deceased was also raised. Through the present approach we thought we can have a much clearer representation of a legal issue the present dispute arises when we analyse it not only from the theoretical point of view, but we can also take into consideration the way it is represented from practical, jurisprudential

approach. The dispute we refer to had as an object the inheritance debate of two successive successions, apparently nothing complicated.

It is known the fact that successions are debated in order the deaths take place.
At the first succession after the deceased B.I. the surviving wife B.D. and the son of the deceased from a previous relationship I.E. had specific rights to inherit. Evidence was submitted, from documents and witnesses, that the surviving wife of the deceased B.D. expressed the right to accept or waive a succession within the legal time frame of 6 months, expressly accepting the succession (because the succession was to be debated under the old Civil Code from 1864, taking into consideration the year 2000 as the date of death of the deceased). The son of the deceased, in capacity of descendant, although legally subpoenaed in this case, did not present himself at any hearing and did not formulate any defence in writing. The second succession was debated for the deceased B.D. (born S) who died in 2014, this one being the surviving wife of the first de cujus. There were her parents who had specific rights to inherit , respectively her mother Ș.A. (the plaintiff in dispute), and the father of the deceased S.I. (deceased at the date the dispute took place) in capacity of privileged ascendants and Ș.R. in capacity of nephew of the predeceased brother, respectively privileged collateral relative, who participated in the succession of their aunt by representing his father. This succession was debated according to the present Civil Code because the death took place in the year 2014. Evidence was also submitted regarding this succesoral debate, respectively documents and testimonial evidence with witnesses. After submitting the evidence, it was proved that the heirs of the deceased B.D. (born S) accepted within the legal time frame of a year the succession left after her, making documents of tacit acceptance.

As we have previously mentioned, the defendant I.E. (the son of the first deceased B.I.) was not present at any hearing, and the conclusions of the plaintiff Ș.A. were to admit the action as it was formulated, by requiring:
1. to consider open the succession of the deceased B.I., who died on June 15th, 2000, whose estate is made of: - ½ of the real estate situated in Lugoj ……, registered in the Land Registry ……. topographical number ……..;
- to certify that B.D. (in capacity of surviving wife) who died on October 6th, 2014 is the only consenting legal heir of the deceased B.I., expressely accepting the succession within the legal time frame of 6 months according to the expressed acceptance declaration from the file;
2. – to consider open the succession of the deceased B.D. (born Ș) who died on October 6th, 2014 in Lugoj …… whose estate is made of: - the real estate situated in Lugoj ……. registered in the Land Registry ……. topographical number ……..; to notice that the only consenting legal heirs of the deceased B.D. (born Ș) who died on October 6th, 2014, are: the plaintiff Ș.A. and their husband Ș.I. (deceased at the moment) – the parents of the deceased, in capacity of privileged ascendants) in proportion of ½ (respectively ¼ each) and Ș.R., by representation (in capacity of nephew of the predeceased brother of the deceased – third degree privileged collateral relative) in proportion of ½, all three tacitly accepting the succession within the legal time frame of a year.
3. – to dispose the registration in favour of the plaintiff Ș.A. and their wife Ș.I. and the nephew Ș.R. the right of property regarding the real estate in Lugoj ……, registered in the Land Registry ……. Lugoj topographical number …….. with title of

succession, in proportion of ¼ on the name of the plaintiff Ș.A., ¼ on the name of his wife Ș.I. and ½ on the name of the nephew Ș.R.;
Following the submission of all evidence and the debate of the substance of the matter, on September 17th, 2019, the court postponed ruling, thus postponing the decision for October 31st, 2019. Being a relatively simple cause, which did not raise any special issues, the postponement was a little surprising. Until October 28th, 2019, respectively the term set for debating and ruling, the court registered a request of main voluntary intervention and at the same time a request to reinstate the case, requests drawn up by two sisters of the deceased B.I., from the first successoral debate, respectively B.A. and P.E. Following these requests, the court decided to reinstate the case in order to bring other evidence regarding the first request, regarding the relatives with the right to inherit the deceased B.I. andsubpoena the plaintiff in order to mention if after this deceased, there are also other relatives with the right to inherit, setting a date of trial on December 5th, 2019. Through the request of main voluntary intervention, the two sisters of the deceased B.I. required rights to inherit together with the surviving wife, claiming to have the specific right to inherit and that they tacitly accepted the succession after their brother within the legal time frame. Although through the statement of defence the plaintiff vehemently opposed the admission in principle of the request of main voluntary intervention, mentioning arguments based on norms of material law as well as procedural law, as well as jurisprudence, in the closure of June 23rd, 2020, the court admitted in principle the request of main voluntary intervention drawn up by the sisters of the first deceased B.I..

The main argument on which this solution was based was the fact that the court admitted that the two intervenors had specific right to inherit their brother. The court explains this solution in the sense that the specific right to inherit of the intervenors (the sisters of the deceased, strictly theoretically, in the context of supporting all parties regarding the consenting heirs), although it is not defined as a consequence of the fact that the defendant I.E. (the son of the deceased) waived his right to inherit, it must be recognised as a consequence of the fact that there is no acceptance form his part within the legal time frame of 6 months of the right to accept or waive a succession, regulated by article 700 (the old Civil Code). The court also acknowledges that the old Civil Code did not admit regarding succession to tacitly waive the inheritance and there is any presumption in this regard, the only expression of will regarding this waiver being those expressly expressed.

In the reasoning it is mentioned that the failure to exert the right to accept or waive a succession within the legal time frame has as a consequence the end of the right to inherit with retroactive effect, the heir becoming non-party to the inheritance. In fact, it is considered that by failing to exert the right to accept or waive a succession within the legal time frame has as a consequence the fact that the heir loses their right to inherit. The heir that did not exert the right to inherit thus cannot be assimilated to a genuine person who waived, the situations being similar but not identical. Unlike the person who waived the inheritance, the heir who did not exert their right to accept or waive a succession within the legal time frame, can, for example, be reinstated.

In conclusion, the court shows that the son of the deceased did not accept the succession within the legal frame time, fact which has as a consequence the end of the right to inherit with retroactive effect, the succession being debated between the surviving wife and the second order of heirs, respectively the two sisters of the deceased – the intervenors. We cannot admit such an approach and forwards we will explain our point of view

regarding the specific right of the intervenors, confirmed by the court. In these circumstances, for the beginning, we will briefly present the principle regarding the rights the relatives of the deceased have to inherit according to the order of heirs. The legal debate regarding succession means to effectively establish the persons who have the right to inherit according to legal provisions. It is based on the degree of relationship, which represents its essence. Usually, the transmission of succession is based on the principle of blood relation, which exists between the persons of the same family (S, 2012).

Article 405 paragraph 1 of the Civil Code states that the relationship represents the blood relation which is based on the descent of a person from another person, or on the fact that more persons have a common ascendant, and paragraph 2 of the same article states that civil relationship represents the relation which results from adoption in the circumstances provided by the law. Not all the relatives of the deceased, no matter their degree, are called to receive an inheritance, because if they are called to receive an inheritance in an indefinite way and at the same time it would lead to an excessive partition of the inherited patrimony, fact which is not desired. In order to know what relatives have the right to inherit de cujus, the legislator uses two points of reference in order to establish the persons called to receive an inheritance, namely: the order of heirs and the degree of relationship between the deceased and the heirs. That is why, from the persons with legal rights, the legislator has established a certain specific order to call to receive an inheritance based on three general principles, each of them having some exceptions. Thus, the legislator has created four orders of heirs, according to their degree of relationship to the deceased, establishing between them a priority sequence, and within each order, the specific right to inherit is also based on their degree of relationship, in the sense that the relatives with a closer degree exclude the ones with a more distant degree.

In the direct line, the relatives of de cujus are infinitely called to receive the inheritance, but in the collateral line, the legislator limits their rights up to the fourth degree inclusively (paragraph 1 of the Civil Code). The right to inherit de cujusthe relatives as well as the surviving spouse have is based on the interest to preserve the acquired goods, sometimes, even by successive generations within the same family, presuming the natural affection between the deceased and these persons decided by the legislator. Thus, according to the provisions of article 964 paragraph 2 of the Civil Code, legal inheritance is governed by three principles, but in the present paper we will refer only to the first principle, namely that of calling the relatives based on the orders of heirs.

As we have previously mentioned, in the Civil Code the relatives of de cujus are classified in four orders of heirs, they being called to receive an inheritance in a pre-established sequence. Thus, if there is a single heir in the first order of heirs, who did not waive the inheritance and who has not been disqualified by conduct, they exclude from the succession the heirs in the subsequent orders. The heirs in the second order are called to receive the inheritance only if there are no relatives in the first order or if they have waived the succession or have been disqualified by conduct, the ones in the third order only if there are no heirs in the first two orders and so on. In the case there are heirs from different orders, in order to effectively call to receive an inheritance it is essential the sequence of orders, and not their degree of relationship to the deceased. Thus, for example: the grandson of the deceased, second degree relative, heir from the first order, excludes from the inheritance the father of the deceased, heir from the second order, although they are relatives of first degree with the deceased.

When we draw up the legal succession (table) which includes all the deceased's heirs who have the right to inherit it is very important to establish correctly the quality of each heir in relation to the deceased (D et al. 2013). Regarding the previously mentioned principle, it is natural to ask oneself if it is however possible to call simultaneously two orders of heirs to receive an inheritance. It is possible to call simultaneously to receive an inheritance heirs from two orders of heirs only in the case of direct disinheritance through will of the heirs in a preferred order(paragraph 2 of the Civil Code). Also, article 964 paragraph 2 of the Civil Code states that "if following a disinheritance, the deceased's relatives in the closest order cannot receive all the inheritance, then the remaining part is assigned to the relatives in the subsequent order who meet the conditions to inherit". We welcome this legal text which expressly regulates the situation when two orders of legal heirs are called simultaneously to inherit, but only the case of direct disinheritance must be taken into consideration. As an example, we mention the case of disinheritance by will of forced heirs in a priority order (descendants of the deceased), who are entitled to a reserved portion, not being possible to be fully disinherited, while the heirs in the order subsequently called to receive the inheritance receive only the remaining of the succession (the available share) in their capacity of legal heirs of the deceased, and not of legatees.

This point of view which aims at simultaneously calling to receive an inheritance two orders of heirs is regarded with reservations by some authors (C, 2014) because the text of article 964 paragraph 2 of the Civil Code does not mention with what title the deceased's relatives in the subsequent order will inherit, thus not being possible to state that the legislator expressly mentioned that two orders of heirs may simultaneously be called to receive the legal inheritance of the deceased.

We mention that it is not only about a partial disinheritance, but also a direct one. This is a proper disinheritance. We consider that indirect disinheritance following some legacies in the favour of other persons has another meaning. It has the consequence of another type of inheritance, the testamentary one, which coexists with the legal inheritance or it even replaces it, if the object of the legacy or legacies refer to the entire estate. However these acts do not have the legal character of disinheritance acts. But, if there is no such manifestation of will, there is no disinheritance.

All relatives, due to the fact that the law includes them as potential heirs, have general rights. Regarding the surviving spouse, we consider that the legal base to inherit gives them a general right, with the specification that it is always doubled by the specific right. Indeed, the living spouse of de cujus is not excluded from inheritance by any relative with right to inherit, no matter the order of heirs they might be included. The surviving spouse participate in the succession together with any of the orders of heirs at law, thus, they don't have any priority compared to one or some of them.(G et al. 2018)

Nevertheless, when we talk about the right to inherit of the deceased's relatives as a necessary condition of the right to inherit, we must analyse it from two perspectives, namely general right to inherit and specific right to inherit. The right to inherit or the call to receive the inheritance is given to the successor either by the will of law, or the disposition of de cujus expressed by the will. The general right to inherit of the deceased's relatives does not mean that they could be called to receive an inheritance together with the surviving spouse all together and at the same time. Their right to inherit is a general one, potential one, certifying only their possibility to inherit. In order to receive the inheritance it is necessary to also meet a negative requirement, namely not to be excluded from the

inheritance by another successor, who has priority by order and degree. This condition is the essence of the specific right to inherit.

Therefore, the relatives of the deceased (the intervenors) in our case with a general right which cannot be contested, must also have a specific right in order to receive the inheritance. Correlating the general right with the specific right, it is to be noticed that not all relatives with general right also have specific right to inherit. The specific right to inherit is even more restrictive than the general right, because, it belongs only to the relatives of the deceased who are included in a priority order of heirs and degree. We also consider that the abstract right to inherit does not give the intervenors active procedural legitimacy in this case, because their succession right is subsidiary to the succession right of the descendant. Thus, for a person to be effectively called to receive an inheritance, therefore to have a specific legal rights, it is not enough for them to be included in the category of legal heirs, with general rights, but they also must meet a negative condition, namely they must not be excluded from the inheritance by another person called by the law in a priority order, who therefore has a specific, useful right, like the son of the deceased. Consequently, the siblings of the deceased who are included in the second order of legal heirs have general (potential) right to inherit, and to also have a specific (effective, useful) right to inherit, it is necessary for the deceased to not have any descendands, which are included in the first order of heirs (or if they are, they shouldn't be able to inherit because they have been disqualified by conduct, or because they do not wish to inherit, because they waived the inheritance), and who are called to inherit with priority by the law(D et al 2013).

The presence of even one single descendant, who is included in the first order of legal heirs (children, grandchildren, great-grandchildren of the deceased, without limit of degree), excludes from the inheritance those included in subsequent orders of heirs (respectively second, third, fourth orders of heirs).

In the case the deceased has no descendants or the existing ones cannot (because they have been disqualified by conduct or they have been disinherited, case in which they receive only the reserved share) or they do not want to inherit (expressly waiving its benefit), the law calls to receive the inheritance the relatives included in the second order of heirs. (Civil sentence no. 726/C dated September 9th, 2004)

If the descendant in direct line from the first order of heirs is alive, did not waive the inheritance and has not been disqualified by conduct, no other relative from another order of legal heirs cannot receive the inheritance left by the deceased. The defendant I.E., son of the deceased B.I. neither has been disqualified by conduct, nor waived the inheritance from their father, as it can be noticed in the certificate of the notary public submitted to the file. The inheritance waiver is a personal, solemn act and it must have an authentic form, therefore the defendant I.E. did not express their option in this sense, not making an express waiver regarding the succession after his father. The fact that he did not express his right to accept or waive a succession within the legal time frame can be considered neither tacit waiver of succession, nor presumption of waiver which is expressly regulated only in the present Civil code. The fact that he did not defend himself during the process and he did not express his procedural position cannot lead to the idea that the relatives from the subsequent order of heirs, respectively the sisters of the deceased, are entitled to be called to receive the inheritance, as long as the son participated in succession together with the surviving spouse of the deceased who, within the legal time frame,expressly accepted the succession.

We consider that the failure of the deceased's son to accept the succession within the legal time frame gives the surviving spouse, together with whom he participated in the succession, the right to receive the entire estate, the deceased's relatives from the subsequent order not being entitled to be called to receive the inheritance. Thus, in conclusion, the relatives from the second order of heirs may be called to receive the inheritance, only if there are no relatives in the first order or the existing ones cannot (because they have been disqualified by conduct) or they do not want (they waived the inheritance) to receive the inheritance. Thus, if the deceased's son with specific right to inherit, together with whom the surviving spouse participate in the succession, did not expressly waive the inheritance and has not been disqualified by conduct, but did not make the proof of accepting it within the legal time frame, the surviving spouse who expressly accepted the succession inherits the entire estate of the deceased. We must take into consideration the fact that the right to inherit as an abstract aptitude becomes potential by the general right to inherit and effective, useful, by the specific right to inherit, so that the intervenors cannot take advantage of a right which is not effective and useful as long as there is an heir in the first order, the son of the deceased.

Although the court admitted in principle the request of main voluntary intervention of the intervenors, on the merits of the case through the civil sentence no. 3710/2021 from November 19th, 2021, unpublished, Lugoj Court partly admitted the main request and rejected the request of main voluntary intervention without granting court costs to the plaintiff.(N et al. 2016) Unfortunately, not even up to this moment, the decision was not justified in order to see the arguments of the court regarding the solution.

Even in the case the intervenors who are not pleased by the decision would appeal, ordinary and devolutive appeal, and would request new proves, even if the court may approve other proves orremake or supplement the proves managed by the court of first instance, we consider that in this case all the proves required by the parties were administrated, especially by the intervenors, in a correct way and thus led to a legal solution. (N. et al. 2013). Because the case in point is complex and approaches several institutions of the succession law, after the justification of the decision we will come back with a new paper which aims at other interesting aspects with high incidence in legal practice, as for example the way in which the parties exerted or not,within the legal time frame, their right to accept or waive a succession.

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URBAN GOVERNANCE AND URBAN LOCAL GOVERNMENT AUTONOMY IN ETHIOPIA

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Abstract: *The purpose of this article is to look in to Ambo urban government institutions' organization and operational efficiency by employing good governance as a framework for analysis. To achieve the research purpose, this article employs a qualitative research approach. Qualitative techniques namely document analysis (analysis of relevant regional laws), interviews, and focus groups were used to collect qualitative data. According to the findings of this study, Ambo urban administration has been given significant legal responsibilities and powers, the autonomous workout of which, directed by good governance principles, could result in overall development. Nonetheless, the study also discovers that a variety of factors, including the Oromo people's dominance in urban government institutions, have a negative impact on the city's governance quality. Other significant factor is the scarcity of efficient checks and balances mechanisms at both the urban-regional (vertical) and intra-urban (horizontal) levels of government. According to this study, this situation has been exacerbated by political aspects of the urban administration, as well as deficiencies in the legislative framework. As a result, the research's main recommendations emphasize consolidating vertical and horizontal check and balance mechanisms as well as the importance of better managing the ethnic diversity of the urban administration.*
Keywords: *Autonomy; good governance; urban administration*

Introduction

As a member of one of the Ethiopian Federation's eleven regions, Oromia National Regional State (hereafter the Oromia Region) has the authority to decide the institutional structure, organization, and competencies of local governments. Although Oromia Region constitution establishes a three-tiered local-government organization such as regional government, local government and kebele (Oromia Region, 2001) and specifies its powers and institutional structure, the constitution makes no mention of urban local government. Article 45 of the constitution of the Oromia Region simply delegates the Cafee (regional government council) to enact legislation in this area. However, their non-constitutional status does not reflect ULGs significance. This is happening rapidly as a result of the country's and region's rapid urbanization. These types of societal dynamics may point to the need for more adaptable legal frameworks, such as those provided by ordinary regional laws (instead of constitutionally enshrined provisions) that detail the institutional structure, competencies, and organization of urban local governments, as well as the institutions' complex interaction. The legal frameworks pertinent to the Oromia Region has created

decentralized urban local governments with significant responsibilities and powers, the autonomous workout of which, directed by good governance principles, could result in overall development.

Using Ambo urban administration as a case study, the purpose of this article is to look in to how and how far urban government institutions are carrying out their legally mandated powers and responsibilities. By employing good governance as a framework for analysis, the study seeks to identify the practical and legal opportunities as well as constraints. Section 2 presents a theoretical discussion on good governance in order to provide a proper conceptual and analytical framework for investigating the structure and practical operation of Ambo urban government institutions.

This article is structured from a governance standpoint, and among the contexts of governances, namely corporate governance, global governance and multi-level governance, the article uses good governance as an analytical tool. As a result, this article focuses on accountability, transparency, legitimacy, responsiveness, and the rule of law principles of good governance. Section 3 discusses the study's approach and methodology. A review of the relevant legal provisions as well as an investigation of current practice based on fieldwork conducted as part of PhD dissertation in the urban administration informs the analysis. Section 4 presents a field data analysis based on an examination of regional laws, interviews, and focus group discussions with members of the urban administration executive committee, the speaker of the urban administration council, and urban administration councilors. Section 5 summarizes the findings of the research and provides an overview of the benefits and drawbacks of good governance as they relate to urban government institutions and how they work. Section 6 concludes with some final thoughts and recommendations.

Literature Review

There is no single overarching theory that explains governance. Rather, the concept of governance is explained and described from a variety of perspectives. First and foremost, governance theories operate at various spatial levels of analysis namely international, African, or regional, and the nation state, among others. The emphasis here is on local/urban governance. These actors may come from any level of society, however, the vast majority of them are almost certainly to be based in urban local government. Furthermore, governance incorporates theoretical perspectives from a variety of academic disciplines, including development studies, public administration, economics, international relations, and political science (Kooiman 1999; Newman 2001). The perspective outlined in this article is based primarily on governance literature in political science and public administration, as they deal with governing processes at the city level.

Governance can also be applied in a variety of contexts, with slightly different definitions. Rhodes (1997) mentions seven various usages, while Hirst (2000) lists five various ways. One area of usage in this regard is global governance, which entails the different patterns through which local, national, regional, and global actors collaborate to manage an expanding range of economic, political, and social affairs (Wilkinson 2002). Certain challenges, such as international financial markets, global trade regulation, and environmental issues are recognized as being beyond the capacity of single states to solve.

The second application/use of governance is multi-level governance that emphasizes governance dispersion across multiple jurisdictions (Hooghe and Marks, 2002). This application of governance begins with a dispersal of power away from national government and downwards to sub-national jurisdictions, sideways to private networks, and upwards to the supra-national level. Since the European Union establishes links between the local/regional governments and national ministries/Commission, it is frequently cited as a model of multi-level governance (Rhodes, 2000).

The third use of governance as per Hirst (2000) refers to "practices of activity coordination through networks, partnerships, and deliberative forums that have grown up on the ruins of the more centralized and hierarchical corporatist representation of the period up to the 1970s." It is contended that the government can no longer claim a monopoly on the expertise and resources required to govern and must rather depend on a diverse set of actors from both state actors and non-state actors. According to Hirst (2000), a fourth application/usage occurs when development economists discuss good governance is a requirement for effective economic modernization. It is recognized here that institutions are important and that development is more than just creating free markets. Thus, the World Bank's good governance strategy entails establishing an effective political framework that encourages economic activity conducted by private sectors (Rhodes 2000). The Global Campaign for Urban Governance was launched in 1999 by UN-Habitat with the motivation that "there is a growing international consensus that the quality of urban governance is the single most important factor for the eradication of poverty and for prosperous cities"(UN-Habitat, 2003a). This Global Campaign has developed a set of good governance principles centered on the concepts of accountability; transparency; legitimacy (as a result of inclusiveness and participation), rule of law, effectiveness and responsiveness (UN-Habitat, 2003b).

Accountability entails those in charge of decision making can be held responsible to the people over whom they rule. It is hoped that by increasing the accountability of governmental institutions, both economic and social development will benefit (Devas, 2004; Bevir, 2009). Transparency entails the free flow of information, in which information and processes are available to those who wish to comprehend and monitor them (Smith, 2007; Bevir, 2009).

Legitimacy entails participation and the right of all individuals to take part in the process of decision-making indirectly or directly via legitimate institutions that act on their behalf (Smith, 2007; Bevir, 2009). In order to achieve economic and political development, legal frameworks must be impartially enforced, fair, and democratically based, and decentralization is a method of reforming institutions to consolidate the rule of law (Smith, 2007; Bevir, 2009).

Responsiveness entails the responsibility of government institutions to respond to all citizens and when it comes to development, government leaders must have a long-term view. Decentralization is needed to achieve this, both to improve the efficiency of public institutions and to bring governance processes closer to the people that aim to meet needs on the ground while maximizing the use of resources available (Smith, 2007; Bevir, 2009). All of the aforementioned usages have beneficial components. Given the purpose of this article, a definition/usage is required, which will be decided by empirical research. As a result, in this study, the fourth application of governance i.e good governance is used as an analytical tool.

Methodology

Research Design

In this article, qualitative case study design was employed. The research sought to ascertain ULG officials' perceptions of urban administration autonomy with respect to good governance. Ambo urban administration, in the state of Oromia, was chosen as a case study for this purpose. A qualitative approach is one in which the inquirer frequently makes knowledge claims that are primarily based on constructivist/interpretive research philosophy perspectives. In constructivist research philosophy, individual experiences' multiple meanings are historically and socially interpreted/constructed with the purpose of developing advocacy/ participatory perspectives or creating a theory/pattern (Creswell, 2014).

Sampling Size

In contrast to its quantitative equivalent, the sample size for qualitative research is typically modest. The sample size for qualitative research is typically smaller than that of quantitative research. In qualitative research, the sample size is determined by a point of data saturation. When a researcher reaches data saturation, he or she stops hearing or seeing fresh information. As the investigation develops, the number of participants needed usually becomes apparent as new categories, explanations or themes give up arising from the data (Mason, 1996). As a result, we conducted eight interviews and two focus group discussions in Ambo urban administration. For this article, secondary data were collected from official documents, visual records, proclamations, books, journals, government policies, and other sources.

Data Collection Instruments

Brynard and Hanekom (2011:54) define data collection as "the collection of information to be used in the investigation." Data collection enables us to gather information about our research objects (Abawi, 2013). A qualitative data collection technique was used to produce data for this study. The following data collection tools namely interview, focus group discussion, and document analysis were used by the researchers of this research inquiry.

Analysis of Data

We applied qualitative analysis techniques that were appropriate for the research question and the data for this research. As per Simon (2011), qualitative data analysis entails "working with data, organizing it, breaking it down into manageable units, synthesizing it, searching for patterns, discovering what is important and what needs to be learned, and deciding what to tell others is what qualitative data analysis entails" (Simon, 2011). In qualitative research, data analysis is a continuous process that occurs alongside collection of data, interpretation, and writing report (Creswell, 2009). The qualitative data acquired through various methods were thoroughly examined in this research. Thematic analysis was used for the purposes of this research. There were five stages to this analysis. The data was first organized and ready for analysis. Based on the sources of information this stage entailed typing up field notes, transcribing focus group and interview results, sorting and organizing data in to various types. The goal of this phase was to become

completely immersed in the collected data. A thematic framework was created in the second stage so as to identify important issues from data. The information/data was coded in the third stage. In this research, coding entailed taking images or text data that were collected during data collection, categorizing images or sentences, and putting a label on those categories as well as naming those categories. Furthermore, in this phase the observed phenomena were classified in to conceptual categories that were identified and tentatively named. The purpose is to develop descriptive and multi-dimensional categories that will serve as a foundation for further analysis. Events, phrases, words that appear to be related have been grouped together in the same category. Throughout the subsequent phases of analysis, gradually these categories were modified and changed. The fourth phase was to create a set of thematic charts that enabled the entire pattern to be explored and reviewed across a set of data. In this study, the final phase of the analysis was data mapping and interpretation, which includes searching for associations, giving explanations, and emphasizing key ideas and characteristics.

Results and Discussions

A Brief History and Profile of Ambo Urban Administration

Ambo urban administration was founded in 1889 and has an area of 8,587 hectares. It is one of Ethiopia's oldest towns. The name Ambo is derived from a salt-water lake. The development of Ambo town is linked to the "Ambo Tsebel" hot spring. During the Hailesellase era, the city's name was changed to Hagere Hiwot, and when the Derge came to power in 1974, it reverted to its previous name. In 1931, the city had municipal governance and a master plan, making it one of the few preferred cities of the period. It has served as the administrative, transportation, and commercial center of West Shoa Zone due to its strategic location. Since 1931, Ambo urban administration has had its own municipal government and a master plan, making it one of the few fortunate cities of its period. It extends over a total of 1,320 hectares. The urban administration serves as the Western Shewa Zone's Administrative, Transport and Commercial hub. The urban administration was chosen as one of twenty in the ONRS to participate in a federal reform initiative.

The city's total population was 50,267 according to the results of the 2007 Housing and Population Census. However, the urban administration's projected population in 2020 is 64, 684 (Ambo Urban Administration, 2020). The expansion of the city's boundaries to neighboring West Shewa Zone woredas; the expansion of industrial and education facilities; and internal migration account for the majority of the city's population growth. According to the projected population census, the Oromo ethnic group has a 50+1 majority in the city. The Oromo have a sizable population, constituting 70.58 percent of the total population. The Amhara ethnic group has 23.5 percent of the population; the Gurage came in third (4.76%); and (1.16%) for all other ethnic groups (Ambo Urban Administration, 2020). In spite of their current numerical dominance, the Oromo used to be a numerical and political minority in the city under previous regimes. According to Tokuma (2010), aside from Oromo political dominance, their numerical increase has been fueled, among other things, by the urban administration's active encouragement of Oromo settlements. This policy of preference for the Oromo appears to be motivated by a desire to atone for the historical injustice they endured, as they were allegedly barred from residing in the city either indirectly or directly (Tokuma, 2010). In spite of the presence of an important

measure that has resulted in an increase in the number of Oromo People, non-Oromo make up 30 percent of the city's population.

Overview of Ambo Urban Administration Institutions: Legal Framework and Practice on the ground

Proclamation No. 65/2003 established the legal framework that governs Ambo and other urban administrations in the region. As mentioned in the introduction, the legal framework for ULG is not enshrined in the regional constitution. Although the non-constitutional status allows for the flexible adjustment of legal provisions in response to a rapidly changing societal environment, it has a negative impact on ULG autonomy. More specifically, the regional legislator has complete control over the autonomy of urban local governments.

Proclamation No.65/2003, has introduced grading of the regional urban administrations: Ambo, which on the basis of this law was designated a "second grade city." Second-grade cities are administratively subdivided into city administration and kebele administration (Ambo Urban Administration, 2020). As a result, the urban administration has six urban and rural Kebeles namely Horaa Ayyetuu; Yaji Gada; Turbaan Kutayee; Kisoosee; Sanqale; and Awaro (Ambo Urban Administration, 2020). It also has legislative, executive, and judicial powers, as well as institutions. Regarding the upward accountability of the urban administration as per Proclamation No. 65/2003 states that Ambo urban administration is accountable to the regional government. This implies that the city is not accountable to the West Shewa Zone, which includes Ambo's territory.

As per Article 7 of Proclamation No.65/2003, urban local governments' were established with the goals of promoting good governance and self-government; promoting local development; ensuring equitable and efficient urban service delivery; fostering collaboration; and protecting the urban environment. The Proclamation not only created Ambo's urban administration, but also two major functions of the urban administration namely municipal and state functions. According to Article 6 of the same Proclamation, on the basis of population size, four grades of cities were established. As a result, cities in the first grade have populations greater than 90,000; second-grade cities have populations ranging from 45,000 to 89,999 people; the population of third-grade cities ranges from 10,000 to 44,999 people; and the population of fourth-grade cities ranges from 2,000 to 9999 people.

Article 10 of Proclamation No.65/2003 established the Council-Mayor Urban Governance Model for Ambo urban administration and Article 11 and 12 of the same Proclamation stating that the urban governance organ consists of the mayor, the city council, the city manager, and the city court. The city council and the mayor have distinct roles and duties under this model. Both the city council and the mayor are elected for the same period of time. There is a separation of executive and legislative powers in this model. In the council-mayor governance model, the Mayor's Committee and the elected Mayor have executive authority. As per Article 11 of Proclamation No.65/2003, the city council is the final say on urban issues and has legislative authority in Ambo urban administration. The city council is appointed for a five-year term. Article 14 of the same Proclamation states, the city council's powers and functions include determining urban government organizational structure; the approval and supervision of the ULG's development plans; and approving urban government service delivery alternatives.

Representative Urban Administration Councils

Ambo Urban Administration council members are elected in direct elections every five years. As per Article 13(2) of Proclamation No.65/2003, the Oromia Region Executive Council determines the number of councilors. According to Article 29(2) of Proclamation No.532/2007 of the Federal Electoral Law, which also applies to city council elections, the regional legislature is responsible for determining the number of representatives from an electoral constituency, taking into account the number of seats in each council. As a result, under Article 4(5) of Oromia Region Proclamation No. 119/2006, each member of the urban administration council in a second grade city such as Ambo must represent 300 to 3000 urban residents. The current Councils of Ambo Urban Administration, which was elected in 2013, consists of 71 members. All 71 council members are elected directly. The representation of Oromo in the City Council is governed by Proclamation No.116/2006, which guarantees indigenous representation. This is implied by Article 4 of Proclamation No. 116/2006, which provides for guarantying Oromo ethnic groups up to 50 percent representation on the city council, unless the Oromo are the city's numerical majority.

Even if the city's indigenous ethnic groups (Oromo) were not given 50% of the vote, the Oromo would hold the majority of the city council seats. According to city council data, the Oromo hold 71 city council seats, despite the fact that non-Oromos such as Amhara, account for 23.5 percent of city residents, the Gurage (4.76%), and all other ethnic groups (1.16%). Although 100% of the Oromo in the city council demonstrate that representation in the city council is inclusive of the city's major ethnic groups, they also show a high disproportionality, concerns have been raised about non-Oromo residents' equitable political participation. The Oromo, who account for 70.58% of the city's population, hold 100% of the seats, while the Amhara, who make up 23.5 percent of the city population, hold 0 percent seats, and the Gurage, who make up 4.76 percent, hold 0 percent seats.

The aforementioned arrangement affirms a national trend of non-indigenous ethnic communities being pushed to the political margins, putting individuals from non-indigenous groups at risk of serious violation. One could argue that the first-past the post electoral system, which favors dominant ethnic groups, is one of the reasons for the Oromo's disproportionate representation in the city council. Nevertheless, while the Oromo are the largest ethnic group in rural kebeles, this is not the case in urban kebeles, where non-Oromo communities outnumber the Oromo (Tokuma, 2010). The political context, in which a dominant ruling party favors indigenous candidates for city council positions, explains Oromo dominance in the urban administration council.

Without political pluralism, the composition of the urban administration council is determined by the ruling party's candidate selection. The Oromo People's Democratic Organization (OPDO), an EPRDF member-party, has hegemony in the urban administration, with its members holding all urban administration council seats. Pursuant to Article 15(2) of Proclamation No.65/2003, the statutionary provisions governing the quorum and majorities required for decision-making allow Oromo members to make decisions without involving non-Oromo representatives, raising serious concerns about the latter's effective political participation. Oromo dominance over the Urban Administration council, which violates principles of good governance namely participation and equity, deserves serious consideration, given the Urban Administration council's significant powers and responsibilities.

Despite the fact that Article 11 of Proclamation No. 65/2003 explicitly granted the city council final say on urban issues, the Proclamation is ambiguous on the urban administration council's legislative powers. However, Article 14(2a) of the same Proclamation gives the urban administration council the authority to issue city ordinances concerning city affairs. In any case, the urban administration council has previously enacted a number of rules, some of which are or pertain to: regulating public protests in the urban administration; controlling noise pollution; and determining building heights in the urban administration.

The same is true for taxing financial autonomy, another important determinant of local government autonomy. Article 14(2c) of Proclamation No. 65/2003 granted the urban administration council autonomous taxing powers by granting it the authority to "introduce, adjust, and ensure the collection of taxes and service charges in accordance with law." Likewise, Article 37(1) of Proclamation No 65/2003 states that "the urban local government may introduce, adjust, and collect taxes, rentals, and service charges in accordance with regional and federal laws and policies." The revenue from urban land and property tax can be used for municipal functions in this case, and the city uses these as its own source of revenue. The aforementioned two provisions, though poorly phrased, appear to imply that urban local governments have the authority to tax autonomy.

The Urban Administration, on the other hand, receives funds from the regional government for the work it does on behalf of the region. Furthermore, the city administration is in charge of determining and managing the city's budget. The Mayor prepares budget proposals and presents them to residents and Kebele council representatives. The city council, on the other hand, has the authority to approve the budget proposal. The Bureau of Oromia Works and Urban Development, one of the regional government bodies, has the authority to assist the city in budget preparation and implementation. Article 37(4) of Proclamation No. 65/2003 entitles the Urban Administration to a regional government subsidy based on a percentage of revenue collected within the city boundary. According to the results of interview with the urban administration head of FEDO’s, the urban administration of Ambo is also financially dependent on the region.

Pursuant to Article 18(4) of Proclamation No 65/2003, the City Council should elect the Mayor from the members of the City Council, and the Mayor is accountable to both the President of the ONRS and the City Council, with the Mayor serving the same term as the City Council. However, Article 7, Proclamation No. 116/2006 later amended this by removing the accountability of the Mayor to the city council and transferred the accountability and appointment of the Mayor of Ambo to ONRS President. In such a case, anyone loyal to the ODP/OPDO and who speaks and understands Afaan Oromoo is a possible candidate for Mayor though he/she does not run for office at the urban administration level. The Mayor is in charge of selecting the mayor's committee’s other members, the city's executive body, and submitting a list of nominees to the city council for approval. The appointment procedure for appointing the city's executive body entails the executive being accountable to the city council.

The Urban Administration Council has a number of tools at its disposal to carry out its supervisory responsibility and make executive accountability a priority. As per Article 14 (2m) of Proclamation No.65/2003, the authority to approve the urban administration budget and monitor its execution is the first and most important tool. Article 42 (1) of the

same Proclamation reveals the urban administration council's authority to appoint an auditor and take action based on the audit report backs up the supervisory role of the urban administration council's in this regard, though Article 42(2) of the same Proclamation indicates the auditor's accountability to the Mayor could make auditing ineffective. Practically, the finance, budget and audit affairs committee (one of the city council's five standing committees) first discusses the budget proposal developed by the executive body of the urban administration.

The results of focus group discussions with urban administration council members demonstrated that the plenum of the urban administration council approves the budget without further discussion following scrutiny by the finance, budget and audit affairs committee. Concerning the urban administration council's authority to oversee and evaluate budget execution, the speaker of the urban administration council told the authors about one example of actions taken in response to audit report findings. The results of interview with speaker of the urban administration council revealed that the measures were based on the findings of an ad hoc committee formed in 2016 to recover public funds misappropriated by a number of urban administration officials.

The standing committees review the executive's quarterly reports in the urban administration as a formal rule of check and balance. The executive must first submit quarterly written reports on its activities, accomplishments, and challenges; then, the standing committees must provide written feedback on the reports. The results of focus group discussions with urban administration council members indicated that the standing committees also have the authority to conduct field visits to evaluate the reports received on the ground if circumstances necessitate it, though this rarely occurs.

The second supervisory tool is the urban administration council's authority to investigate the mayor's committee members and the mayor. The results of the focus groups with urban administration council members revealed that, despite the fact that punitive measures are occasionally imposed on the executive members, the urban administration council, according to its members, is ineffective in carrying out its supervisory responsibilities and holding the executive accountable. In this regard, a number of factors can be mentioned. The first is the urban administration lack of political pluralism. As previously stated, the OPDO has such a stranglehold on political space in the urban administration to the point where its members are all urban administration council representatives. The OPDO has faced little opposition from alternative political parties that representatives of the OPDO feel more accountable to their party rather than to the voters. Elections do not guarantee public accountability in this context because the electorate has very little chance of removing unpopular councilors. Besides, the OPDO is distinguished by strict party discipline, which has a negative impact on councilors' willingness to effectively represent the interests of their respective constituencies.

The merger of executive and legislative institutions brought about by the parliamentary governance system, as well as since many urban administration councilors are concurrently members of the urban administration, are the second factor preventing the urban administration council from carrying out its supervision responsibilities. Urban Councilors are understandably hesitant to express their dissatisfaction with their administrative superiors. The results of focus group discussions with urban administration council members revealed that insufficient financial incentives (City Councilors in the urban administration are not paid) as well as the resources in terms of human resources and

material, are the third factor preventing the urban administration council from carrying out its supervision responsibilities effectively. Despite its importance in ensuring accountability, popular participation, and transparency in urban governance, urban council in the urban administration does not receive much political attention. This can be seen, for instance, in the disparity in the budget allocations between the urban administration council and executive. According to the urban administration 2019/20 socio-economic profile, the Mayor's office budget was significantly larger than the budget allotted to the urban administration council.

In the end, the urban administration council's relationship with the regional government should be investigated. According to Article 16 (1) of Proclamation No. 65/2003, the urban administration council is accountable to both the electorate as well as the regional government council. Nevertheless, it is unclear how the urban council's autonomy is affected by its upward accountability. As per the urban administration council's speaker, the regional government is informed of all city council activities. The regional council (Caffee) assesses the reports and gives appropriate feedback. This procedure applies to all urban administrations in the region, which come together in only one single session for reporting and receiving feedback.

According to the urban administration council's speaker, the reporting procedure/process is similar to that of a consultative meeting, however, the authors are uncertain how far it can and does violate the city's autonomy. Because of all city council and regional council members are affiliated with the same political party, they have the potential to severely limit the autonomy of the urban administration. Nevertheless, the EPRDF and its constituent parties appear to be in flux when this research was written, with a noticeable deterioration in party discipline. It will be interesting to see how far this pattern will have an impact the internal operations of the OPDO.

Urban Administration Executive Bodies

Pursuant to Article 18 and 20 of Proclamation No.65/2003, the Mayor and the Mayor's Committee are executive bodies of Ambo urban administration. Article 6 of Proclamation No.116/2006 states the Mayor of Ambo Urban Administration is elected by the President of the Oromia Region and is accountable to the same person. Simultaneously, as per Article 7 of Proclamation No.116/2006 states the urban administration Mayor is tasked with producing his strategy and report to the Urban Administration Council, but the Mayor is not chosen by the Urban Administration Council and is not accountable to it. This arrangement of the President's and the Mayor's relations has been criticized because it forces the Mayor to prioritize upward accountability to the President's will over the Mayor and urban administration council collective accountability.

Although upward accountability is common in decentralized settings, Proclamation No. 116/2006 does not define the scope of such accountability. In this regard, it is unclear whether the mayor can be fired by the President of the regional government or what other mechanisms exist to ensure accountability. As opposed to, according to Article 30, Proclamation No.65/2003, the regional state council has the authority to dissolve the city council when an act detrimental to the public interest or endangering the constitutional order is committed. This provision not only provided mechanisms for ensuring accountability, but it also allowed for arbitrary regional intervention in city governance autonomy (Van der Beken, 2017).

This legal ambiguity allows for broad regional interference with urban government autonomy in a context where all government levels in the regional state are administered by a dominant ruling party. The President of the region is usually a high-ranking official in the party who can leverage his position in the party to put excessive pressure on the mayor. As a result, the mayor's accountability is far more political than legal. The Mayors' recent resignation from Oromia Region various urban administrations in response to strong pressure from the Oromia Region President demonstrates that, despite its weakness, political accountability is still present (Ketema, 2017).

The existence and operation of a so-called city coordination committee in Ambo exemplifies the mayor's strong relationship with the ruling party. This entirely informal committee meets once a week (the formal mayor's committee meets once a month) and is made up of the mayor, the deputy mayor, and three OPDO representatives. The committee's role is ambiguous and amorphous, violating the principle of transparency. The results of interview with the Mayor of the urban administration revealed the coordination committee is responsible for both political and developmental matters, the Mayor's Committee, on the other hand, is a more technocratic organization. Given the Mayor's close relationship with the ruling party, the coordination committee has an undeniable influence on urban autonomy and decision-making. This is further evidence of the region's ruling party's growing desire to tighten its grip on everything, even to the point of determining, more than any other body, how the urban administration day-to-day operations are carried out.

To ensure local government autonomy, the mayor's upward accountability must be clarified and specified to ensure that the legal limitations of regional and political supervision are clearly stated. Such legal clarity is also required to ensure effective accountability in the event of political dynamics shifts. Recent events in the country have demonstrated that strong EPRDF party discipline cannot be taken for granted. Democratic advancements may also result in the regional and local levels of government being administered by different political parties. In these scenarios, Proclamation No. 65/2003 does not provide the regional government with the necessary tools to effectively supervise and hold cities accountable.

As far as the Mayor's appointment and upward accountability is concerned, without a doubt, it impedes local democratic processes because it is not rooted in the community. In this regard, during the interview with the Speaker of the urban administration council, the speaker of the council sees the strategy as yet another way to keep non-Oromo from becoming Mayor of the urban administration. Furthermore, the Mayor's appointment system in the Urban Administration has a tendency to concentrate power in the hands of the Mayor, making the Urban Administration council subordinate since the Mayor has control over vertical information flows and excludes the Urban Administration Council from decision management and administration. Besides, as long as the Urban Administration Council cannot support the Mayor's appointment, it is in a weak position.

The law has given the mayor significant powers and responsibilities, which, as previously stated, are not effectively balanced by the city council. Pursuant to Article 18(4b) of Proclamation No.65/2003, the first important power of the Mayor is in charge of ensuring the observance of law and order in the urban administration. Article 18(4d) of the same Proclamation indicates the selection of the Mayor's Committee (urban administration executive councils) by the urban administration chief executive, the Mayor. Nominees for the Mayor's committee may or may not be members of the city council. The list of

nominees must be submitted to the city council for approval, but party discipline and executive dominance over the council make this largely a ceremonial affair. The results of interview with Ambo urban administration Mayor revealed that the urban administration of Ambo Mayor's committee currently has five members. Because ethnic diversity is not guaranteed by law, this body is likely to be dominated by people with an Oromo identity, as an Oromo mayor nominates candidates for an Oromo-dominated city council.

According to Article 22(1) of Proclamation No.65/2003, the municipal service is managed by a professional urban administration Manager who is appointed by the Mayor. Article 22(2) of the same Proclamation states the Manager of the urban administration is accountable to the Mayor. Pursuant to Article 22 (3) and (4), the urban administration Manager has extensive executive authority and responsibilities, among others, recruiting, administering, and dismissing manpower's working in the municipal service in accordance with law. The results of interview with urban administration civil service official and Article 8(2e) of Proclamation No.65/2003 indicated that the urban administration ability to administer its civil servants in accordance with government civil service law, i.e. administrative autonomy, is a critical component of urban government autonomy. Ambo urban administration currently employs 1,726 people across its various hierarchies. While the mayor claims that the recruitment and employment of city civil servants is done in accordance with civil service laws, a look at the ethnic composition of the city administration institutions reveals a disproportionate number of Oromo.

In 2016, for example, Oromo people made up 77 percent of the city's civil service workforce of 1,675. In 2020, 81 percent of the 1,726 employees were Oromo. The preceding figures raise serious equity concerns for an ethnic group that accounts for 70.58 percent of the total population. Furthermore, a look at the city's appointed heads of various departments reveals a similarly disproportionate number of ethnic appointments. For example, in 2016, Oromo appointees led all nine of the major departments under consideration.

Pursuant to Article 18(4h) of Proclamation No.65/2003, the Mayor is also in charge of developing and overseeing the execution of the urban administration plan and budget. The urban administration finance and economic development office (FEDO) is in charge of developing the draft plan and budget. The FEDO sends a letter inviting the other city offices to develop their budget plans as the first step in developing a draft budget. These plans are then debated with the OFED, and the first draft of the budget has been completed after an agreement has been reached. The results of interview with the head of the urban administration FEDO's revealed that the Mayor's committee debates and completes the draft budget following a discussion with the Mayor. Following that, Article 40(2b) of Proclamation No.65/2003 indicated it is the Mayor's responsibility to present the budget draft for approval to the City Council.

Budgeting and planning are key indicators of the autonomy of local governments, which can be severely limited if the local government cannot generate enough revenue to cover its expenses. In that case, the local government is reliant on external revenue (Example, transfers from regional government), which may be accompanied by external policy priorities. This possible threat to local autonomy has occurred in Ambo urban administration due to the urban administration reliance on regional grants.

Participation of the public in budgeting and planning should be ensured, for example, by having urban residents represented on the urban administration council, which

is responsible for approving the budget and plan. However, the effectiveness of public participation is hampered by a number of constraints. As previously stated, the urban administration council is ineffective in overseeing the executive for a variety of reasons. The other impediment to public participation's effectiveness is the city council's lack of inclusive and equitable representation, both politically and ethnically. There has already been mention of Oromo dominance and OPDO monopoly on city council representation. This could result in budgeting and planning that ignores non-Oromo residents' interests, as well as ignoring alternative perspectives on development. It would be considered a breach of the responsiveness principles of good governance in serving all stakeholders, including residents, and would be harmful to the policy effectiveness in development.

Summary of Findings: An Overview of the Benefits and Drawbacks of Good Governance

Proclamation No. 65/2003 gave urban local governments important powers, which they exercise via the executive and legislative institutions discussed in this article's fourth section. The legislative organ, the urban administration council, has the authority to pass local ordinances; approve the urban administration plan and budget; perform supervisory duties; and set service charge tariffs. However, from the standpoint of good governance, this research has uncovered a slew of legal and practical issues.

The composition of urban administration council's is the first challenge in this regard. Despite the fact that Proclamation No. 116/2006 guarantees the Oromo people a maximum of 50% of council seats, leaving significant space for non-indigenous community representation, representatives of Oromo origin hold nearly three-quarters of these seats. This implies that the urban administration council's ethnic representation is unequal, limiting city's residents' political participation that is both equitable and ethnically inclusive. The lack of inclusiveness in the urban administration council also restricts the representation of opposing political ideas.

Non-Oromo ethnic groups are not fairly represented, and there is no opposition representation, limiting city residents' effective political participation. The current city council's composition may result in decisions that favor and reflect Oromo interests and perspectives, which is counterproductive to the principles of good-governance responsiveness in terms of providing service to all residents of the urban administration. Moreover, because only OPDO viewpoints are considered, it has a negative impact on the caliber of political debate and the policy outcomes that result.

The urban administration council's ineffectiveness in carrying out its oversight of the executive is the other barrier to good governance. The ineffectiveness of the urban administration council's supervision of the executive has a clear negative impact on the executive's accountability. The mayor's accountability to the President of the region alone, as well as the council's inability to approve the mayor's appointment, means that the council lacks the majority required to sanction the mayor. In practice, however, the lack of downward accountability is offset by the Mayor's strong upward accountability to the president of the region. This is due to the fact that, in the current political climate, both the president of the region and the mayor are members of the same political party with a rigid hierarchical structure. However, the mayor's accountability is primarily political as

opposed to institutional, because the law does not define the extent of the upward accountability of the Mayor to the president of the regional government.

The function and existence of urban administration coordination committee, a completely unofficial organization that appears to be in charge of advancing the interest of the ruling party in the city, exemplifies the mayor's close relationship with the ruling party. In this regard, the lack of legal clarity contradicts the goal of transparent decision-making. It also poses risks to effective city-region oversight, as changes in political dynamics may weaken party discipline or even result in different political majorities at the city and regional governments. This scenario could result in a lack of upward accountability to an already weak downward accountability practice. Given the mayor's significant powers and responsibilities, ineffective vertical and horizontal checks and balances could create a favorable environment for him or her to become a petty dictator.

Conclusion and Recommendations

Ambo urban administration has been given significant legal authority and responsibilities, the independent exercise of which, governed by good governance principles, should result in overall development. The urban administration main challenges and opportunities for good governance have been identified in this article, based on a discussion and evaluation of the urban administration institutional legal framework and how they work in practice. Finally, several recommendations are made in order to improve the urban administration governance quality and thus contribute to the realization of the urban administration developmental goals. Some are of the political variety, while others are of the legal nature.

The study identifies Oromo dominance over the urban administration government institutions as the first major problem. Despite the fact that Ambo's location within Oromia Region territory justifies Oromo interest protection measures (at the very least, according to the Ethiopian administrative organization's ethnic-territorial mindset), this research contends that good governance necessitates more effective participation and greater representation of non-Oromo ethnic communities in urban government. Even if urban local government Proclamations Nos. 65/2003 and 116/2006 guarantee Oromo dominance in first and second grade cities, both proclamations implicitly recognize the existence of non-Oromo groups in order to create a city government that is more ethnically diverse that reflects the city's multi-ethnic composition. However, this research found that the majority of urban administration council members are Oromo. As a result, this put up to Oromo dominance over the mayor's committee, whose membership is recommended by the Oromo mayor and then approved by the city council. According to the article, the Oromo ethnic group's disproportionate representation in the Mayor's committee and city council is primarily due to the OPDO's regional and local political dominance, a situation that benefits Oromo city council candidates.

Despite the fact that this has resulted in Oromo control of the city government, its long-term viability is doubtful because it is dependent on the OPDO's continued dominance over the urban administration political scene. Given the country's current political developments, it is reasonable to expect fierce political competition in future local elections. This political competition is expected to come from multi-ethnic and ethnic-based political parties, with both non-Oromo and Oromo candidates. Given that 30% non-

Oromo groups live in urban kebeles, the current level of ethnic politicization and the continued use of the plurality voting system is likely to result in the election of non-Oromo candidates. Greater electoral competition will likely encourage the OPDO to field a greater number of non-Oromo candidates. As a result, simply increasing electoral competition will result in more equitable city institutions and ethnically proportionate. Because such a situation would instill fear in the Oromo of being deposed in "their" urban administration, legal guarantees of continued political power are recommended so that their fear does not lead to socio-political conflict and instability.

A second issue to consider is the urban administration council's ineffective supervision of the executive. Even if the presence of representatives from various political parties on the urban administration council would undoubtedly consolidate its supervision role, even when there is no political pluralism, the ruling party could encourage its members on the urban administration council to be more assertive in carrying out their duties. To be sure, this might be asking too much given that many urban administration council members also hold professional positions in urban administration. One strategy to encourage urban administration councilor members to be more assertive should be to provide legal immunity for votes cast and opinions expressed in the urban administration council. Following the example of South Africa, the other strategy could be to make it illegal for urban administration employee to become a city councilor. Minimizing the large financial disparity between the urban administration executive and council is a political measure that would give urban administration councilors with the human resources and material they need to carry out their duties effectively.

Effective accountability mechanisms necessitate clarification of the executive's upward accountability under the law. Whilst local self-government refers the ability to make discretionary decisions, this authority is not limitless, which should be protected by a higher-ranking government (Yilmaz, et al., 2010). Nevertheless, it is critical to strike a balance between upward accountability and discretion so that the former does not obviate the latter. The Oromo urban local government law does not provide this guarantee because the scope of the city council's upward accountability to the regional government and the mayor's accountability to the regional president is ambiguous. Due to a lack of legal clarity, the regional government is currently able to interfere extensively with local government autonomy, instead of formal legal strategies of vertical accountability, close party ties are used. To prevent urban government autonomy from devolving into local tyranny, a changing political environment necessitates a legal clarification of upward accountability's substance and the means for maintaining it.

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PUBLIC PRIVATE PARTNERSHIP AND EDUCATIONAL INFRASTRUCTURE IN NIGERIA

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Abstract: *The objective of the study was to examine the impact of public-private partnership on educational infrastructure in Ogun State model secondary schools. There is a consensus among educationists, policy experts and policy makers that there are not enough resources for government alone to address growing education challenges in many developing countries. Consequently, a paradigm shift by the government to embrace the PPP initiatives in addressing infrastructural decay in schools is advocated. Data were derived from the review of official records, newspapers, website, journals and internet. Findings show that Public-Private Partnership in Ogun State model secondary school is based on the joint venture approach between government agencies and corporate investors. So far, attention has been on the provision of qualitative education at the secondary school level for the citizens, while the challenges militating against Public-Private Partnership in education are increase in the growing population, inadequate financing of the sector, lack of qualified teachers, ill-motivated manpower, corruption and systemic embezzlement as well as the exclusion of low-income people from the PPPs services. Given the huge educational gap at public secondary school level in Ogun State, the study recommend training of stakeholders that are involved in PPPs, stakeholders must be conversant with the rudiments, knowledge and orientation of projects they are embarking upon, also we should localised our enabling laws so that our institutional framework can be strengthen, corruption and nepotism should not hold way in contracting and bidding of PPPs projects like it was done on other public utilities.*
Keywords: *Public-Private-Partnerships, Infrastructure Development, Model Secondary School, Ogun State.*

Introductıon

"In Nigeria, it is unarguable that the nation has experienced a colossal shortage of infrastructure and the infrastructure which is available and accessible are not satisfactorily utilized. The previous administration have invested hugely in the state infrastructure in which education sector is not excluded. This can be justify by the statement of the State's Commissioner for Regional and Urban Planning as she uncovers to Business Day in an interview in Abeokuta that Ogun State has become the most preferred investment destination in Nigeria and the most flourishing industrial hub in Africa because the State government has embarked on aggressive development of infrastructure aimed to open up the State for more investors. The State in the last five years has attracted billions of naira investment from both local and foreign investors who see her enabling environment enough

for them to settle for business as a result of the massive infrastructure rebirth that the state is currently experiencing. Authorities of the state estimate that 35 percent of all the Foreign Direct Investment (FDI) into Nigeria in the last two years found their way into the state. Sokenu (2016), ascribed the investment inflow to the governments decision and pledged to give an enabling environment likewise infrastructural renewal through its economic strategy. It ought to be noted that the exact figure invested in infrastructure annually is not accurate, hence, there is the need for Public-Private Partnership to help in bridging the gap closer to the expected desire of infrastructural development in Ogun State"(Business Day, 2016).

In the light of the above, it is evident that the government alone even at the best of times cannot provide infrastructural requirements needed for the economic development of the country, hence, the call for the intervention from the private sector in the provision of public infrastructure is necessary"(Taiwo, 2016). Public private partnership is therefore a necessary and a significant instrument for the attainment of sustainable infrastructure development. "Public private partnership came into existence as a channel for infrastructure development and renewal, i.e. to make available adequate infrastructure through public private partnership's development. Public private partnership can be said to be a crossover from the traditional contracting of projects to private personnel to develop a particular project which the government will pay such private personnel for the provision of such projects and which may not later be fully completed" (Fatile, 2015). Here, "the essence of public private partnership is to see to the successful development of infrastructure by the contribution and collaboration of both the public and private sectors. Private public partnership is of great significance to the development of any nation. It has essential implications for the role of the state vis-à-vis the private sector as a provider of public services"(Leonard, 2012). "It is based on this and also because of growing pressure to find new and better ways to succeed in the innovative field of the labour market and to reach the poorest areas of the society, the public sector is looking up to the private sector for leadership, technical expertise, and innovative ways to finance vital societal projects and services" (Okoye and Chijioke, 2013). "PPPs aim to combine the skills, expertise, and experience of both the public and private sectors to deliver higher standard of services to customers or citizens. The public sectorcontributes assurance in terms of stable governance, citizens' support, financing, and also assumes social, environmental, and political risks. The private sector brings along operational efficiencies, innovative technologies and managerial effectiveness, access to additional finances, and construction and commercial risk sharing" (Egbewole, 2011).

"Traditionally, it has been the role of the government to provide secondary school education and studies have shown the degree to which PPP in education has been successful in different countries across the world" (Leonard 2012). "Others have focused on the role of government agencies in PPP in secondary education and the contributions of PPP to address the education challenges in Nigeria" (Taiwo, 2016).

However, the gap in knowledge to the study which Leonard, 2012; Taiwo 2016 and other writers fail to consider is how public private partnership affect educational system in Nigeria especially at the secondary level. Meanwhile, there are few empirical studies on the prospects and challenges of PPPs in public secondary education in Nigeria. Among these few studies, none has specifically investigated the adoption of PPP in education sector in Ogun State, Southwest Nigeria. Consequently, part of the study is to explore the

challenges of PPP in secondary education especially the newly created models school in Ogun State and also to identify the key partners, their roles and the target population, as well as cost of schooling in PPP education schemes in terms of affordability. The challenges militating against the PPPs in meeting education needs of low-income residents in Ogun State were also examined.

Objectıves of the study

The main objective of this paper is to examine how Ogun State can successfully adopt PPP as a policy option when it comes to infrastructure development in Nigeria educational system. The secondary objective is to investigate how PPPs assist the government in providing qualitative and affordable education in Ogun State, Nigeria.

Conceptual and theoretıcal frameworks

In this section attempt is made to conceptualise public private partnership and infrastructure development which is considered as a key variable central to this research and to situate the study within the context of Principal-Agent and Institutional theories which are relevant for its analysis.

The Concept of Public Private Partnerships (PPPs)

Public Private Partnerships (PPPs) is a much contested concept. It is not only hard to define the concept, since it can take many forms, but opinions differ whether they are a wishful development. Proponents and critics of PPPs agree on a loose concept of PPPs, namely a public and private interaction to deliver a service. Yet providing a clear definition turns out to be challenging. The term is a sort of an umbrella notion covering a broad range of agreements between public institutions and the private sector, aimed at operating public infrastructures or delivering public services (Education International, 2009).

According to the National Council for Public-Private Partnerships (2012), a PPP is defined as a contractual agreement between a public agency (federal, state or local) and a private sector entity. Through this agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service and/or facility. Public Private Partnership can also be described as an agreement between governments and private sector firms for the provision of public infrastructure, facilities and services. It is a contractual arrangement formed between public and private sector partners which requires the private sector to invest in the development, financing, ownership, and operation of a public utility or service and responsibilities shared so that the partners efforts are complementary (Leonard, 2012). The private partner may contribute substantial cash or equity in the project and the public sector may also contribute but ultimately gains access to new revenue or service delivery capacity. It also refers to a form of cooperation between public agencies and the private sector to finance, design, build/construct, renovate, manage, operate or maintain an infrastructure or service utility which involves some form of risk sharing.

Egbewole (2011) believed that the allocation of sizable and, at times significant, elements of risk to the private partner is essential in distinguishing the PPP from the more traditional public sector model of public service delivery. There are two basic forms of

PPP: contractual and institutional. Although institutional PPP has been quite successful in some circumstances, particularly in countries with well-developed institutional and regulatory capacities, contractual PPP are significantly more common, especially in developing economies.

While there is no universal consensus about the definition of public-private partnerships, the following elements typically characterize a PPP:

The infrastructure or service is funded, in whole or in part, by the private partner.

Risks are distributed between the public partner and private partner and are allocated to the party best positioned to manage each individual risk.

PPP is a complex structure that involves multiple parties and relatively high transaction costs.

PPP is a procurement tool where the focus is payment for the successful delivery of services (the performance risk is transferred to the private partner).

Oyedele (2013) identified the essential Features of PPP as follows;

1) PPP is a form of collaboration or joint endeavour between the public and private sectors for the purposes of implementing a project, whereby the resources, strength and capabilities of each parties are brought together. This is done in a way which allocates risks and responsibilities between them in a rational manner designed to achieve the optimum balance from each perspective.

2) In practice, PPP structures usually involve the transfer of much of the responsibility for financing, designing, constructing and operating the project and most of the risks associated with these activities to the private sector- whilst allowing certain (often residual) responsibilities and risks to be retained by the public sector. Effective education can best be achieved when government collaborates with a range of other actors in private sector, civil society, independent experts, communities and families.

3) PPP systems entail the pooling of competencies, resources, and capacities from the public and private sector to achieve outcomes that add value beyond what either party could achieve acting alone. The approach builds on the idea that different sectors in society have different yet potentially complementary core competencies and resources that, if appropriately joined, produce positive results for national benefits.

4) Governments benefit from PPP by gaining access to corporate expertise in management, strategic planning, innovative solutions, labour market expertise, skills development, efficient delivery of services, project development, and logistics support.

Meanwhile, there are other features that is parochial before PPPs can came into existence and such feature includes;

1. The Legal Framework must be sound because of the different objectives of the parties.
2. There must be efficient and effective costing. The costing must take into consideration all the risks involved.
3. The source of finance must be assured, accessible and sustainable.
4. Both parties must have technical knowledge of the infrastructure being developed though it may be at different levels.
5. It must be based on value for money (vfm), must be economical, efficient and effective.

Farlam (2005) suggested that PPPs bring the business efficiency and effectiveness to public sector service delivery and avoid the politically volatile factor of full privatization of public utilities. They allow governments to retain ownership while contracting the

private sector firm to carry out a specific function such as designing, building, maintaining and operating infrastructure like roads, bridges and ports, or providing basic services like health, water, waste disposal and electricity. Government earns income by leasing public-owned properties or alternatively pays the private firm for improved infrastructure and efficient service delivery. The private sector may also get paid by consumers for using such utility. Ibrahim (2013), asserted that PPPs can be commissioned for (or any combination of) financial, developmental, efficiency, ideological and political reasons.

3.1.1 Financial reasons (risk diversification): PPP may be implemented because the government doesnt have enough resources to carry out a project alone. Risk diversification can also be a motive to implement PPP because it encourages investment in projects that would otherwise not have been carried out because of the high product/market risks.

3.1.2 Development reasons: The realization of Millennium development goals (MDGs), Vision 20:2020, or certain international standards is another reason to implement PPP.

3.1.3 Efficiency reasons: This can be viewed from two angles; market failure and government failure.

- Market failure means that private firms fail to innovate and ensure continuous improvement in product and process development because this is not profitable for them.
- Government failure means that the government fails to secure accountability between decision makers and industry/economic players.

Ideological/political reasons: the changes that occur in the socio-political and industry climate sometimes encourage PPP interventions, especially where the project is internationally funded. Also for political reasons, government may support economic liberalization and less state interventions.

Infrastructure development

According to World Bank (2015) Infrastructure offers significant investment opportunities for long-term investors, even in a time of global crisis. It is important, both for economic recovery and long-term development. Infrastructure is the basic physical and organisational structures needed for the operation of a society like industries, buildings, roads, bridges, health services, governance and so on. It is the enterprise or the products, services and facilities necessary for an economy to function (Sulivan and Sheffrin, 2003). Infrastructure can be described generally as the set of interconnected structural elements that provide framework supporting an entire structure of development. It is the means of achieving an objective or set of objectives and also includes the objectives. It is an important term for judging a country, region or states and individuals developments/status. The term typically refers to the technical structures that support a society, such as roads, telecommunications, water supply, electrical national grids, etc and can be defined as "the physical components of interrelated systems providing commodities and services essential to enable, sustain, or enhance societal living conditions" (Fulmer, 2009). Viewed functionally, infrastructure facilitates the production of goods and services, and also the distribution of finished products to end-users (markets), as well as basic social services such as schools and hospitals; for example, roads enable the transport of raw materials to a factory (American Heritage Dictionary, 2009). In military parlance, the term refers to the buildings and permanent installations necessary for the support, redeployment, and operation of military forces (Department of Defense Dictionary, 2005).

There are two types of infrastructure, Hard and Soft" infrastructure. Hard refers to the large physical networks necessary for the functioning of a modern industrial nation, whereas "soft" infrastructure refers to all the institutions which are required to maintain the health, cultural, economic and social standards of a country, such as the financial system, the education system, the health system, the governance system, and judiciary system, as well as security (Kumar, 2005).

Theoretıcal Framework

To get a better understanding of the possibilities and shortcomings of PPP, it would be useful to base the review of the study on an analytical framework. Such a framework would also be useful when structuring the discussion of findings in the reviewed literature. A number of scholars in the public management realm have highlighted the theoretical foundations of PPPs, although there is no unified theoretical basis for PPPs. It is possible to situate this paper within the context of the Principal Agent framework and Institutional Theory given the specific nature of risks existing in most PPP projects.

Principal-Agent Theory: The PAT was developed by Mike Jensen and William Meckling; American economists in 1976; hence, they both have their foundation on financial economics and managerial economics. PAT establish the framework and explains the roles of the Principal (State) and the Agent (managers) in the provision of infrastructure in the economy (Jensen and Meckling, 1976). Applying Principal-agent theory to PPP's we can say that the principal is the state (or other public actors) and the agent is the private sector company, partnership or consortium that the state contracts with. The state wishes to harness the capacity (human and investment), entrepreneurship and innovation of the private sector “agent” to achieve public policy goals, but has to recognize that; private sector “agents” have their own objectives and; will only enter into deals if they think that these will in some way be furthered by implementation of the Public Private Partnership agreement. Specifically, firms will only enter into PPP agreements if their expected “utility” from concluding the deal exceeds what they could obtain from directing the same resources to alternative uses, i.e. the opportunity cost of these resources (Poulton, 2009). Poulton (2009) further asserted that at the heart of Principal-agent theory is the problem of asymmetric information. If the state had perfect information, concerning the capability and motives of potential private sector partners (prior to signing of a contract) and the actions and motivations for these actions (during implementation of a contract), the challenge above would be fairly straightforward. However, in reality these things are at least partly hidden from everybody except the (senior management of the) firm itself. In compliance with principal agent theory the two contract parties in PPP are named principal (the public authority) and agent (the private enterprise). Both actors are intrinsically motivated by self-interest based on rationality (Greiling, 2009). This theory is mainly interested in how the agent can be forced to act in accordance with the principal. A so-called agency problem evolves that is not only derived from the actors' egoism but from information asymmetries in favour of the agent. The principal agent theory is applied as a theoretical reference framework for the PPP partnering model and the PPP performance process model to restrict opportunistic behavior. The principal agent theory therefore constitutes the theoretical base for optimally structuring contractual incentive mechanisms to protect against opportunistic behavior (Jensen and Meckling, 1976). Principal agent theory also broaches the issue of risk-bearing. This is a central topic for Public Private Partnership because the share of risks

is supposed to be one main advantage of the PPP concept for growing efficiency in public service delivery.

There are several general conclusions on Principal agent theory. These include; Firstly, the risk should be allocated to the Agent to the extent he does manage the risk. Secondly, risk should be allocated to the least risk adverse partner in order to minimize the overall risk-bearing cost. In the Principal-Agent literature, the Agent is most of time supposed to be risk averse whereas the principal is supposed to be risk neutral. Thirdly, the Principal should support risk in order to minimize the overall risk-bearing cost.

4.2 Institutional Theory: Governments operate in an institutional environment which influences their actions. In this environment, the main goal of organizations is to survive not only economically, but they need to establish acceptability within the world they operate. Institutional theory analyzes how structures including procedures, rules, schems, and routines, become established as guiding principles for social behavior through processes. Institutions determine how different elements are developed, diffused, adopted, and adapted over space and time (Scott, 2004; Scott, 2008). An important element of institutional theory is conformity. While formal institutions are conscious in their guiding principles which prescribe or proscribe parties' behavior, it is also important to include informal rules or trust patterns as part of the institutional framework since behavioral patterns become institutionalized and informal rules become seen as given, or, informal commitments become institutionalized over time due to the repetitive execution of acts by individuals involved (Winch, 2010).The institutional environment shapes political processes and the rules of the political game and vice versa. There is a link between how political institutions shape political incentives, how political behavior influences policy making processes and their capabilities. In the case of PPPs, governments are responsible for the establishment of programs and to develop the necessary capacity to ensure project success. The way a government shapes the environment for PPP development will depend on the institutional context where projects take place. The policy interventions will have an impact on the institutional capabilities of the environment to foster PPP development and provide an enabling environment (Jooste et al., 2011). Institutional theory is used to analyze the influence of the institutional environment on PPP projects with the intention of refining it and proposing it for further research to study the interplay between the institutional and project outcomes. The categorization proposed by Mahalingam et al. (2011) serves as a means to delimit the institutional environment and characterize the institutional capabilities needed for PPP development so then we can compare different institutional environments. The institutional environment has a contract structure, the duration of negotiations for planning and procurement, and the emergence of public opposition. Projects' outcomes result in lessons learnt. The influence of the institutional environment on project outcomes and context specific factors shape the evolution of the institutional environment in different ways in different arenas, thereby leading to diverse project outcomes over time, even when the initial set of institutional logics surrounding PPPs are the same across these arenas.

Model of Public-Private-Partnerships

Oyedele (2013) identified the following types of PPP model:

Build, Operate, Transfer (BOT): here the private investor faces the challenge of construction risk, operating risk and social, and environment risk, endeavors to make profit,

and thereafter transfer ownership to government at the expiration of the time stated in the contract. Under this model, the contractor may be a developer and financier who will build and own the property with the agreement that the client will possess the property in the future. This model is usually used for specialized facilities like hospitals, schools and housing.

Design, Build, Finance, Own (DFBO): Under this model, the venture is 100% private sector owned. The challenge here is that of regulatory risk, project risk and creeping taxation. It is a Public Finance Initiative (PFI) in which a private sector firm conceived a development idea, design, construct it, operate it and own in perpetuity.

Design, Build, Operate and Transfer (DBOT): In this model, the private investor is charged with the responsibility to design a project, build it, operate within an agreed period of time, and thereafter transfer ownership title and operations to the government.

Build, Own, Operate and Transfer (BOOT): This is similar to DBOT model however the private sector partner will have a complete ownership for a given period of time, during which it directs the affairs of the enterprise with interference from the public sector.

Rehabilitate, Operate and Transfer (ROT): This is an agreement to rehabilitate existing public infrastructure, operate it for an agreed period of time and transfer ownership to government at the expiration of the contract.

Joint Development Agreement (JDA): This model encourages the private and public sector to come together and sponsor the development of a project from scratch. At completion, both parties maintain the stakes in the management and running of the venture.

Operation and Maintenance (OM): Under this model, the operation and maintenance function of the project, usually existing, is contracted to the party that has the experience, resources and technology to carry out the function ownership and management remains with the initiator.

Management/Lease Contract: Management contract and lease contracts involve a private firm taking over the management and control of a public enterprise for a given period of time although the facility continues to be owned by the public sector. The public sector may retain the responsibility of financing the investments in fixed assets. In the case of management contracts, the public sector also finances working capital. In this plan, it is 100% Public sector owned.

Outsourcing: This is where government outsources some supporting services to the private sector such as billing, postage, stationary supplies, metering, transport, or cleaning.

Leasing Contract: In Lease Contract, the private investors build the infrastructure and lease it to government under finance or operating lease. Greenfield projects: With Greenfield projects a private entity or a public-private joint venture builds and operates a new facility for the period specified in the project contract. The facility may return to the public sector at the end of the contract period or may remain under private ownership.

Divestiture: Another form of private participation in infrastructure is divestiture where a private entity buys an equity stake in a State-Owned Enterprise through an asset sale, public offering or mass privatization. For a country where the majority of the citizens is stricken by poverty, whatever model is adopted should place the benefit of citizenry at top most priority.

Concession: This is a collaborative agreement between a government and private developer(s) to design and develop facilities through combination of participants which

include the financiers, contractors and consultants. The developers may not necessarily be the financiers of the project.

Methodology

The aim of the paper is to examine public private partnership and infrastructure development in Nigeria. The data for this paper were drawn mainly from secondary sources. While the paper is exploratory in nature and it meant to investigate whether there has been an improvement in the service delivery when it comes to qualitative education at the model secondary school in the State through public private partnership. Based on this, the study maintains the qualitative paradigm of social research such as textbooks, journals, articles, newspapers and other publications. To improve on the reliability and validity of the study, multiple secondary sources were used to minimize the risk of error.

PPP and ınfrastructure development ın Ogun state, Nıgerıa

Construction industry is the backbone of infrastructural development and this industry is a driver of growth in other sectors due to its heavy reliance on an extended and varied supply chain. All other sectors of the economy like manufacturing, education, health, sports etc, depend on construction industry for performance (Oyewole, 2013). However, with the obvious decay in infrastructure, and the failure of existing contracting methods, due to varying degrees of corruption, adoption of PPP appears to be an attractive alternative. Niniowo (2016) asserted that the focus of PPP is on end results and standards, and not on processes as the case is with traditional contracting. PPP provides the best quality and value for the taxpayers money. Adoption of PPP in infrastructural development will provide adequate and affordable infrastructures, employment, rural development and tax as a form of income for government. PPP has been successfully used in the provision of infrastructures world over. According to Oyewole (2014), the infrastructure gap is very wide in Nigeria because of the irresponsibility of past and present leaders in the provision of infrastructures. With PPP, governments are now achieving greater provision of infrastructures. Clement (2011) is of the opinion that PPP gives local authorities access to new sources of capital investment and management skills for new or improved facilities and creates new opportunities for the private sector to combine construction facilities, management, finance and operating skills.

Globalization and modern technology means that direct provision of goods and services is no more fancied worldwide and that a dynamic and inventive kind of politics is required in response (Ibrahim, 2013). PPP helps the government to focus and to engage in more capital investment than it would by following conventional procurement methods. It is akin to taking out a mortgage, with public bodies being forced to pay the true market rate for capital. Commercial companies provide the initial capital and in theory assume the risks associated with construction and maintenance in return for guaranteed leases that will allow them to cover costs and make a profit. Instead of building new offices, schools and IT facilities, local councils now lease them from commercial companies, thereby providing the provider of these asset-based services with a secure low income (Fulmer, 2009).

Moreover, the strategic objective for the Infrastructure Concession Regulatory Commission (ICRC), 2005 is to accelerate investment in national infrastructure through private sector funding by assisting the Federal Government of Nigeria and its Ministries

Departments, and Agencies (MDAs) to implement and establish effective Public Private Partnership‘s (PPP) procurement. The act provides for the participation of private sector in financing the construction, development, operation, or maintenance of infrastructure or development projects of the Federal Government through concession or contractual arrangements; and the establishment of the Commission to regulate, monitor and supervise the contracts on infrastructure. The scope of the Federal Government□s programme for PPP is the creation of new infrastructure and the expansion and refurbishment of existing assets at the federal level.

PPP ın Ogun state model schools

Ogun State Government proposed to set up 26 model schools at the rate of one school building per local government and six to all the senatorial district of the state. These schools will be centres of qualitative education at the secondary level and would have infrastructural facilities at least of the standard with stipulation for pupil-teacher ratio, educational environment, appropriate curriculum, ICT enablement and emphasis on output and outcome. About 200 blocks of classrooms that are conducive in learning in the State are constructed in all senatorial district and these are meant to lift the education standard in Ogun State as it can be seen in Appendix I.

The model schools are set up by government using her own financial resources and to be managed by private partner with full autonomy and management control which fall under auspices of PPPs. The government would provide a capital incentive which would be payable over a few annual instalments. The release of the amount would be triggered through certification by an independent agency on achieving pre-determined performance standards. 50% of seats in each school would be filled up through sponsorship by the government from among the best public three students for each public secondary school that sat for unified secondary examination for which the government would provide a capital recurring grant which is equal to the actual per capital cost incurred by government in running similar government schools. The remaining 50% of the seats should be filled up by the management which would charge an appropriate fee. Land for the school would be provided on lease at a concessional rate by the State government, or the private partner would be free to purchase suitable land of its own. In each block, the private partner would be chosen through a competitive bidding process.

Therefore, government involvement in these aspects is intended to speed up the process of providing qualitative education in the State. The private organizations on the other hand are involved in the management of the daily routine affairs, and also determine the actual cost in which can pay for the service. The fact that private organizations determine the prices of the service means that the government wants to ensure a margin of profit and to sustain their interest in the PPP schemes.

Table 1: Roles of the Partners in PPP Model Secondary School Schemes in Ogun State

Government	Corporate Investors in Education
Provision of infrastructural facilities	Pay for other sundry charges
To provide access road and power supply	Comply with building and planning regulations in the design and construction of the projects
Sets the target	Undertake the design and physical construction of the model school
Play supervision and monitoring role	Funding part of the construction work

Set standard and ensure compliance	Creating awareness(advertising) on the projects
Provides legal policy frameworks	Marketing and allocation of model school to various investors
Creation of awareness and marketing of the school to the teeming public.	Management of the school as agreed by the government.

Source: Adebanwo (2017)

Challenges of PPP experiments in Ogun state, Nigeria

State governments are considering using PPP to develop infrastructure in which Ogun State is not exempted. Although each state is responsible for its own investment projects, many PPP projects within a state will be financed with the support of a guarantee by the Federal Government. In providing any such guarantees, the government will have regard to best practices as exemplified by its own PPP policy and guidelines. These are extracts of the government on PPP policy. PPP interventions in Nigeria has been bedeviled with various forms of obstacles, however, this should be seen as mere teething problems. Sotola and Ayodele (2011) are of the opinion that the controversy and problem surrounding PPP in education sector could be less damaging if the government failed to make the process of Transferring public utilities to private sector transparent likewise if the government failed to involved the private sector in project circle such as project conception may make the efforts of the government failed. The Olokola FTZ Gas project was conceived as a PPP venture involving Ogun, Ondo and a consortium companies in the oil and gas industry. Though this project is not officially closed, the commitments from political leadership have waned, with a change of government in the States.

In 2004, the Ogun State government unveiled a cargo Airport initiative under a PPP framework. The project was located in Iperu/Ilishan axis in Ogun East Senatorial district. The design of the project was based on the framework that the state government would kick-start the project with on-site mobilization of contractor and some selected private sector participants will ensure the completion. By 2009, the project has been abandoned due to controversies and allegations of corruption. Gateway Hotels, owned by the state government, remained closed due to controversies surrounding concessioning agreements. The concessioning of many publicly owned projects to private firms has become a major debate in public discourse in Ogun state since the coming on board of a new administration. The government had instituted a probe into the public-private partnership ventures entered into by the previous administration in the state.

Despite the above, there exist some challenges. A key function of the government is the provision of infrastructure for the populace. Most Nigerians still view the transfer of this responsibility to the private sector as gross inefficiency especially where it is marred with controversies, as it is the case with Nigeria. Egbewole (2011) asserted that PPP has been seen by many pundits to be elitist, expensive and diversionary. Pricing is a major economic obstacle. Citizens are concerned that, if not curtailed, their collective future will be mortgaged to the elites. Especially in situations where there are no existing and/or efficient alternatives. Some analysts are rather conservative, as they see PPP as the leeway employed by powerful firms and multinationals, primarily driven by profit, to gain entry into the public sector. Also, PPP will always be a more expensive method of funding capital projects because of the requirement to finance the profits of the private firms and the additional borrowing costs. This has caused an affordability gap for many public service organizations. PPP has also been viewed as indicative of the secret and conspiring

relationship the government has with big businesses. This can be likened to a face saving relationship for political patronage and electioneering sponsorship. Another problem is that the complexity of many PPP agreements. Most are designed in such a way that it defeats the very essence of democracy- as government of the people by the people and for the people (Oyedele 2013). Closely related is the responsibility factor, PPP places on successive administrations on the assumption that government is continuum. With Ogun State, Nigeria as case in point, these administrations may not wish to continue with the contract, where there are no binding laws.

Conclusıon and recommendatıons

Adoption of Public Private Partnership (PPP) as an effective panacea to the infrastructural deficit in Ogun State, Nigeria, especially in the secondary education appears to be best to our education development if this model can be apply to other sectors of our infrastructure. Hence PPP should be adopted with sincerity of purpose by government and the private sector and trust from the citizenry. Also, any PPP project should be well researched and structured backed by credible, experienced players in order to attract the needed finance. However, a frightening level of distrust for government has been built in Nigeria over the years, such that in situations where there are genuine efforts on the part of government to right some wrongs with PPP, the idea becomes dead on arrival. Moreover, part of the way forward the study recommends are;

1. There is the need to put in place checks and balances in the implementation of policies, programmes execution, systems administration, structures and organizations of the schools. There must be control on the fees and levies charged. Thorough inspection of modelschools frequently by the Ministry of Education is imperative. It will check excesses in unauthorized expansion of curricular and exaggerated extra-curricular activities.
2. The environment and background should dictate the choice of method of teaching and learning and the entire materials that will be applied in the processes.
3. Libraries must be well equipped and students should be tutored and advised to make maximum use of the library facilities. There should be a Guidance and Counselling Unit in each school to enhance the students' intellectual tempo and conceptual understanding as well as academic achievement and vocational inclination towards their chosen subjects and careers.
4. There are still lot of work to be done in the areas of training as stakeholders must be conversant with rudiments of PPP, and also orientation of Nigerians on PPP.
5. Also, for PPP to work in the provision of infrastructure in Nigeria there is need for enabling laws to be domesticated in each state of the federation. These laws must take into cognizance the sensitive nature of public properties, and ensure continuity in governance.
6. Corruption is the bane of our society. No true development can occur where sentiment and greed holds way in our contracting procedures.
7. Furthermore, partisanship and nepotism must be avoided by leaders in all areas of life, especially when it comes to infrastructural provision. These factors drive new governments to review or discontinue existing contracts.
8. Governments should demonstrate political will and co-partner with committed sponsors, experienced concession and Project Manager. There should be Legal/Regulatory framework plus enforcement from Government.

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FINANCIAL MARKETS SHOCKS AND MONETARY POLICY IN SOUTH AFRICA: A BAYESIAN VAR APPROACH

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Abstract: *This paper evaluates the dynamic interaction between monetary policy and financial markets. A Bayesian VAR modelling technique was employed on quarterly time-series data for the period 2003:Q2 to 2020:Q4. The findings revealed that interest rates and the inflation rate have a positive effect on stock market capitalisation as a proxy for financial markets, while on the contrary, the real effective exchange rate was found to have a negative effect on stock market capitalisation.*
Keywords: *Bayesian VAR, Monetary policy, Financial Markets*

Introduction

In recent years the subject of monetary policy and financial market nexus has been revived following the recent global financial crises. Foreign investments result in a country's economic growth and development wherein financial markets have a favourable impact on a country's economic growth and development, as well as a positive impact on the Balance of Payments (Tchereni & Mpini, 2020). Thus, when the stock market is performing well, it usually signifies that the good performance of businesses contributes to the economy thriving. As a result, foreign investors are attracted to the security provided by well performing economies because they know that their funds are secure. The financial system in Africa has developed and evolved over the years to withstand and survive a series of banking crises. However, most central banks' monetary policies are primarily focused on ensuring the financial system's existence and development. In their study, Ma & Lin (2016) suggest that any policy that affects the financial market development will ultimately have a concurrent effect on the transmission mechanism of the monetary policy. Some studies have shown that the strength of the monetary policy lies mainly on the stage and structure of financial system development (Krause & Rioja, 2006). The effects of the global financial crisis and more recently Covid-19 pandemic have resulted in many economies having to adopt an expansionary monetary policy of low interest rates and because a bank cannot adopt low inflation rates; Banks can only achieve low interest rates and inflation rates given the responsiveness of the monetary policy instrument, in this case the interest rate, but these policies have not induced the aggregate demand.

In the context of South Africa, the manner in which the country executes its monetary policy has not changed as a result of recent financial market developments. In

the years prior when the government implemented an inflation targeting regime as a response to deal with the global financial crisis such as the Asians 97/98, certain substantial changes happened in terms of the operational aim and monetary policy instruments (Bank of England, (2020). In August 1999, South Africa declared its intention to adopt an inflation targeting framework, and formally introduced inflation targeting in February 2000. Since then, inflation has been managed within a range of 3% to 6%. At present, the SARB is currently revising its monetary policy implementation mechanism in order to improve its efficacy and suitability.

The monetary policy implementation framework that gives effect to the SARB's inflation mandate has changed from variations of a discount facility to a repurchase rate repo-based financing system (BIS, 2020). The SARB follows a cash reserve system, wherein it creates a money market that reserves a certain percentage of the cash for emergency situations. This system requires banks to influence the credit channel of monetary policy transmission (BIS, 2019). The propensity of the financial market to monetary policy implementation is a key concern for the performance of real economic activity. According to Ruth (2017), monetary policy affects macroeconomic and financial variables constantly and the effect is more robust in the presence of high financial frictions. As stated by Chirila, et, al (2015), financial markets in the developing market economies such as Brazil, India, South Africa, and Indonesia amongst others, have realised capital inflows in 2013 owing to the narrowing of the US quantitative easing measures i.e., reversal of unconventional monetary policy aimed at injecting liquidity in the financial markets. Moreover, the US financial markets experienced fluctuation and an exchange rate depreciation, because of the policy measures implemented prior.

The depth of global financial crises prompted various central banks such as European Central Bank, Federal Reserve and Bank of England in the world to make their credit allocation system more robust, and to foster effective and smooth monetary policy transmission (Suurlaht, 2021). As a result of these policy initiatives the elasticity of financial markets to the monetary policy in international community as a whole becomes a problem in the background. It proves to be more difficult when the financial market responds less to predictable monetary policy actions, since the information would have already been taken into consideration prior to the implementation of monetary policy (Ozdagli, 2018). Nevertheless, unexpected component of changes in monetary policy can be computed to address the complexity thereof. Horvath (2018) provides in his discussion, that financial market fragmentation has had an impact on the monetary transmission mechanism in the European context, Horvath (2018) pointed out the conduciveness of unconventional monetary policies in reducing fragmentation, albeit such policies are only a provisional solution to reducing fragmentation.

Therefore, the assessment of the nexus between the financial market development and monetary policy becomes important to make harmonised policies for many countries including but not limited to South Africa. The issue of monetary policy and financial market development has received very little attention both empirically and theoretically. These theoretical and empirical formulations of monetary policy need to consider the quantitative relevance of uncertainty because it is a constant feature of monetary policy practice (Naraidoo & Raputsoane, 2015). Against this background, this study aims to examine the dynamic interactions between financial market and monetary policy.

Specifically, the study analyses the response of financial market to monetary policy instruments' shocks in South Africa.

Literature review

This section presents theoretical views relating to the topic under investigation. Some of the theories regarding monetary policy and financial market are briefly discoursed in the subsections below. Thus, insights that emerge in this section can be associated with some of the results detailed in the empirical literature studies to explain, validate, and corroborate certain findings, as far as the interaction between financial market and monetary policy is concerned.

Theoretical literature

The Taylor rule is a simple monetary policy rule linking mechanically the level of the policy rate to deviations of inflation from its target and of output from its potential (the output gap). The Taylor rule as genuinely state that:

$$i^* = r^* + \gamma_t + h(\gamma_t - \gamma_\tau^*) + b(\vartheta_t - \vartheta_\tau^*) \quad (1)$$

Where i^* the target is nominal interest rate, r^* is the equilibrium real interest rate, γ_t is the current inflation rate, $(\gamma_t - \gamma_\tau^*)$ is the inflation gap, $(\vartheta_t - \vartheta_\tau^*)$ is the output gap. The interest rate is modified based on the output gap and current inflation rate, according to the interpretation of this form. This allows the policymakers to choose the inflation and output gap coefficients, depending on whether they want to target inflation or output stabilization. In terms of the inflation gap coefficient, Taylor (1998) argued that when the value of the coefficient is considerably over one, inflation can be stabilized. In other words, monetary authorities should raise interest rates by more than the inflation gap when inflation exceeds the target level which is called Taylor principle. Otherwise, if 1 + h is not more than 1, a rise in inflation will decrease the real interest rate $i - \gamma$ and this will boost inflation, stimulating more aggregate demand and leading in further instability.

Following the Taylor principle, in the event of supply or demand shocks that boost inflation, an increase of real interest rates (because nominal rates go up by more than inflation does) thus reduce output, which caused the increase in inflation and keep economy stable. When real output exceeds its long-run potential, an increase in the policy interest rate is required, which is related to the output gap. Its coefficient is not so restrictive, as simply a positive value is desired. According to Garcia-Iglesias (2007), a very high value may have a negative impact on the proportion of inflation and output variability trade-off, causing inflation to rise. The advantage of a basic rule like the Taylor is that it is more robust than more sophisticated rules in terms of limiting swings in inflation output and interest rates, therefore ensuring financial market stability. The proposed form includes variables that are useful to private agents in decision making. However, central banks preferably smooth interest changes, including in Taylor rule a lagged value of the interest rate, resulting in the rule below, known as smoothing interest rate:

$$i_t = \psi i_{t-1} + (1 - \psi) i^* \quad (2)$$

where $\psi \epsilon [0,1]$ is reflecting the degree that the interest rate is smoothed. As an interpretation, when $\psi = 0$, there is an instant adjustment to the targeted interest rate. The higher the value of the interest rate, then the slower the adjustment is. Different scholars pointed to the fact that central banks' decision to smooth interest rates has various advantages, including preventing capital market dysfunction and maintaining credibility.

The second theory is the monetarist theory, this theory explains that financial crises are impacted by bank failures on the economy through the decrease in the supply of money. Contrary to the business cycle, the crises frequently result from monetary authorities' policy errors, which lead to regime transitions that risk-pricing cannot anticipate in advance. Banking panics have reportedly been recognized by monetarists as a sign of a financial crisis. Friedman & Schwartz (1963) opined that, banking panics were a significant factor in the lowering of the money supply, which caused a severe contraction in overall economic activity. Furthermore, they emphasise that inflation is a major contributor to financial instability since it is closely tied to both the interest rate and the money supply, and an increase in inflation triggers an increase in the interest rate. This causes issues for the Central Bank, especially if the bank is involved in fixed rate lending or investment projects. Even this unstable price level may result in bank insolvencies. Monetarists do not exclude the possibility of an asset price bubble and do not perceive an essential connection between the business cycle and crises. In monetarist view, financial crisis` is mainly a shift to money that leads to widespread run-on banks. In particular, banking crises occur when financial systems become illiquid. This type of financial crisis refers to bank runs, closures, mergers, takeovers, or large-scale assistant by the government to a group of banks or to the banking systems, should the crisis turn out to be systemic.

Lastly is the Minsky's financial instability hypothesis which contends that financial crises occur as a result of a credit cycle, with an initial positive shock worsening growing debt, mispricing of risk by lenders, and the bursting of an asset bubble. The theoretical argument of the financial instability hypothesis starts from the characterization of the economy as a capitalist economy with expensive capital assets and a complex, sophisticated financial system (Minsky, 1995). The financial system has been made unstable by the increases of innovation, the complexity of the financial system, the involvement of the government as refinancing agent of financial institutions and businesses. Minsky (1995) identifies the economic problem following Keynes as the capital development of the economy. The author further explains that the occurrence of instability in the financial sector is an increased result of inflation and an extreme use of debt deflation which goes out of control time to time. The instability in the financial sector begins in the banking sector that is involved in a profit seeking activity.

Empirical literature

Domestic and international financial markets have increasingly become integrated, albeit the transmission mechanisms through which financial markets shocks effects remain an area of examination among scholars (Ehrmann, Fratzscher & Rigobon, 2005); (Eyuboglu & Eyuboglu, 2017). According to Onur & Ibrahim (2019) who studied the transmission mechanism of financial stress into economic activity in Turkey, real economic activity is adversely and significantly prone to worsening of financial conditions. As the background to this study stipulated, the variables under investigation in this study are financial market and monetary policy. Hence, this section intends to scrutinize the empirical studies on the same/similar topic to discuss the findings and ultimately the potential gaps.

Using the Dynamic Stochastic General Equilibrium (DGSE) model, Efrem & Salvatore (2010) fitted the post-World War II data into the model to investigate the interactions between stock market fluctuations and monetary policy for the economy of

United States. The study reported a couple of considerable findings signifying that, stock prices have meaningfully affected the business cycle and real economic activity. Furthermore, the estimates also found that the Federal Reserve have a counteractive and significant response to oscillations in stock price.

Having mentioned that stock prices have meaningfully affected the business cycle and real economic activity, the findings of Suurlaht (2021) suggests that during low sentiments concerning the economic stance coupled with periods of recession, unforeseen foreign contraction in monetary policy is allied with negative stock market returns and elevated risk in the financial market. These results have been abridged from the study that analysed the impact of unanticipated changes in domestic and foreign monetary policy on aggregate stock market performance and risk, investigated in five countries (UK, Spain, Italy, France, and Germany) using an event study method, for the period spanning from 1999 to 2018.

In his study, Koivu (2010) examined the impact of monetary policy on the household consumption via stock housing prices in China using the structural vector auto regression model. The study concluded that a loosening of China's monetary policy leads to higher asset prices, which in turn are linked to the household consumption. The study showed that there is positive relationship between asset prices and household consumption in China. The study also revealed that the possibilities of influencing house behaviour in China via monetary policy are limited due the fact that people have limited access to external finance. In a related matter Bonga-Bonga (2010) examines how short-term and long-term interest rates react to supply, demand and monetary policy shocks in South Africa. He uses the impulse response functions obtained from the SVAR model with long-term restrictions. The study found a positive correlation between the two interest rates after a monetary and demand shock and a negative correlation after a supply shock. He concluded by pointing out that, operation of the monetary transmission mechanism should be effective in South Africa. Mbarek et al. (2019) investigated how the nexus amid monetary policy and the treasury yield curve evolves overtime. The study employed a time-varying parameter model estimation with the data spanning from 2006 to 2016, which suggested that the impact of monetary policy is more pronounced at the short end of the yield curve relative to the end, though such impact drops significantly across the maturities post revolution and illustrates wide time variation. Thus, highlighting the appeal of more vibrant monetary policy, notably in a blustery environment. Noumbissie & Mongale (2014) use the vector autoregressive (VAR) model to evaluate the impact of monetary policy on financial market in South Africa with quarterly data spanning from 2000Q1 to 2013Q1. The model consists of five policy instruments as variables; namely: money supply (M3), real exchange rate, discount Rate, consumer price index, gross domestic product and the two market related variables: market turnover and Bond market turnover. Using impulse response function (IRF), the study found that, stock market turnover reacts positively to money supply; discount rate; real exchange and GDP shocks. On the other hand, stock market turnover reacts negatively to CPI economic shocks. They have concluded by suggesting that policymakers must envisage a contractionary monetary policy translated by a proportional cut in money supply through the sales of government securities.

Balcilar et al. (2020) examined how the US financial markets is impacted by the Fed's unconventional monetary policy using yearly data spanning from 1996 to 2018. They used the smooth transition vector autoregressive (STVAR) model which suggested robust

evidence that the risk structure of the US financial market adjusts post the global financial crises of 2008 and announcement of quantitative easing measures via the portfolio balance channel. Eyuboglu & Eyuboglu (2017) examined the interaction amid government bond markets of 3 developed and 5 emerging countries (i.e., Germany, Japan, US and Turkey, Russia, Brazil, China, India respectively). The period covered 2006 to 2015, with the application of A VAR analysis carried out to a monthly data to determine the link among government bond yield of 10 years. The findings indicated non-dominant impact of US bond market, and an influential Japanese market. Moreover, less integration has been revealed between Chinese and Japanese bond markets. Gumata, Kabundi, & Ndou (2013) study the various channels of monetary policy shock transmission in South Africa. From 1990Q1 to 2012Q2, the study looked at 165 quarterly variables. A Large Bayesian Vector Autoregressive model was utilized. Credit, interest rate, asset prices, exchange rate, and expectations are the five transmission channels in their model. The findings demonstrate that while all channels appear to be powerful, their magnitudes and relevance vary. The interest rate channel, followed by the exchange rate, expectation, and credit channels, is the most important shock transmitter, according to their findings. The asset price channel is somewhat weak, since households are directly affected through the interest rate channel and the amplification of the shock through their balance sheets is rather weak. Tchereni & Mpini (2020) examines the effect of monetary policy decisions on stock markets in emerging economies particularly South Africa for the period 2000Q1 to 2016Q4. The study utilised a two-stage approach to test the hypothesis that stock markets do not respond to monetary policy decisions. The first test is the vector error correction model, which is used to identify the long-run relationship between variables, and the second is the GARCH model, which is used to determine the volatility. The results suggest that about 5.2% variations in the Johannesburg Stock Exchange (JSE) volatility are due to monetary policy shocks. Furthermore, the findings reveal that there is a positive relationship between repo rate and JSE volatility, which is not economically desirable because repo rate fluctuations affect aggregate demand for investment securities. Their study recommends that the Monetary Policy Committee an expansionary monetary policy of keeping the repo rate lower must be pursued in order to increase borrowing that makes the public to have money to make transactions in securities on the financial market.

Despite the fact that several researchers established a link between monetary policy and stock market shocks, others came to the opposite conclusion. This includes Neri (2004), who used structural VAR to test the link on G-7 countries and discovered that it was weak and negative on average. In their study, Li, Iscan, & Xu (2010) analyse whether trade and financial market openness matter for the impact on the transmission of monetary policy shocks to stock prices using SVAR models with short-run restrictions appropriate for Canada and the United States. They discovered that the immediate response of stock prices to a domestic contractionary monetary policy shock in Canada is small and the dynamic response is brief, whereas the immediate response of stock prices to a similar shock in the United States is relatively large and the dynamic response is relatively prolonged. They came to the conclusion that the disparities are mostly due to differences in financial market openness, which result in different dynamic reactions to monetary policy shocks across. Hsing (2013) found a negative and positive relationship between the Polish stock market index and money supply using GARCH models. The study found that when the M3 to GDP ratio is less than 46.03 percent, the correlation is positive, and when

it is greater than 46.03 percent, the link is negative. On the other hand, Atis & Erer (2017) evaluated the association between monetary policy and the stock market using the Markov switching dynamic approach and the criteria of low and high volatility periods. During the low volatility mechanism, the data demonstrated that monetary policy had a negative significant impact on stock returns.

Literature gap

An important observation from the discussion of various findings above is that the relationship between financial market and monetary policy has been investigated dominantly in the developed countries. There are few studies that incorporated emerging countries in their analysis. Most concerning, South Africa rarely appeared among the reviewed literature. For instance, Naraidoo & Raputsoane (2015) applied an extended monetary policy rule that allows scrutiny of the effect of uncertainty about the financial market conditions on the interest rate setting behaviour that describes decisions made by the South African Reserve Bank. This serves as a basis to further examine the variables under investigation. This suggests a need to expand research on this topic with incorporation of more emerging market countries (in particular, South Africa).

Samantaraya & Patra (2014) highlighted the importance of country-specific research because of the awed assumption of homogeneity in countries combined in cross country research. This research will add to the already existing scanty body of country-specific research on the dynamic interaction between financial markets and monetary policy. The research focuses on South Africa and consider institutional and structural factors that are peculiar to the country. In addition, the literature revealed a research gap in terms of time frame. Firstly, country specific research on South Africa has focused on the use of yearly data. Secondly, the research also considered a shorter time with the longest being 17 years. However, this study intends to fill in this gap by using quarterly data from 2003Q2 to 2020Q4. This will provide more observations as well as more information for analysis. Moreover, when using yearly data, a lot of actualisations during the year are lost in yearly averages; however, the use of quarterly data provides for within year analysis as well as more information for trend analysis. Furthermore, the study employs a Bayesian Vector Autoregressive (BVAR) model to estimate the dynamic interaction between financial markets and monetary policy in South Africa. The BVAR model eliminates the problem of over-parameterisation that is faced with an unrestricted VAR. This is because the BVAR model makes use of restrictions based on prior knowledge of the parameters. Also, the BVAR model has been shown to produce more accurate results and forecasts in comparison.

Methodological Framework

The estimated model was informed by earlier studies including Efrem and Salvatore (2010), Mbarek et al., (2019) and Balcilar et al., (2020). The estimated model, with a few modifications, can be expressed mathematically as:

$$FM = \alpha_0 + \beta_1 cpi_{t-1} + \beta_2 int_{t-1} + \beta_3 exr_{t-1} + \beta_4 dum1_{t-1} + \beta_5 dum2_{t-1} + \varepsilon_t \quad (3)$$

Where

FM is financial markets proxied by the domestic stock market capitalisation,

CPI is the consumer price index capturing the effects of inflation in the financial sector,

INT is the market prevailing interest rate,
EXR is the real effective exchange rate measuring changes in the foreign exchange market
$DUM1$ is a dummy variable to capture the shock of the 2008 financial crisis,
$DUM2$ is a dummy variable to capture the effects of the 2016 sovereign debt crisis and,
ε_t is the error term.
Equation 3 can be expressed in VAR form as follows. Consider the n variable vector autoregression of order p, VAR(p), given by (3.7) below,

$$Z_t = \Psi_1 Z_{t-1} + \cdots + \Psi_p Z_{t-p} + \delta + \varepsilon_t \quad (4)$$

Where Z_t is an *(n x 1)* vector of non-stationary time series, δ is an *(n x 1)* vector of constants coefficients and ε_t is an *n x 1* vector of error terms. Ψ_1 through Ψ_p represent *(n x n)* matrices of parameters to be estimated. The VAR(p) is therefore simply a set of equations in which each variable depends on a constant and lags 1 through p of all n variables in the system.
The study followed the below estimation approach in relation to achieving the primary objectives of the study. First the study conducts the unit root test using the Phillips-Perron unit root test in order to determine the order of integration. This is followed by the determination of the optimal lag length in order to avoid under or over estimation of the lags.

The next step would be to estimate a Bayesian Vector Autoregression Model (BVAR). In their study, Kenny, Meyker & Quinn (1998) postulate that, when it comes to forecasting economic time series, the Bayesian technique is most commonly used with multivariate vector autoregression rather than univariate models like the AR(p) model. A Bayesian approach to vector autoregression has in particular been put forward by Doan, Litterman and Sims (1984) where they proposed priors for an n-dimensional VAR of non-stationary variables. A variety of Bayesian priors have been developed for use in vector autoregressive models. The study chooses Litterman/Minnesota and Sims-Zha Normal Wishat method to see if there is notable difference. This approach is suitable for emerging markets with open borders, such as South Africa, where monetary policy has come under fire for irregularities like liquidity as well as price or exchange rate conundrums (Rosoiu & Rosoiu, 2013). The second issue is over-parameterization, which Sheefeni (2017) identified as being particularly problematic when there are many parameters that need to be estimated but insufficient observations are available. Thus, the Bayesian VAR model was created as a solution to this issue (Rosoiu & Rosoiu, 2013; Mabulango & Boboy, 2016). The choice of this methodology as opposed to the standard vector autoregression utilized in most empirical studies is justified in light of the aforementioned inferences. A good set of priors, on the other hand, should impose some structure on the VAR that represents the nature and process of data generation.

To ensure that the estimated model does not suffer from spurious regression, several residual diagnostic tests were performed including the autocorrelation test and heteroskedasticity test. The last point of analysis involved performing the impulse response and variance decomposition tests. This was done to identify the response of financial markets to innovations in monetary policy aggregates. An impulse response, in general, denotes the response of any dynamic system to some external perturbations. Impulse reactions in VAR, in particular, focus on how the dependent variables respond to shocks from each independent variable by properly summing the coefficients of the impulse response functions, the cumulative effects of unit impulses are calculated (Lin 2006). This

study used the generalized impulse response functions as developed by Pesaran and Shin (1998) to address the issue of the impact of ordering of the variables on the outcomes like the classic impulse response analysis would. In addition, the variance decompositions analysis would be used to demonstrate how the percentage of changes in the dependent variables are caused by their own shocks as opposed to shocks to other variables (Brooks 2008).

Data and Sources

The data was sourced from several reliable databases including the South African Reserve Bank online statistical query and St Louis Federal Reserve database. The frequency of the data was quarterly, spanning from 2003:Q2 to 2020:Q4. This brought the total number of observations to 71. The variables are domestic stock market capitalisation, the consumer price index, the market prevailing interest rate and the real effective exchange rate.

Empirical Results and Discussion

Stationarity Analysis

Table 1 below shows that the order of integration of the variables is a mixture of I(0) and I(1). The unit root analysis indicated that the consumer price index and real effective exchange rate are stationary at level. On the contrary, the study found that stock market capitalization and interest rates are stationary after first differencing.

Table 1: Stationarity results

Variable	Model Specification	PP		Order of Integration
		Level	First Difference	
MKP	Intercept	-0.96	-7.21**	I(1)
	Trend & Intercept	-1.47	-7.19**	
CPI	Intercept	-9.05**	-29.57**	I(0)
	Trend & Intercept	-8.90**	-30.20**	
EXR	Intercept	-7.98**	-31.31**	I(0)
	Trend & Intercept	-7.91**	-35.46**	
INT	Intercept	-2.33	-8.13**	I(1)
	Trend & Intercept	-2.53	-13.08**	

Source: Author's computations, (2022)*, Note: asterisk ** indicate rejection of the null hypothesis at 5% level of significance.*

Lag order

One of the common problems in the estimation of an unrestricted vector autoregression is the over-parameterization of the VAR model. Thus, to overcome this challenge, determining the appropriate optimal lag length was crucial to the analysis. The results are provided in table 2 below.

Table 2: Optimal lag length selection

Lag	LogL	LR	FPE	AIC	SC	HQ
0	-567.52	NA	1.85	17.64	17.85	17.73

1	-173.67	702.86	3.09e-05	6.64	8.04*	7.19*
2	-133.82	63.75*	2.82e-05*	6.52*	9.13	7.55
3	-105.05	40.72	3.79e-05	6.74	10.55	8.24
4	-68.05	45.54	4.24e-05	6.71	11.73	8.68
5	-39.02	30.36	6.78e-05	6.92	13.15	9.38
6	-10.37	24.68	0.00e-30	7.15	14.57	10.08

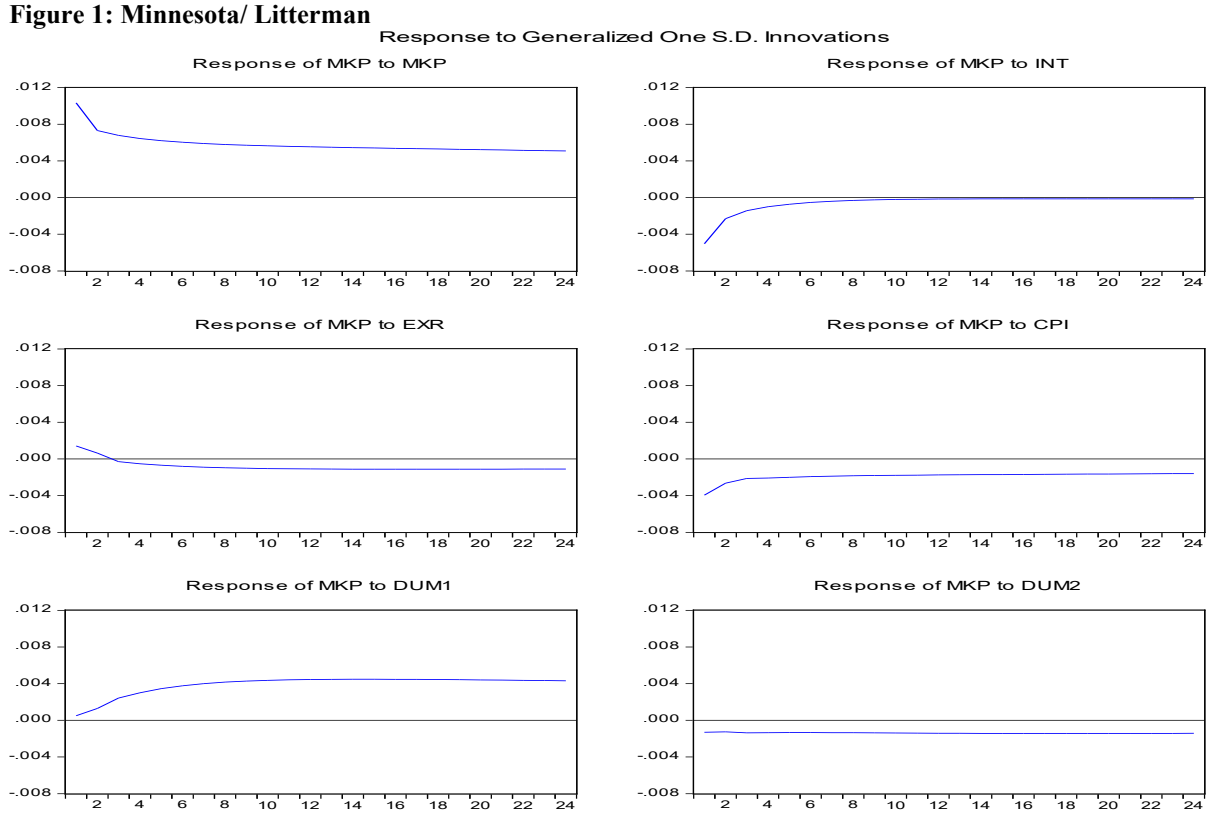
Source: Author's computations, (2022)

The findings from the estimated VAR model recommended the use of two lags. This was informed by the Akaike Information Criterion. Following the pre-estimation analysis, the proceeding step was to perform a Bayesian VAR model.

Bayesian VAR, impulse response functions and variance decomposition

Bayesian VAR estimates based on the prior of KoKo Minnesota/Litterman (2010) and Sims & Zha (1998) prior were conducted from which the generalised impulse response functions and forecast error variance decomposition were derived. Figure 1 shows the results of the responses of financial market to monetary policy and other variables in the model. The findings indicates that stock market capitalisation (MKP) responded positively to its own shocks during the short run and long run. The effect of shocks appears to be permanent for stock market capitalisation since the blue line does not go back to its initial equilibrium which is the zero line for the steady state. Meaning the new equilibrium has been formed.

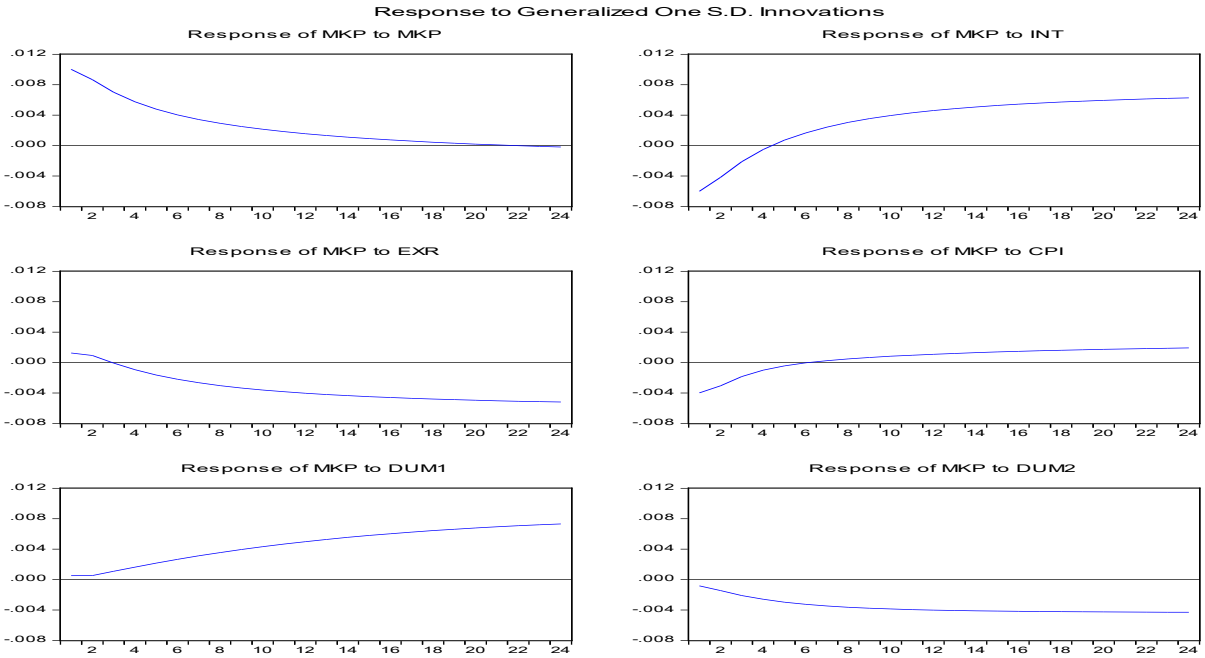
Figure 1: Minnesota/ Litterman



Source: Author's computations, (2022)

The response of financial market to low interest rates is that the domestic financial market suffers due to capital outflows as investors seek higher returns in other countries. The opposite holds when interest rates are increased domestically. These results are similar to those of Sheefeni (2017). Changes in interest rates (INT) largely influence the decision to borrow and invest. In the same vein, the reaction to interest rate suggests that the effect of the shocks is transitory because no new equilibrium has emerged since the blue line returned to the initial equilibrium. With regard to real effective exchange rate (EXR), financial market responded negatively, and the effects wear out after two quarters. It is worth noting that when the domestic currency weakens, the stock market appreciates given that domestic stocks become relatively cheaper. As shown above, the response to exchange rate shows that the effect of shocks is permanent. In contrast, the consumer price index (CPI) was found to have a positive impact on stock market capitalisation. This is because, a stable and sustained inflation rate is necessary for preserving the value of stocks. During periods of hyperinflation, the value of domestic stocks decreases while during periods of deflation, the value of domestic stocks appreciates thus making them attractive. In this case, the effect to shocks is also permanent. The dummy (DUM1) for the 2008 financial crisis was found to have a positive effect on stock market capitalisation. It can be assumed that the 2008 financial crisis affected advanced market economies adversely, especially in relation to emerging market economies and as a result, emerging market economies were regarded as safe havens for investment. The dummy (DUM2) for the 2016 sovereign debt crisis was found to have a negative impact on stock market capitalisation as well with permanent effect of shocks. The exercise was repeated with additional prior of Sim's-Zha to compare whether or not the results differ. Similarly, the response of stock market capitalisation to shocks in interest rates was likewise found to be positive during the entire quarters. This is based on the assumption that higher interest rates are linked to higher returns. As a result, potential investors seek returns in countries with higher prevailing market interest rates

Figure 2: Sim's-Zha (WishartNormal)



Source: Author's computations, (2022)

The same is true for the exchange rate. A weak exchange rate attracts capital inflows and thus driving liquidity into the domestic financial market. This can be observed in figure 2. Stock market capitalisation responds negatively to shocks in the exchange rate. The response of stock market capitalisation to shocks in inflation is positive in the short run but muted in the long run. This is because, the effects of inflation on domestic stocks are only temporary and thus muted in the long run which one can conclude that monetary policy does have effect on inflation rate in the long run. The effect of shocks in all cases are permanent.

Similar to impulse responses, the variance decomposition is used to illustrate the forecast error discrepancy of each variable in relation to its own fluctuations. The findings are provided in table 3.

Table 3: Variance decomposition

Period	S.E	MKP	CPI	INT	EXR	DUM1	DUM2
1	0.01	100.00	0.00	0.00	0.00	0.00	0.00
6	0.02	70.72	2.08	18.75	0.83	5.50	2.12
12	0.03	35.16	3.02	37.29	3.12	17.72	3.69
18	0.04	20.01	3.01	42.08	4.44	26.62	3.84
24	0.05	13.11	2.90	42.70	5.14	32.46	3.69

Source: Author's computations, (2022)

The variance decomposition results show that in the short run, variations in stock market capitalisation are explained by changes in its shock. For example, in the first period, 100% of the variations in stock market capitalisation are explained by its own shock although this share declines to 87% in period 4 and 62% in period 7. Over the long run, variations in stock market capitalisation are largely explained by shocks in interest rates,

DUM1 and to a small extent by shocks in the real effective exchange rate and inflation rate. This is indicative of the significant role played by various monetary policy tools to maintain price stability, exchange rate stability and overall financial stability.

Conclusion

The primary goal of the study was to examine the dynamic interaction between monetary policy and financial markets. This was achieved by means of economic analysis. The study employed quarterly time-series data spanning from 2003:Q2 to 2020:Q4. Various econometric techniques were utilised including the Philips Perron unit root tests to examine the order of integration of the variables. The lag length criteria was conducted in order to determine the optimal lag length. Further to this, a Bayesian VAR model was estimated from which the generalised impulse response function and forecast error variance decomposition were derived, to analyse the dynamic interaction between monetary policy and financial markets. The findings revealed that interest rates and the inflation rate have a positive effect on stock market capitalisation as a proxy for financial markets, while on the contrary, the real effective exchange rate was found to have a negative effect on stock market capitalisation. Also, findings for the variance decomposition indicated that in the long run, fluctuations in stock market capitalisation are largely explained by itself, interest rate and by DUM1.

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YOUTH AND DESPERATE MIGRATION: IS THERE SOCIAL PROTECTION IN NIGERIA?

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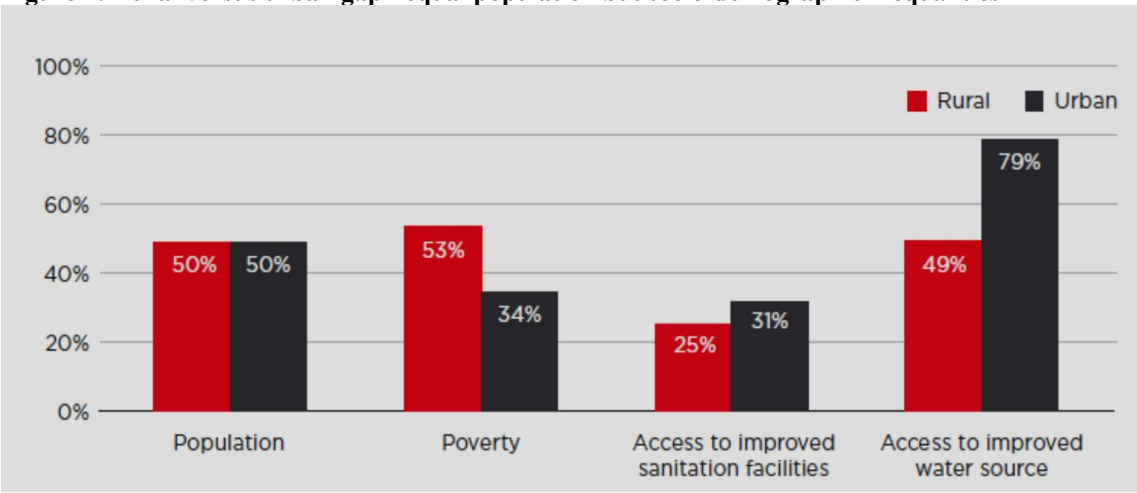
Abstract: *The economic down turn which began in the early 1980s in Nigeria rather than declining exacerbated from the Mid-1980s as a result of the adoption of Structural Adjustment Programme (SAP). This has had a lot of dislocating effects on social and economic life especially for the poor who constitute majority in the society. The youth have reacted to the social dislocation by migrating to different parts of the world in search for greener pastures. However, while Europe and America have tightened the process of accessing visa, most young people have become daring in the phase of stiffer entry requirements to adopting hazardous and dangerous risks of venturing through the Sahara Desert and the Mediterranean Sea in desperation to migrate to Europe. It is against this backdrop that this paper examines the desperation of the Nigerian youth to migrate out of the country in the bid to access better life in Middle East, Europe and America. The paper further examines the social protection programmes available in Nigeria that are aimed at addressing unemployment, poverty and reducing the youth vulnerability to desperate migration. This, the paper argues is the uninformed decision to embark on migration which continues to claim lives, in the bid to cross the Mediterranean Sea. This situation has become a national embarrassment. The paper therefore calls for a review of social protection programmes and policies in order to stem desperate youth migration. Its argument is anchored on the Push and Pull Theory of Migration by Everett S. Lee and the Dual Labour Market Theory of Michael J. Piore.*
Keywords: *Migration, Desperate Migration, Youth, Social Protection, Nigeria*

Introduction

From time immemorial, people have been moving from one area to another in the quest for better life. This movement in modern life is referred to as migration. Instructively, the technological development which affects all facets of life has made migration easier and relatively unpronounced. In Nigeria, people have been moving and changing places of abode from the precolonial periods of Kingdom, Empires and Chiefdoms for safety and business purposes. Migration, Ikwuyatum (2016) asserts, is the movement of people to a new place of residence for at least a minimum of 12 months. Okediji and Okediji (1974) have observed that the international pattern of migration in the 1950s before independence and 1960s after independence was for Nigerians to graduate from American and European Universities and return home to contribute to their country's development. However, this orientation changed especially in the early 1980s and became a worse scenario after the adoption of structural Adjustment Programme (SAP) (Jiboku and Jiboku, 2021). Many of those who have been trained in other countries outside Nigeria and those who acquired education in the country began to migrate to Europe and America due to unfavourable conditions in the country.

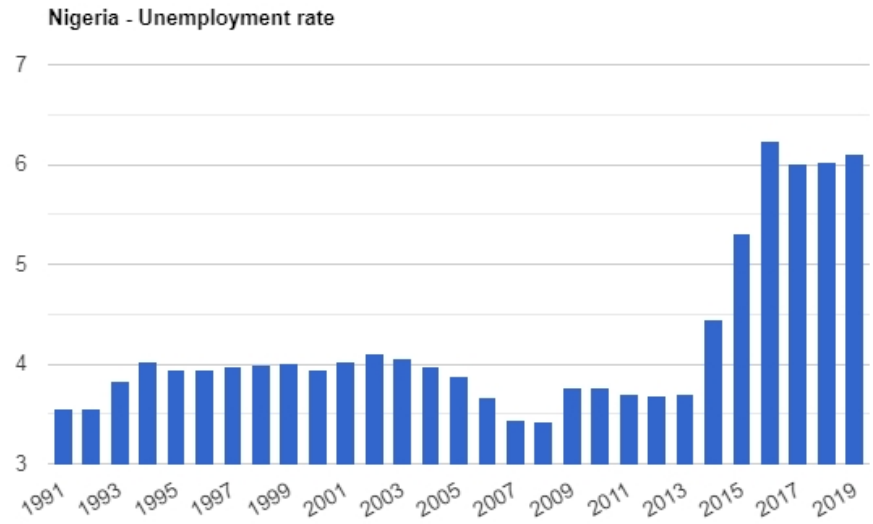
Nigeria's development crisis continues to be a topical issue. The country has been confronted with various political and socio-economic challenges. They include: political problems which have to do with managing elections, promoting national integration, establishing democratic values, curbing corruption and money laundering, ensuring efficiency and effectiveness in the public service sector; intra-state conflicts with negative consequences for the polity; insecurity, the Niger Delta crisis; inequality – the widening gap between the rich and the poor; the issue of providing for the needs of the citizenry and addressing unemployment, poverty, dearth of infrastructures and basic social facilities among others (AU/APRM, 2009; Foster, 2011; Leke et al. 2014). Most of these problems affect Nigeria's large population, many of who wallow in abject poverty. Many citizens do not see the Nigerian state as existing to protect their interests and this has manifested in their attitudes towards the things of government. Figure 1 (below) shows the level of poverty in rural and urban areas and the prevailing socio-economic conditions in these areas. As a result of the social dislocation and attendant problems of unemployment, lack of fulfillment, poverty and reduced opportunity for social emancipation (see figure 2), the youth who constitute the future generation have also keyed into the idea of migration or "checking out" with zeal and vigor. This has culminated in desperation to move out of the country with the belief that life will be better outside the shores of Nigeria.

Figure 1: Rural versus urban gap - equal population but socio-demographic inequalities



Source: GSMA Intelligence, (2014). Country Overview – Nigeria. June (2014, p. 7).

Figure 2 – Unemployment rate in Nigeria



Source: TheGlobalEconomy.com, The World Bank

Syndicates and networks have subsequently emerged with the intention of exploiting the desperate youth. While some youths die in the course of passing through illegal routes in the Sahara Desert and the Mediterranean Sea, some of those who are able to make it are sold into prostitution, slavery and other disheartening human conditions, experiencing sometimes worse situations than was prevalent at home (see Shelly, 2014). The promised 'Eldorado' and life of comfort becomes shattered and the government is sometimes called upon for rescue missions (UNODC, 2011). While it could be taken fore-granted that migration is a universal phenomenon, the questions to ask are: Why are the Nigerian youths so desperate to migrate and why do they dare to cross the Mediterranean Sea despite the unpleasant picture of death associated with this endeavor? Importantly, what harsh conditions and hazards are often faced by migrants through the Sahara Desert? What are the social protection policies and programmes available to the poor and the vulnerable youth to stem the ugly tide of desperate migration? These questions constitute the problematique of the paper.

Conceptual Clarification and Theoretical Discourse:

Who is a Youth?

The youth constitute an important segment and represent the future of any nation. While some scholars allude to the social meaning of youth as being a state of mind without age barrier, others have disagreed with this perspective and have emphasised that the youth constitute the young generation. According to the United Nations Organisation (UNO), youth are categorised as individuals between the ages of 15 to 24 years. This age classification also includes young people who are also recognised as youth in the UN Sustainable Development Goals (SDGs). Youth includes young people who are generally classified as adolescents. It is a period of transition to maturity and adulthood (UNDP

2014). It could be a crisis stage in the life of an individual if adequate social capital has not been indoctrinated and imbibed in the course of socialisation (see Otite and Ogionwo, 1979).

In Nigeria, the National Youth Policy (NYP) Document defined any person between ages 18 - 35 years as a youth. A person having attained 18 years of age is considered an adult with voting rights (NYP, 2001, 2009). These are persons who normally would have completed secondary education, and are likely to be either in tertiary institutions, or striving to make a living through gainful employment. Alternatively, such people could be in one vocational or technical training for the acquisition of skills at the informal level (see also Chigunta, 2002). The youth generally constitute a formidable demographic segment of national population; they also make up the next generation of parents, workers and leaders who are expected to lead the nation to the next level. Therefore, how the nation addresses the well-being of the youth population could have implications not only for their own lives, but also for the societies they will build and maintain in the future. Their ability to play expected leadership roles effectively will depend on the kind of foundation and mentoring they have received from the different agencies of socialisation - families, communities, and the dedication and commitment of governments to their development. In essence, it is worthy of note that nations generally take the youth segment as important in society. As such, the type of social capital invested by the various relevant institutions of the state will impact on their ability to perform expected leadership roles (see Otite and Ogionwo, 1979; Aiyede et. al, 2015).

Migration

Migration is a natural aspect of human life and has no race or ethnic coloration as all peoples have been involved in one form of migratory movement or the other. According to the United Nations Population Division, it was reported that as of the year 2013, 3.2% of the world's population lives outside their countries of origin. This statistic has increased by 33% compared to the year 2000 statistical record of the Division. The European countries are the host of the majority of these immigrants which was estimated to be 72 million people (United Nations, 2013). It should be noted that majority of the migrants are from Africa and are persons who have been forced to move away from their home countries as a result of conflicts, natural disasters, terrorism and above all, poor governance and leadership ineptitude (Olaitan, 2001, Akokpari, 2008). There is a consensus among migration scholars that migration involves the movement of people from their primary base in country of origin to a secondary base in country of destination either voluntary or involuntarily as the case may be either for temporary or permanent residence (Afolayan et al 2008; Ikwuyatum, 2016).

On his part, Agim (2015) asserts that migration is a complex social phenomenon that is influenced by a number of factors which range from: the economic situation of a country; prevailing political activities; state ideology among others. Migration is predicated or influenced by the level of a country's social development. This may well account for the UN Report that majority of migrants were from the developing countries to Europe and other developed parts of the world. Explaining further, Ikwuyatum (2016) added that for migration to occur, time frame or period of re-location must be factored into the explanation. This scholar stressed that migration should be viewed as the movement of people over defined space and over time; he emphasised the relocation of people from their

usual or current place of residence to another and residing in the new location for at least one year.

Migration is also considered as the movement of people from one geographical region to another, which may be on temporary or permanent basis (Adewale, 2005). This movement can be from rural to urban, rural to rural, urban to rural, urban to urban and it could also be across international boundaries (see also Oyeleye, 2013). Migration is a form of geographical or spatial mobility between one geographical unit and another, generally involving a change in usual residence from the place of origin or place of departure to a place of destination or a place of arrival (Nwanna, 2004). Fajana (2000) also adduced a similar description of migration as the movement of persons, group of persons, ethnic groups between two differentiated point A and B, and this movement could be explained in terms of tension between the two points which reaches a level that transforms into actual movement.

From these scholarly definitions of migration, it could be inferred that migration is recurring movements of human beings and it occurs among communities or nations and constitutes one of the vital components of population dynamics globally. However, the motive (s) of migration varies from one environment and person to another but generally is informed by social, political or economic considerations.

Desperate Migration

As could be inferred from various literary definitions, that desperation connotes a state of mind in which individuals appear to have lost hope and this could result in something extremely reckless behaviour without cost benefits considerations. Desperate migration could have dire consequences for individuals and society at large. Merriam-Webster Dictionary further emphasised that a desperate person exhibits a hopeless sense about a situation that is so bad and almost impossible to manage. Such a person could become downcast, devastated and in extreme situation could become suicidal due to total loss of hope. According to Oxfam (2017), the social situations of many migrants in their home countries which created a state of hopelessness made many people so desperate as to embark on the hazardous journey, migrating through Libya - a failed state (Akokpari, 2010/2011) across the Mediterranean Sea. Such issues as unemployment, conflicts and natural disasters led to migration. It was not the choice of the migrants, rather many migrated in the bid to survive from the situations in their home countries with the hope of better future in Europe. The inconveniences associated with migration are considered to be temporary for better life across the sea in Europe (see Shelley, 2014).

The United Nations Children's Fund (UNICEF) in 2017, reported that on daily bases, many people travel through the Mediterranean Sea with the hope of reaching safety in Europe as they attempt to flee war, violence and poverty endemic in a number of African countries. In the course of their desperate attempts to cross the Mediterranean, they have to endure exploitation, abuse, violence and sometimes detention by Libyan militias during which unprecedented number of migrants die. The Report concluded that attempting to cross to Europe through the axis is not only a risky route taken by desperate migrants but that migration to Europe through the Mediterranean has also become a lucrative business with network of syndicates and criminals who take advantage of desperate migrants to rip them off. Many of the migrants are not told the truth about the risks involved and the difficulties to be encountered in their attempt to migrate to Europe (see Chamie,

2013; Oxfam, 2017). The reality only dawn on the migrants at sea when it would have been late to turn back. Money has been committed for which there will be no refund.

Chamie (2013) observed that it would appear that the risks of desperate migration and associated hazards of the journeys are all understood by the desperate migrants, that the migrants considered such hardship as temporary in the long run, compared to the bleak, perhaps hopeless or precarious living conditions in their home countries. Many of these desperate migrants attempt to flee from civil conflict, political violence and sometimes political persecution especially during military rule. Some other desperate migrants risk their lives to escape poverty with the hope to secure employment in new destination to enable them provide remittances to those left behind (see Oxfam, 2017; see also Gheasi and Nijkamp, 2017).

As observed by Wittenberg of the International Peace Institute (2017), the push factors of migration in Africa through Mediterranean Sea include armed conflicts and situations of generalised violence exemplified by the near failed states of Africa with prolonged conflicts. Other factors include: fear of political or religious persecution, political instability, human rights violations, chronic poverty, lack of economic opportunity, and natural or human made disasters. These factors contribute in no small proportion to push migrants toward Europe where such negative conditions are absent. According to the United Nations High Commission for Refugees (UNHCR, 2017), attempts by Nigerians to migrate have increased the number of migrants arriving to Italy through the Mediterranean Sea over the past three years. This is attributable to a long period of political and communal violence, and the volatile security situation with the Boko Haram insurgency ravaging in the North East of the country with an estimated over 2.5 million internally displaced people as at 2015 (UNHCR, 2017, see also UNODC, 2011).

It is quite revealing that social, political and economic crises have triggered the desperate migration of youth from Nigeria as in other African countries. These youth migrate to Europe and America with the hope of securing better living conditions where they are confident and hopeful, having become despondent in their home countries. In the light of this scenario, what is the country doing to rekindle the hope of the Nigerian youth in order to stem desperate migration? What social protection is available to give hope to the youth who are the future generation of the nation?

Social Protection

Social protection is concerned with protecting and helping those who are poor and vulnerable in society besides the women, children and the aged. Apart from these conventional categories of people, the displaced persons, and those that are unemployed such as youth, are also captured in social protection. The youth need to be supported to live descent lives as leaders of tomorrow (ILO, 2012; Barrientos and Hulme 2009). The issue of Social Protection has become contentious among scholars. There is the argument as to which interventions constitute social protection as protection overlaps with a number of social life issues involved. These include: development of human capital and food; water; other basics of life; security interventions among others (Harvey et al., 2007; Jones, and Shahrokh, 2013).

Social protection is generally described as the totality of all public and private initiatives aimed at providing some sort of assistance and succor to the poor, protect the vulnerable against risks of livelihood in order to enhance the social status and wellbeing of the disadvantaged groups in the society. The main objective is to reduce the economic and social vulnerability of such disadvantaged groups in society to anti-social activities

(Devereux and Sabates-Wheeler, 2004; ILO, 2012). Writing on Social protection, Harvey et al. (2007) viewed it as a form of the social contract between the state and the citizens in which state and citizens have reciprocal responsibilities to each other for the sustenance of the social system (see also Mukherjee and Ramaswamy, 2007).

Social protection is also seen as a form of **investment in human capital** which increases capacities especially of the vulnerable to access productive assets such as skills and social services. It will indirectly provide access that will enable individual households to invest in their own development trajectory and remove vulnerability (Barrientos, 2010). Social protection represents efforts geared towards alleviating the challenges facing society that increase the desperation for hazardous and risky ventures such as the desperate migration of youth for better life. As Devereux and Sabates-Wheeler (2004) noted, the whole objectives of social protection are compressed into four groups. The scholars stressed that social protection generally, in whatever dimension are to ensure: Provision of relief from deprivation where it already exists; prevention of deprivation; promotion of human development for enhanced capabilities and; promotion of social inclusion in societal development initiatives. The transformative element of social protection is not just to alleviate poverty but to transform lives through pursuing policies that rebalance the unequal power relations existing in society that cause vulnerabilities *ab initio* (Gentilini et al., 2014). In practice, social protection interventions are diverse and cover many social challenges confronting contemporary society (Babajanian et al., 2014). The issue of concern in this paper however, is to examine how a country like Nigeria that possesses enormous human and material endowments and that can boast of having the richest African man and one of the richest women in the world, takes care of the poor and vulnerable masses of the country. Particularly for the youth, how is the Nigerian government especially the civilian administration, promoting human development? Addressing the issue of social protection is important for the enhancement of the capabilities of the Nigerian populace and promotion of their social inclusion in society's development initiatives. Through functional social protection policies and programmes, the urge for desperate migration to Europe through the Mediterranean will, on the whole, be arrested.

Methodology

This paper is based on a desk review of secondary literature on social protection policy and programmes. The review incorporates the work of eminent scholars in the field of social protection. The paper x-rays the Nigerian situation and efforts made by different government towards ensuring social protection of Nigerians in order to alleviate poverty and reduce vulnerability towards desperate migration of the youth. Secondary data were obtained from agencies of government and Non-Governmental Organisations (NGO), International agencies and reliable internet materials. Secondary data constitute a large volume of data that have been collected and compiled, that are now easily accessible for research endeavours. The utilisation of existing data for social research is gaining wider acceptance and is flexible and can be used in different ways. It is also a credible source of information when the systematic procedures are followed and evaluative steps adhered to in its utilisation for research (see Johnston, 2014). The data enabled the authors to appraise the extent to which existing social protection in Nigeria could tame the vulnerability and desperation of the youth towards desperate migration which has become a source of

national embarrassment. One of the key objectives of this paper is to strengthen social protection in Nigeria for the realisation of a better society through building capacities for inclusiveness of society in the Nigerian project and thereby stemming desperate migration.

Theory

This paper is anchored on the Dual Labour Market Theory of Piore, 1979 and Push-Pull Factors advanced by Everett S. Lee 1966. The theories posit that it is not only the push factors of low wages that cause people to migrate, but also the pull factors that cause migration generally. For countries of the developed world, their high level of technological adaptation representing a market presents a need for them to acquire unskilled and cheap labour which migrants provide, particularly the ones which the undocumented and illegal migrants readily offer. This scenario tends to encourage migration from the developing countries to the technologically advanced countries. Notwithstanding that the labour market has changed over time due to education and social structural changes in society, the existence of menial jobs which are considered to be of less prestige and value, at the bottom of the social hierarchy and are low-paying act as attraction. These available jobs in which the citizens of developed countries are not interested in, provide livelihood and support for migrants generally especially those that are undocumented and are in desperate need for survival. This scenario of available job opportunities for migrants tend to act as pull for the youth who are desperate to migrate. A complement of the Dual labour market theory is the economic deprivation which acts as the push factors. Social and economic deprivation engendered by conflicts, natural disasters, corruption and above all lack of good governance as are characteristic of many African countries (Akokpari, 2010/2011) tend to encourage migration of the youth in search of better life and fulfillment. Thus, the desperation increases to migrate in order to escape the social dislocation and attendant human problems that bread hopeless. The Dual Labour Market Theory and Push-Pull Factors are useful in untangling the key issues in the discourse of desperate migration of the African youth. The theories assist not only in explaining the missing links in government policies on youth and social development but also the challenges and complexities associated with the phenomenon of desperate youth migration through the dangerous and hazardous Sahara Desert and Mediterranean Sea (see Lee, 1966; and Piore, 1979). In this case, Nigeria being the most populous African country with high level of poverty and social and economic uncertainties will no doubt have a very high proportion of the youth vulnerable in their desperate migration bid to migrate to Europe and other parts of the world (see UNHCR 2017).

Discussion

Migration is a natural complement of human social life from time immemorial as people often migrate due to a number of factors which vary. Migration could be induced by natural disasters such as flooding, earthquake, drought and famine. Other factors include: warfare and invasion which could lead to insecurity, the quest for knowledge and skills, outbreak of epidemic and diseases among others. However, the current trends of desperate migration in Nigeria are not in the real sense induced by the aforementioned factors but rather by greed, bandwagon effects and peer group influence to escape the social

situation in the country (Chamie, 2013; Oxfam, 2017; UNHCR, 2017). While the authors note that these are not the best of times for Nigerians considering the level of unemployment, deficit of social infrastructure in the country and institutional weaknesses, the situation has not in real sense degenerated into a state of hopelessness where a large majority of the Nigerian youth would begin to embark on dangerous and hazardous migration to Europe through the Mediterranean Sea at the risk of life.

Successive Nigerian governments at different times, have formulated different initiatives aimed at empowering the citizens and addressing the challenges facing Nigerians. Such programmes include: Operation Feed the Nation; Green Revolution; Better Life for Rural Dwellers; Directorate of Food Roads and Rural Infrastructure (DFRRI); Family Support Programme (FSP); Peoples' Bank of Nigeria; National Agricultural Land Development Authority (NALDA); River Basing Development Authority; Mass Mobilization for Self-Reliance, Social Justice, and Economic Recovery (MAMSER) and; Bank of Industry (BOI) among others (see Kolawole, 2021). Despite these numerous initiatives, however, the desperation for migration appears not to abate as human trafficking appears to be on an upward trend (Chamie, 2013; UNHCR, 2017). More worrisome is the risk of passing through the Sahara Desert, war torn Libya and the Mediterranean Sea in the bid to get to Europe for a supposed better life. The issue of migration is concerning and the question begging for answer is: Bearing in mind that there exists a number of social protection policies in Nigeria, why have such policies not stemmed the tide of desperate migration? What are the problems inhibiting the objectives of these numerous social protection policies from achieving the goals? These concerning issues are addressed in the next section of this paper.

Factors Affecting the Implementation of Social Protection Policies in Nigeria

The challenges bedeviling social protection in Nigeria are varied and multifaceted. These are compounded by the structure of the country. Nigeria operates the three-tier system of government with certain level of autonomy existing among the tiers of government. This in itself could lead to duplication of efforts, conflict of ideas which may not augur well for the citizens which they are meant to serve. In essence, the concurrent autonomy of state governments on policy development and funding has created avenues of spending public funds with little results on social protection in Nigeria. Where Federal and State government ought to work together, there is lack of trust and mutual suspicion such that financial resources reserved for social protection and released by the Federal government may not reach the grassroots at the state level (AU/APRM, 2009; Ali & Ahmed, 2019).

There is also the problem of poor monitoring by the relevant agencies of government on the performances of institutions concerned with social protection. Some of these institutions appear to be too far from the grassroots where poverty and inequalities are endemic (Jiboku and Jiboku, 2019).

Corruption is a major menace across different sectors of government (Ikejiaku, 2009). The multiplier effect is that it affects inter-government transfer of social protection funds appropriated at national level where such funds move through the state to local government level. Such resources could be misappropriated under a spurious explanation as a result of connivance of officials. The weak and ineffective governance in Nigeria

constitutes a major challenge to effective social protection aimed at ensuring a healthy economy, addressing poverty and alleviating the social conditions of the youth and others who are vulnerable in the society.

Beyond the aforementioned challenges, the government budgetary allocations to aspects of social and economic life that are meant to provide succor to the poor, youth and other vulnerable people in society are really miserable. While the United Nations Educational, Scientific and Cultural Organisation (UNESCO) recommends that at least 26% of annual country's budget should be devoted to education, Nigeria operated far below this recommendation with 7.32% in 2010; 9.32% in 2011; 9.86% in 2012; 10.21% in 2013 and; 10.63% in 2014. These pitiable allocations to education have not in any way improved significantly (www.statisense.com). Another important area is health care in the country. With a population estimated to be 193.4 million in 2016, the percentage of budgetary allocation to health between 2015 and 2017 were 6.24%; 4.64% and; 6.0% respectively (NBS, 2017). How will such meager budgetary allocation reduce poverty, inequalities and stem the tide of desperation of the people especially the youth bearing in mind that majority of the population are youth and that over 50% of the population live below the poverty line? (see NBS, 2017, Hagen-Zanker and Holmes, 2012).

Conclusion

While institutionalised social protection has existed from independence for those in the public and private sectors in form of pension and gratuity, the same cannot be said for those within the informal sector. Thus, for those in the informal sector, social protection programmes are mainly emergency and ad-hoc. They have remained poorly funded, unsustainable and neglected especially when there is a change of administration, as each government comes with its own programmes to be implemented (Aiyede, et al. 2015). Even the people who are supposed beneficiaries of the social protection programmes which are formulated to take care and improve their conditions tend to lose confidence in such well-intentioned programmes. This is contrary to what obtains in the advanced countries where established social protection programmes and policies exist to take care of specific challenges of the people. The implication of the situation in Nigeria is that a number of social problems that ought to be addressed have aggravated to crisis situation. One of such problems is that of desperate migration which this paper contends with.

The Nigerian government needs to ensure that the various social protection policies and programmes are enforced by the relevant agencies of government in order to arrest the negative consequences that could emanate from the neglect of such programmes as could be seen from the larger society today. The pitiable budgetary allocations to social protection programmes need to be reviewed significantly. Adequate monitoring and evaluation are also essential for appropriate review of implementation as situation changes. While social provisioning for the aged and the disabled are essential for the wellbeing of society, the youth who constitute majority of the population and are still active, need to be empowered as part of social protection. This could be achieved through development of their skills and establishment of more vocational centres as a way of empowering them and to further enable them in channeling their energies towards creative ventures (Jiboku, 2016). There is no gain saying that the acquisition of skills will reduce the desperation for migration and the urge to engage in unsustainable businesses such as motorcycle riding

which in local parlance is referred to as 'Okada'. The motorcycling business venture is one that has sent many youth to early graves and has left others with permanent disabilities. The benefits of taking care of the teaming population through social protection will be invaluable in the long run.

This paper has brought to the fore the increasing need to have well institutionalised social protection policy in Nigeria in order to stem the increase in social problems like desperate migration of the youth that has reared its ugly head in the body polity and has become a national embarrassment. Notwithstanding, the civilian government should be commended for its anti-corruption crusade aimed at arresting the menace of desperate migration of youth and safeguarding public funds from being embezzled by a few persons occupying privileged positions of authority in the country. Sustaining the anti-corruption social crusade will ensure that more resources are available for taking care of the vast majority of Nigerians and developing infrastructural facilities to return the country back to the period when people were satisfied and did not need to migrate to other parts of the world desperately.

Way forward

Nigeria is generally not lacking in programmes and policies aimed at promoting development but the challenge has been that of implementation. This paper argued that despite the numerous policies and programmes aimed at alleviating poverty and empowering the people, the menace of desperate migration has persisted. The recent upsurge in migration, that is, desperate migration could be viewed as arising out of deficiency in social capital imbibed by people from the primary agents of socialisation that are supposed to lay a solid foundation for the individual's development (see Otite and Ogionwo, 1979). A corollary to the deficiency of social capital is the loss of traditional African values which lay emphases on contentment, dignity of labour, sanctity of human life, genuine acquisition of wealth, preservation of family name and others which would ordinarily stem unnecessary risks and exploits that could become embarrassments (Nwolise, 2001). Re-enacting the cherished traditional African values will no doubt go a long way in stemming the desperate migration of the youth. Achieving this goal in this age of technology at national level will involve national agencies like National Orientation Agency (NOA) to help in providing adequate enlightenment and advocacy for ethical re-orientation such that the youth will not continue to live in fantasy about Europe (Jiboku, 2007).

Beyond social re-orientation, practical and realistic measures should also be adopted to make financing more accessible to the youth for entrepreneurship and establishment of small-scale businesses. The Bank of Industry needs to work out a plan that will take care of youth who have skills that need to be empowered for self-employment. Corruption in government which has affected service delivery at all level of governance in the country needs to be properly addressed. If these measures are vigorously pursued, there will be improvement in social infrastructural facilities and ample opportunities will be created in the country. This without doubt, will discourage the desperation of the youth to migrate out of the country at the risk of their lives through the Sahara Desert, the war-torn Libya and also stem the deadly voyage through the Mediterranean Sea.

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CURRENT CHALLENGES IN THE EUROPEAN CONSTRUCTION SECTOR: A THEORETICAL APPROACH

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Abstract: *Increasing project complexity, low technological progress, extensive regulations, and market fragmentation result in low returns on capital employed in the European construction industry. Using a theoretical approach in shape of literature review and document analysis, the main challenges, which are faced by the European construction sector, have been identified and analysed. Through the main findings, the low digitalization level, the transition phase, the lack of human resources or the skills mismatch can be accounted as actual challenges, which this industry has to face. The current work could act as a starting point for the competent institutions and state organizations of the building industry in adopting the necessary measures to boost this sector`s performance.*
Keywords: *European Construction Sector, Productivity, Digitalization, Innovation, Technologies*

Introduction

While in the last decade, many industries have gone through fundamental changes, reorganized and adopted technological changes that improve the entire production cycle, (such as the automotive industry (GTI, 2021), which has long adopted the process of automation and reoriented towards a powerful paradigm shift: electric cars), the construction sector has avoided or failed to embrace digital innovation. In fact, if one looks at the investments made in information technology spending, a maximum of only 1% can be observed, with only agriculture and hunting recording lower percentages. The results, expressed in terms of productivity, show only insignificant increases or stagnation (ECSO, 2019).

The construction process itself is very complex and merges several dimensions: 3D, time, costs, sustainability, building usage and operation. Organization and coordination are two basic pillars, the actual process being cumbersome, lacking in transparency and with a low level of information exchange.

The logistics process for the supply of materials and resources is conceived independently and there is no direct link with the plans or building documents. Currently, information is not collected in a centralised manner, which could allow a greater flow of information. Understanding by third parties is very difficult and in the case of complex projects, the presence of the people who established the logistics concept being imperative.

The parties involved in the construction process are multiple: architect, civil engineer, builders, beneficiaries and the list goes on. In the building course, construction documents and drawings are transmitted from one party to the other directly in a one-to-one relationship. By many building projects, the information is not centralized in a model

or database, which could allow the simultaneous access, by all parties (Kjartansdóttir *et al*., 2017).

The building process is not transparent, requiring very effective communication for the smooth development of the construction. In the construction phase, problems are often encountered due to the lack of information received from the design parties. Speed and very good coordination is needed, especially in the advanced stages of the project (construction is started), so that the builder receives the information on time and executes according to the plan.

Compared to other industries, the construction sector is characterized by a rather pronounced fragmentation generated by the presence of many small companies, which leads to a high degree of difficulty in terms of testing new technologies and implementing new information techniques.

The existing human capital in the sector is strongly influenced by the sector's migration towards new trends: digitization and green construction, so that a series of problems deriving from the adaptation to the new directions appear the lack of skills in the sector or their inconsistency (European Commission, 2020). Construction work has a negative reputation for being hard, dirty, weather-dependent and high-risk, so attracting young talent becomes a difficult endeavour.

A primary objective of the current work is to identify the current challenges faced by the European construction industry in a complex environment governed by digital transformations and policy changes that aim to improve sustainability, energy efficiency, and resource efficiency (European Commission, 2021).

Methods

Using literature review approach and document analysis, the main challenges of the European construction sector, which exist have been identified and characterized. The literature review is a type of analysis who investigates official documents and publications, which is often used in social sciences (Sekaran and Bougie, 2016). Being a type of secondary research (the data are not collected from people or companies directly), the data which is required to be analysed consists of unstructured texts and information. For performing a quality analysis, the selection of the data had undergone a filter selection of several criteria as Scott´s studies advice (Scott, 2006):

1. Authenticity of the documents: the document origin was proofed whether is reliable and genuine.
2. The credibility of the source: the information should be trustworthy.
3. Representativeness of the documents: to which extent the publication or the document is representative for the research topic.
4. Meaning and consistency: the information should be understandable and consistent.

The first step of the process implied the identification of the various publications and gaining the access to the information. At this point, journal articles, conference proceedings, official publications of the European Union or state of the art papers of the European entities such as European Construction Sector Observatory or the European Construction Industry Federation have been consulted. The second step included a title glance, followed up by an abstract or table of contents review. When the publication passed these search criteria, the full text review was performed.

Challenges of the European construction sector

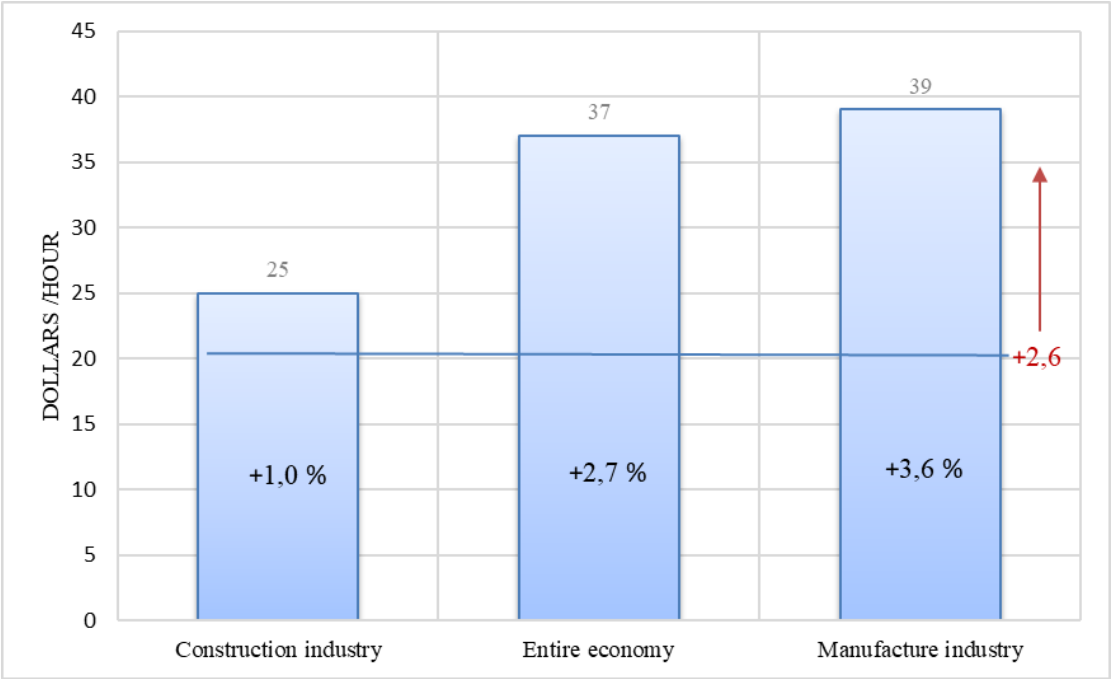
Productivity

The European construction sector is characterized by the presence of many small firms (FIEC, 2022) with limited technological improvements and a high level of labour intensity compared to other fields. All this leads to a low structural stability of the sector, which, reflected in terms of general productivity, is far below European averages (Bellochi and Travaglini, 2021). Low labour productivity is a problem worth mentioning in the construction market. The construction industry has been suffering from remarkably low productivity compared to other sectors for decades. Other industries have transformed and taken steps to boost productivity. In traditional commerce, large-scale chain stores, such as Aldi and Walmart, with global supply chains and distribution systems that are increasingly digitized and technological, have replaced retail stores. In the manufacturing process, Lean principles and aggressive automation have been embraced globally. By comparison, much of the construction industry has evolved at a slower pace. According to the experts from the McKinsey Global Institute (figure 1), on a sample of 20 countries and 30 industries analysed between 1995–2014 the entire construction sector productivity increased with only 1% in this time interval (MGI, 2016). In the global economy overall, productivity growth was 2.7%, while manufacturing (automotive, electrical and electronics, hardware) experienced 3.6% increase.

In general terms, within the EU, the average productivity per worked hour in the construction sector stands at around 21.76 euros/hour, while the European industry average is around 38.46 euros per hour. Although positive values are recorded in certain countries and the construction sector seems to be gaining ground (like in Belgium or Bulgaria), the picture of productivity in the construction sector is one that leaves a lot room for improvement (Bellochi and Travaglini, 2021). If the construction sector were to grow in terms of productivity in the world economy, it is estimated that an increase of about 1,600,000 million dollars per year could be registered, an amount equivalent to the GDP of Canada [40] (Barbarosa *et al.* 2017). Increased projects complexity, low technological progress, extensive regulations, relatively opaque and fragmented construction market, inadequate design and investment processes, poor project management and insufficient qualified staff/Insufficient investment in digitization and innovation represent the causes of low productivity.

The dynamics of labour productivity is directly related to the nature of the sector itself and the historical perspective of these branches of industries. This industry has always been characterized by limited research and technology efforts. When compared to other industries such as automobiles, pharmaceuticals or electronics, it is easy to see that there are a number of major gaps in the construction sector. In most fields, investment in research and development has found an imperative scent and combined with very rapid technological advancements, lead to increased competitiveness within industries. This differs in the construction industry, as they are not perceived as a growth driver of technologies, and the final product is not directly influenced by them.

Figure 1. Average annual productivity growth rate (per worked hour) in the 1995-2014 interval



Source: MGI, 2016

Moreover, the implementation of some technologies takes much longer than in other industries, because the production cycle itself is longer, and an investment in technology needs a longer period of time and a larger capital block. (Bellochi and Travaglini, 2021).

Digitization, Digitalization and Digital transformation

Construction unfortunately remains one of the current industry sectors characterized by manual processes and traditional methods. By their nature, physical presence is needed to technologically fulfil certain processes, and certain properties that apply for example to classic branches such as commerce, cannot be applied to the present industry (Leontie et al., 2022). However, some subsectors of the construction have improved over time. One of the most eloquent examples is that of the design and planning phase, which about 20 years ago began to reorient its methods, changing the "tool" from hand drawings to computer-aided design (Computer Aided Design, CAD). The last decade is characterized by the transition from CAD (mentioned above) to BIM (Building Information Modelling) (Skyes, 2018). By using BIM, constructions, residential and non-residential, have become huge databases through the adoption of new technologies. With a high volume of data, these databases can be analysed more effectively and used with different tools, such as Artificial Intelligence (Skyes, 2018).

Now, communication and collaboration between members of the construction industry are major concerns. The McKinsey Global Institute observed that the digitization index in this sector is at a very low level, ranking last among European countries (MGI, 2016). Digital spending, digital capital deepening or digital interactions are some segments that suffer severely from a very low level of implementation.

Among the most common problems, which act as a strong barrier against process conversion, the employees working in different isolated places without internet connectivity and the permanent movement of the workers for the development of technological processes can be counted (Vrijhoef, 2011).

Digitization and digitalization growth potential, but there are many challenges looking for a solution. The relationship between digitization and digitalization, respectively digital transformation, deserves special attention, their gearing leads to the entire digital transformation that is desired in the construction industry. If digitization refers to information and the form in which it is stored, digitalization considers the processes that are used and the entire digital framework in which they take place. It is about using digital technologies to change a business model. The last step in the industrial revolution is digital transformation. It is defining a digital approach not just for information and tasks, but for the entire business or industry (Sategna *et al.*, 2019).

The digitalization degree of the construction industry and the adoption of the different digital technologies varies across the different EU countries. The member states national polices and strategies lack homogeneity concerning each other and several inconveniences and difficulties appear in the companies who perform international activities (Leontie and Maha, 2022). Between the main barriers against digitalization, the low decision making speed within the large companies, the implementation and training costs in medium and small enterprises (Bilal et al., 2016), fear of implementation in small companies, different implementation stages existing through the industry, security issues (Lee, 2017) and the lack of qualified personnel can be counted (European Commission, 2019).

Human resources, skills and competences

Among the most common challenges facing the labour market within the construction industry, with a strong impact, the following can be listed (European Commission, 2020):

a) The decrease in the number of young people with appropriate qualifications. This problem is one of the most common, affecting the development and growth of the value of this sector. Economic growth and digital solutions lead to an increase in productivity and an expansion of the sector, but at the same time, they are directly dependent on a skilled workforce with complex skills. The decline of young professionals in this branch is directly linked to the image of the sector, imbued with many risks and unattractive working conditions.
b) The aging of the labour force is a topic that concerns the labour sector for a long time. The average age of the active population in the construction sector is increasing (in Germany, the active population is between 35 and 50). This can generate an additional barrier to the integration of new skills in this industry **(**Bundesinstitut für Bau-, Stadt- und Raumforschung, 2021);
c) The high mobility and ease of working within the EU leads to the situation where some member states, Romania as well as Estonia, face major problems in retaining highly qualified labour force, young people migrate to better paying jobs in other states. At the other pole are countries such as Sweden, which registers a very large influx of foreign workers (European Commission, 2020);

d) The lack of alignment to a common framework in the case of youth training (vocational education), together with the high demand within the labour market of the construction industry, slows down the speed of development of this branch. About 35% of all construction workers have experienced technological changes in the last 5 years (European Center for the Development of Vocational Training, 2015).

The lack of employees trained and adapted to new market requirements is a direct problem related to the level of research degree existing in the sector. A possible cause of the mentioned can undoubtedly be the fragmented structure of these industries, its nature and the various branches into which is divided. The predominance of small and medium-sized companies within the European construction sector, with an average of approximately 4 workers per company, its multitude and diversity lead to reduced possibilities for testing projects in research and development (FIEC-European Construction Industry Federation, 2020). As jobs go digital, the level and nature of requirements will change, leading to new job profiles and qualifications. The present fact is a known one, the only unknown being the speed with which all this happens (Sategna *et al.*, 2019).

With digital transformation comes a huge volume of data that must be centralized and analysed, and awareness of their impact is necessary for the industry to create value and efficiency. It is expected that the number of site manager jobs will increase, new jobs will emerge, some will change to meet new requirements, and some will disappear altogether. Prominent examples of this would be the use of drones to check material stocks on large construction sites (only one drone operator will be needed, not entire teams to draw up material inventories), sensors connected to the mobile phone network for to indicate different parameters (either meteorological or technical), and the list could go on. The gap between high-skilled and very low-skilled jobs will widen, while the demand for unskilled jobs will decrease.

Considering the fact that the construction field is suffering from continuous aging and a decrease in qualified young people, as mentioned above, human capital becomes a major concern. Rather than changing the value system, digitization could make the field more attractive to young people and women, who are a minority in this industry (Sategna *et al.*, 2019).

There are currently many vacancies (unfilled) on the European construction market, which may have complex causes, but suggest a serious gap between demand and supply of skills and competences. In vocational schools, the number of students enrolled in the training programs is insufficient now; furthermore, the number of graduates is not enough to meet demand (European Commission, 2020).

Discussion

The European construction sector represents a key industry who faces currently multiple challenges, in a complex environment. Undergoing a full paradigm shift towards CO2 reduction (European Commission, 2011), energy efficiency, sustainable and green buildings (European Parliament, 2010), this sector experiences at the same time several digital transformations which try to modernise the way the whole building cycle is conceived. Items related to the productivity, which is obtained in the sector, represent the

first identified challenge. This market suffers since decades of a low productivity, situating itself under the European averages of the other industries (MGI, 2016). The nature of this sector has definitely a role to play and the hard jobs which need here to be done require physical presence and remote works. The main causes of a reduced productivity are represented by increased project complexity, low technical progress, extensive regulations, poor management project or reduced investments in terms of innovations.

A fragmented construction market, with the majority of the companies (over 95%) having fewer than 20 employees (FIEC, 2022) represents an existing problem. Because the construction process is very long, testing new technologies and innovations is particularly difficult (Bellochi and Travaglini, 2021). Digitization and digitalization along with the latest technologies from the field have a huge improvement potential (Foracel *et al.*, 2020). Unfortunately, one should consider the industry as a whole and these innovative means are not perceived at all times as being positive, but rather a sceptical approach exists in the sector (Bock, 2015). There are several barriers which stand against digitalization, and firstly the costs which are necessary for a company to become digital may be mentioned (Bilal *et al*., 2016). Afterwards, the fear of the small companies to implement digital means along with the different stages of the digitalization and of technology implementation, present in the industry play also an essential role. The small and medium companies lack finance, while the big companies with many employees suffer of low speed in terms of decision-making: long decision chain along with complicated company structures.

The human resources in this sector represent one of the most valuable resources that exist. In terms of labour market, this sector is dependent of experts in the field, which require time to be formed. In the current paradigm shift in the direction of digitalization, and technology use, the sector still requires time to create its experts. In addition, jobs with new profiles appear (as drone operator or BIM manager), and several other disappear. The decrease in the number of young people with proper qualifications along with the aging in this sector are problems, which need to be mentioned (Bundesinstitut für Bau-, Stadt- und Raumforschung, 2021). In addition, the high mobility of the workers, along with the ease of working in other EU states, causes several problems in less developed states. The lack of alignment to a common framework in terms of youth vocational training triggers problems.

Conclusions

Using a literature review approach and a document analysis, the main challenges, which the European construction sector has to face, have been identified and categorized. A total number of three categories has been observed: productivity, items related to digital transformation and human resources. A percentage not exceeding 1% of the sector's volume was spent on IT activities and technological solutions. It is an extremely low percentage, which has caused productivity to remain so low in the last two decades.

Also, the absence of an overall vision and a sustainable long-term technological goal lead to a low efficiency of the degree of research and innovation. The lack of a broad view is felt, which could make all these existing technologies in the industry more efficient.

With digitization and the move towards green, energy-efficient buildings, the new construction worker will need to be digitally perceptive, capable of using tablets and other "Smart" devices. Having a broad spectrum of positive effects, digitalization, digitization

and digital transformation still have to overcome several obstacles in terms of mentality, high costs for training and IT infrastructure and interoperability. The nature of the construction sector itself plays an important part and due to the complicated and long construction process, innovations and new technologies are particularly hard to be tested.

The existing human capital in the sector is strongly influenced by the sector's migration towards new trends: digitalization and green construction, so that a series of problems deriving from the adaptation to the new directions appear: the lack of skills in the sector or their inconsistency. Construction work has a negative reputation as being hard, dirty, weather-dependent and high-risk, so it becomes a difficult ordeal for young professionals. Currently, there is a large number of vacancies (unfilled) within the European construction market, which may have complex causes, but suggests a rather severe discrepancy between demand and supply of skills and competences.

Digital transformation comes with a series of answers to a multitude of requirements that the construction sector manifests, but at the same time, the transition to new horizons is not an easy one. The paradigm shift in an aging and underperforming sector generates many challenges that the industry today must face. Combined with a very high fragmentation and an extensive division of the field, digitalization seems to be the optimal solution for adapting the construction market to modern needs.

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SKIM OF BANK'S DEPOSIT GUARANTEE SYSTEM IN SOME COUNTRIES IN THE WORLD BASED ON PRINCIPLES OF JUSTICE

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Abstract: *The banking business is a trust business. This customer trust can be obtained by the existence of justice and legal certainty in bank regulation and supervision as well as guaranteeing bank customer deposits to improve the continuity of the bank's business in a healthy manner. The continuity of a bank's business in a healthy manner can ensure the security of customer deposits and increase the role of banks as providers of development funds and banking services. The Deposit Insurance Corporation is a deposit insurance company for bank customers that can significantly maintain customer trust in the banking industry after the 1998 crisis. With the 1998 global financial crisis, it is necessary to anticipate that there will be no large-scale withdrawal of bank funds due to the decline in public confidence in guarantee the safety of the money saved. The establishment of the Deposit Insurance Corporation in Indonesia is one of the efforts made by the Government to increase public trust in banking. The government's blanket guarantee program has succeeded in restoring public confidence in the banking system. However, this policy increases the burden on the state budget and has the potential to create moral hazard by bank managers and bank customers. The author will use a normative legal research method with an approach to the relevant laws and regulations, with the hypothesis: there is an injustice in the regulation of the amount of customer deposits in Article 11 (1) of Law Number 24 of 2004 and Government Regulation Number 66 of 2008 concerning the amount of guaranteed deposit value. Deposit Insurance Agency. For depositors whose deposit value is above two billion rupiah, of course this does not fulfill the principle of justice. It is necessary to make a customer deposit guarantee system scheme (Deposit Protection System) that fulfills a sense of justice for all banking customers.*
Keywords: *banking, trust, customer deposits, the principle of justice, the guarantee system scheme, the Deposit Insurance Corporation.*

Introduction

The definition of a bank according to Law Number 14/1967 Article 1 concerning the Principles of Banking, a bank is, "a financial institution whose main business is providing credit and services in payment traffic and money circulation." Meanwhile,

according to the law, financial institutions are "all bodies which, through their activities in the financial sector, withdraw money from and channel it into the community". A bank is a financial intermediary that offers loans and deposits, and payment services. Nowadays banks also offer a wide range of additional services, but it is these functions that constitute banks' distinguishing features. Because banks play such an important role in channelling funds from savers to Borrowers. A bank is a financial intermediary whose core activity is to provide loans to borrowers and to collect deposits from savers. In other words they act as intermediaries between borrowers and savers (Casu, Girardone, Molyneux, 2006, p 4). Bank Indonesia Regulation Number 13/1/PBI/2011 concerning Assessment of the Soundness of Commercial Banks, with the regulatory background: (1) Changes in business complexity and risk profile, implementation of consolidated supervision, as well as changes in the approach to assessing bank conditions that are applied internationally affect the approach assessment of Bank Soundness Level; (2) In order to improve the effectiveness of the Bank Soundness Level assessment to deal with the changes as referred to in letter a, it is necessary to improve the Bank Soundness Level assessment with a risk-based approach.

This Bank Indonesia Regulation is effective as of January 1, 2012, namely for the assessment of Bank Soundness Level at the end of December 2011 and on the effective date it revokes Bank Indonesia Regulation Number 6/10/PBI/2004 concerning Commercial Bank Soundness Level Assessment System (https://www.ojk.go.id/id/regulation/Pages/PBI-about-Penilaian-Level-Kesehatan-Bank-Umum.aspx, accessed on Sunday, December 27, 2020 at 3.30 PM). Bank health is in the interest of all parties (stakeholders), namely bank owners, bank management, the community as bank service users and the government as a regulator. Intended as a benchmark for bank management, whether they run the bank's business in accordance with applicable regulations, so as to avoid problems that occurred in the past. Public trust and monetary stability in Indonesia are factors that are influenced by this. Permana (2012) A healthy bank is a bank that can carry out its functions properly, such as being able to maintain public trust, being able to carry out intermediation functions, being able to help smooth payment traffic, and being able to implement monetary policy.

Bank soundness is a qualitative assessment of various aspects that affect the condition or performance of a bank through quantitative and/or qualitative assessments of capital factors, asset quality, management, profitability, liquidity and sensitivity to market risk. After considering the element of judgment based on the materiality and significance of the assessment factors as well as the influence of other factors such as the condition of the banking industry and the national economy. The bank can assess the soundness of its own bank using the method recently issued by the government in Bank Indonesia Regulation Number 13/1/PBI/2011 article 2, it is stated that banks are required to assess the soundness of banks using a risk approach (Risk Based Bank Rating) both individually or consolidation. This regulation replaces the previous valuation method, namely the method based on Capital, Asset, Management, Earning, Liquidity and Sensitivity to market risk or what is called CAMELS. The RBBR method uses an assessment of four factors based on the Circular Letter of Bank Indonesia Number 13/24/DPNP, namely: Risk Profile, Good Corporate Governance, Earning and Capital.

From the Risk Profile factor using the calculation of credit risk, market risk and liquidity risk. The GCG factor takes into account the assessment of the implementation of

self-assessment. Earning factor or profitability is measured by indicators of profit before tax to total assets (ROA), net interest income to total assets (NIM). Capital factor is measured by the CAR ratio. The overall RGEC method has a very healthy predicate. In Bank Indonesia regulation No. 13/1/PBI/2011 article 2, it is stated that banks are required to assess the soundness of banks using a risk approach (Risk Based Bank Rating) either individually or in a consolidated manner.

Theory and Concepts Used

The legal relationship between the customer and the bank is a relationship of trust. Trust in banking is very important. In order for the bank to be trusted by customers, it is necessary that this trust relationship must always be maintained and upheld. Unfortunately, the concept of trust has shifted, so banks must uphold the trust of the public/customers. The author uses the Theory of Justice. John Rawls, who coined the theory of procedural justice, defines justice based on 2 main principles originating from the idea of equality: (1) Everyone has the same rights to the broadest basic liberties, as wide as the same freedoms for everyone; (2) Social and economic inequality even though it is regulated in such a way that; (a) can be expected to benefit everyone; and (b) all positions and titles are open to all. John Rawls, who coined the theory of procedural justice, defines justice based on the main principle originating from the idea of equality, everyone has the same rights to the broadest basic freedoms, as wide as the same freedoms for everyone. The author chooses the theory of justice from John Rawls, because according to the author all banking customers are entitled to equal rights to the broadest basic freedoms to obtain justice and legal certainty regarding the regulation of the amount of bank customer deposits guaranteed by Deposit Insurance Agency.

Discussion

a.Implementation of the Deposit Guarantee Scheme

Article 37 B of Law Number 10 of 1998 stipulates that banks are required to guarantee public deposits. To guarantee public savings, it is necessary to establish a Deposit Insurance Corporation (LPS) in the form of an Indonesian legal entity and subsequently regulated based on a Government Regulation. The law does not regulate the form of legal entity that must be established and the authority that must be possessed. In relation to the basis for the establishment of the Deposit Insurance Corporation, ideally, with the authority as possessed by the FDIC, the formation of the Deposit Insurance Corporation must be based on the law, not just government regulations. In its journey, the mandate of Article 37 B is implemented by law, namely the Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation (hereinafter referred to as the IDIC Law).

Article 1 paragraph (8) of the LPS Law stipulates that “Bank Customer Deposit Insurance, hereinafter referred to as Guarantee, is a guarantee carried out by the Deposit Insurance Corporation for bank customer deposits”. The form of the IDIC legal entity, Article 2 of the IDIC Law stipulates that the Deposit Insurance Corporation is a legal entity, an independent, transparent, and accountable institution in carrying out its duties and authorities; and is responsible to the President. However, the IDIC Law does not explain

further about legal entities. Meanwhile, independence means that in carrying out its duties and authorities, the IDIC cannot be interfered with by any party, including the government, except for matters that are clearly stated in the law. Since the policy regarding guarantees has an impact on the banking and fiscal sectors, the IDIC has representatives from each competent authority in the banking and fiscal sector. The existence of representatives of authorities is intended to jointly formulate guarantee policies that can support policies in these sectors. However, the implementation of the policy is entirely the responsibility and authority of the IDIC without being interfered with by any party. For example, in carrying out the task of settling a bank whose business license has been revoked, especially in the context of selling and or transferring the bank's assets, IDIC cannot be influenced by the interests of outside parties including the Government. The form of the regulation reflects its mandate and level of independence from other institutions that are also responsible for the financial safety net.

In order to reduce the negative impact of the government guarantee program, a Deposit Insurance Corporation (LPS) has been established, in accordance with Law no. 24 of 2004 concerning the Deposit Insurance Corporation (LPS) on September 22, 2004. The Deposit Insurance Corporation has two functions, namely to guarantee deposits of bank customers and to carry out settlements or handling of banks that have not been successfully rehabilitated or failed banks. Deposit insurance for bank customers by the Deposit Insurance Corporation is limited in nature to reduce the burden on the state budget and minimize moral hazard. However, the interests of customers are maintained optimally. Every bank operating in Indonesia, both Commercial Banks and Rural Banks is required to become a guarantee participant. The types of deposits at banks that are guaranteed include savings, demand deposits, certificates of deposit and time deposits as well as other similar types of deposits. The Deposit Insurance Corporation guarantee scheme has been fully started since March 22, 2007

b. Legal Protection for Bank Customers Explicitly (Explicit Deposit Protection)

What is meant by explicit protection is protection through the establishment of an institution that guarantees public deposits so that if the bank fails, the institution will replace the public funds deposited in the bank. Explicit protection can be obtained through the existence of a Deposit Insurance Corporation. In order to gain public confidence in the banking industry, which had slumped during the 1998 monetary crisis, a Deposit Insurance Corporation was created to protect public money collected in a bank from failed bank conditions. A failed bank is a condition where the bank experiences financial difficulties and jeopardizes its business continuity and can no longer be rehabilitated by the Banking Supervisory Agency in accordance with its authority. The legal basis of this institution is Law no. 24 of 2004 concerning the Deposit Insurance Corporation. With this law, protection can be done implicitly or directly against customers.

Banking Law Number 10 of 1998 only regulates the protection of customers implicitly/indirectly. In the law, basically protection for customers cannot be separated from efforts to maintain the continuity of the bank as an institution in particular and protection of the banking system in general. Indirect protection to customers can take the form of supervision of banks by the government in this case Bank Indonesia.

In addition to having to maintain their health in accordance with the provisions set by Bank Indonesia, each bank is also required to: (a) Maintain its business in accordance

with prudential banking principles, including implementing the provisions on the maximum limit for granting credit, providing guarantees, placing investment in securities, or other similar rights, which may be exercised by the bank to the borrower or a group of related borrowers, including to companies in the same group as the bank concerned as determined by Bank Indonesia; (b) In providing credit in carrying out other business activities, take ways that are not detrimental to the bank and the interests of customers who entrust their funds to the bank. (Article 29 paragraph (4); (c) For the benefit of the customer, the bank provides information regarding the possible risk of loss for customer transactions conducted through the bank (Article 29 paragraph (5).

Protection of customers as creditors is also seen in the form of supervision by Bank Indonesia where according to article 30 paragraph (2) of the Banking Law, banks at the request of Bank Indonesia are required to provide opportunities for inspection of books and files in their possession, and are required to provide necessary assistance. in order to obtain the truth of all information, documents and explanations reported by the bank concerned. Furthermore, Article 31 paragraph (1) states, Bank Indonesia conducts inspections of banks, either periodically or at any time if necessary. Article 32 also adds that if deemed necessary, the Minister may also request Bank Indonesia to submit a report on the results of bank inspections or request Bank Indonesia to conduct special examinations on banks and report the results of the examinations carried out.

In relation to the balance sheet and the calculation of loss/profit, banks are required to submit to Bank Indonesia the annual balance and calculation of loss/profit as well as explanations thereof which have been audited by a public accountant, as well as other periodic reports within the time and form stipulated by Bank Indonesia (Article 34 paragraph (1) and (2)).

Government supervision, among others, in the context of protecting customers as creditors can also be seen from the actions of Bank Indonesia when it sees a bank experiencing difficulties that endanger its business continuity. Article 37 paragraph (2) stipulates that if a bank encounters difficulties that endanger its business continuity, Bank Indonesia may take actions including but not limited to: (1) Shareholders increase their capital; (2) Shareholders replace the bank's board of commissioners and directors; (3) Banks write-off non-performing loans, and calculate bank losses with their capital; (4) Banks merge or consolidate with other banks; (5) Banks are sold to buyers who are willing to take over all obligations. If Bank Indonesia considers that the condition of a bank endangers the banking system or the above actions are not sufficient to overcome the difficulties faced by the bank, then Bank Indonesia may propose to the Minister of Finance to revoke the bank's business license and the bank will be liquidated. In addition, in the event that the board of directors does not liquidate the bank, the Minister of Finance after hearing the considerations from Bank Indonesia asks the court to liquidate the bank concerned. This provision is a last resort to protect customer rights if a bank experiences business failure (revocation of its business license).

c. Legal Basis and Regulations for Settlement of Banking Disputes in Indonesia

In accordance with Article 41 of Law Number 21 of 2011, the Financial Services Authority informs the Deposit Insurance Corporation about a troubled bank that is currently being restructured by the Financial Services Authority. Likewise, the Deposit Insurance Corporation can carry out inspections of banks related to their functions, duties and authorities and coordinate in advance with the Financial Services Authority (Article

41, Law Number 21 of 2011, concerning the Financial Services Authority). The Financial System Safety Net is the framework that underlies the regulation of the deposit insurance scheme, the mechanism for providing emergency financing facilities by the central bank (Lender of last resort), as well as crisis resolution policies. The Financial System Safety Net is primarily aimed at preventing crises, however, this framework also includes a crisis resolution mechanism so that it does not incur large costs to the economy. Thus, the objective of the Financial System Safety Net is to maintain financial system stability so that the financial sector can function normally and have a positive contribution to sustainable economic development. In 2005, the Government and Bank Indonesia developed a framework for the Financial Sector Safety Net which would later be included in a Bill on the Financial Sector Safety Net. Within the framework of the Financial Sector Safety Net, it clearly states the duties and responsibilities of the relevant institutions, namely the Ministry of Finance, Bank Indonesia and the Deposit Insurance Corporation as players in the Financial Safety Net. In principle, the Ministry of Finance is responsible for drafting legislation for the financial sector and providing funds for crisis management. Bank Indonesia as the central bank is responsible for maintaining monetary stability and banking health as well as the security and smooth running of the payment system. The Deposit Insurance Corporation is responsible for guaranteeing bank customer deposits as well as for resolution of problem banks.

The Financial Safety Net Framework has been set forth in the Draft Financial Sector Safety Net Law. Thus, the Law on the Financial Sector Safety Net in the future will serve as a solid foundation for policies and regulations set by the relevant authorities in order to maintain financial system stability. In the Draft Law on the Financial Sector Safety Net, all components of the Financial Sector Safety Net are stipulated in detail, which include: (1) Effective bank regulation and supervision; (2) Lender of the last resort; (3) Adequate deposit insurance schemes and (4) Effective crisis resolution mechanisms. In its implementation, the Financial Sector Safety Net requires effective coordination between the relevant authorities. For this purpose, a Coordinating Committee was formed consisting of the Minister of Finance, the Governor of Bank Indonesia and the Chairman of the Board of Commissioners of the Deposit Insurance Corporation. As part of the Financial Sector Safety Net policy, a Joint Decree of the Minister of Finance, the Governor of Bank Indonesia and the Chairman of the Board of Commissioners of the Deposit Insurance Corporation has been issued regarding the Financial System Stability Forum as a coordination forum for Bank Indonesia, the Ministry of Finance and the Deposit Insurance Corporation in maintaining financial system stability.

The government's blanket guarantee program has succeeded in restoring public confidence in the banking system. However, this policy increases the burden on the state budget and has the potential to create moral hazard by bank managers and bank customers. In order to reduce the negative impact of the government guarantee program, the Deposit Insurance Corporation has been established. In accordance with Law no. 24 of 2004 concerning the Deposit Insurance Corporation on September 22, 2004, the Deposit Insurance Corporation has two functions, namely guaranteeing bank customer deposits and carrying out settlement or handling of banks that have not been successfully rehabilitated or failed banks.

If there are banks that experience financial difficulties and fail to be rehabilitated so that their business licenses must be revoked, the Deposit Insurance Corporation will pay

the deposits of each customer of the bank up to a certain amount, as determined. The unsecured customer deposits will be settled through the bank's liquidation process. With the guarantee of bank customer deposits by the Deposit Insurance Corporation, it is hoped that public confidence in the banking industry can be maintained (https://www.ojk.go.id/id/kanal/perbankan/stabilitas-sistem-keuangan/Pages/Manajemen-Krisis.aspx, accessed on Wednesday, April 8, 2020). The banking industry is one of the branches of industry that is most regulated by the Government because the stability of the banking and financial system is an absolute prerequisite for growth and stability of the economy as a whole (E.Gerald Corrigan, "Central Banks and The Financial System", paper present to A Symposium of Central Banking Issues in Emerging Market Oriented Economies). The reasons for the government intervention are:

First, to maintain the security and health of the banking system and the financial system as a whole. Without a reliable banking institution and financial system, it is impossible for the public to be willing to accept money as a medium of exchange, as a measure of value, as a means of storing wealth, or as a means of settling debts and receivables in the future. (deferred payments).

Second, to be able to control the money supply in order to maintain the stability of the price level. The more advanced an economy, the smaller the role of paper money and coins in circulation because the greater the role of debt securities issued by banking institutions as a substitute for paper money and coins. With the high trust held by financial institutions, the bonds issued can be accepted by the public as money.

Third, the banking industry is considered a very strategic industry in allocating economic resources to realize various development goals. Financial institutions are considered as semi-state companies that can be used by the government as an instrument to realize its policy goals.

Fourth, to maintain fair competition in the financial industry. Through fair competition, the financial industry is competing to mobilize public funds, competing to reduce intermediation costs, and competing to reduce doubtful accounts due to bad loans. A decrease in intermediation costs and bad loans will reduce loan interest rates. Rational credit allocation while increasing economic efficiency and increasing business activities (Nasution (2),1991 p. 14-17, See also, Javier Arrigunaga, Op.cit. Case. 330-331).

Bank customers also need to be given a guarantee. In relation to guaranteeing bank customer deposits, there are at least six policy options that can be carried out, namely: (Gillian G.H. Garcia (3), "Deposit Insurance A Survey of Actual and Best Practices", IMF Working Paper, (WP/99/54, April 1999), p. 4). (a). Strictly stated, that the Government does not provide protection to customer deposits; (b). Customer deposits are not protected, but depositors are given priority rights in the bank liquidation process; (c). Uncertain coverage of warranties; (d). Covert guarantees; (e). Explicitly stated limited warranty; (f). An expressly stated comprehensive warranty.

Broadly speaking, the guarantee can be carried out with an indirect guarantee system and a direct guarantee system. Indirect guarantees are carried out in the form of regulation and supervision of banking activities, such as: provisions for capital adequacy, fit and proper test for controlling shareholders and bank management as well as supervision applied to banks. The indirect guarantee system often results in reduced public confidence due to the lack of firm regulation regarding the status of their deposits if a bank is forced to have its business license revoked by the government or a bank is bankrupt and liquidated. This

system is often interpreted by the public as providing covert protection, because guarantees only appear when there is bankruptcy at the bank. Covert guarantees are never conceptually and formally structured. There are no arrangements regarding membership, obligations that must be fulfilled by banks, the level of guarantee provided or the form of reimbursement that will be applied. Naturally, covert guarantees create uncertainty about how the fate of depositors and their funding will depend on government policies and the ability to access public funds (Financial Stability Forum, "Guidance for Developing Effective Deposit Insurance System", Basel: September 2001, page 8).

Another form of guarantee system for depositors is the direct guarantee system which can be in the form of a joint fund scheme, deposit insurance and blanket guarantee. The pooling fund scheme is carried out by a buffer fund institution. The buffer fund aims to support a sound banking system and increase public confidence in banking. In addition, buffer funds function to protect the interests of customers.

The direct guarantee system produces many benefits, although there are also many disadvantages, such as: the emergence of setbacks in market discipline (moral hazard). For this reason, effective supervision and regulation is an important element of the financial safety net in controlling moral hazard. Empirically this is supported by research conducted by Demirguc-Kunt and Detragiarche (between 1980-1997) with a sample of 61 developing and developed countries. His findings show that the absence of a prudential regulation system and effective supervision can increase the banking crisis, especially with the existence of a customer guarantee system such as insurance schemes such as deposit insurance schemes (For details see Asli Demirguc-Kunt and Enrica Detragiache, "Does Deposit Insurance Increase Banking System Stability", IMF Working Paper (WP/00/3, January 2000).

Supervision and regulation are important instruments to pressure banks to take risks. If this is not carried out properly, it can threaten the stability of the financial system as a whole. So a deposit protection system such as deposit insurance that is equipped with effective regulation and supervision can reduce systemic risk, although it cannot eliminate it completely (Glenn Hoggarth and Farouk Soussa, "Crisis Management, Lender of Last Resort and the Changing Nature of the Banking Industry", in Richard A. Brealey, et.al., "Financial Stability and Central Bank A Global Perspective", (London: Routledge , 2001), p. 168). The implementation of a deposit guarantee scheme can be more successful if the banking system has been running well. The presence of an effective deposit insurance can contribute to the stability of a country's financial system, especially if the existing system is part of a well-designed safety net. In addition, deposit insurance must also be applied consistently, and can be well understood by the wider community.

The main purpose of the customer deposit guarantee system is to provide direct guarantees to depositors. Direct guarantees are carried out by developing a system that functions to provide guarantees in the form of guarantees for customer funds when the bank's business license is revoked and liquidated. The guarantee can be in the form of a limited warranty or a full guarantee. Direct protection with limited guarantees that are commonly used are deposit insurance schemes, both schemes managed by the government as practiced in the United States, and those managed by the private sector as in Germany. Full direct protection is generally carried out in times of crisis as is practiced in crisis-affected Asian countries, including Indonesia.

The establishment of the Deposit Insurance Corporation was basically carried out as an effort to provide protection against two risks, namely irrational run against banks and systemic risk. In running a business, banks usually only leave a small part of the deposits they receive in case there is a withdrawal of funds by the customer. Meanwhile, the lion's share of existing deposits is allocated as credit. This situation causes banks to be unable to meet requests in large quantities immediately for customer deposits they manage, in the event of sudden and large withdrawals. Limitations in the provision of cash funds, because the bank can not immediately withdraw the loan that has been disbursed.

If the bank is unable to fulfill the deposit withdrawal request by its customer under these circumstances, the customer usually panics and will close his account at the bank, even though the bank is actually healthy. For this reason, the existence of being a deposit is important in order to prevent customer panic by convincing customers about the safety of their deposits, even though the bank's financial condition is deteriorating.

The second risk is the threat of systemic risk. This is because the bankruptcy of one bank can have dire consequences for another bank, thus destroying the largest segment of the banking system. In this connection, the deposit guarantor can function to regulate the security and soundness of the bank in general. Another function of deposit insurance is as a supervisor which is carried out by monitoring balance sheets, lending practices and investment strategies with a view to seeing signs of financial distress that lead to bank bankruptcy (Anna Kuzmik Walker, "Harmessing the Free Market: Reinsurance Models for FDIC Deposit Insurance Pricing", Harvard Journal of Law and Public Policy, (Summer 1995), p. 737).

The important role of deposit insurance such as deposit insurance is based on several considerations: (Sutalaksana, December 1993, p. 11).

a. In the economic growth of a country, the role of a stable financial sector is very important and the core of financial sector stability is the stability of the domestic banking system. The important role of the banking sector can be seen in the aspect of the payment system that allows trade transactions to occur. In addition, the bank collects funds more efficiently and henceforth distributed to the public. On the other hand, public funds stored in banks will determine the existence and profits of a bank.

b. To prevent the erosion of public confidence in banks which can result in a rush which can certainly endanger the individual bank and the banking system as a whole.

In the era of globalization with advances in information technology and computers, it has resulted in a global market in the financial sector. In the global market, funds are free to move from one country to another. If the owner of the funds lacks confidence in the national banking system, he can invest his funds abroad (capital flight) which can result in the loss or reduction of the productive power of a country.

Judging from the experience of the United States, the establishment of deposit insurance has succeeded in achieving the main goal of banking reform for at least a century, namely to prevent banking panics (Milton Friedman & A. Schwart, "A Monetary History of the United States", 1867-1960, (Princeton: Princeton University Press 1993) p. 440. See also Oscar Cerda et.al., "The Financial Safety Net, Cost, Benefits, and Implications", which states, "The federal deposit insurance program is the clearly most recognized component of the financial safety net and has helped sustain the general public's confidence in the banking system. Since its inception in 1933 it has deterred liquidity panics, forestalled bank

runs, and avoided instability in the economy", Chicago Fed Letter, (Chicago, Nov. 2001) p.2).

With the existence of a deposit guarantee, the announcement of negative information about a particular bank, for example, has no effect on other banks so that it does not cause general chaos because the market has been able to distinguish the financial problems experienced by certain companies and their consequences for the individual (bank and the banking industry as a whole (See Jonathan R. Miller & Elizabeth H. Garret, "Market Discipline by Depositors: A Summary of the Theoretical and Emperical Arguments", Yale Journal on Regulation, (Winter 1988).

The existence of deposit insurance is also an effort to facilitate the settlement of troubled banks, for example due to the revocation of a bank's business license. So that the impact of declining customer confidence which in turn can lead to bank panic can be prevented as soon as possible (The importance of the immediate settlement of problem banks is based on the reason that banks that are in a state of insolvency and if allowed to continue operating have the opportunity to carry out high-risk activities with the aim of obtaining large profits. Actions like this can result in even greater losses for depositors and other bank creditors). The basic reason for the government's participation in providing protection to bank customers is due to the view that the role of banking is so important. Often the government also intervenes to overcome the banking crisis. The intervention was carried out with the aim of: (1) Maintaining the integrity of the credit mechanism; (2) Maintaining the integrity of the payment system; (3) Maintaining financial stability; (4) Maintaining economic stability; and (5) Creating an efficient banking system structure (Edward J. Frydl and Marc Quintyn, "The Benefits and Costs of Interventing in the Banking Crisis", IMF Working Paper, (WP/00/147, August 2000) pp.7-8).

However, any formation of a deposit insurance can create a moral hazard, so it must be done properly and carefully. In short, a deposit insurance is something that is necessary but not sufficient in solving banking problems.

d. Scheme of the Deposit Protection System in the United States, Thailand and Germany

Several methods are widely used by the Deposit Insurance Corporation (LPS) in the world, in resolving bank bankruptcy, or managing troubled banks to restore the bank, including: (a) Liquidation and payment of customer deposits; (b) Purchase-and-asumption transactions (P&A); (c) Open-bank financial assistance.

The first method, namely the liquidation and payment of customer deposits or often called the paybox system, is to pay the depositors' bills after the bank's business license is revoked. This system has no responsibility for supervision and regulation or the authority to intervene. This paybox system, requires sufficient authority to make payments immediately. This system also requires access to customer information and adequate funding.

The second method is the Purchase-and-Asumption transaction (P & A) method, which is a risk minimize method. In carrying out this method, the deposit guarantor must have relatively wider authority. These powers include: the authority to grant and revoke membership licenses, the authority to assess and manage risk and the authority to conduct or request bank checks. This system can provide financial assistance in solving problem banks. This system is also authorized to issue regulations and carry out settlement activities for troubled banks. With this method, the deposit guarantor transfers the ownership of the troubled bank to a healthy bank or a newly established bank. The bank receiving the

ownership purchases the non-performing bank deposits and assumes responsibility for all of its obligations (except for subordinated loans). The Deposit Insurance Corporation will then restore the troubled assets. The third method is open bank financial assistance, which is a method of providing financial assistance to troubled banks to revive the bank.

United States Model

The United States uses a direct protection system through a deposit insurance scheme administered by the Federal Deposit Insurance Corporation (FDIC), an institution that replaces funds deposited by customers in liquidated banks. This system was put in place as a response to the banking crisis that hit the country in the 1930s. The FDIC was established with the objectives of: (1) Stopping a deeper contraction in the banking system; (2) Re-activating lending by banks; and (3) Protecting small banks. FDIC provides guarantees to depositors, so that bank panics can be prevented, and can stop the domino effect that at that time hit US banking. In the United States, the implementation of the deposit insurance scheme has basically succeeded in reducing the number of bankrupt banks. Every bank customer deposit up to USD 100,000 must be insured by the FDIC.
The FDIC was established with the Banking Act of 1933 in response to the widespread three-year bank failure in the United States. At that time the people of the United States who were worried about their savings in the bank, withdrew their funds to be deposited in the form of cash (hoarding). In the decade 1930 to 1932 about 5,100 banks went bankrupt. Many banks went bankrupt, resulting in losses for depositors, shareholders and the business world. This phenomenon is called banking panic (R.William Keeton, “Deposit Insurance and the Deregulation of Deposit Rates”, Federated Reserve of Kansas City, Economic Review, (April 1984), p.4). FDIC has an important role in the form of its ability to overcome banking panics, namely preventing "bank raids" (bank run) by providing confidence and guarantees to depositors of funds, that their deposits will definitely return.

Thai Model

Thailand took a different step from the steps taken by the United States in rescuing the banking system, namely by providing assistance to troubled banks through pooling funds (The disaster fund scheme (Pooling Funds / Common Funds) is a concept based on the existence of Standing Funds in which the minimum amount of funds is attempted to be a certain percentage of the total third party bank funds. These funds come from participating banks in the form of special or non-permanent contributions. Mandatory contributions are mandatory contributions paid by participating banks periodically, the amount of which is a certain percentage of the total bank third party funds. See Marulak Pardede, “Perspective on Legal Protection of Customer Funds in Banks”, in the Journal of Business Law, (Vol.11, 2000) p. 53). At the end of 1983, to provide liquidity assistance to troubled banks and securities companies, the Government and members of the Thai Bankers Association (TBA) established a “liquidity fund” of 5 billion Bath. The funds are used to help financial institutions in trouble and are managed jointly by representatives of TBA, the Ministry of Finance and the Bank Of Thailand (BOT). TBA uses market interest rates for the loans it receives and also uses market interest rates for users of these funds. Borrowers at this institution get waivers of up to three years and can be rolled-over (R. Barry Johnston, “Distressed Financial Institution in Thailand: Structural Weaknesses, Support, Operations, and Economic Consequences”, in V. Sundararajan and Thomas

JTBallino (ed) Banking Crisis: Cases and Issues, (Washington DC: IMF 1998), Case. 265-266).

In April 1984, when the public's loss of trust in financial institutions became more serious, the Ministry of Finance initiated a "lifeboat" scheme as additional assistance to liquidity funds. Based on this scheme, any non-performing financial institution can become a member and the scheme offers three types of assistance, First, a credit line by charging market interest rates, without a period of time and is used to pay customers who withdraw their deposits. Second, providing an injection of capital through investment. Third, soft loans from BOT for a period of five years with an interest rate of 0.1 - 2.5%. Then in 1985, the Financial Institutions Development Fund (FIDF) was formed. FIDF was formed within the Bank of Thailand as a separate legal entity, with the aim of refining troubled financial institutions and strengthening financial system stability. FIDF has its own Board of Directors which is separate from the Board of Directors of the Bank of Thailand. However, its operations are carried out by Bank of Thailand personnel (Carl-Jaohan Lindgren, et al, "Financial Sector Crisis and Restructuring Lessons from Asia", (Washington DC: IMF, 1999) p. 94).

FIDF has the authority to invest in short-term securities, place deposits with financial institutions, provide loans to financial institutions with collateral, purchase assets and own shares of financial institutions and provide financial assistance to depositors of a collapsed financial institution. . FIDF funding sources come from mandatory contributions from financial institutions and participation from the Bank of Thailand. Each financial institution is required to provide a contribution of the amount determined by the Fund Management Committee with cabinet approval of a maximum of 0.5% of the total deposits, debts, and funds received by the institution for a year (Section 29 Quinque, Bank of Thailand Act. B.E. 2485).

FIDF was formed to overcome the financial crisis that hit Thailand due to the economic recession in the early 1980s, in which 57 financial institutions experienced severe financial difficulties. Thailand made 3 (three) amendments to the Law, namely: the Bank of Thailand Act, Commercial Banking Act and the Act on The Undertaking of Finance Business, Security Business and Credit Focier Business. Through this amendment, the FIDF was formed (Wichai Hirunwong, "Deposit Protection System In Thailand", paper presented at the Asean Conference on Deposit Protection System", (Denpasar Bali, 16 December 1993), p. 1-5). During the crisis in the 80s, known as the "King of Crisis", the Thai Government has proposed to establish a deposit insurance. However, due to political changes that occurred, the government finally withdrew the proposal from parliament (Wichai Hirunwong, "Deposit Protection System In Thailand", paper presented at the Asean Conference on Deposit Protection System", (Denpasar Bali, 16 December 1993), p. 1).

Assistance provided by FIDF to troubled banks through financial and non-financial assistance, among others: management assistance, supervision and inspection, providing operational advice, replacing the board of directors, revocation of licenses and liquidation. Financial assistance is carried out through, first, bail out by placing funds in financial institutions, providing funds and injecting capital. Second, purchase and assumption by taking over bad debts from non-performing financial institutions for liquidation and providing funds to cover obligations to depositors. Third, pay-off by providing financial

assistance to depositors from a liquidated bank. After the financial crisis that hit Southeast Asian countries in mid-1997, forced the Thai government to provide a blanket guarantee.

German Model

Deposit insurance for private banks was established by the German Bank Association to offset the competitive advantage of saving banks owned by the government. The saving bank group has several regional deposit insurance schemes and national compensation schemes. Although saving bank depositors are protected by institutional explicit guarantees from government ownership, saving banks are also forced to establish a deposit insurance scheme to offset the competitive disadvantage of private banks. As with saving banks, cooperative bank groups also have regional and national insurance schemes. Savings bank and cooperative schemes do not directly guarantee savings but guarantee institutions (The three bank groups have auditing institutions and work closely with the Federal Supervisory Office and the Bundesbank (central bank). Bundesbank is prohibited by law from acting as a lender of last resort for deposit insurance schemes. In the case of a systemic crisis, a political solution will be found without this being predicted. The three schemes are voluntary and funded by premiums charged to participating banks. Ibid).

Deposit insurance membership is voluntary but mandatory for all members of the German Bank Association, unless they have joined another insurance scheme. Although membership is voluntary, non-member banks face major obstacles. The Federal Supervisory Office is required, under Section 32(3) of the Banking Act, to consult with the association before granting permission to a bank to participate in an insurance scheme. The Bank Association has a consultative role in the licensing process and has the authority to provide recommendations on whether or not to grant a permit for a bank. Banks that are not yet members of insurance must notify that the bank is not a member of deposit insurance in the General Terms and Conditions, as well as in the announcements displayed on the bank's wall and the application form for opening an account.

All non-bank deposits are guaranteed a maximum of 30% of the capital obligations of problematic institutions. With the minimum capital under the Banking Law is 5 million euros, the maximum guaranteed is 1.5 million euros, or about 50 times the German per capita income. With a commercial bank's total equity of 295.5 million Euros, the guarantee coverage limit is 90 million Euros. With such a high limit, the coverage is almost able to cover all participants in the guarantee provided to domestic and foreign customers in the form of their home currency. Skim also includes national and international domestic branch offices. Meanwhile, what are not covered are interbank bond payment accounts and insider accounts. Thus, although the coverage of the guarantee is very broad, there is no guarantee from the government for depositors or banks in the event of a crisis.

Coverage under the German model is the highest in the world, both in absolute terms and when compared to savings on a per capita basis. The average guarantee coverage limit is three times per capita across explicit schemes. Likewise with the other two deposit insurances that apply in Germany, the scheme that applies to private banks is financed by the member banks and the mix is based on ex-ante and ex-post. Members must pay a premium of 0.03% of obligations to creditors originating from the banking business every year. This premium can be doubled or nil depending on the condition of the adequacy of funds of each bank. There may also be a premium of up to 100% of the regular premium in the event that the bank does not have sufficient funds. Regarding membership

requirements, banks that have been paying for 20 (twenty) years and are classified as category A (low risk) can be excluded from the obligation to pay premiums. Banks that are qualified as high risk (B or C) are required to pay an additional premium of 250% of the regular premium.

The Bundesbank, Germany's central bank, is prohibited by law from functioning as a lender of last resort for deposit insurance institutions. However, it has become an agreement that if private bank deposit insurance lacks funds to pay obligations to depositors, when a seismic crisis occurs or a number of banks go bankrupt, the central bank can provide assistance. Worldwide, only 10 (ten) countries have unfunded deposit insurance on an ex-ante basis, mostly from Europe. Most countries are financed at least from premiums paid by members, but most receive additional funding from the government or may be funded by the government in times of crisis.

This customer guarantee institution is managed by a commission which is a representative of 10 (ten) banks, reporting to the General Council of the Association. All groups of commercial banks are represented on the commission. Ideally 4 representatives from large banks, 3 representatives from private banks, and 3 from regional banks of foreign cooperatives and other banks. Institutions are flexible in terms of providing assistance to troubled banks. The guarantor agency can pay through the bank itself. Guarantee institutions can also issue guarantees or take over the obligations of troubled banks.

Table 1: Deposit Guarantee System Scheme (Deposit Protection System)

No	Country	Premium	Guarantee Limit
1	Indonesia	0.1 % (one thousandth)	Rp.2,000,000,000, - (two billion rupiah)
2	United States of America	Max Insurance Coverage is: US $ 5.000 (1934) US $ 10.000 (1950) US $ 15.000 (1966) US $ 20.000 (1969) US $ 100.000 (now)	The FDIC allows banks to cease their business activities and pay all deposits insured by the FDIC.
3	Thailand	Maximum 0.5% of total savings.	blanket guarantee) -1997.
4	German	0.03% of the liability.	All non-bank deposits are guaranteed a maximum of 30% of the capital obligation of problematic institutions. Minimum banking capital 5 million Euros, maximum guaranteed 1.5 million Euros (50x German per capita income). With a commercial bank's Equity amounting to 295.5 million Euros, the guarantee coverage limit is 90 million Euros.

(Source: Catarina Manurung, 2022, Dissertation: Reformulation of Regulations on the Amount of Bank Customer Deposits Guaranteed by LPS Based on the Principles of Justice and Legal Certainty, pp. 320-322)

Conclusion

The banking business is a trust business. Article 37 B of Law Number 10 of 1998 stipulates that banks are required to guarantee public deposits. To guarantee public savings, it is necessary to establish a Deposit Insurance Corporation (LPS) in the form of an Indonesian legal entity. In its journey, the mandate of Article 37 B is implemented by law, namely the Law of the Republic of Indonesia Number 24 of 2004 concerning the Deposit Insurance Corporation (hereinafter referred to as the IDIC Law). Several methods are widely used by the Deposit Insurance Corporation (LPS) in the world, in resolving bank bankruptcy, or managing troubled banks to restore the bank, including: (a) Liquidation and payment of customer deposits; (b) Purchase-and-asumption transactions (P&A); (c) Open-bank financial assistance. For the state of Indonesia, it is necessary to create a customer deposit guarantee system scheme (Deposit Protection System) that fulfills a sense of justice for all banking customers.

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A BIBLIOMETRIC REVIEW OF CHATBOTS IN THE CONTEXT OF CUSTOMER SUPPORT

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Abstract: *With the birth of new technologies and their progressive incorporation into everyday life, human beings have managed to perform tasks much more efficiently that previously required a large number of personnel and time. Nowadays, these tasks, which could be a significant added burden for companies, are considerably reduced thanks to technology and Artificial Intelligence (AI). It is clear that technological globalization is present on a daily basis and is increasingly incorporated progressively in almost all known sectors. These rapid technological advances have allowed the development of various tools that facilitate some of the tasks of different companies, one of which is the Chatbots. This article identifies the important issues on which scholars have focused, and so can serve as a reference for the future research and discussions of chatbots. The first goal we set was to understand what a chatbot is and how they work. The second objective was to know their characteristics, advantages and disadvantages.*
Keywords: *chatbot, bibliometrics analysis, Scopus, VOSviewer, customer service, conversational agents,*

INTRODUCTION

This paper presents the results of a study combining bibliometric analysis and extensive literature review with the aim of discussing about chatbots, about their relationship with artificial intelligence (AI) and how chatbots emerged in client-supplier interaction. The paper focuses on two main objectives of the study, namely: (1) to understand what the chatbots are and how they work, and (2) to shed a light on chatbots' characteristics and the benefits they bring. It can be said that Chatbots, in the first instance, need a human to enter a series of commands and values on which the machine can start working. From there and after a lot of programming work, "Technological Independence" is achieved, that is, the machine is able to understand, process and evolve with the new information that arrives. This part is essential and will act as a separating filter between a good and a bad AI. Therefore, creating chatbots for companies can involve various problems. The first and most widespread is the lack of knowledge of the process of creation and implementation of this tool. Then, if benefits are obtained with this project and if it compensates to replace human labor. While it is true that AI replaces part of the work that a human would do, a person is needed to "teach" it during its creation so that in the future they can work in an automated way.

A variety of terms are used to refer to these applications such as *chatterbots*, virtual assistants, virtual agents, intelligent agents, conversational bots, conversational interfaces or web-bots. Chatbot technology integrates a language model and computational algorithms to emulate informal chat communication between a human user and a computer

using natural language. Users can chat via text or voice input on the computer or mobile device screen with the text or audio/voice output of the chatbot (Wang & Petrina, 2013). "ChatBots" are computer programs that, through the use of a series of algorithms (which are applied by making software), obtaining a series of data and, sometimes, using Artificial Intelligence, are able to simulate human conversations and solve the doubts of users. *"Chatbot* is a program that has the ability to hold a conversation with humans using *Natural Language Processing."* (Abdul-Kader & John, 2015). Currently, *chatbots* are one of the most promising technologies, as many companies are making use of them in *customer support*.

A chatbot is defined as an intelligent software program that communicates with its user in natural language through chat and can be used for commercial purposes (Milan Van Eeuwen, 2017). In addition, another of the authors defines it as a computer program that imitates human conversation in its natural format, including text or spoken language, using artificial intelligence techniques such as "Natural Language Processing" (NLP). In recent years, Chatbots have become considerably popular due to their dominance and immediacy when it comes to answering users' questions and doubts, in addition to their total daily availability 365 days a year. This makes the user experience increasingly promising, and therefore the application of this software in turn is more demanded by companies to improve their marketing strategy and customer service.

Objectives and methodology

The objectives of this study are as follows:

- Understand what a chatbot is and how they work.
- Know their characteristics**,** the benefits they bring.

We performed a literature review combined with a bibliometric analysis. Bibliometrics emerged a few decades ago to statistically measure the scholarly publications in terms of their extrinsic aspects. Those analyses earlier helped libraries to manage their collections and subscriptions. According to Beck and Manuel (2008) bibliometrics "is one of the oldest research methods in library and information science," and this field of study is now on fast track with the advent of sophisticated computer technology and tools. Wilson (2012) says that "bibliometrics can also be referred to as informetrics, webometrics, scientometrics, and cybermetrics. The different terms basically reflect the types of information to which the analysis is applied." Therefore, these terms, with slightest changes in context or purpose, could represent the same connotation to analyse the metrics of scholarly communications.

First, we searched and collected the articles to be analyzed, which should represent the field of *virtual assistants* in *relational marketing*. The second stage of the metod concerns several bibliometric analyses to map the field and identify its most important themes. The search we performed in November 2022, returned 479 articles. Filtering this initial data set out, English articles, excluding several subject areas (Mathematics, Physics and Astronomy, Energy, Arts and Humanities, Medicine, Environmental Science, Materials Science, Earth and Planetary Sciences, Agricultural and Biological Sciences, Pharmacology, Toxicology and Pharmaceutics, Chemical Engineering), and excluding duplicates, we finally retrieved 318 articles. These articles ranged from 2011 (1 article) to

2022 (84 articles, available in November). The articles were analysed using the VOS Viewer software (van Eck & Waltman, 2010), developed and offered by Leiden University. Scopus database was used for our bibliometric analyses. Using the AND operator, we combined the search string for *chatbot* ("virtual agent*" OR chatterbox* OR "virtual agent*" OR chatbot* OR chatterbot* OR chatterbox*) with that for *relational marketing* ("relationship marketing" OR "relational marketing" OR "customer satisfaction" OR "customer experience" OR "customer care" OR "customer service") in the title, abstract and keywords.

Results

Bibliometric studies have a range of applications at present. Mabrouk (2015) says that bibliometrics would help bring insights of publication practices, identify influential papers, authors and journals in a domain, and to locate potential collaborators. According to Hoffman and Doucette (2012), citation analysis is a simple methodology that utilizes readily available bibliographic data of references. By doing so researcher is able to understand publication trends within a given discipline, and measure the accuracy of citation indexes.

Table below shows that the article with the most citations is Xu et al.'s (2017), which studies "A new chatbot for customer service on social media".

Table 1. Top 20 highly cited Chatbot papers

Authors	Year	Title	Citations
Xu A.; Liu Z.; Guo Y.; Sinha V.; Akkiraju R.	2017	A new chatbot for customer service on social media	256
Chung M.; Ko E.; Joung H.; Kim S.J.	2020	Chatbot e-service and customer satisfaction regarding luxury brands	197
Hoyer W.D.; Kroschke M.; Schmitt B.; Kraume K.; Shankar V.	2020	Transforming the Customer Experience Through New Technologies	139
Ashfaq M.; Yun J.; Yu S.; Loureiro S.M.C.	2020	I, Chatbot: Modeling the determinants of users' satisfaction and continuance intention of AI-powered service agents	126
Adam M.; Wessel M.; Benlian A.	2021	AI-based chatbots in customer service and their effects on user compliance	122
Ranoliya B.R.; Raghuwanshi N.; Singh S.	2017	Chatbot for university related FAQs	120
Sheehan B.; Jin H.S.; Gottlieb U.	2020	Customer service chatbots: Anthropomorphism and adoption	101
Nuruzzaman M.; Hussain O.K.	2018	A Survey on Chatbot Implementation in Customer Service Industry through Deep Neural Networks	83
Przegalinska A.; Ciechanowski L.; Stroz A.; Gloor P.; Mazurek G.	2019	In bot we trust: A new methodology of chatbot performance measures	79
Canhoto A.I.; Clear F.	2020	Artificial intelligence and machine learning as business tools: A framework for diagnosing value destruction potential	77
Trivedi J.	2019	Examining the Customer Experience of Using Banking Chatbots and Its Impact on Brand Love: The Moderating Role of Perceived Risk	75

Rese A.; Ganster L.; Baier D.	2020	Chatbots in retailers' customer communication: How to measure their acceptance?	69
Hu T.; Xu A.; Liu Z.; You Q.; Guo Y.; Sinha V.; Luo J.; Akkiraju R.	2018	Touch your heart: A tone-aware chatbot for customer care on social media	67
Io H.N.; Lee C.B.	2017	Even good bo ts fight: The case of Wikipedia	61
Tsvetkova M.; García-Gavilanes R.; Floridi L.; Yasseri T.	2018	Chatbots and conversational agents: A bibliometric analysis	61
Nordheim C.B.; Følstad A.; Bjørkli C.A.	2019	An Initial Model of Trust in Chatbots for Customer Service - Findings from a Questionnaire Study	58
Gnewuch U.; Morana S.; Adam M.T.P.; Maedche A.	2018	Faster is not always better: Understanding the effect of dynamic response delays in human-chatbot interaction	55
Thomas N.T.	2016	An e-business chatbot using AIML and LSA	55
Gnewuch U.; Morana S.; Maedche A.	2018	Towards Designing Cooperative and Social Conversational Agents for Customer Service	48
Schuetzler R.M.; Grimes G.M.; Scott Giboney J.	2020	The impact of chatbot conversational skill on engagement and perceived humanness	42

The networks between authors who published articles were visualized and analysed using VOSviewer as shown in figure below. A co-citation network is formed when two articles (nodes) are cited together by another document, forming a link (Van Eck and Waltman, 2020).

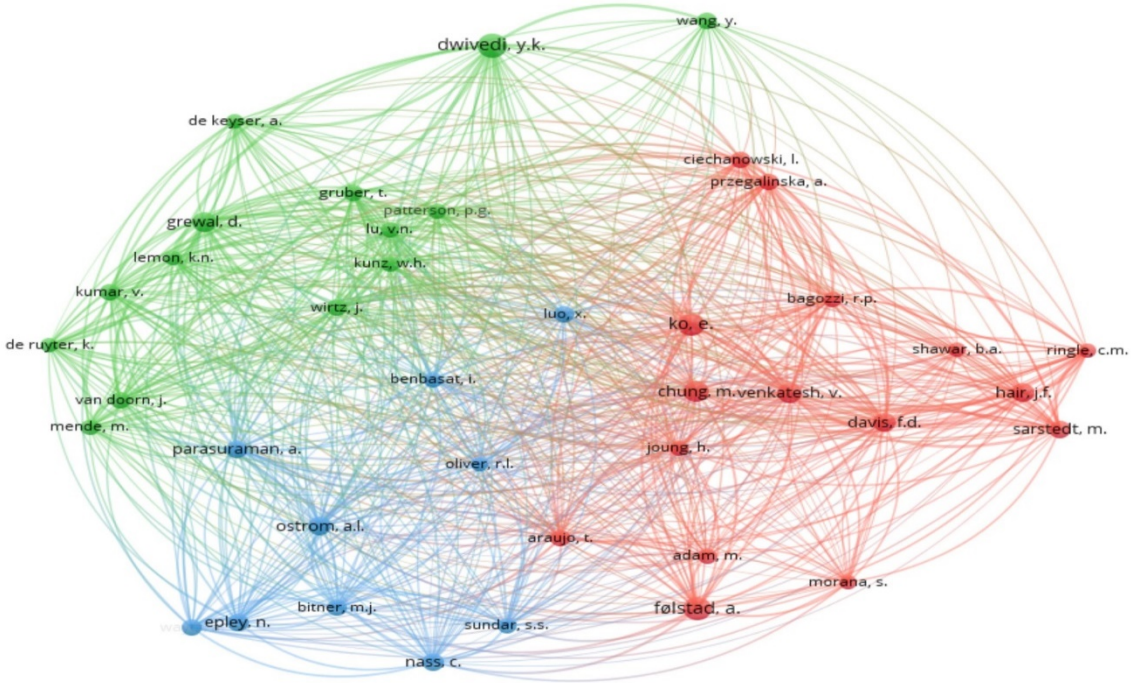

Figure 1. Visualization of Author Collaboration

Figure 1 portrays the links between authors who collaborated with other contributors. Meanwhile, various sizes of bubbles in the visualization show the strength of authors in terms of the number of publications during the study period. Weaker contributions are not displayed in the normal view.

Chatbots and Artificial Intelligence

Currently, artificial intelligence (AI) is one of the most important components used by companies in developed countries and that, little by little, is permeating the structures of developing countries. The first ideas about AI appeared during the second half of the twentieth century when, from science fiction, it was believed that in the near future there would be anthropomorphic robots that could perform all the activities performed by humans. The reality is that today the situation is somewhat divergent from what was thought in those years. For example, robots that have been designed and thrive on AI can far exceed the capabilities of humans in technical matters such as mathematics or chess; however, they are limited to specific and monotonous activities (Lu, Li, Chen, Kim and Serikawa, 2018). For context, it's important to talk about what artificial intelligence means. This is defined differently in different contexts, so it is valuable to conceptualize it in terms of marketing. One of the recent descriptions we have, defines it as a collection of advanced technologies that allows machines to feel, understand, act and learn (Daugherty et al., 2018), and as a sophisticated application of technology by which a machine demonstrates human cognitive functions such as learning, analysis and problem solving (Valin, 2018). In addition, it is important to mention that, according to many experts, the use of computerized machinery to emulate capabilities that were once unique to humans is expected to have an even greater impact on business than social networks.

At present, AI does not have a single and accepted definition, since, being a complex, new and changing science, providing an exact definition of it is almost impossible (Pascual, 2019). This science covers a wide range of fields of research in which you can find various definitions of authors brought to their branch of study. Within the realm of computing, the concept of AI was proposed by McCarthy, Minsky, Rochester and Shannon in 1955; This referred to the imitation of human activities by a certain computer system; however, one of the debates that have existed since the concept was proposed is whether or not AI has the ability to exceed the capabilities of human beings, which calls into question this first approach. Another definition considers AI to be "the ability of a system to interpret external data, learn from it, and use it flexibly to achieve a specific goal" (Kaplan and Haenelin, 2018: 3).

Thus, according to these definitions, artificial intelligence can be conceptualized in the context of marketing as a technology capable of learning to feel, learn, analyze, act and solve problems with equal or greater capacity than that of a human. Consequently, it's important to ask whether artificial intelligence can replace human expertise to generate valuable marketing insights and trigger actions by learning from what it's doing. Norbert Wirth (2018), says that this is already happening in areas such as online targeting. It's no wonder we see these solutions growing rapidly in the digital ecosystem because these decisions are made at such scale and speed that a human would simply be lost. Nowadays the definitions that can be found on the internet or in dictionaries about AI focus on what is a science or technology based on the computing and computerization of machines or

robots, which follow algorithms to imitate human intelligence. As an example, we point out the definition proposed by the Oxford Living Dictionary that defines Artificial Intelligence as "The theory and development of computer systems capable of performing tasks that normally require human intelligence, such as visual perception, speech recognition, decision making and translation between languages".

In short, Artificial Intelligence is a science not yet completely defined, as well as new and changing, based on the ability that machines can have to imitate and reflect human actions and behaviors, obtaining from them their own "intelligence" to carry out these actions. This intelligence has to be fed constantly, since being a very variable technology, it needs to learn and renew itself constantly. According to Borges (2019), AI is based on calculation processes such as Big Data, which consists of a base that manages to have enormous amounts of data for processing, Data Models, which are structures to process, select and analyze in an intelligent way the data received, and Processing Power, which is the operational and logistical capability for processing information quickly and efficiently.

Where do chatbots come from? The historical evolution of chatbots

Alan Turing, considered the father and pioneer of AI, achieved that today it has gone so far thanks to his theories and discoveries, being today a reference in history and practice. Thanks to its contribution to human knowledge, the development of technology has grown to the point that machines are able to work on their own, being able to be "intelligent" indeed. AI, and specifically Chat Bots, were developed in the wake of his 1950 paper "Computer Machine and Intelligence," in which Turing began by asking a question: "Can machines think?" From this question came **"The Imitation Game"**: The game consisted of the participation of three people: A man (A), a woman (B) and an interrogator (C). The interrogator is in a separate room and his role is to guess who is the man and who is the woman. "A" will try to trick you into thinking it's "B," and "B" will help you. The purpose of this game was to change to "A" for a machine and see if the interrogator was able to differentiate the person from the machine. This game is known as the "Turing Test", whose objective was to see if a machine could be considered intelligent or not (Turing, 1950).

Since then, the Turing Test has been considered the precursor of the creation of the commonly called "Chatbots" today. This test has been used for decades to examine the ability of these chatbots to use AI and maintain a conversation as human and real as possible and thus not be able to be distinguished as machines. It was not until 2014 that a Chatbot passed this test. The idea of what is known today as a "Chatbot" was born at the Massachusetts Institute of Technology (MIT), where many other related projects also emerged. Turing's work inspired many other researchers on the subject, such as the German computer scientist Joseph Weizenbaum, belonging to MIT, who created what is considered today the first Chatbot, ELIZA, in 1966. Weizenbaum (1966) defined it as "a program that makes natural language conversation possible with a computer". Its aim was to "demonstrate that communication between man and machine is superficial".

The operation of ELIZA was based on the recognition of keywords associated with an internal record. She acted as a psychotherapist, with the aim of following guidelines based on these keywords, so that it seems that she is listening to the interlocutor. This chatbot responded in relation to the messages proposed by the user using their own words

in the form of a question. When some word did not enter his register, he tried to resume the conversation with a generic response (Weizenbaum, 1966).

The five fundamental technical problems that ELIZA had, according to Weizenbaum (1966) were: "The identification of key words, the discovery of a minimal context, the choice of appropriate transformations, the generation of adequate responses or the ability to react to the absence of critical words." In January 1973, computer pioneer Vint Cerf decided to have the two famous chatbots, ELIZA and PARRY, establish a conversation using ARPANET, as a demonstration of their "intelligence" at the International Conference on Informatics (Garber, 2014). The creation of these two chatbots was a remarkable fact in history, which drove the creation and growth of Chatbots until today. In 1988 the term Artificial Intelligence is used for the first time in the domain of Chatbots with the construction of Jabberwacky in 1988, by the programmer Rollo Carpenter (Artificial Solutions, 2020). In 1989 Chatterbot appears, a virtual player of the video game TINYMUD capable of having conversations through chat with the rest of the real players of the game, answer their questions, explore the worlds, etc. This bot gained a lot of fame in TINYMUD, because many players assumed that it was also a real person playing (Mauldin, 1994).

Due to the rise of chatbots and the progression of conversational compounds, in1990 the Loebner Prize for Hugh Loebner was established, which consists of using the Turing Test format where judges have conversations with Chatbots in order to check which chatbot most resembles a human (Artificial Solutions, 2020). In 1991 Dr. Sbaitso was created, a Chatbot whose role is "psychologist". This bot differed from the others in the ability to use AI a digital voice to communicate with users (Artificial Solutions, 2020).

In 1995 Richard Wallace developed "Artificial Linguistic Internet Computer Entity" (**A.L.I.C.E**.), inspired by the ELIZA Chatbot. ALICE is a Chatbot that makes use of the NPL, and in addition to the Artificial Intelligence Mark-up Language (AIML), so it became a much more advanced agent than its predecessor, gaining much success, in addition to the Loebner prize in the years 2000, 2001 and 2004 (Abushawar et al. 2015).
In 1997 Clippy was born by Microsoft. It was the first Windows chatbot, whose objective was to provide help to users using the Microsoft Office tool (Watters, 2016).
During the new century, new technologies and the use of Artificial Intelligence grew, so it also affected the growth and development of Chatbots.

In 2001, Smarterchild was born, a chatbot found on MSN and AOL instant messaging networks, and provided information on movie schedules, sports scores, stock prices, news and the time it obtained from the databases to which it had access. This represented a significant advance in human-robot interaction and the intelligence that the latter could acquire (Shawar et al., 2007). In 2005 was born what is known as the successor of ALICE, Mitsuku, created by Steve Worswick from AIML technology and winner of the Loebner Prize in 2013, 2016, 2017, 2018 and 2019 (Artificial Solutions, 2020).

Chatbots had a new boom after their development in what is known as personal virtual assistants of intelligent voice, incorporated into mobile devices, computers and smart speakers. This type of Chatbot, also known as Voicebot, has contact with the user through the use of voice, taking care of tasks such as monitoring automatic home devices, calendars and personal emails, facilitated searches, etc. The most famous are: Apple's Siri, IBM Watson, Google Assistant, Microsoft's Cortana, and Amazon's Alexa (Adamopoulou et al. 2020).

Siri, created in 2008, is a virtual assistant of a technology company that emerged from SRI International, and was bought by the Apple company in 2011 to use it in its new iPhone 4S mobile device. It makes use of the NPL to answer questions and perform actions within the phone delegated by the user such as phone calls, messages, opening and closing applications etc. (Natale, 2021).

Watson was developed in 2011 by IBM with the aim of beating the world champion of the popular contest Jeopardy!. It is a computer system that analyzes questions and content in natural language quickly and concisely. His performance in this program was the beginning of a research task based on decades of experience inDeep Content analysis, NLP, information retrieval (Information Retrieval), Machine Learning and AI (IBM, n.d.).

Google Now was developed in 2012 with the aim of providing information taking into account the user's location, the time it was requested and their preferences within the Google Search mobile application. **Google Assistant**, developed in 2016, was its successor. It has a superior Artificial Intelligence, offering information to users predicting their needs. However, it has no personality and its questions may violate the user's privacy, as it is directly linked to itsGoogle account (Adamopoulou et al. 2020).

Cortana, developed by Microsoft in 2014 with the ability to recognize voice commands, answer questions, find requested information, send emails and messages, create reminders and the... The same year, Amazon developed **Alexa**, a built-in Voicebot for home automation and entertainment devices (Adamopoulou et al. 2020). Alexa, beyond performing similar actions to its competitors such as making calls, opening applications, sending messages, creating reminders and others, also performs everyday tasks inside the home instead of its user, such as turning on and off the Smart TV, changing the channel, putting and removing music from any device smart, turn lights off and on, electronics, etc. Although this feature is only useful if the house is equipped with smart electronic devices that have this function linked with Alexa.

2016 was a culminating year for the history of chatbots. This year was when Chatbots were developed to be carried out on social media platforms for the promotion and growth of brands. Facebook launched its messaging platform (Facebook Messenger), in which it was introduced the use of bots to interact with users within the social network, managing to become leaders in Chatbot programs and exceeding 300,000 active Chatbots on its platform in 2018 (Artificial Solutions, 2020). In addition, Vicent (2016) relates that in 2016 the famous Tay Chatbot was born, created by Microsoft for the social network Twitter. It is a Chatbot with the ability to learn natural language that simulates being a teenager within the social network to interact with young people. Not even 24 hours have passed since it was launched when the Chatbot began to use racist, xenophobic, sexist behavior. thus publishing tweets against Mexicans, Jews, praising Hitler and Trump, supporting genocide, etc. This is because the Artificial Intelligence of this Chatbot consisted of learning and repeating the tweets that people were sending it, thus acquiring an unfiltered knowledge that caused a great stir and an early closure of the Twitter account of Tay by Microsoft (The Guardian, 2016).

In 2020, after the beginning of COVID-19 pandemic, Chatbots acquired even more prominence, since they have been fundamental sources of information and humanitarian aid necessary due to ignorance of the virus and everything that surrounded it. There have been thousands of Chatbots created all over the world with this objective, either to provide

information about the Coronavirus, its symptoms, clarify the doubts of the pandemic, the state of confinement, denying hoaxes of the disease, etc. These Chatbots have been developed for all kinds of instant messaging applications, such as Facebook Messenger, WhatsApp and Telegram.

The main advantages and disadvantages of using chatbots

The use of Chatbots in companies generates a multitude of benefits, since using these systems for customer service is not only a streamlining and improvement of time and type of response, but also customer satisfaction. Generally, following the article by Zumstein & Hundertmark (2017), the benefits that we can find when implementing a Chatbot in a company are:

Availability of customer service 24 hours a day, 7 days a week, plus a new way of direct customer contact. That is, companies through a Chatbot can contact the customer directly, and this answer the doubts or requests of users, even in non-business hours, quickly and efficiently.

This in turn provides a saving of money for the company, since the use of this assistant makes it require less hiring of personnel for customer service, since the use of a Chatbot requires an investment that is not necessarily high, depending on the type of Chatbot that is lame and the AI that is incorporated.

In addition, you also save with respect to response time to users compared to real agents, which in turn improves customer satisfaction and their user experience.

Chatbots can be incorporated into instant messaging applications, websites, social networks within what is the world of the Internet. In addition, more at the user level, those also known as virtual assistants are also in devices such as Smartphones, smart speakers such as Amazon's Alexa, or even in smart TVs or Smart TVs. So anyone with a smart device can make use of this technology and experience all its benefits.

On the other hand, following the previous article, Chatbots make it possible for the company to have access to the personal data of customers with whom conversations have been established, such as their profiles, interests and tastes. This data is stored in order to use it to improve the marketing of the company, which provides the opportunity to create highly personalized offers for those customers.

The literature also indicates chatbots' disadvantages. In their article "Adaptive *Behavior of Context-Dependent Chatbots*", Rodríguez, Merlino, & Fernández (2014) explain the main problems in the interpretation of the ways in which the context is related to the content of the conversation with a chatbot, emphasizing several disadvantages of chatbots, such as: resolution of referents; lexical ambiguity; ellipsis in linguistics; limitation of the answers to closed questions; Rigidity; Robotic tone; Impersonality.

However, according to the literature presented above we can conclude that chatbots are an **innovative tool** for today's businesses. The fact that the company uses one, either on its website or from a messaging application, makes it acquire more prestige, improving the image of the company's brand.

Conclusions

At this point we will recapitulate everything developed throughout the work and synthesize the main contributions made to demonstrate compliance with the objectives.

The first goal we set was to understand what a bot is, how they can be classified and how they work. With the information provided, we can conclude that bots are computer programs operating on the Internet, which are trained by a set of rules to act autonomously and offer a service. The truly important technological advances are those that are capable of changing the world More than five thousand years ago the human being made one of the most important inventions of all time, without a doubt the wheel was a before and after in the history of humanity, the invention of computers marked the beginning of the current era, machines that automatically are able to perform in just seconds calculations that would take humans years Just a couple of centuries ago to think of something like that was total madness, today it is something so common that it is impossible to conceive life without electronic devices.

The second objective was to analyze in detail the specific case of chatbots and know their characteristics. Today there are many people who think that the intelligence of computers will never be the intelligence of human beings, today the idea that a machine thinks for itself is crazy, but little by little it ceases to be so, for a technological advance to be carried out only a mind with the ability to imagine is necessary. To put it into reality, with such large companies making such big advances in the field of artificial intelligence, it's only a matter of time before machines think for themselves.

One of the biggest failures that artificial intelligence has is its way of communicating with human beings, it is easy to notice when you are talking to a machine and because of this we instinctively lose the ability to judge it objectively, human beings have always been characterized by fear of the unknown, by rejecting what they do not understand, and therefore the changes must be made in a more transparent way that they are noticed as little as possible, as in the invention of the touch screen, at first many thought it was a bad idea for the fact of leaving the buttons, but companies like Apple with their devices made the change in such a transparent way that it is something accepted worldwide.

The human being prefers what resembles him, that is why our project focuses on making the machine communicate more closely to the human being, that the difficulty to differentiate if you talk to a machine or a human is greater, is a way to globalize the use of artificial intelligence for more "Human" tasks. More sociative, artificial intelligence is widespread but for the most part it is only used for projects that the end user does not see, such as YouTube with its selection of recommended videos, but in other areas it is difficult to take this technology seriously, companies such as IBM have made efforts and advances worthy of study such as their artificial intelligence Watson, the largest technology companies know that the future of technology is in artificial intelligence, so projects like Cortana in Microsoft, or Siri in Apple, these virtual assistants have a gap in the market but do not go beyond the basic functions, and although their way of expressing themselves is already more similar to the natural language of human beings, They remain far from achieving a fluid versation.

These technologies that interact directly with humans are called Chatbot; Chatbots in their most widespread meaning are a Bot with the ability to communicate with humans

either in writing or by voice, when the chatbot can understand the human voice, it is also called a voice assistant.

In 2020, after the beginning of COVID-19 pandemic, Chatbots acquired even more prominence, since they have been fundamental sources of information and humanitarian aid necessary due to ignorance of the virus and everything that surrounded it. There have been thousands of Chatbots created all over the world with this objective, either to provide information about the Coronavirus, its symptoms, clarify the doubts of the pandemic, the state of confinement, denying hoaxes of the disease, etc. These Chatbots have been developed for all kinds of instant messaging applications, such as Facebook Messenger, WhatsApp and Telegram.

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IS INVESTMENT IN STOCKS A GOOD HEDGE AGAINST INFLATION IN SOUTH AFRICA?

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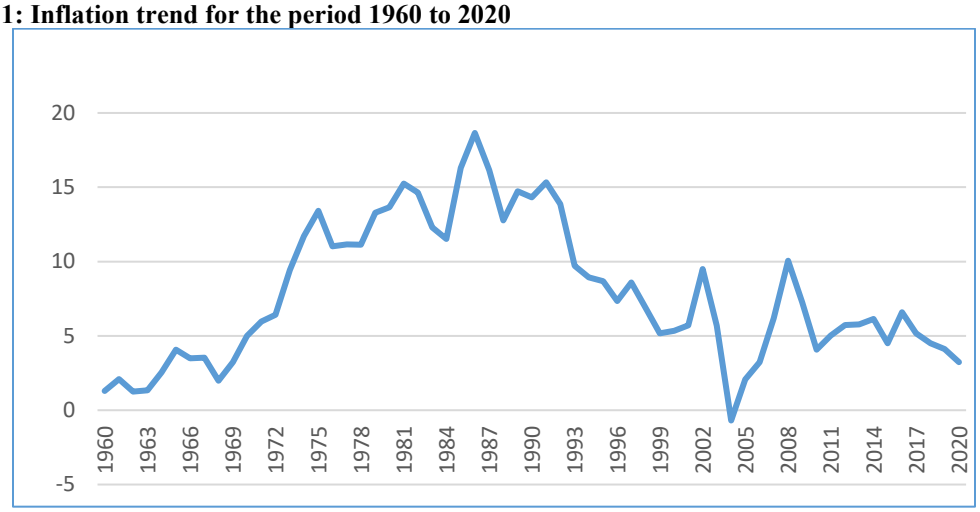
Abstract: *This paper examines the relationship between common stocks and price increases in South Africa. The study employed the ordinary least squares (OLS) and autoregressive integrated moving average (ARIMA) methods on monthly data covering the period January 2008 to January 2021. The empirical findings shows that the Fisher's hypothesis holds for the South African market because of the positive relationship between the two variables. Moreover, the overall index (stocks) have a favorable and statistically significant relationship with ex-post inflation. That is, the ex-post model shows that there is hedge against inflation in South Africa even when using the overall index. Similarly, the ex-ante model also depicts a relationship that is positive between the variables and that the overall index is indeed a good hedge against the expected inflation. That is why, overall, the favorable correlation between CPI and stock market returns shows that stock returns in South Africa were a good fence against price hikes.*
Keywords *Investment, Common stock, Inflation, hedge, Fisher's hypothesis.*

Introduction and background

Investment is described as putting out money with an objective of generating more from it by means of profit in the future period. Normally, people invest by putting money in an investment portfolio (Gaille, 2020). Despite the existence of various types of investment that one can invest in e.g., stocks bonds investment funds, options, annuities etc. This paper focuses on investing in common stocks because common stocks are shares in a cooperation that gives the holder the right to vote. One of the typical nature of any investor is that they consider a lot of things that may affect the investment's future payment. Inflation is one of the factors being taken into consideration.

Figure 1: Inflation trend for the period 1960 to 2020



Source: Author's compilation

Figure 1 shows the inflation trend in South Africa and reveals fluctuations in the variable. The figure shows that inflation was at its highest in the year 1986 where it was 18.65%, it was at its lowest in 2004 where -0.65% (negative). There were fluctuations of increases and decreases in the inflation rate. However, Inflation in South Africa has been relatively constant in recent years, ranging between 3.1 % and 6.3 %. However, after 2008 there was a fluctuation in the inflation rate where the rate has managed to stay in the target that was set in place by the Minister of Finance (Stats SA, 2000). Inflation targeting is a monetary policy in which central bank puts a specific inflation rate as its objective. Inflation targeting allows central banks to react to local economic shocks. The inflation target is set at 3-6 percent. Inflation in South Africa is affected by many factors, for example, a crisis arising because of low growth due to weak demand and an uncertain political future, among other factors. During the year 2020 inflation stood at 3.22. With all these fluctuations, the objective of this study is to establish whether or not investing in stocks hedge against inflation in South Africa.

The rest of the paper is organised as follows: the next section presents the literature review. Section 3 provides methods and data. Section 4 discusses the empirical analysis and results. Section 5 concludes the study.

Literature review

The theoretical literature review discussed the various theories such as the Fisher's hypothesis, Proxy theory, Tax effect hypothesis, Money illusion theory and the inflation hypothesis. The section also presents the various empirical studies, where different studies that have looked at similar topic and other related topics are analysed.

Theoretical literature

Fisher's hypothesis has proved a positive correlation between a general increase in prices and common stocks. Fisher's equation expresses the correlation that is between nominal interest rates and anticipated price increases. The equation asserts that the actual interest rates is equal to nominal rate of interest - projected inflation rate so, the real interest

rate drops as inflation rises, except if nominal rate increases the same way as inflation. Since the worth of shares is intrinsically based on underlying assets and capital investments, which should keep a fixed actual value regardless of price increases, the Fisher's hypothesis suggests that stock returns should fluctuate positively with inflation, making stocks an efficient shield against unanticipated price hikes (Moores-Pitt and Strydom, 2017). Till the middle of 1970s, it was widely considered that the Fisher's hypothesis held true, implying that variations in projected inflation rate must be directly correlated with changes in real returns on equities.

To the contrary, the proxy theory shows a negative relationship between the two factors. The hypothesis states that the negative relationship between increased prices and real activity induces the wrong unfavourable correlation between equity and price hikes. The theory was introduced by Fama in the 1980s, it is further explained by money demand and quantitative theory of money. Fama explained that unexpected inflation affect savings negatively and as a result decreased savings lead to a downward shift in demand for stocks (Kawawa, 2018). A fall in demand for stocks will lead to a decrease in stock prices. Fama's conclusion was that the correlation between future cash flows and stock returns determines how macroeconomic variables affect stock returns and price increases thus stock returns will be adversely affected by any variable that increases inflation.

Another theory was given for the correlation between price hikes and stocks is the inflation hypothesis by Geske and Roll (1984) the hypothesis also addresses the pessimistic correlation between the two variables. It was developed around the 1980s. The theory presumes that a decline in economic activities will address various issues with the traditional Big Bang theory, which states that the universe expands slowly throughout time and has a negative impact on stocks. The theory is further discussed and compared with Fisher's hypothesis to see the differences that makes the other show a positive relationship while the other views the correlation negative.

Tax effect hypothesis is also another theory that shows correlation between variables, it was also introduced in the 1980s by Feldstein. The hypothesis stated that business which recorded higher accounting earnings because of inflation are charged because the excess tax incurred lowers the real cash flows. He observed the United States market, because the value of depression and stocks, inflation has false capital gains. Since capital gains are exposed to tax in an inflationary position, businesses have higher tax liabilities. These liabilities that are caused by an increased tax reduce real after-tax earnings. This causes an investor to decrease common stock price to consider the results of price increases. (Kawawa, 2018). Price hikes cause a downfall in stock prices. This theory was analyzed in the US market, and it has not yet been proven if it holds in other countries. The connection between stock market returns and price increases was thoroughly examined in the literature. The proof is contradictory. There are findings that support the Fisher hypothesis, which states that there is a positive association between stock market returns.

Empirical literature

Muhammad and Faridul (2010) applied the ARDL methodology on the period 1997 till 2008. This was to examine the relationship between stocks and CPI in Pakistan. Specifically, the study looked at whether or not stocks can be a defense mechanism against inflation. The findings revealed that a rise in CPI tends to increase the profits of businesses after a while, actual return is not affected. Thus this study provided relevant and good

information on the behavior of the investors in the Pakistani market. These findings are similar to that of Ibraham and Agbaje (2013) who found a positive relationship between stocks and inflation in Nigeria. Therefore, the data for the period January 1997 to December 2010 suggests that common stocks are good hedge against price increases.

From a cross-countries' perspective, Alagidede and Panagiotidis (2010) investigate the relationship between stock markets and inflation in six African stock markets for the period 1990 to 2010. Using the monthly stock prices as well as consumer prices, the results showed a long-run relationship between the variables of interest in four countries except for Kenya and Tunisia. In particular, the Fisher elasticities of stock prices in terms of consumer prices are positive and statistically significant. Similarly, Bhatti and Pak (2013) conducted a Fisher hypothesis test on CSI countries-Kazakhstan, Ukraine and Russia, in relation to stock returns and inflation rates for the period 2001 - 2012. The findings revealed that the hypothesis is only valid for Kazakhstan. Moreover, both current and predicted inflation coefficients in Kazakhstan are statistically significant and greater than unity. However, there was no evidence of a long-run relationship amongst the variables. A predominant conclusion from this study was that CIS stock markets do not seem to be good hedges against inflation. The findings of the previous study partially support Syed, Zafar, and Muhammed (2012) study which looked at the relationship between the two variables among the SAARC countries for the period 1971 - 2008. The findings revealed mixed results with some countries showing a positive correlation while others had a negative correlation. The countries included in the study are namely, India, Pakistan, Bangladesh and Sri Lanka.

There are also studies on this subject matter that exist in the South African context. For instance, Eita (2012) examined CPI and stock market gains in South Africa for the period of 1980 till 2008. The study revealed a positive correlation between CPI and stock return meaning that stock prices increase when inflation increases. Furthermore, this study also showed equities are indeed hedge against increase in price given the positive association between the two variables. Similarly, Moores-Pitt and Strydom (2017) looked at the correlation between equities and price hikes in South Africa for the period 1980 – 2015. In the conclusion it was stated that indeed equities can be used as protection against inflation. However, different results were obtained in the study of Kawawa (2019) who found evidence of protection against inflation via investing in stocks from the individual sectors rather than the overall index. Moreover, the relationship that exist between the two variables is positive. Of course it is worth noting that there might be heterogeneous relationship across industry stocks. This conclusion was based on the data for the period 2000 – 2016.

It evident from the latest study of Kawawa (2019) that there is literature gap. For example, there is time gap of five years. Moreover, these studies utilized mostly similar methodologies. However, the most important gap is that of inconclusive results which calls for a renewed study on the subject matter.

Research methods and data

Analytical framework – ordinary least squares (OLS) and autoregressive integrated moving average (ARIMA)

In order to meet the set out objective, this study follows the method used by Hau (2017). Looking at the study, two empirical specifications have been estimated, thus the ex-post, which shows the correlation between real CPI and stock returns; it is estimated using basic Ordinary Least Square (OLS). Two empirical specifications that have been estimated, thus the ex-post, which shows the relationship between actual inflation and stock returns.

$$\boldsymbol{R_t} = \propto_{\boldsymbol{o}} + \boldsymbol{\omega_1 \pi_t} + \boldsymbol{\varepsilon_t} \qquad (1)$$

Where R represents stock returns, $\boldsymbol{\pi_t}$ represents inflation, $\boldsymbol{\omega}$ and $\propto$ are coefficients while $\boldsymbol{\varepsilon_t}$ is the error term.

The second model is the ex-ante, it is estimated using the autoregressive integrated moving average (ARIMA) model to have expected and unexpected CPI. The equation for the relationship is as follows:

$$\boldsymbol{R_t = \alpha_0 + \beta E_{t-1}(\pi_t) + yUE_{t-1}(\pi_t) + \mu_t} \quad (2)$$

Where R represents stock returns, $\boldsymbol{\mu_t}$ is an error term, $\boldsymbol{UE_{t-1}(\pi_t)}$ represent unexpected element of CPI given the data available at $\boldsymbol{t-1}$. Three cases for hedging potential can be checked:

- Asset is a complete hedge against expected inflation ($\boldsymbol{\beta = 1}$).
- Asset is a complete hedge against unexpected inflation ($\boldsymbol{y = 1}$).
- Asset is considered as a complete hedge against inflation ($\boldsymbol{\beta = y = 1}$).

Data

The JSE and Stats SA provided the monthly time series data. All share indices from 2008 January till 2021 January (monthly data), constructed and provided by the JSE and the inflation for the same period was obtained from Stats SA. L is added at the beginning of all the variables to show that they are in Log terms. LINF represents inflation in logged form and LSTI represents overall index data also in logged form.

Data analysis and findings

Ex-post model

It is important to determine the link between the actual inflation and overall stocks index to show if the stocks provide a complete hedge against inflation. The estimation is done using the ordinary least squares method.

Table 1: Regression results of stock returns on actual inflation (LSTI as the regressand)

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	**3.985257**	**0.234320**	**17.00778**	**0.0000**
LINF	**1.487643**	**0.052430**	**28.37400**	**0.0000**
R-squared	**0.839430**			
Adjusted R-squared	**0.838387**			
F-statistic	**805.0839**			
Prob(F-statistic)	**0.000000**			

Source: Author's compilation

Table 1 above shows the output estimations for stock returns on actual inflation. The results show a positive inflation coefficient that is 1.488.

$$\boldsymbol{LNSTI = 3.985 + 1.488LINF} \quad (3)$$

From the equation above, an addition of one percent to inflation causes a 1.488 % increase in stocks. This positive correlation between the two variables provides the evidence that supports Fisher's hypothesis and that there is complete hedging against inflation when suing the overall index. The findings supporting the Fisher hypothesis are similar to that of Eita (2012).

Ex-ante model

The ex-ante model shows the relationship between expected and unexpected inflation. On the figure below, the study looks at the coefficient of LINF and AR(1) this is from equation above that was specified (equation 3). The variable LINF is the expected inflation which is beta (β) while AR(1) is the unexpected inflation (y).

Table 2: Regression results of stock returns on expected and unexpected inflation (LSTI as a regressand)

Variable	Coefficient	Std. Error	t-Statistic	Prob.
C	5.200256	1.222272	4.254580	0.0000
LINF	1.216218	0.270059	4.503521	0.0000
AR(1)	0.938670	0.024906	37.68801	0.0000
SIGMASQ	0.002032	0.000182	11.18256	0.0000
R^2	0.979469	Durbin-Watson statistics		2.018889
Adjusted R-squared	0.979064			
F-statistic	2417.136			
Prob(F-statistic)	0.000000			
Inverted AR Roots	.94			

Source: Author's compilation

For overall index data, Table 2 illustrates the regression results for stock gains on expected and unexpected inflation rates. Expected and unexpected inflation affects the stock return positively. The table demonstrates that the coefficients of predicted inflation share a similar pattern with that of the actual inflation, that is, they both are positive, even though the actual inflation is slightly greater that the expected inflation this suggested that the stocks give protection against actual price increase than expected inflation.

$$\boldsymbol{LNSTI = 5.2 + 1.22LINF + 0.94AR(1)} \quad (4)$$

Equation 4 shows that a 1 % increase in inflation results in 1.22% rise in expected inflation and a 0.94% increase in unexpected inflation. The positive relationship between the variables also proves Fisher's theory. The support of the Fisher's hypothesis supports the findings by Kawawa (2019). According to the analysis above stocks are indeed a hedge against inflation in South Africa in the case of the expected inflation.

Conclusion

The study examines if investing in common stocks is a good hedge against CPI in South Africa. Some studies have seen a relationship that is favorable between CPI and stock prices while others have observed an unfavorable relation of the two variables. However most studies have managed to prove that fisher's hypothesis holds both in the short term and the long term. The analysis uses monthly data for the period January 2008 until January 2021. The empirical study shows that the overall index data (stocks) have a favorable relationship and statistically significant relationship with ex-post inflation. The ex-post model shows that there is hedge against inflation in South Africa even when using the overall index. Similarly, the ex-ante model also depicts a relationship that is positive between the variables and that the overall index is indeed a good hedge against the expected inflation. That is why, overall, the favorable correlation between CPI and stock market returns shows that stock returns in South Africa were a good fence against price hikes from 2008 up till 2021. The results of the study have implications that can help investors in making their decisions on where to plough their funds in the market of South Africa. However, the scope of the study was limited, the study could have been broadened to analyse the sector-by-sector relationship. This is to seek the connection between price hikes and the inventory market in order to determine if the hypothesis holds.

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AN INTEGRATED HUMAN RESOURCE MANAGEMENT MODEL FOR SELECTED PROVINCIAL LEGISLATURES OF SOUTH AFRICA

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Abstract: *An integrated human resource management is significant, especially in provincial legislatures serving the same constituency. As it significantly reduces competition, while increasing levels of motivation, engagement and satisfaction, and reducing the rate of turnover intention. The aim of the study was to design an integrated HRM model. This study employed the quantitative approach. A questionnaire was distributed to a sample of 108 respondents selected through a systematic sampling from two selected provincial legislatures (Limpopo and Mpumalanga) of South Africa with ninety questionnaires returned. Data was analysed using a Statistical Package for Social Sciences (SPSS) version 22 and AMOS 18. Findings for (H_1) and (H_2) revealed that there was a significant and positive relationship between the differential application of HRM policies and practices, and extrinsic motivation and intrinsic motivation with Path Coefficients output ($\beta = 0.520$, $P<0.05$) and ($\beta = 0.383$, $P<0.05$), respectively. Null hypotheses for both hypotheses not supported. The results for (H_3) and (H_4) indicated that the differential application of HRM policies and practices contribute significantly to turnover intention levels and to employee engagement with Path Coefficients output (β =-0.259, $P<0.05$) and (β = 0.438, $P<0.05$), respectively. Null hypotheses not supported. However, (H_5) on the differential application of HRM policies and practices makes no significant contribution to employee satisfaction levels produced a Path Coefficient output (β= 0.049, $P>0.05$), Null hypothesis supported. The results will enable management to find strategies in applying HRM policies and practices equally. The study contributed to academic literature in respect of the integration of HRM.*
Keywords: *Human resource management, engagement, motivation, satisfaction, turnover*

Introduction

Owing to provincial legislatures not having an integrated HRM model, each provincial legislature has its own HRM department. Currently, the situation is that each provincial legislature applies HRM policies and practices differently from the other provincial legislatures. The differential application of HRM policies and practices result in employees believing that employees in other provincial legislatures enjoy better benefits. This is as a result that each provincial legislature has its own HRM department, and the application of HRM policies and practices is not equal, nor the same (South African Legislative Sector, 2008). The differences in the application of HRM policies and practices makes it difficult for provincial legislatures to share skills (Parliament of RSA. Offices

Supporting Democracy, 2018; Scott, 2016). The HRM Forum at the time of writing this article had not produced a blue-print or a model on what shape it will take.

There is nevertheless little or no evidence suggesting that the legislatures share human capital resources between and amongst themselves (Parliament of RSA. Offices Supporting Democracy, 2018; Parliament of RSA. Report of the Portfolio Committee on Public Service and Administration, 2010). That is why, in most cases, provincial legislatures train their own employees in order to equip them with the required skills. Several problems arise, such as high levels of turnover and low levels of motivation (extrinsic and intrinsic), satisfaction and engagement, as employees are likely to be attracted by the benefits offered by another provincial legislature. In such contexts an integrated HRM model, which will result in the equal application of HRM policies and practices will aid these legislatures to improve levels of motivation (extrinsic and intrinsic), satisfaction and engagement and reduce turnover intention (Parliament of RSA. Offices Supporting Democracy, 2018; Scott, 2009).

The study was conceived as a result of lack or non-existent of such a model for provincial legislatures in South Africa. Again, there are no academic studies conducted in provincial legislatures focusing on the differential application of HRM policies and practices and their effects on employees. The paper seeks to address the gap in knowledge by designing an integrated HRM model for provincial legislatures to keep motivation (extrinsic and intrinsic), satisfaction and engagement at an acceptable level, while reducing the rate of turnover.

Research purpose and objectives

The main purpose of this study is to design an integrated HRM model for similar treatment of employees in provincial legislatures to keep motivation, engagement, satisfaction and turnover intention at an acceptable level, and to further determine whether there are any significant relationships between the differential application of HRM policies and practices and motivation (extrinsic and intrinsic), and whether any relationships exist between differential application of HRM policies and practices and variables such as turnover intention, satisfaction and engagement.

Literature review

Background to Human resource management

Human resource management is a concept that evolved from personnel management (PM) (Gomez-Mejia, Balkin & Cardy, 2012). This means that there is a close link between HRM and PM. The close link between the PM and HRM does exclude different interpretations. However, these concepts operate more or less the same (Gomez-Mejia et al., 2012). Irrespective of the differences in the interpretation, conceptualisation, origin and history of HRM, the academic fraternity has accepted the existence and the importance of HRM in the modern workplace (Antwi, Opoku, Seth & Margaret, 2016). It is for this reason that a number of academics, among others Christie (2010), Fitzgerald and Mills (2012) and Gomez-Mejia et al. (2012) have researched the concept of HRM extensively.

Human resource management definition

Human resource management is defined in many ways. It must be said though that irrespective of the non-existence of a universal definition of HRM, it does not mean that these various definitions are not accurate (Armstrong & Taylor, 2014; Kaufman, 2015; Noe & Hollenbeck, 2010; Price, 2011; Sharabi & Harpaz, 2010). The definitions of HRM provided here give the viewpoints of this concept from different approaches. Watson (2010:919) provides a comprehensive definition and defines HRM as "the managerial utilisation of the efforts, knowledge, capabilities and committed behaviours, which people contribute to an authoritatively coordinated human enterprise as a part of an employment exchange to carry out work tasks in way which enables the enterprise to continue into the future". In addition, according to Armstrong and Taylor (2014) HRM is a rational and planned approach to managing an organisation's most valuable asset, the employees, who are able to contribute individually and collectively to achieving the strategic objectives of the organisation.

In brief, the definitions emphasise the crucial role played by HRM in the success of an organisation and, therefore, it is imperative that HRM should be integrated with core business of an organisation. Given that its prime focus is on the organisation's greatest asset, its human capital, as alluded to in research by Levictus (2017), HRM is not operating in isolation, but as an important business partner and strategic tool in an organisation.

Legislative sector of South Africa

The provinces are autonomous, distinct and independent. Irrespective of their autonomy they are required to promote cooperation amongst themselves (Parliament of RSA. Research Section, 2017). It was for this reason that the South African Legislative Sector was established as the body to facilitate cooperation within the provincial legislatures in South Africa. This was as a result of the nine provincial legislatures coming together to establish various internal structures, one of which is the HRM Forum (Scott, 2016). The purpose of this forum is to facilitate cooperation amongst provincial legislatures (South African Legislative Sector Support, 2008).

The non-existence of a blue-print or model makes it difficult for provincial legislatures to have a formal HRM cooperation. To emphasise the importance of cooperation is that the functions performed at provincial legislatures require highly specialised skills, from the perspective of human resource capital. These specialised skills are scarce in the mainstream labour market owing to their legislative nature. The scarcity of these skills is also because institutions of higher learning do not include them specifically in their curricula (Parliament of RSA. Research Section, 2017; South African Legislative Sector, 2016).

These skills include but are not limited to the following: the procedural advisory services; simultaneous interpreting of debates in legislatures (in various languages); the production of Hansard (the word-by-word recordkeeping of debates in legislatures) and translation services in different languages. These skills also include the production of daily papers, such as order papers; the setting and production of question papers and recording of the Minutes of sittings of the Houses of Parliament (Parliament of RSA. Offices Supporting Democracy, 2018; Scott, 2016; South African Legislative Sector, 2008).

It is difficult, if not impossible, to find a suitable employee from outside a legislature who is capable of recording, transcribing, collating, editing and producing the bound volumes of Hansard. The only place to source any of these skills is another provincial legislature (Parliament of RSA. Language Services Section, Remuneration Task Team Report, 2012; South African Legislative Sector: Human Resource Development Strategic Framework, 2008; Parliament of RSA. Research Section, 2017). It is consequently important for HRM departments of provincial legislatures to be able to source these skills from other legislatures. (South African Legislative Sector: Human Resource Development Strategy Framework, 2008).

. In addition, provincial legislatures with fewer resources are unable to prioritise the training and development of employees. There are too many competing interests, such as ensuring that laws are processed, and public participation programmes are held. There is nevertheless no guarantee that trained employees in provincial legislatures will stay in the employ of that legislature. As employees are attracted by benefits offered by other provincial legislatures (South African Legislative Sector Support, 2009). This shows that there is inequality amongst the different provincial legislatures. The highlighted differences in the application of HRM policies do not augur well for the strengthening of employee and organisational capacity. One example of this is that each province has its own remuneration policy, namely total cost to company (TCOE), and salary plus benefits. That is the reason why it is often difficult to attract, develop, deploy and retain the best talents at some legislatures because of these differences in the application of HRM policies and practices (Parliament of RSA. Language Services Section, Remuneration Task Team Report, 2012). Evidence shows that employees who resign from one provincial legislature do not necessarily go to a different sector, they often move to another provincial legislature (South African Legislative Sector Support, 2009). Differences in treatment and the work environment influence their decision to leave the legislature that employs them. In addition, the lack of cooperation between provincial legislatures, results in employees being demotivated, because they tend to believe that the treatment of employees at other provincial legislatures is better, and that they have more or better benefits (Parliament of RSA. Report of the Portfolio Committee on Public Service and Administration, 2010). One reason is that when an employee resigns from a provincial legislature to join another legislature (Scott, 2016), in this context is that an employee will have interrupted his or her service, which automatically occurs because there is no structure in place for carrying over employment service from one provincial legislature to another.

This also includes capped leave, or the leave that is due to an employee, which has financial consequences as that leave days are equivalent to daily payment rates. Again, it may be possible to prevent this situation from arising if there is better cooperation amongst provincial legislatures (Parliament of RSA. Report of the Select Committee on Cooperative Governance and Traditional Affairs, 2011; Parliament of RSA. Offices Supporting Democracy, 2018; Scott, 2016). It is not only the interruption of services that negatively affects employees, but also the burden that an employee leaves behind as the functions that they had performed must be allocated to other employees until a replacement is found (Parliament of RSA. Research Section 2017; Scott 2009). It takes time to fill vacancies in provincial legislatures due to the lack of available specialised skills in the mainstream labour market.

It is therefore important to treat employees equally at provincial legislatures in order to bring stability to this sector (Parliament of RSA. Report of the Portfolio Committee on Public Service and Administration, 2010; Parliament of RSA. Report of the Select Committee on Co-operative Governance and Traditional Affairs, 2011). For the reason that employees are the most important assets of any organisation; therefore, their treatment should be equal (Okechukwu, 2017; Rožman, Treven & Čančer, 2017; Scott, 2016). The unequal treatment of employees most probably means that they will eventually leave the organisation (Blake, 2017). If the treatment of employees is equal, they will feel valued by the provincial legislatures. This may motivate employees to stay in this sector for longer (Scott, 2009).

Integrated HRM

One of the best way for organisations to leverage their competitiveness in the labour market is to have a HRM framework or model that integrated and applied equally across the organisation. Quite importantly is that HRM policies and practices are most effective in an organisation when they facilitate (Sattar, Ahmad & Hassan, 2015) the proper implementation of HRM policies and practices. One fundamental important is that for any organisation in leveraging its human capital cannot apply HRM policies and practices outside of its broader strategic objectives (Insight Consulting, 2012; Scott, 2009). Therefore, these warrants a need integrate HRM policies and practices, so that the entire system empowers employee motivation and other related variables.

Integrated HRM is significant, especially in situations where organisations serving the same constituency that competes for talent, in particular when their operations are intending to speak with one voice (Insight Consulting, 2012; Scott, 2009). Furthermore, there is much better coordination of organisational activities. Organisations serving the same constituency capitalise on integrated HRM for the benefit of all employees. Especially, those organisations that compete for talent, particularly when their operations are interlinked such as the legislatures (Insight Consulting, 2012; Scott, 2009). As a result of having an integrated HRM, there is much better coordination of organisational activities.

To maximize employee potential, there must be an integration of HRM processes with a view to achieving the common purpose, which is essential for effective communication as well as for awareness of and commitment to the above by all the parties (Sattar *et al*., 2015). An integrated departmental function allows the consistent application of HRM practices across the entire organisation (Mohammad, Miah, Rahman & Rahaman, 2017). According to Insight Consulting (2012), for HRM to be profit-orientated, to reduce costs and optimise processes, integration is important to proactively address the needs of employees. This will assist in ensuring that employees' potential is maximised. When HRM policies and practices are integrated, organisations are enabled to manage their human capital effectively (Sattar *et al*., 2015).

It is further affirmed that the HRM policies and practices such as recruitment and selection, compensation, performance appraisal and training, and development are positively related to productivity and organisational performance (Mohammad *et al*., 2017; Sattar *et al*., 2015). It must, however, be indicated that the effect of integrated HRM depends on how policies and practices are implemented (Mohammad *et al*., 2017; Nadarajah, Kadiresan, Kumar, Kamil & Yusoff, 2012; Sattar *et al*., 2015).

The implementation of integrated HRM policies and practices moreover contributes to a stable workforce and reduced turnover intention improves job satisfaction and organisational commitment levels (Amin, Ismail, Rasid & Selemani, 2014; Mbugua, Waiganjo & Njeru, 2015). It must be noted that integrated HRM policies and practices improve employees' job satisfaction (Pradhan, Dash & Jena, 2017). This view is supported by Nadarajah *et al*. (2012). It is always advisable that HRM policies and practices should be integrated further to reduce turnover intention levels and improve engagement levels (Blake, 2017).

Various researchers concur that integrated HRM policies and practices improve employee motivation, engagement, and satisfaction and in turn fill them with the desire to be more energetic, committed and to hold onto their jobs (Amin *et al*., 2014; Khan, 2010; Khan, Khan & Khan, 2017; Nadarajah *et al*., 2012). The main aim of this paper was to design an HRM model that will assist provincial legislature of South Africa to have a similar or common application of HRM to improve employee motivation (extrinsic and intrinsic), engagement, satisfaction and reducing turnover rate.

Employee motivation

Motivated employees are "happy" employees and for an employer a motivated employee presents a desirable or expected outcome (Nurun Nabi, Islam, Dip & Hossain, 2017). Motivation is also influenced by the application of HRM policies and practices in the workplace (Rožman *et al.,* 2017). That is why it is important for employers to understand employees through scientific research in the workplace on what motivates them to improve the performance of the organisation (Rožman *et al.,* 2017). Treating employees differently is not good for any organisation (Nurun Nabi *et al*., 2017). Treating employees differently will affect their workplace satisfaction and motivation negatively (Nurun Nabi *et al*., 2017; Rožman *et al.*, 2017; Scott, 2016). That is why it is imperative that HRM departments should ensure that the treatment of employees is undertaken in accordance with acceptable norms and standards, and that there is transparency within the organisation.

Extrinsic motivation

Extrinsic motivation is defined as those external factors that develop an interest in employee to perform satisfactorily at work (Tymon, Stumpf & Doh, 2010). These external factors include rewards and benefits. Cao, Chen and Song (2013) posit that HR policies and practices in that focus on employee career planning, succession planning has the potential of building good employee relations. The significance of employee career planning is affirmed in Anwar, Waqas, Shakeel and Hassan (2018), that career development and training help to reduce employee turnover intention. Therefore, it is important as observed in Anwar *et al*. (2018) that successful organisations tend to develop policies and practices that are employee-friendly to make employees extrinsically motivated.

Intrinsic motivation

Intrinsic motivation is defined as the intention or the willingness to learn and acquire new knowledge for self-satisfaction (Cao *et al*., 2013; Khan *et al*., 2017). Therefore, it is evident that when employees are given opportunities and are willing to take such opportunities, they are likely to be intrinsically motivated. Organisations should

develop programmes are intended to develop self-development, such as career pathing and employee well-being programmes (Cao *et al*., 2013). According to Cao *et al*. (2013) there is a relationship between employee's personal goal achievement and the intention to stay in an organisation, especially when the organisation supports employee's goals. The support that the organisation provides to the employee to achieve personal goals plays an utmost important role in building a long-term relation with employees (Tymon *et al*., 2010).

Turnover intention

Employee turnover is the rate at which employees join and leave the organisation in a given period (Wynen, Van Dooren, Mattijs & Deschamps, 2019). Motivated employees are likely to stay in an organisation and, therefore, there is no denial of a relationship between the application of HRM policies, motivation, organisational performance, and employee turnover (Wen, Zhang, Wang & Tang, 2018). Every organisation faces the risks associated with employee turnover, and no organisation is immune to this phenomenon since employees leave organisations voluntarily or due to natural attrition (Yanchus, Periard & Osatuke, 2017). Employers should always strive to keep employees' level of motivation at an acceptable, to reduce turnover intention (Yanchus et al., 2017; Zhang, Meng, Yang & Liu, 2018).

Irrespective of the good financial status of the organisation, employee turnover is an important element for HRM professionals to consider. This allows them not only to focus on retaining their current workforce, but also on planning for the future through the implementation of a succession plan, which is forms an integral part of HRM functions (Wan, Li & Shang, 2018; Wen et al., 2018).

Employee engagement

Employee engagement is a core organisational driver for the success of organisations. High engagement levels within an organisation promote the retention of talent (Ahmed, Ahmad & Joarder, 2016). Accordingly, it is important that engagement should remain at an acceptable level (Zhang et al., 2018). The focus of employee engagement is more about employee attachment to the organisation, specifically the extent to which employees perform their tasks, whether they are performing as expected and are willing to "defend" the organisation's pride and brand. It is for this reason that employers must develop HRM programmes intended to improve engagement levels. Engaged employees are likely to manifest behaviours that display acceptable motivation and satisfaction levels (Pradhan et al., 2017; Wan et al., 2018).

Employee satisfaction

Satisfaction relates to the degree to which an individual is satisfied with their conditions of work, including the environmental set-up (Zhang *et al*., 2018). It is for this reason that any organisation intending to achieve its strategic objectives should keep its employees satisfied at an acceptable level (Rožman *et al*., 2017). When employees feel that they are treated differently to their counterparts, especially through the application of HRM policies, they are likely to be dissatisfied (Okechukwu, 2017). Employees who are not satisfied are likely to leave the organisation (Zhang *et al*., 2018). They often compare their current job with other available opportunities and evaluate the pros and cons of leaving

their current job when they are considering an alternative. According to Okechukwu (2017), the crucial task of the HRM department is to acquire the right human resources, develop their competencies and skills, motivate them for best performance and ensure their continued satisfaction and commitment to the organisation to achieve organisational objectives (Rožman *et al*., 2017).

RESEARCH METHODOLOGY AND DESIGN

Research approach

This paper follows a quantitative approach, wherein a questionnaire is utilised. This form of research focusses on gathering numerical data and generalising it across groups of people or explaining a particular phenomenon (Babbie, 2013). Descriptive studies are aimed at finding out "what is" and are designed to provide a bigger picture of a situation as it happens naturally (Babbie, 2013; Cooper & Schindler, 2011; Struwig & Stead, 2013).

Research participants

A population is the sum of all units of analysis from which the sample is drawn (Babbie, 2013). Population includes all the people or items that has specific characteristic the researcher intends understanding. This study is conducted in selected provincial legislatures of South Africa. The target population for the study is N=324 (Limpopo n=150 and Mpumalanga n=174), which include senior managers, middle management, supervisors, and junior employees. To select a sample a purposive sampling, non-probability sampling method is used. This type of sampling method relies on arranging the target population according to some ordered scheme, and then selecting elements at regular intervals through that ordered list (Hennink, Hutter & Bailey, 2011). The sample is 50 from Limpopo and 58 from Mpumalanga (n=108). However, 90 questionnaires are used, 13 questionnaires were not returned and 5 were not fully completed and were discarded. The response rate from the sample is 87%. Table 1 below reflects the demographic profile of respondents:

Table 1: Demographic profile of respondents

Dimension	Frequency	Valid percent
Province		
Limpopo	41	46
Mpumalanga	49	54
Gender		
Female	55	39
Male	35	61
Age		
21-30 years	37	41
31-40 years	28	31
41-50 years	16	18
51-60 years	8	9
61 years and above	1	1
Level of employment		
Junior employee	61	68
Senior employee/supervisor	17	19
Middle management	6	6

Senior management	6	7
Education		
Certificate/Higher Certificate	13	14
National Diploma	13	14
Degree	35	39
Honours/BTech/Postgraduate Diploma	16	18
Masters	11	12
PhD/DTech	2	3
Years of employment		
Below 1 year	9	10
1-5 years	36	40
6-10 years	29	32
11-15 years	8	9
16 years and above	8	9

Research instrument

A Likert scale is used in the questionnaire. Respondents chose between four options wherein a four-point rating scale is used. The scale for the application of HRM policies and practices; intrinsic and extrinsic motivation; turnover intention and employee engagement is set out as follows: 1=Strongly disagree; 2=Disagree; 3=Agree; 4=Strongly agree. However, for levels of satisfaction the scale is set out as follows: 1=Strongly dissatisfied; 2=Dissatisfied; 3=Satisfied; 4=Strongly satisfied. The reliability of constructs was undertaken by applying the Statistical Package for Social Sciences (SPSS version 22). The constructs met the adequate reliability level of above 0.6 (Fornell & Larcker, 1981). Analysis is conducted in two stages. Firstly, SPSS is used to determine the levels of constructs. Secondly, different indices output from AMOS 18 are used to determine the goodness-of-fit of the Structural Equation Model (SEM). Data analysis is through SPSS version 22, MS Excel and AMOS 18 output from the SEM with five hypothesised paths (Table 2 and Table 3). The standardised regression coefficients from the SEM is used to determine the relationships between variables and to support or not to support the hypotheses.

Table 2: Cronbach Alpha coefficients

Construct	Cronbach's Alpha	N of items
Human resource management policies and practices	0.8	21
Extrinsic motivation	0.7	7
Intrinsic motivation	0.7	7
Turnover intention	0.7	12
Satisfaction	0.9	20
Engagement	0.8	12

Table 3: Goodness-of-fit

Fit statistics	Recommended Limit	Obtained
X^2	-	3.70
Df	-	6
P value	p < = 0.05	0.81
Goodness-of-Fit Index (GFI)	>0.95	0.98
Adjusted Goodness-of- Fit Index (AGFI)	>0.95	0.95

Research procedure and ethical considerations

For the main purpose and hypotheses of this study, a questionnaire was used to collect data. According to Hennink, Hutter and Bailey (2011) deemed that a questionnaire is a simple yet effective research tool and is cost effective. Furthermore, a questionnaire guarantees respondents' confidentiality. A questionnaire and items used in this study are adapted from Agoi (2017); Armstrong and Taylor (2014); Gallup Organisation (2008) and Weiss, Davis & England, (1967). There were two contact persons one from each provincial legislature (Limpopo and Mpumalanga) to collect the questionnaires on behalf of the researcher. The researcher printed out the questionnaires and placed them into two sealed boxes and sent the questionnaires to the two legislatures.

Although the questionnaires were given to the respondents, contact persons were available to assist were respondents encountered challenges in filling the questionnaire. The contact in these provincial legislatures were taken through the questionnaire administering it, to prepare them to answer questions from the respondents. At legislatures, a box was placed for all respondents to access it, wherein respondents dropped in completed questionnaires. At least two weeks were given to respondents to complete the questionnaires. Those respondents who requested extension of submission were granted a one-week extension. After all questionnaires were returned the contact persons, sent the completed questionnaire through a registered post to the researcher. After all respondents submitted completed the questionnaires, the box was sealed and sent back to the researcher.

There was no respondents' personal information shared and as such, respect privacy and ensure confidentiality (De Vos, Strydom, Schulze & Patel, 2011). In addition, there were no ethical guidelines that were breached. Throughout the process of the study the researcher ensured that human dignity was always maintained without any infringements (De Vos et al., 2011). The Ethics Committee from Cape Peninsula University (CPUT) granted the researcher permission to continue with the study

Statistical analysis

There are two stages to analyses of data. First, reliability analysis was through the application of the SPSS version 22 to determine and evaluate the reliability and consistency of the items measured, and descriptive statistics. Secondly, AMOS 18 is used to evaluate the goodness-of-fit indices of the research proposed structural equation model with five hypothesised paths. In the second stage of data analysis, data is presented using the structural equation model with the help of standardised scores to support or not to support the null hypothesis recorded at the significant (p value > 0.05). Hypotheses results with a (p-value < 0.05) are considered not significant and as such, Null hypothesis not supported and hypotheses results with a (p value > 0.05) are considered significant, and as such Null hypotheses not supported.

Results

Descriptive results indicate that the sample represented 46% (n=50) and 54% (n=58) for the Limpopo and Mpumalanga Legislatures, respectively. As far as gender is concerned, the sample indicate that 61% (n=61) are female and 39% (n=39) are male. The mean of age group is 34.2 (SD=11.071). Years of service revealed that 41% (n=37) of respondents are between 1 and 5 years of service. Finally, most respondents 39% (n=39)

have higher education degrees. Table 4 indicate the results after testing the structural relationships of the variables in line with the hypotheses. There are five hypothesised paths.

Table 4: Standardised regression estimates of hypotheses tested

No	Hypotheses	Path Coefficients (β value)	Supported/not supported
(Ho1)	The differential application of human resource management policies and practices does not contribute significantly to employee extrinsic motivation levels.	(β = 0.520, P<0.05)	Null hypothesis not supported
(Ho2)	The differential application of human resource management policies and practices does not contribute significantly to employee intrinsic motivation levels.	(β = 0.383, P<0.05)	Null hypothesis not supported
(Ho3)	The differential application of human resource management policies and practices does not contribute significantly to turnover intention levels.	(β =-0.259, P<0.05)	Null hypothesis not supported
(Ho4)	The differential application of human resource management policies and practices makes no significant contribution to employee engagement levels.	(β = 0.438, P<0.05)	Null hypothesis not supported
(Ho5)	The differential application of human resource management policies and practices makes no significant contribution to employee satisfaction levels.	(β= 0.049, P>0.05)	Null hypothesis supported

Table 5: Unstandardised regression coefficients

Variable	Est.	S.E	C.R	P
Human Resource Management⟶Extrinsic Motivation	0.605	0.107	5.641	***
Human Resource Management⟶Intrinsic Motivation	0.206	0.053	3.916	***
Human Resource Management⟶Turnover Intention	-0.204	0.036	-5.633	***
Human Resource Management⟶Employee Engagement	0.425	0.094	4.493	***
Human Resource Management⟶Employee Satisfaction	0.213	0.096	2.220	0.026

Discussion

Outline of results

The purpose of the paper is to design an integrated HRM model for provincial legislatures of South Africa (Figure 1). In addition, there were five hypotheses. Findings of the results in Table 4, (Ho1) testing the differential application of HRM policies and practices does not contribute significantly to employee extrinsic motivation levels indicated a following Path Coefficient output (β = 0.520, P<0.05). Null hypothesis not supported. This means that when the value of one variable increases, so does the value of the other variable. The results are in line with the findings in Shoaib, Noor, Tirmizi & Bashir (2009) wherein, it was found that HRM practices such as compensations, rewards and benefits have a positive influence on employee extrinsic motivation. The results for (Ho2) testing the differential application of HRM policies and practices does not contribute significantly to employee intrinsic motivation levels produced a Path Coefficient output (β = 0.383, P<0.05), Null hypothesis not supported. This means that when the value of one variable decreases, the value of the other variable increases. This shows that the variables

work towards different or opposite directions. The results are in line with a study by Mathis and Jackson (2011) wherein it was found that HRM policies do motivate employees intrinsically, especially policies intended to develop individual employees. Therefore, it is important as the result indicate that HRM policies should be applied fairly.

The findings for (Ho3) testing the differential application of human resource management policies and practices does not contribute significantly to turnover intention levels indicated a Path Coefficient output of (β = -0.259, P<0.05). Therefore, Null hypothesis not supported. The phenomenon of employee turnover intention, as observed by the HRM Forum of the legislative sector, identified the differential treatment of employees in provincial legislatures as another factor contributing to turnover (South African Legislative Sector, 2009). The findings of this study are further articulated in Shahzad, Hussain, Bashir, Chishti and Nasir (2011) on employee turnover in the public sector in Pakistan, wherein it was found that employees are likely to leave the organisations when HRM practices such as career growth opportunities are not applied equally.

The findings for (Ho4) testing the differential application of human resource management policies and practices does not contribute significantly to employee engagement levels produced a Path Coefficient output of (β= 0.438, P<0.05). Thus, Null hypothesis not supported. The results are in line with a study of Cao, Chen & Song, 2013) concluded that human resource management policies and practices have an impact on employee engagement. Therefore, the application of human resource management policies and practices fairly, are likely to increase levels of employee engagement. The results mean that when the value of the differential application of human resource management policies and practices increases, so does the value of employee engagement. The results furthermore mean that these variables move together.

In addition, the findings for (Ho5) stating that the differential application of human resource management policies and practices makes no significant contribution to employee satisfaction levels produced a Path Coefficient output of (β= 0.049, P>0.05). Therefore, Null hypothesis supported. The findings are in support of studies by Ather, Khan & Hoque, (2011); Muhammad and Wajidi (2013); Okubanjo (2014) and Obasan (2011) that employee satisfaction or dissatisfaction can be attributed to various organisational factors, such as career opportunities, security, and only the application of policies. However, Tumwesigye (2010) highlighted that employee are likely to leave the organisation because it is generally posited that satisfaction is as closely related to the application of policies operational in organisations.

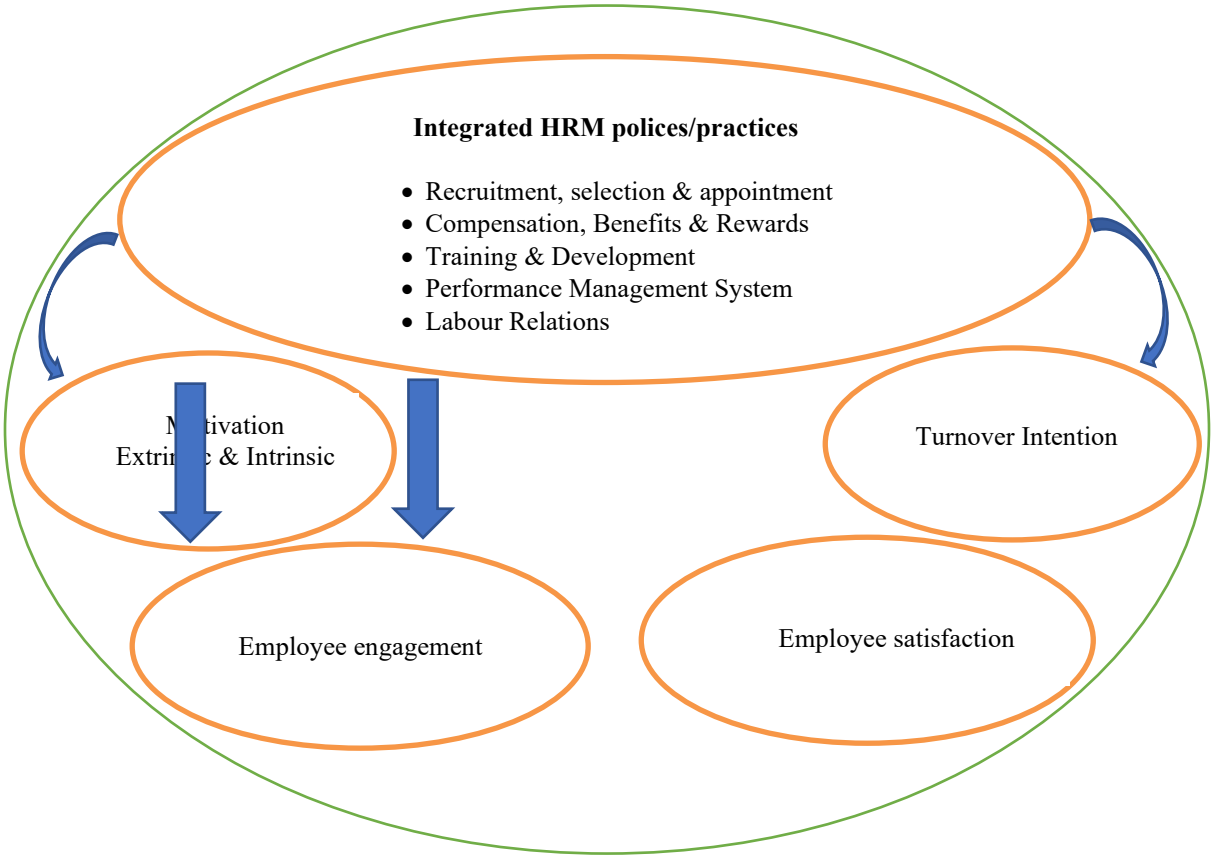
The findings in Table 5 indicates the unstandardised regression, which shows whether measured variables are significant or not (Hu & Bentler, 1990). The column with a P denotes the value of probability, linked the Null hypotheses. Hoyle (1995) proposed that the value of probability presumed that the test is 0 (zero). The results in Table 5 show that HRM and both extrinsic and intrinsic motivation, including turnover intention and engagement, are all statistically significant. This means that the differential application of HRM policies and practices does contribute to increases or decreases to levels of these variables. The results also indicate that the differential application of HRM does not contribute to satisfaction levels.

Figure 1 below represents the product as postulated in the purpose and objectives of the study. The results demonstrate that the differential application of HRM policies and practices a have an undesirable effect on employees. Therefore, this indicate that provincial

legislatures should harmonise HRM policies and practices across all provincial legislatures. This is supported, as shown by the relationships that exist between HRM and (motivation, engagement and turnover intention). However, employee satisfaction, might be seen as not being influenced by the differential application of HRM policies and practices in provincial legislatures. It is however an important variable that should not be ignored.

These HRM policies and practices can be developed in the short term and long-term purposes to allow proper planning, consultation with all the stakeholders and the activation of change management programmes. Finally, this article is concluded by proposing future studies that will be intended to determine the relationship between the differential application of HRM policies and practices in provincial legislatures, with variables such as organisational commitment. Below are the results of the study and proposed integrated human resource management model.

Figure 1: Integrated human resource management model



Practical implications

The findings of this study assist managers to have an insight as to the impact of human resource management on employees. This study probably serves as a first step to the managers at the selected provincial legislatures to implement an integrated HRM model. The managers are likely to consider HRM processes, procedures and their application. This study will inspire managers to appreciate the integration of HRM

functions across all provincial legislatures or apply and customise this model to their organisations.

Limitations and recommendations

This study focuses only the two selected provincial legislatures of the Republic of South Africa (Limpopo and Mpumalanga) and not any other sphere of government or organ of state. The research for this study more over focuses on the administrative component (senior managers, middle management, supervisors, and junior employees). This was a limitation in a sense that legislatures also have Members of Provincial Legislature (MPLs), who are important stakeholders. Members of Provincial Legislatures are not part of this study because they are public representatives of the people and not employees of provincial legislatures. Members of the administrative staff, employed by different political organisations in these provincial legislatures, did not form part of the study. In addition, only two provincial legislatures (Limpopo and Mpumalanga) formed part of the study. This was a limitation because other provincial legislatures did not respond in time and as time is of the essence. However, two provincial legislatures responded, hence, they are part of this study, and as such results can be inferred.

Conclusion

The results demonstrate that there is a significant relationship between HRM policies and practices and motivation (extrinsic and intrinsic), engagement and turnover intention. In addition, no established relationship between HRM policies and practices and employee satisfaction is found. Emanating from the findings of the study, it is important to note that for provincial legislatures to retain their employees, they should integrate HRM policies and practices by across all provincial legislatures. This, as demonstrated in the findings, improve levels of employee motivation, satisfaction, and engagement. The integrated and equal application of HRM policies is, moreover, anticipated to dispel the perception that employees at other provincial legislatures are treated better.

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Competing interests

The authors declare that they do not have any financial or personal interest that may compromise the publishing of the article or that may have inappropriately influenced them in writing and publishing this article.

Author's contribution

AJ Mokoena is the primary researcher of this paper, and this article forms part of the fulfilment of his Doctor of Technology research. He is solely responsible for

conceptualisation of the research, collection of data, analysis, and interpretation of data. In the process he was assisted by Prof Braam Rust who acted as a promoter of the research and subsequently to the compilation of this article. His role was more on guiding the process of writing the research paper and also with statistical procedures and reporting.

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Data availability statement

New data was collected and as such there are no previous studies that used the data in this paper. Data was made available as per the permission granted to conduct the study.

Disclaimer

The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of any affiliated agency of the authors.

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HOW DOES FINANCIAL MARKET STRESS RESPOND TO SHOCKS IN GLOBAL ECONOMIC ACTIVITY AND EXCHANGE RATE STABILITY? A STRUCTURAL VAR APPROACH

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Abstract: *The study examined the response financial market stress to innovations in global economic activity and the exchange rate in emerging economies and advanced economies during the period 2006Q1 and 2020Q4. This was achieved by means of time series econometric analysis. The impulse response function estimated through structural factorisation indicated that financial market stress responds positively towards its own innovations and innovations in global economic activity. In contrast, financial market stress responds negatively to a one standard deviation in the exchange rate at least in the long run albeit the response is neutral in the short run. The findings from the variance decomposition showed that in advanced market economies, a larger fraction of the discrepancies in financial market stress are explained by its own innovations followed by innovations in global economic activity whereas in emerging market economies, a larger proportion of the discrepancies in financial market stress are explained by its own innovations followed by innovations in the broad exchange rate. Given the findings, the study recommends strong coordination between monetary policy and fiscal policy to ensure that overall economic activity is optimized and maintained in the long run.*
Keywords: *financial stress; exchange rate stability; global economic activity; emerging markets*

Introduction

The financial sector is an important part of the economy and impacts on the lives of all citizens of a country. Individuals make use of financial services to conduct economic transactions, save and preserve wealth for future aspirations, retirement needs as well as unforeseen events. Financial services also contribute to economic growth, job creation, building of key infrastructure and sustainable development. Despite this, the financial sector also introduces risks to the economic system and hence it is a widely held view that financial markets should be well regulated and stable. Many definitions of financial stability exist in literature, however in this study we follow Gadanecz and Jayaram (2009) who define financial stability as "the absence of excessive volatility, stress or crises". Financial stability issues began to receive special focus after the global financial crisis of 2007-2008 due to their macroeconomic implications and cross boarder effects amongst other things. Global imbalances in saving and consumption between different parts of the world during the crises were characterised by large savings in emerging economies such as China flowing into industrialised economies such as the United States(US), United Kingdom(UK) and the Eurozone. The surplus of funds fuelled an unsustainable level of

debt-financed consumption in some advanced economies, coupled with rapid rises in asset prices. In emerging countries, financial stability problems are often not only connected to internal shocks, but also external shocks enhanced by the globalization impact (Golovnin & Oganesian, 2018). Exchange rate fluctuations influence price dynamics and determine the debt burden of borrowers as large amounts of debt in these emerging countries is denominated in foreign currency and foreign exchange assets constitute a large portion of domestic savings (Golovnin & Oganesian, 2018). The recent crisis has demonstrated that economies are interconnected, hence, vulnerabilities in the financial system of one country can easily spread across national borders. Promoting global economic stability was identified by the International Monetary Fund (IMF) as an essential remedy or way to prevent financial crises, large swings in economic activity, high inflation as well as a great volatility in financial markets. Global economic instability can increase uncertainty, discourage investment, impede economic growth, and hurt living standards (IMF, 2021).
Recognising the need for coordinated efforts to secure global financial and economic stability, many countries have committed to important obligations of preventing a similar crisis in the future. Policy makers and academics around the globe have become increasingly concerned with what causes financial instability as well as what could be done to prevent it. Regulatory reforms adopted by international policy makers over the past decade can be categorised into micro and macro prudential regulation. International reform of micro prudential regulation has focused on four key areas: capital, leverage, liquidity, and resolution, while macroprudential regulation focused on three areas namely: macroprudential capital buffers; stress-testing; and shadow banks (Haldane, Aikman, Kapadia, & Hinterschweiger, 2017). Against this backdrop, the study considers the nexus between global economic activity, exchange rates stability and financial stability in emerging markets and advanced economies. The study extends on existing literature which uses the financial stress index (FSI) to understand the channels of financial transmission.
Furthermore, the nexus between global economic activity, exchange rate stability and financial stability remains relatively underexplored in financial literature. Some studies in literature have focused more on the link between financial stability and other variables such as competition in the banking sector, financial sector regulation and supervision as well as monetary stability to mention a few (e.g., Nanna, 2002; Gale, 2004; Hesse and Cihak, 2007) rather than specifically on the link between the three variables. Another strand of literature focused on the link between financial stress and economic activity of individual countries such as United states (US), France, Germany (e.g., Royes, 2011; Aboura & van Roye, 2017; Ferrer, Jammazi, Bolos, & Benitez, 2018). To the best of our best knowledge, very little attention has been paid specifically to the effect of global economic activity and exchange rate stability on financial stability. This study contributes towards closing this gap in literature.

Literature review

Theoretical literature

In order to prevent the occurrence of financial instability, policy makers need to understand the underlying causes. As documented in Mishkin (1997), there are two major institutional differences between the financial markets of developed economies and emerging market economies which leads to different propagation mechanisms for financial

instability between the two different sets of countries. Firstly, in developed countries where inflation expectations are often low, debt contracts are for a long duration. Advanced economies often retain strong currencies and thus most debt contracts are denominated in domestic currency. In contrast, most emerging market economies have domestic currencies that experience substantial fluctuation in values and are thus riskier. Many of the debt contracts in emerging market economies are denominated in foreign currencies. Notwithstanding the above, the initial impetus for financial instability maybe the same for both developed and emerging market economies. Mishkin (1997) identified four factors that help initiate financial instability: (1) increase in interest rates, (2) increase in uncertainty, (3) asset market effects on balance sheet, (4) problems in the banking sector. When market interest rates increase to substantially high levels, there is a high probability that lenders may lend to bad credit risk (adverse selection), since it's only the borrowers with higher risk investments projects that are likely willing to borrow at higher interest rate. The increase in the chances of adverse selection may incentivize lenders to reduce the number of loans they provide, possibly leading to a decline in lending which will in turn have a negative effect on economic activity and investment. Financial markets behave in line with the optimism or pessimism of investors. Uncertainty in these markets can be as a result of recessions, political instability, stock market crush which potentially makes it difficult for a lender to identify good from bad credit risks. The increase in uncertainty may result in information asymmetry and worsen the adverse selection problem.

The strength of the balance sheet of both financial and nonfinancial institutions has an effect on the degree of the asymmetric information problem. The deterioration of these balance sheet worsens adverse selection, moral hazard problem and therefore may promote financial instability. Furthermore, banks have a very important role in financial markets since they are well-suited to engage in information-producing activities that facilitate productive investment for the economy. A decline in the ability of banks to engage in financial intermediation and make loans may lead directly to a decline in investment and economic activity. In addition to the above, emerging market economies face additional potential shock which increases the likelihood of financial instability. Institutions in emerging countries raise funds by issuing debt denominated in foreign currencies.

Empirical literature

This section discusses the empirical evidence on the effect global economic activity and exchange rate stability on financial stability/financial stress, discussing how exchange rate fluctuations and conditions in the global economy affect key variables in the financial sector. There is a dearth of literature on the nexus between global economic activity, exchange rate stability and financial stability. Existing studies have mostly focused on the relationship between financial stability and other variables such as banking sector competition, financial sector regulation, monetary stability and has been silent with regards to the link between global economic activity, exchange rate and financial stability.

Global economic activity and financial stability

As noted by the Bank for International Settlements (BIS) (2011), weaker macroeconomic conditions reduce the revenues and profits of businesses (including banks) and the incomes of households, which results in households' and businesses' net worth increasing more slowly or in some cases decreasing. In addition, weaker business revenues

and household incomes push up borrowers' default probabilities, which in turn weaken the position of banks' balance sheets. The strength of bank balance sheets is important because it influences their ability to extend credit, while the strength of the borrowers' balance sheets influences default rates, which in turn affects the strength of bank balance sheets (BIS, 2011). Balkrishna et al (2011) suggest that financial stress can be as a result of global factors such as changes in commodity prices, GDP growth and interest rates, as well as country specific factors such as the degree of openness and macroeconomic vulnerabilities. Similarly, Park and Mercado (2013) investigated the determinants of financial instability in emerging market economies. Using the FSI for a panel of 25 emerging countries, it is concluded that both global and domestic factors affect FSI. Higher global interest rates tend to increase domestic financial stress suggesting that the tightening of conditions in international credit markets can have adverse effects on domestic financial conditions in emerging market economy (Park & Mercado, 2013). Higher global GDP growth reduces domestic financial stress, suggesting that as global demand conditions improve financial stress declines. Sound domestic macroeconomic conditions also have mitigating effect on domestic financial stress. Furthermore, results of their study show that current account surplus, fiscal surplus, and higher foreign exchange reserves lower domestic financial stress. Among these domestic indicators, fiscal surplus was found to significantly lower domestic FSI across specifications, implying that fiscal space of the country or its ability to increase domestic spending during episodes of financial market turmoil plays an important role in lowering domestic financial stress (Park & Mercado, 2013).

Another strand of literature has focused on the effects of financial stress on real economic activity (manly output & inflation) of nations. Amongst these is a research paper by van Roye (2011) which looked at the effects of financial stress on economic activity in Germany and the Euro area. The study estimated a small Bayesian vector autoregressive (VAR) model and concludes that an increase in financial stress has an adverse effect on GPD growth. Results of the study revealed that 15% of the variation in GDP is attributable to financial stress in Germany while this number is slightly higher at 30% for the Euro area (Roye, 2011). In another study, Aboura and Roye (2017) examined the nexus between financial stress and economic activity in France. The authors employ 17 financial variables from different market segments and extracted common stress components by means of a dynamic approximate factor model. The model was estimated with a maximum likelihood and expectation-maximisation algorithm allowing for mixed frequencies and an arbitrary pattern of missing data. Using a Markov-Switching Bayesian VAR, the study shows that while high financial stress is strongly linked with low or subdued economic growth and activity, episodes of low financial stress have a negligible effect on economic dynamics (Aboura and Roye ,2017). Ferrer *et al* (2018) considered the interactions between financial stress and economic activity in the US. As measures of economic activity, the study employed growth rate of industrial production, real GDP growth rate, inflation rate, unemployment rate and 10-year treasury rates. A number of FSI indices were employed including the Kansas City Financial Stress Index (KCFSI) and St. Louis Financial Stress Index (STLFSI) and Cleveland Financial Stress Index (CFSI). Results of the study show an adverse effect of financial stress on economic activity since the onset of the subprime mortgage crisis in 2007. This shows that financial stress is more severe during periods of financial turmoil (Ferrer et al, 2018).

Exchange rate and financial stability

There is still a dearth of empirical studies on the effect of exchange rate stability on financial stability/stress. Some of the earliest literature around this area includes studies by McKinnon (1988) and Eichengreen (1997). The former considered the impact of monetary and exchange rate policies on financial stability while the latter focused on implications of international monetary arrangements for the stability of the banking system. A more recent attempt by Fornaro (2015) looked at the relationship between financial crises and exchange rate policy. The study achieves this by evaluating the performance of different exchange rate policies in sudden stop-prone economies. The key element of the analysis is a precautionary externality arising from frictions in international credit markets which creates a trade-off between price and financial stability. Results of the study show among other things a depreciation in exchange rate during financial crises has a positive impact on welfare because the stimulus provided by a depreciation sustains asset prices (Fornaro, 2015). On another study, Stoica and Ihnatov (2016) examined the link between exchange rate regimes and financial stability using annual data from a sample of 135 countries grouped by their level of economic development. Results of the study support the view that the flexibility of exchange rate regimes should be reduced in order to sustain financial stability. Golovnin and Oganesian (2018) studied the nexus between financial stability indicators and exchange rate in Russia. As financial stability indicators, study made use of non-performing loans for banking sector and stock market index dynamics for the stock market. Results of the study show that non-performing assets negatively depend on exchange rate while stock market index dynamics is determined by money supply, interest rates and exchange rates fluctuations.

Methodology

The study made use of quarterly time series data spanning from 2006Q1 to 2020Q4. The data was collected from reliable databases including the Federal Reserve Bank of Dallas, St Louis Federal Reserve and Office of Financial Research.

By following recent studies including Gersls and Hermanek (2007), Park and Mercado (2013), Stoica and Ihnatov (2016), Ferrer et al (2018), our empirical model can be expressed as:

$$y_t = \beta_0 + \beta_1 EXR_t + \beta_2 GEAI_t + \varepsilon_t$$

Where:

y_t is the dependant variable represented by the financial stress index. This includes the emerging markets financial stress index, advanced markets (Japan and European Union) financial stress index and the United States financial stress index.

EXR is the nominal broad exchange rate

$GEAI$ is the global economic activity index developed by Kilian (2009)

ε_t is the error correction term

The study employed a multiple regression analysis. Several pre-estimation tests were conducted prior to the regression analysis. This included descriptive analysis and unit root analysis. The variables were examined for unit root by means of the Augmented Dickey Fuller unit root test (Dickey & Fuller, 1979). The next step of analysis involved estimating the structural Vector autoregression model. The choice of technique was to account for structural breaks in the financial system. Three models were estimated, for

emerging market economies, advanced economies (Japan and European Union) and for the United States. This is primarily because the United States is not included in the financial stress index for advanced economies. The impulse response function and variance decomposition were later performed through structural factorisation to evaluate the response of the financial market stress to innovations in global economic activity and exchange rate stability. Given that econometric analysis is prone to errors, the estimated model was assessed for autocorrelation and heteroscedasticity.

Findings and discussions

This section documents findings from the econometric tests performed. This includes pre-estimation tests, cointegration, residual diagnostics and impulse response. The findings are discussed in line with recent empirical studies.

Descriptive Analysis

Our pre-estimation analysis included performing descriptive analysis. This was done to examine the individual characteristics of the variables of interest. The results are provided in table 1 below.

Table 1: Descriptive statistics

	AE FSI	EM FSI	US FSI	EXR AE	EXR EM	EXR US	GEAI
Mean	0.05	-0.01	0.01	101.60	92.92	106.69	-0.31
Maximum	11.08	2.14	9.84	119.32	105.64	122.70	185.31
Minimum	-2.30	-0.76	-1.63	85.59	82.94	93.64	-146.22
Std. Dev.	2.39	0.45	2.01	11.08	6.06	8.22	75.06
Skewness	2.39	1.97	2.73	0.24	-0.12	0.09	0.74
Kurtosis	10.19	10.95	11.98	1.46	1.79	1.61	2.95
Sum	3.11	-0.10	0.04	6096.08	5575.25	6401.87	-18.49

AE FSI – advanced economies financial stress index
EM FSI – emerging economies financial stress index
US FSI – United States Financial Stress Index
EXR AE – advanced economies nominal broad exchange rate
EXR EM – emerging economies nominal broad exchange rate
EXR US – United States nominal broad exchange rate
GEAI – Global Economic Activity Index

Source: author's computations

The financial stability index for advanced economies averaged 0.05 between 2006/Q1 and 2020/Q4 while the corresponding standard deviation amounted to 2.39 during the same period. Similarly, the financial stability index for the United States had a mean value of 0.01 and standard deviation of 2.01 between 2006Q1 and 2020Q4. In contrast, the financial stability index for emerging market economies averaged -0.01 between 2006/Q1 and 2020/Q4 while the corresponding standard deviation equated to 0.45. The lower mean values and standard deviations indicate that the data points are less spread out. In respect of the exchange rate, we find that the mean and standard deviation in advanced economies, emerging markets and the United States have higher values, implying that the data points are more spread out.

Stationarity Analysis

The unit root analysis was conducted by means of the Augmented Dickey Fuller test and the results are given in table 2. The purpose of the unit root test is to evaluate the variables for unit root and determine the order of integration.

Table 2: stationarity test (ADF)

	Intercept	Trend & Intercept	Order
FSI AE	-2.41	-2.82	
D (FSI AE)	-3.60*	-3.49**	| (1)
FSI EM	-3.61*	-3.54**	| (0)
FSI US	-2.37	-2.79	
D (FSI US)	-4.08*	-4.00*	| (1)
EXR AE	-1.29	-2.71	
D (EXR AE)	-5.21*	-5.15*	| (1)
EXR EM	-1.54	-1.91	
D (EXR EM)	-5.93*	-6.03*	| (1)
EXR US	-1.63	-2.66	
D (EXR US)	-5.19*	-5.18*	| (1)
GEAI	-2.27	-3.02	
D (GEAI)	-7.97*	-7.90*	| (1)

Source: author's computations

The variables were examined for unit root at intercept and trend and intercept. From the analysis, only the emerging markets financial stress index was found to be stationary at level. The rest of the variables, including the global economic activity index and nominal broad exchange rate in emerging markets, advanced markets and the United States were found to be stationary after first differencing.

Impulse Response

The impulse response function was estimated through structural factorisation to account for structural shocks in the financial system. The primary goal of impulse responses is to determine the response of endogenous variables to a one standard deviation. The results for advanced economies, emerging economies and the United States are illustrated in Figures 1-3, respectively.

Figure 1: Impulse Responses (Advanced Economies)

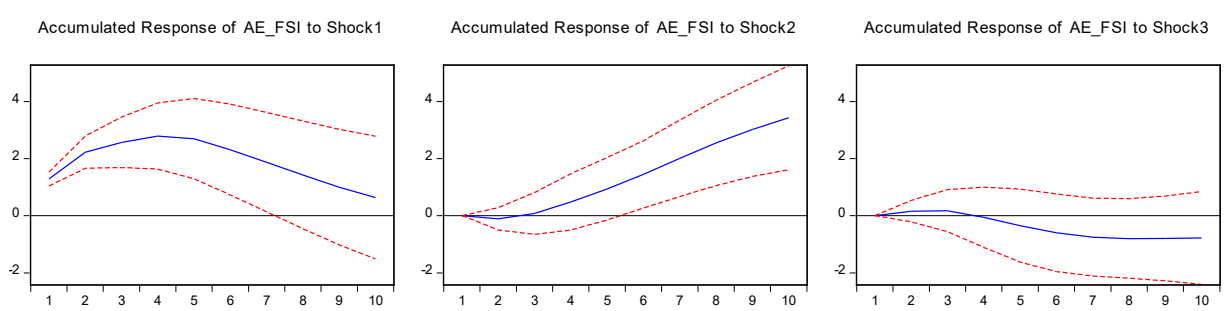


Figure 2: Impulse Responses (Emerging Economies)

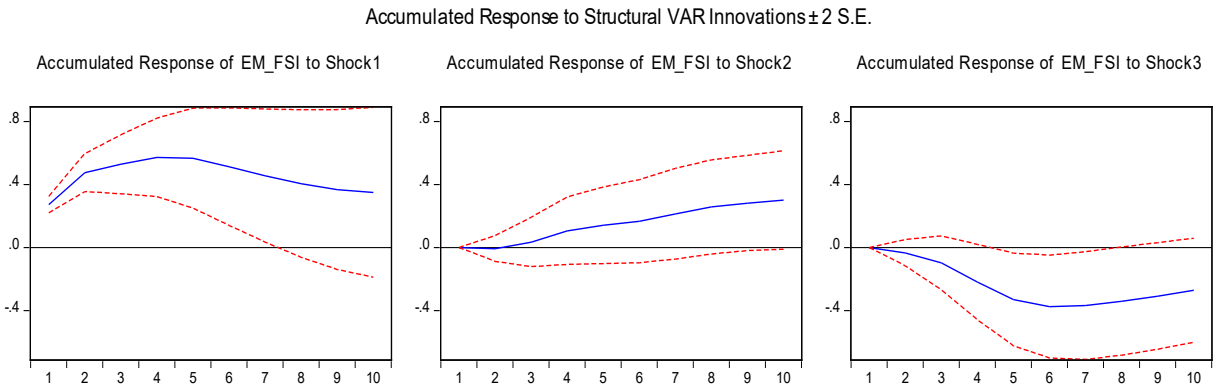
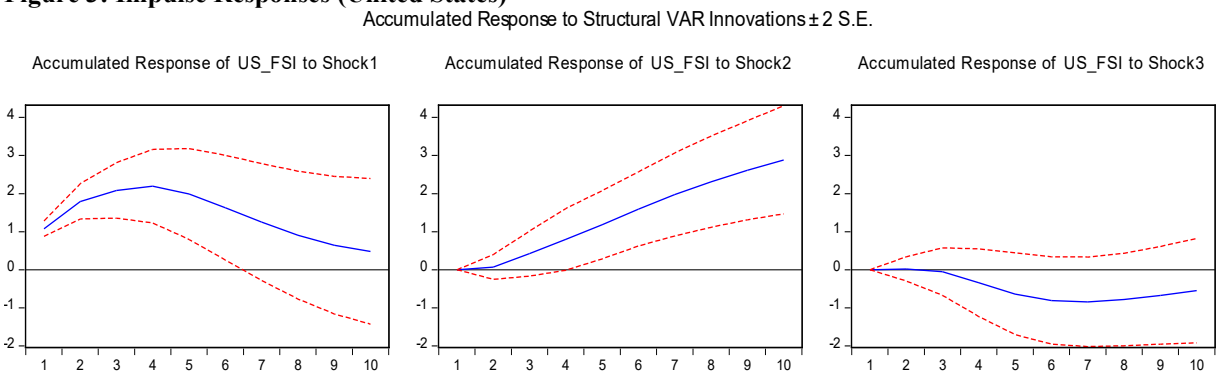


Figure 3: Impulse Responses (United States)



Source: author's computations

The general finding is that financial market stress responds positively to shocks in global economic activity and negatively to shocks in exchange rate stability. This implies that enhancements in global economic activity result in a more stable financial market whereas a deterioration in global economic activity would result in a more volatile financial market. In contrast, we find that financial market stress responds negatively to shocks in the broad exchange rate. A positive shock in the exchange rate translates into a more stable financial market while a negative shock to the exchange rate translates into an unstable financial market. These findings are in line with Golovnin and Oganesian (2018) who found that exchange rates have a negative influence on financial stability in Russia.

Advanced Economies

In Japan and Europe, financial market stress responds positively to its own innovations in the short run and long run although the magnitude of response deteriorates overtime. Similarly, the financial market stress responds positively to innovations in global economic activity at an increasing rate between the short run and long run. On the contrary, the response financial market stress to a one standard deviation in the exchange rate was found to be positive in the short run but negative in the long run. Notably, the size of response in the financial market stress to shocks in the exchange rate is relatively larger than the size of response to shocks in global economic activity.

Emerging Markets

A similar trend was observed in emerging markets. For example, the financial market stress responds positively to its own innovations and innovations in global

economic activity although the response is relatively smaller in magnitude compared to advanced economies. Likewise, the response of financial market stress to a one standard deviation in exchange rates was found to be negative in the short run and long run.

United States

The United States is no exception. Findings from the impulse response function revealed that the financial market stress responds positively to its own innovations both in the short run and long run. In respect of global economic activity, we find that the response of financial market stress to a one standard deviation in global economic activity is muted in the short run but positive in the long run. On the contrary, the financial market stress responds negatively to shocks in the exchange rate in the long run albeit the response is neural in the short run.

Variance Decomposition

In line with impulse responses, the variance decomposition was executed to measure forecast errors of each variable in relation to its own shock. The results are provided in Table 4.

Table 4: Variance Decomposition

P	AE_FSI	GEAI	EXR_AE	EM_FSI	GEAI	EXR_EM	US_FSI	GEAI	EXR_US
1	100.00	0.00	0.00	100.00	0.00	0.00	100.00	0.00	0.00
2	98.52	0.47	1.01	98.98	0.04	0.97	99.69	0.28	0.02
3	97.29	1.74	0.96	94.38	1.40	4.22	92.87	6.88	0.26
4	90.29	7.12	2.59	81.63	4.66	13.71	83.05	12.63	4.32
5	82.28	12.76	4.97	74.87	5.03	20.10	75.31	17.29	7.41
6	75.95	18.03	6.02	74.08	5.25	20.67	70.89	21.52	7.59
7	71.10	23.09	5.80	73.56	6.41	20.03	68.88	24.19	6.92
8	67.94	26.79	5.26	72.86	7.28	19.87	67.55	25.91	6.54
9	66.15	29.01	4.85	72.40	7.49	20.11	66.13	27.29	6.57
10	64.94	30.48	4.58	71.75	7.62	20.64	64.76	28.46	6.78

Source: author's computations

Advanced Economies

The variance decomposition analysis indicates that in the short run (3 years), 97% of the variations in the financial stress index are explained by its own shock. In the medium term however (6 years), only 75% of the variations in the financial stress index are explained by its own shocks while 18% of the variations are explained by shocks in global economic activity and 6% of the variations by shocks in the broad exchange rate. In the long run (10 years), a larger proportion (65%) of the variations in the financial stress index remain explained by its own shocks while 30% of the variations in the financial stress index are explained by shocks in global economic activity and 5% by shocks in the exchange rate. Similar results were likewise obtained by Taylor (2015) who found that shocks in financial market stability are largely explained by shocks in global economic activity than in the exchange rate.

Emerging Markets

In respect of emerging markets, the findings revealed that in the short run (3 years), 94% of the variations in the financial stress index are explained by its own shocks while 1.4% and 4.2% of the variations are explained by shocks in global economic activity and broad exchange rate, respectively. In the long run (10 years), a huge chunk (72%) of the discrepancies in the financial stress index are still explained by its own innovations while only 7.6% of the discrepancies in the financial stress index are explained by innovations in global economic activity. The share of exchange rate shocks in explaining discrepancies in the financial stress index is relatively higher than the share of global economic activity shocks at least in the long run. Shocks in the exchange rate explain 21% of the variations in financial market stress.

United States

In the United States, 71% of the variations in financial market stress are explained by its own shocks in the medium term (6 years) while 21% and 8% of the discrepancies in financial market stress are explained by shocks in global economic activity and the broad exchange rate, respectively. These findings are in line with Jeremy (2012) who analysed monetary policy as a financial stability regulation in the United States. Over the long term (10 years), a large fraction (65%) of the variations in financial market stress are still explained by its own innovations, followed by innovations in global economic activity (28%) and broad exchange rate (7%).

Residual Analysis

The last step of analysis involved evaluating the residuals of the estimated model for autocorrelation and heteroskedasticity. The Vector autoregression technique is vulnerable to autocorrelation and thus performing residual diagnostics is necessary under this econometric approach. The findings are presented in Table 5 below.

Table 5: Residual Diagnostic tests

	Advanced Economies		Emerging Markets		US	
	Obs*R-squared	Prob. Chi-Square	Obs*R-squared	Prob. Chi-Square	Obs*R-squared	Prob. Chi-Square
Autocorrelation	33.58	0.60	24.71	0.92	38.68	0.37
Heteroskedasticity	166.85	0.09	153.95	0.27	158.66	0.19

Source: author's computations

The autocorrelation test indicated that the estimated models for the advanced market economies, emerging market economies and United States do not suffer from autocorrelation. This is because the corresponding probability values of the chi-square are greater than 5%. As such, the null hypothesis of autocorrelation is rejected against the alternative hypothesis of no autocorrelation. Equally, the white heteroskedasticity test revealed that the estimated models for advanced market economies, emerging market economies and the United States do not suffer from heteroskedasticity. This is indicated by the corresponding probability values of the chi-square which are above 5% in all models.

Conclusion and recommendations

The study examined the response financial market stress to innovations in global economic activity and the exchange rate in emerging market economies and advanced economies during the period 2006Q1 and 2020Q4. This was achieved by means of time series econometric analysis. This includes unit root analysis, structural Vector autoregression, impulse response function and variance decomposition. The impulse response function estimated through structural factorisation indicated that financial market stress responds positively towards its own innovations and innovations in global economic activity. In contrast, financial market stress responds negatively to a one standard deviation in the exchange rate at least in the long run albeit the response is neutral in the short run. The findings from the variance decomposition showed that in advanced market economies, a larger fraction of the discrepancies in financial market stress are explained by its own innovations followed by innovations in global economic activity whereas in emerging market economies, a larger proportion of the discrepancies in financial market stress are explained by its own innovations followed by innovations in the broad exchange rate. The estimated residuals were likewise examined for autocorrelation and heteroskedasticity. Given the findings, the study recommends strong coordination between monetary policy and fiscal policy to ensure that overall economic activity is optimized and maintained in the long run. Monetary authorities have a role to play in ensuring price and exchange rate stability while fiscal authorities have the tools to realize minimal budget deficits and optimal debt management.

Declaration of conflict of interest

There is no conflict of interest between the authors. Also, the authors did not receive any funding towards the research work carried out.

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ISSUES IN DEMOCRATIC CONSOLIDATION IN NIGERIA: BETWEEN COMPETITIVENESS AND REGULARITY OF ELECTIONS

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Abstract: *This paper examined issues in democratic consolidation in Nigeria by focusing on the nature of the linkages among competitiveness of elections, regularity of elections and democratic consolidation in the country. The haunting experience of a protracted period of military rule in the West African state makes the subject matter of democratic consolidation in the country usually engaging. Even at that, extant literature has not adequately covered issues bordering on the linkages among the competitiveness of elections, regularity of elections and democratic consolidation in Nigeria. What then is the nature of the linkages among these research variables? The methodology of the work is qualitative and relies on secondary sources of non-numerical data for analyses. The paper found a position of disarticulated relationship among the study's variables. In addressing the embedded issues, it is recommended that independent candidature be constitutionally introduced as part of the electoral culture of the local government system in Nigeria. So that under such scenarios, as many citizens as possible at the local government level would usually become candidates during council elections. In so doing, competitiveness would have become totally practicalized and locally epitomized in democratic consolidation in Nigeria.*
Keywords: *Democratic Consolidation, Democratic Consolidation in Nigeria, Competitiveness of Elections, Elite Theoretical Framework, Elite Theory*

Introduction

Democratic consolidation in Nigeria promptly evokes memories of military disorder in the affairs of the West African nation. Nigeria was formerly colonized by Britain and obtained unready independence in October 1960. The emergent leaders of the new state (the neoteric political elite) remained ostentatiously in office as if governing a newly independent country was a tea party. The Westminster pattern of government was ostensibly in place but the purpose of the state and the expedient responsibilities of its key functionaries were largely misread. The nascent political elite possibly concluded that the preceding colonial lords handed over the evolving state to them as recompense for their ostensive nationalist exertions towards the county's independence. Kwaghe & Ecoma (2016) argue that this antecedent set of leaders never had a common perception about the country. This indeed appears to be the abiding defectiveness of that leadership class and not truly corruption as nearly concluded everywhere. In retrospection therefore, the politicians of that era (previously freely accused of grave corruption) continue to portray the images of virtuous persons in comparison with their contemporary counterparts.

In any case, even with corruption eating deep into the marrows of a society, what currently seems to matter profoundly is whether such a location is describable as a

democracy? This system of government accordingly appears to have become the ultimate system of government. However, democracy usually has some discontents (Dahlberg et al., 2015; Hernández, 2018). Such dissatisfactions frequently lead to attempts at scuttling national democratic processes. Post-Independence Nigeria saw the occurrence of such rupture in its first decade of existence and incidentally the democratic system of government had to encounter a series of truncations prior to what currently appears like democratic normalcy being witnessed in the country. In consonance with the foregoing therefore, the general objective of this paper is to examine the issue of democratic consolidation in Nigeria. A specific objective of the work is to determine the nature of the linkages among competitiveness of elections, regularity of elections and democratic consolidation in Nigeria. The expositions of the paper are anchored on the elite theoretical framework of social scientific investigation.

The contribution further continues in the following order. There is the section on "Memories of a Democratic Rupture: The Toppling of Nigeria's Post-Independence Government", followed by "When Brutality Begets Cruelty: The Counter Coup of July 29, 1966". The next section is titled "Prelude to a Stoppable War and the Birth of Prolonged Militocracy", followed by an overview of the theoretical framework of the paper and then the segment captioned, "Explicating Democratic Consolidation". The next section of the paper is on how competitiveness of elections, regularity of elections or deficiencies in such regards might have contributed or detracted from democratic consolidation in Nigeria. Then there is a conclusion of the paper. The focus of the work fundamentally covers the period of democracy's truncation in the country in 1966 and extends to the reintroduction of the democratic order of governance in the same nation up to the period of political parties' primary elections in 2022, precedent to the 2023 general elections.

Memories of a democratic rupture: the toppling of Nigeria's post-independence government

A group of radical and impatient army officers on 15 January 1966 toppled the post-independence government in Nigeria. The bloody military action led to the murder of leading figures in the government, including the nation's Prime Minister, Sir Abubakar Tafawa Balewa. Also murdered was the influential Premier of Northern Nigeria, Sir Ahmadu Bello (the Sarduana of Sokoto). The casualties included many high-ranking politicians, senior Army officers (inclusive of their wives), and sentries on guard duty, all 22 in number (Kirk-Greene, 1971; Siollun, 2009). Assassinated leaders and other casualties hailed mainly from Northern Nigeria, populated by the Hausa/Fulani ethnic bloc (one of the three major ethnic groups in Nigeria. The two other ethnic groups that make up the dominant trio are the Yorubas of Western Nigeria and the Igbos of the Eastern region. In the coup-plotting and the occasioned casualties, the Yorubas recorded comparatively minimal participation and impact. Dauda (2022) gives account of "the people assassinated by the January coupists as follows: Prime Minister Balewa - north; Premier Ahmadu Bello - north; Premier S. L. Akintola - west; Finance Minister Festus Okotie-Eboh- east (sic) (non-Igbo); Ahmed B. Musa - north; Hafsatu Bello (Bello's wife); Mrs Latifat Ademulegun -west; Zarumi Sardauna - north; and Ahmed Pategi - north". Dauda (2022) further recounts that "among the military and police casualties were: Brig. Samuel Ademulegun - west; Brig. Zakariya Maimalari - north; Col. Ralph Shodeinde - west; Col. Kur Mohammed -

north; Lt. Col. Abogo Largema - north; Lt. Col. James Pam -north; Lt. Col. Arthur Unegbe-(the Igbo officer who refused giving the coupists keys to the armoury)". Others were "Sgt. Daramola Oyegoke - west; PC Yohana Garkawa - north; L.C Musa Nimzo - north; PC Akpan Anduka - east (non-Igbo); PC Hagai Lai - north and Philip Lewande - north" (Dauda, 2022)

The coup plotters were predominantly Igbos. Citing Gbulie (1981), Dauda (2022) gives the names of the participants in the coup plot as follows: "There were eight Majors: Nzeogwu, Ifeajuna, Okafor, Anuforo, Chukwuka, Onwuatuegwu, Obienu, and Ademoyega and five captains: Nwobosi, Oji, Ude, Gbulie and Adeleke, four lieutenants: Ezedigbo, Okaka, Oguchi and Oyewole and seven second lieutenants: Igweze, Ikejiofor, Wokocha, Azubuogo, Nweke, Amuchienwa, and Olafemihon". Invariably, the bloody overthrow of the post-Independence government of Nigeria became known as an Igbo coup, particularly in northern Nigeria. However, according to Chief Mbazulike Amechi, First Republic politician / parliamentarian in Nigeria and the country's first post-Independence Minister of Aviation, in Ujumadu (2016) "Ademulegun (one of the leaders of the group who was of Yoruba nationality) and other Yoruba officers never admitted that it was an Igbo coup. It only happened that there were more Igbo officers involved in the coup because there were so many Igbo officers in the army at that time". Amechi on this score further asserts that after "they killed the Prime Minister of the country; they killed the Premier of the West; they killed the Premier of the North. They were about to kill the Premier of the East but what saved Dr Michael Okpara (Premier of the East) was that Archbishop Macarious, the President of Cyprus, was his guest that night and probably they wouldn't want war between Cyprus and Nigeria". Still according to Amechi, "on the other hand they could not kill Chief Dennis Osadebey (Premier of Nigeria's Mid-Western Region) because there was no Army in Benin (Capital of Mid-Western Region) at the time of the coup and so Osadebey managed to escape". Amechi further posits that his close friend, "Colonel Arthur Unegbe (of Igbo nationality) who was in charge of the Armoury was also killed because he was reluctant to release the Armoury to them and they shot and killed him in his house". The account of Dauda (2022) corroborates this incidence (coincidence) of the predominance of Igbos in the officer-cadre of the Nigerian army at this time in the nation's history. According to Dauda (2022) "Isa Alkali Abba in his book titled Mahmudu Ribadu, said:…at the time of the January 1966 coup d'etat 60 percent of the officers were from the Eastern region alone…". The Eastern region is the ethnic base of the Igbos. Sunmi Smart-Cole in Anazia (2021) further affirms that "there were not many educated Hausa/Fulani in the army in pre and post-independent era. As such, they were not among the ranks of commissioned army officers in the country at the time of the first coup. Majority of the top officers in the army at that time were Igbo". Strangely also, there are several accounts of how this same coup was foiled by Igbo officers. Summarizing the various narratives, Akinbode (2019) posits that "interestingly, those who foiled the coup were senior Igbo officers. Major-General Johnson Aguiyi-Ironsi, Lieutenant-Colonels Chukwuemeka Odumegwu-Ojukwu, Comrad Chukwujimje Dibia Nwawo, Alexander Attah Madiebo, and Major Alphonso Keshi". Akinbode (2019) highlights that "as Brigade Major, Two Brigade, Kaduna, Keshi informed Madiebo of the coup, Madiebo moved over to Brigade headquarters where Nzeogwu had taken over Ademulegun's seat and worked on Nzeogwu". Then "Ojukwu, Commanding Officer, Fifth Battalion Kano, stood his ground strategically and all the officers worked with Ironsi to fly in Nwawo, the Defence Attaché in London, and

Nzeogwu's teacher. Only then could the Major (that is, Nzeogwu) be softened" (Akinbode, 2019). Nzeogwu was eventually flown to Lagos where he surrendered to Ironsi.

When brutality begets cruelty: the counter coup of july 29, 1966

To avenge the brutal effects of the January 1966 coup on Northern Nigeria against the Igbos of the then Eastern Region of the country, the counter coup of July 29, 1966 was staged. After the January coup was foiled (with Igbo officers playing major roles in the foiling) it was yet an Igbo man, Major General Johnson Aguiyi Ironsi (General Officer Commanding, Nigerian Army at the time), who became the Military Head of State of Nigeria. Onwe (2017) recounts that "there was widespread rumour of coup plots not from one but from several quarters – mainly the Northern aggrieved soldiers who were disaffected by the killings of their leaders (military and political), the supporters of January 15, 1966 coup who felt that their original coup and their mission had been foiled and hijacked and so there ought to be another coup to topple Ironsi and free Nzeogwu and his cohorts and even an alleged coup plot by some Igbo military officers who were disenchanted with both Ironsi and the original coup". According to Onwe (2017) "all the rumour were swirling round and virtually suffocating the society when on the night of July 29, 1966 at the Army Barracks, Abeokuta, Lt. Col. Gabriel Okonweze (Midwest Igbo) and Major Obienu – both ethnic Igbo in charge of the barracks had directed Lt. Abdullahi Mamman to summon a meeting of the officers at the Officers' Mess for a discussion of the loud whispers of rumour of coups, especially the information he received from Defence Headquarters, Lagos on July 28, 1966 of an impending coup, and the need to guard the barracks against unnecessary incursions as happened in January 15, 1966 coup". Onwe (2017) further narrates that "the two officers – Lt. Col. Gabriel Okonweze and Major John Obienu had briefed officers of the rumour and the need to guard the barracks against incursion from outside. One of the resolutions of the meeting was that arms were to be issued to soldiers for the defence of the facility against possible incursion from outside. This order was passed, but instead of complying with the intent it was breached as the northern soldiers hijacked the exercise and instead turned it against their Igbo and other southern compatriots". In the account of Onwe (2017) "Lt. Col. Okonweze and Major Obienu were still sitting at their high table and had hardly finished the meeting when two soldiers, Sergeant Sabo Kwale and Corporal Maisamari Maje (the unit's armourer) intruded into the meeting and shot dead Lt. Col. Okonweze and Major Obienu. Then Lt. Pam Mwadkon, Corporal John Shagaya, Inuwa Sara and others rallied other Northern soldiers to the mutiny, which had spread out to hunting and killing any available Igbo and southern officers and soldiers".

Relating the same incident, Iloegbunam (2016) writes that "three casualties lay instantly dead in the persons of Lieutenant Colonel Gabriel Okonweze, the Garrison Commander, Major John Obienu, Commander of the 2nd Reece Squadron, and Lieutenant E. B. Orok, also of the Reece Squadron. It was the beginning of the much-touted revenge coup of Northern Nigerian army officers and men against the regime of Major General Johnson Aguiyi-Ironsi". Iloegbunam (2016) adds that "by August 1, when Lieutenant Colonel Yakubu Gowon assumed power in Lagos as Nigeria's second military Head of State, the bullet ridden bodies of both Ironsi and his host, Lieutenant Colonel Francis

Adekunle Fajuyi, the military Governor of Western Nigeria, lay buried in shallow graves at Iwo, outside Ibadan".

According to Onwe (2017) "report of the mutiny (ironically by an Igbo officer), Lt. Rowland Ogbonna, had got to the planners of the northern coup of revenge led by Murtala Mohammed, Martin Adamu, Joe Garba, Nuhu Nathan, Malami Nassarawa, Muhammadu Buhari, Paul Tarfa, Musa Usman and Shittu Alao in Lagos, while Ibadan was taken charge of by Garba Dada, Jerry Useni, Ibrahim Bako and assisted by TY Danjuma, William Walbe, who were part of Lagos group but being part of General Ironsi guards participated by default as they accompanied General Ironsi to his official tour of the Western Region. Onwe (2017) still contributes that "the coupists immediately seized the moment to escalate the mutiny into a full-fledged coup. General Ironsi and Col. Fajuyi were seized by TY Danjuma and William Walbe and killed. The Abeokuta orgy of violence was repeated both in Lagos and Ibadan and across Northern cities with greater vehemence and outrage as civilian Igbo and other easterners were added to the lot marked for elimination in most brutal manner and savagery".

Citing First (1970) Iloegbunam (2016) states that "within three days of the July outbreak, every Igbo soldier serving in the army outside the East was dead, imprisoned or fleeing eastward for his life. But Africa's bloodiest coup did not stop at that stage, despite the shooting to deaths of 42 officers and over 130 other ranks, who were overwhelmingly Igbo. The killing sprees and ever-expanding killing fields spread like wild fire across most of the country. Northern soldiers and civilians went into towns, fished out Easterners and flattened them either with rapid gunfire or with violent machete blows, leaving their properties looted or torched." The report of Iloegbunam (2016) further highlights that "according to "the Massacre of Ndigbo in 1966: Report of the Justice G. C. M. Onyiuke Tribunal", between 45,000 and 50,000 civilians of former Eastern Nigeria were killed in Northern Nigeria and other parts of Nigeria from 29th May 1966 to December 1967 and although it is not strictly within its terms of reference the Tribunal estimates that not less than 1,627,743 Easterners fled back to Eastern Nigeria as a result of the 1966 pogrom."

Prelude to a stoppable war and the birth of prolonged militocracy

There are indeed extant records of the Nigerian tragedy in highly accurate and participant-observer trajectories. This includes the work of Madiebo (1980). The point is that the 15 January 1966 coup in the country and the 29 July 1966 counter coup occasioned a series of unprecedented bestialities in the affairs of the nation as the nascent power elite engaged in a show of force involving hardheartedness and political myopia. The narrow-mindedness of the soldiers that are now in power did not help matters in anyway. With Lieutenant-Colonel Yakubu Gowon in Lagos as the new Head of State, there was Lieutenant-Colonel Chukwuemeka Odumegwu-Ojukwu in Enugu as the Military Governor of Eastern Region. Besides his grappling with a refugee crisis resulting from the massive return of Easterners from everywhere in the country, particularly from Northern Nigeria, Ojukwu had other points to make about the existing situation (s). Part of it was that the rightful person to become Head of State was not Gowon. Brigadier Babafemi Ogundipe was Second-in-Command to Ironsi and Ojukwu's position was that Ogundipe, not Gowon should have become the new Head of State after Ironsi was killed. The

occasioned rivalries were integral to everything else that happened precedent to the civil war that commenced July 6, 1967.

According to Amechi in Ujumadu (2016) "the quarrel between two Lieutenant Colonels – Ojukwu and Yakubu Gowon – eventually led the country to a civil war. Ojukwu said he was senior to Gowon and that Gowon cannot be the head of state when he (Ojukwu) was a governor. Gowon said if you want to be head of state, come to Lagos so that soldiers could take order from you". According to Amechi "the argument (between Ojukwu and Yakubu Gowon) continued until it led to the killing of Igbos in the north and killing of Igbo soldiers all over the country, with one of them buried alive in Ibadan". Amechi narrates that "the young man had insisted on not doing what the counter coup plotters wanted and they threatened to kill him. He said he was prepared to die; after all it was only one bullet that could kill him. So they told him they were not going to waste a bullet on him and buried him alive after forcing him to dig his grave. He was a major in the Army. A lot of atrocities were committed then". The point is that, despite the national tragedies occasioning gruesome murders which started in January 1966 and the pogrom that was unleashed as response; if Gowon and Ojukwu were more statesmanlike in their readings of the situations, the Nigerian civil war would have been prevented.

In any case, the concept of statesmen-like soldiers appears empirically contradictory. Amechi in Ujumadu (2016) thus opines that "the army took over and continued to blunder. They continued to do what they were trained to do; that is to destroy; to kill and to loot". These were essentially what they did from January 1966 to January 1970 when the civil war they precipitated ended. At the end of the war, the soldiers remained in government with intermittent pretences of claiming to be interested in handing over to civilian politicians (their elite counterparts in civilian robes). The coups and counter coups, allegations of coup plotting and narratives of phantom coups continued to be features of the militocracy that became the new system of government in the country (in replacement of democracy). In the course of their coups-plotting and executions, counter coups, allegations of coup-planning and narratives of coups phantasms, they "killed, brutalizing our common ego, as they turned to murder, killing one another" (Okeke, 2005, p.1). They have however since allowed the nation to return to the route of democracy from May 29, 1999, necessitating this scholarly enquiry on the state of democratic consolidation in the country.

Theoretical framework: the elite theory

The elite theory is one of the flagship theories of the social sciences. Okeke & Anyadike (2020, p.17) who cited Higley (2010) and Okeke (2014) explicate that "elite theory's origins lie most clearly in the writings of Gaetano Mosca (1858-1941), Vilfredo Pareto (1848-1923), and Robert Michels (1876-1936). Furthermore in Okeke (2014, pp.322-323), Henry (2001) "suggests that perhaps, the classic expression of elite theory can be found in C. Wright Mills' "The Power Elite". Okeke & Anyadike (2020, p.17) then deposes that "the elite theory is about the bifurcation of society into subaltern members on one hand, and the men and women of means and influence on the other hand. The influential ones create the policies that govern societies and usually reflect their wishes and needs (even greed) in such policies, before other considerations. The elites also ensure that subject policies are implemented according to their wills and caprices".

Focusing further on the contemporary dimensions of the elite theory Okeke (2014, p. 325) elucidates that "over the years, the spheres of elite activity have expanded to reach finance, business, bureaucracy, the military, education and different other areas. Consequently, types of elite, in addition to the power or political elite include the military elite, business elite, economic elite, bureaucratic/administrative elite, educational elite, economic elite, social elite and even sports elite". But within the conceptual gamut of the elite theory, the specific trajectory of the generic theorization that is most relevant to this contribution is the power elite thesis of C. Wright Mills. Bierly (2022) then explicates that "Charles Wright Mills was an American sociologist who received his Ph.D from the University of Texas and worked at Columbia University from 1946 until his death at age 45. He elaborated and extended the ideas of Karl Mannheim and Max Weber, and helped give birth to the New Left movement in the U.S". According to Bierly (2022), "as a leftist sociologist, Wright Mills was concerned about social inequality and the decline of the middle class, and the complicity of the sociology profession in these developments. His book The Power Elite was his most important contribution to sociology (social sciences)". Bierly (2022) further elucidates that "in the Power Elite (1956), Mills identifies the centers of status and power among the elite as made up of three groups: a governmental elite, corporate elite and military elite". Then "the power elite are the group of people who comprise the leadership of these three spheres. Mills states that the common person is powerless in society. Even the average rich person is more or less powerless as power resides in a very small group at the top of the military, economic, and political system" (Bierly, 2022). Invariably, in the application of elite theory to this study, the researchers explored how it was the nation's power elite that actually truncated democracy in the country in 1966. The work fundamentally bordered on how the same disordered elite overtly maintained the truncation for several decades and even currently continues to do so covertly.

Explicating democratic consolidation

In explicating democratic consolidation, one does not need to go farther than the definitive contribution of Schedler (1998). Consequently, the current paper cites extensively from the positions of the eminent Austrian political scientist, Andreas Schedler. According to Schedler (1998, p.91) "originally, the term "democratic consolidation" was meant to describe the challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression, of building dams against eventual reverse waves." Then "to this original mission of rendering democracy "the only game in town," countless other tasks have been added. As a result, the list of "problems of democratic consolidation, as well as the corresponding list of "conditions of democratic consolidation" has expanded beyond all recognition" (Schedler, 1998, p.91). Schedler (1998, pp.91-92) adds that these lists have "come to include such divergent items as popular legitimation, the diffusion of democratic values, the neutralization of antisystem actors, civilian supremacy over the military, the elimination of authoritarian enclaves, party building, the organization of functional interests, the stabilization of electoral rules, the routinization of politics, the decentralization of state power, the introduction of mechanisms of direct democracy, judicial reform, the alleviation of poverty, and economic stabilization". Schedler (1998,

p.92) posits that “at this point, with people using the concept any way they like, nobody can be sure what it means to others, but all maintain the illusion of speaking to one another in some comprehensible way”. Hence, while "democratic consolidation" may have been a nebulous concept since its very inception, the conceptual fog that veils the term has only become thicker and thicker the more it has spread through the academic as well as the political world” (Schedler, 1998, p.92). Schedler’s concerns and apprehensions about democratic consolidation are shared by the current researchers. However, the inherent discontents and unpredictability of democracy itself has made the concept of democratic consolidation an ever relevant type. In this paper therefore, attention is focused on how the competitiveness and regularity of elections or their deficits might have contributed or undermined the courses of democratic consolidation in Nigeria.

Competitiveness and regularity of elections in Nigeria’s democratic consolidation

Elections have continued to be held in Nigeria since 1999 and new governments inaugurated at different levels of government, from the federal, state to local government levels. By some readings, the embedded processes constitute democratic consolidation. In some interpretations also it is even the very incidence of an unbroken cycle of elections that is describable as democratic consolidation. But elections are not ends in themselves. An election is a means to an end. Hence, it is not the very act of an election that confers legitimacy on democracy; it is the quality of the election. Then one of the critical indicators of quality in the elections that characterize democracy is competitiveness. Devoid of competitiveness, election will not be different from selection, and that would be when the shortcomings of the process are mildly stated. Elections that are lacking in competitiveness are impositions and there is nothing democratic about impositions.

Competitiveness of elections is an allusion to the expectation of free and fair elections. But above everything else, competitiveness implies that the winner of an election is not predetermined. Incidentally, winners of elections in Nigeria are now predetermined. Anytime results are announced contrary to the predetermination of the power elite, suggesting competitiveness, the germane actors use the law courts to upturn and invalidate the previously announced results. On the other hand, when the results are orchestrated to conform to the prearrangement of the power elite, no law court can invalidate the same result. Consequently, to challenge the result of a presidential election in Nigeria up to the nation’s Supreme Court is a mere academic exercise. In the country’s Imo State in 2019, after the governorship election results had been announced by the electoral umpire - the Independent National Electoral Commission (INEC) and Mr Emeka Ihedioha sworn in as Governor of the State on May 29, 2019, he was removed from office on January 15 2020 by the country’s Supreme Court (the highest court of law in the land). Mr. Hope Uzodimma who took the fourth position as earlier announced by INEC was now declared winner and sworn in as the Governor of the state. Salihu (2020, p.101) describes the verdict of the Supreme Court as “an obviously bad judgment”. The insinuation is that Governor Uzodimma has been imposed on the people, not elected, because he had been consecrated to win by the power elite. The process was not designed to be competitive.

At the local government level where the electoral bodies funded by the state governments conduct the elections, the political party in power at the state level has undeviatingly won all the seats available at the local councils. None of the other registered

political parties existing in the state and at these local levels ever wins any seats in such elections. The elections are accordingly considerable as non-competitive. In the face of such non-competitiveness at the local council levels in the country, the meaning of democratic consolidation in the nation begins to appear palpably wooly.

The godfather syndrome has made putative elections non-competitive in Nigeria. The person the godfather had earlier consecrated must emerge the winner. Competitiveness merely begins and ends with being blessed and presented by the godfather. Even political parties' primaries for purposes of electing candidates that would represent parties at the main elections are controlled by godfathers. Fundamentally therefore, where the choice of delegates to the conventions slated for primaries was not competitive; the final choice of candidate(s) also fails the test of competitiveness. Essentially, generic non-competitiveness only begets final non-competitiveness in the choice of national flag bearer of such a political party in a presidential election.

Then there is the mercantilist factor in the sale and purchase of the expression of interest and nomination forms of the major political parties in the country. In this regard, Itodo (2022) reports that for the 2023 general elections "the ruling All Progressives Congress (APC) fixed the cost of nomination forms for president at N100 million ($240,884), governorship at N50 million ($85,470), senate at N20 million ($34,188), House of Representatives at N10 million ($17,094) and state assembly at N2 million ($3,418)". Then "the leading opposition party, the People's Democratic Party (PDP) pegged N40 million ($68,376) as the cost for presidential nomination forms, N21 million ($35,897) for governorship, N3.5 million ($5,982) for senate, N2.5 million ($4,273) for the House of Representatives and N1.5 million ($2,564) for state house of assembly" (Itodo, 2022). This only translates to competitiveness in the purchase of the forms, not in the elections. The nation's power elite uses such excessive charges to debar credible but non-members of their class from standing for election. The resultant scenario rather smacks of exclusivity in place of competitiveness in general elections.

The thesis of this study is that from Nigeria's post-independence government, to the protracted military period and the current democratic dispensation in the country, if the same breeds of power elite have continued to be in charge, but elections are currently being regularly held, it is contradictory to interpret the surrounding positions as democratic consolidation. In other words, what amounts to democratic consolidation can only occur when electoral choices are continuously made in sacrosanctity by the people under self-evident competitiveness? To begin to gradually address the embedded issues, it is recommended in this study that independent candidature be constitutionally introduced as part of the electoral culture of the local government system in Nigeria. Under such scenarios, as many citizens as possible at the local government level would usually become candidates during council elections. Competitiveness would in so doing become totally practicalized and epitomized.

The kernel of democratic consolidation

Democratic consolidation is not an end in itself. According to Schedler (1998) the essence of democratic consolidation is the security of democracy. However, there must be other beneficial purposes derivable from democratic consolidation. It must lead to the good life for the generality of a country's citizens. It is not an issue for elite rationalization and

elite-led sophistry. Democratic consolidation needs to be accompanied by undisputable decreases in national misery. Such cases of nationwide pain and privation have however persisted in the Nigerian nation. Political instability, citizen alienation, electoral violence, insensitivity of the political elite have all continued to lead to massive deaths and monumental destructions in Nigeria. This scenario as illustrated by Table 1 is not describable as index of democratic consolidation.

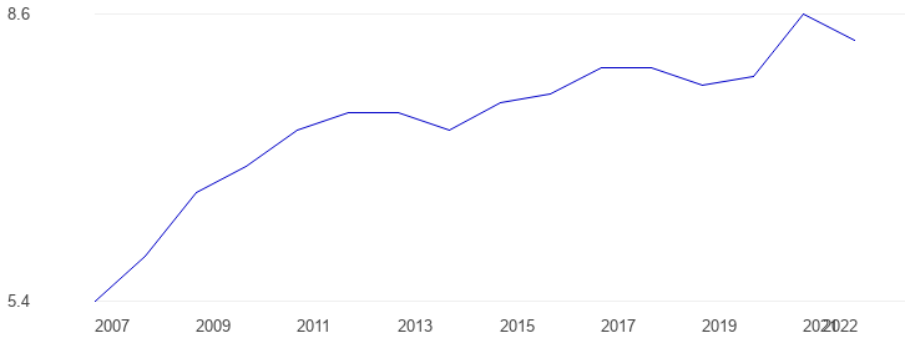
Number of Violent Deaths Caused by Political Instability and Citizen Alienation in Nigeria between 2011 and 2021, by Perpetrator

Perpetrator Classification	Number of Deaths
State Actor	13, 241
Boko Haram Terrorist Group	18, 397
Boko Haram / State Actor	22, 138
Sectarian Actor	12, 201
Other Armed Actor	10, 082

Source: Adaptation by Authors from Statista (2022)

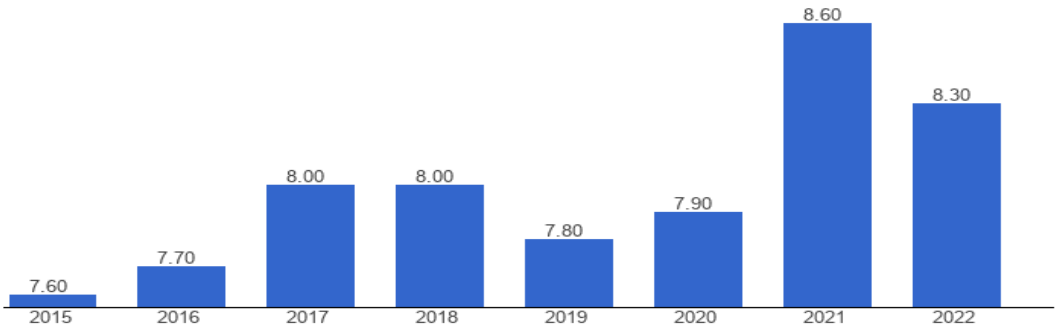
The country has also not recorded steady growth on the economic front in the period under review as possible pointer to democratic consolidation flowing from regularity of elections without competitiveness leading to the good life for citizens. In the Fund for Peace's economic decline index for Nigeria reported by the Global Economy.com (2022) measured in index points of 0 (low) - 10 (high) Nigeria's latest value (2022) was 8.3. For this indicator, data was provided for Nigeria from 2007 to 2022 (see Figures 1 and 2). During the period, "the average value for Nigeria was 7.39 index points with a minimum of 5.4 index points in 2007 and a maximum of 8.6 index points in 2021. The latest value from 2022 is 8.3 index points. For comparison, the world average in 2022 based on 177 countries is 5.59 index points" Global Economy.com (2022).

Figure 1: Nigeria's Economic Decline Index: Longer Historical Series



Source: Global Economy.com (2022

Figure 2: Nigeria's Economic Decline Index: Recent values



Source: Global Economy.com (2022)

The above economic decline indicator for Nigeria considered issues related to economic degeneration within the country. For instance, "the indicator looks at patterns of progressive economic decline of the society as a whole as measured by per capita income, Gross National Product, unemployment rates, inflation, productivity, debt, poverty levels, or business failures. It also takes into account sudden drops in commodity prices, trade revenue, or foreign investment, and any collapse or devaluation of the national currency, the higher the value of the indicator, the greater the economic decline in the country" (Global Economy.com, 2022). Regularity of elections that are devoid of competitiveness can only engender contentious democratic consolidation that leads to economic decline.

Conclusion

This paper examined issues in democratic consolidation in Nigeria by focusing on the nature of the linkages among competitiveness of elections, regularity of elections and democratic consolidation in the country. The work demonstrated that extant literature had not adequately covered issues bordering on the linkages among these research variables and found a position of disarticulated relationship. Such disordered associations are attributable to historically entrenched power elite dominance of Nigerian affairs inclusive of election issues in the current democratic dispensation. The thesis of the study is that contrary to orthodox thoughts, elections in the country are acutely devoid of competitiveness and the resultant scenario does not smack of democratic consolidation. In addressing the implications of the research findings for democracy and democratic consolidation in the country, it is recommended that independent candidature be constitutionally introduced as part of the electoral culture of the local government system in Nigeria. It is accordingly prognosticated that under such scenarios, as many citizens as possible (at the local government level) would usually become candidates during council elections. In so doing, competitiveness would have become largely practicalized and locally demonstrated in democratic consolidation in Nigeria.

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EDUCATIONAL E-SERVICES AND STUDENT SATISFACTION IN NIGERIAN PUBLIC UNIVERSITIES

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Abstract: *This study sought to investigate educational e-services and student satisfaction in Nigerian universities using the University of Abuja as case study. The study's objectives were to identify the implementation of educational e-services; impact of e-services on student satisfaction and challenges impeding educational e-services and student satisfaction at the University of Abuja. The study adopted a survey design whereby the researcher elicited relevant information from the distributed questionnaire and extensively reviewed pieces of literature. The data generated from the questionnaire were analyzed using mean, standard deviation and hypotheses tested using linear regression model, chi-square, and spearman rank correlation (Statistical Package for Social Sciences, version 23). The findings revealed that the University of Abuja, had adopted educational e-services in the form of email services, website interaction for and e-registration, fees payments, e-payment platform, virtual/online classes via GoogleMeet and the University management interaction with students using social media platforms such as Telegram and Facebook. The study also revealed that students are not satisfied with the mode of virtual/online lectures, time allocated for virtual classes, internet network, e-library services, and e-registration for hostel accommodation. Factors impeding educational e-services were poor maintenance culture, overpopulation, cost/poor funding, low ICT literacy/digital divide, inadequate ICT experts, poor internet network and poor knowledge of best practices. Therefore, the study recommended that public-private partnerships and internally generated revenue should be expanded to increase the revenue base of the university to provide the needed educational e-services facilities. Also, training and retraining of the University staff on ICT should be adopted. The University management should adopt best practices in the maintenance e-library by content centralization, updated and recent learning materials, full accessibility, user-friendly electronic devices, multi-format and appealing contents so to increase students' satisfaction. Also strict adherence to National Universities Commission (NUC) policy on students' admission should be implemented fully. Awareness on the importance on the need to imbibe good maintenance culture of the University properties should be carried out periodically by management. Partnership with telecommunication companies to build more network gadgets/devices to improve network connectivity, periodical assessment by the University leadership, the Ministry of Education and students on implementation of educational e-services should be adopted.*
Keywords: *Technology, Information Communication Technology, e-governance, digital divide, education, e-services, students, satisfaction, students' satisfaction, public university, Nigerian public university, University of Abuja*

Introduction

The advancement of technology has made the world a global village. Technology has made private and public service organizations to render services seamlessly. The Nigerian educational sector is not left behind. Globally, Information and Communication Technology (ICT) is widely deployed in many Universities mainly for the provision of information accessibility, computer-based databank storage of students and staff statistics. ICT is also used for planning, budgeting, management requirements, and automation of administrative purposes. The idea behind the adopting of educational e-services by public

universities especially in developing nations is to offer wide range of services in a seamlessly fashion. The management of public universities in Nigeria have galvanized material and human resources to ensure their institutions implement educational internet services to offer seamless services to students. Educational e-services in public universities could be in form of information dissemination, payment of tuition and hostel fees, and e-registration of courses and so on. The history of adoption and implementation of educational e-governance (e-service) in University of Abuja is traced to 2010 when the former vice –chancellor Professor James Sunday Adelabu, launched some e-services which regularization policy linked to the Joint Administration Matriculation Board (JAMB), registration of online courses by students, e-payment procedures. Successive administration within the university has made efforts to improve educational e-services in the university through website upgrading, payment of fees through remitta (Treasury Single Account policy), e-library services and so on (Paul and Ali, 2022).

University of Abuja is a public service organization saddled with the responsibility of delivering educational services to the people. The institution is situated in the nation's capital, and has embraced e-governance services. For instance, the payment of school fees, virtual/online classes, registration of hostel accommodation registration via the school portal, online course registration, and result checking and other activities are done electronically through the aid of internet-based devices. This study therefore, seeks to examine the influence of educational e-services on students' satisfaction with a focus on the University of Abuja which is one the highly-ranked public university in Nigeria.

Statement of the Problem

Before the introduction of the advancement of technology, tertiary institutions utilized traditional methods. Administrative activities and services in tertiary institutions were characterized by bureaucratic bottlenecks resulting in a long period of delay in processing academic results, hostel registration, payment of tuition and other educational-related fees, poor service delivery in terms of lectures, and so on. Kazmi (2010) and Kayani et al. (2011) submit that the benefits of e-services are enormous. However, there have been challenges impeding its smooth implementation in developing countries. The University of Abuja has embraced the use of Information and Communication Technology (ICT) in ensuring its services reach a wide range of clients and for the seamless completion of tasks for its students. The idea of ICT in the University is a lofty one, although there have been several challenges impeding e-governance services within the University. The literacy level of some staff is still low despite the fact that we are in an advance technological age. Some of them cannot operate the computer very well thereby still resulting in getting information manually, which could take more time, thereby hindering their performance to deliver on time. Oftentimes, students have issues accessing their results on the school portal, paying their fees, or registering their courses because there are inadequate competent Information Technology (IT) experts (Paul and Ali, 2022).

The issue of inadequate ICT infrastructure in public universities is another major problem. For instance, the virtual classes have not been fully effective. The network within the University is still poor and this has hindered educational e-services for students. Consequently, the study seeks to investigate the following:

i. What is the implementation of educational e-service at the University of Abuja?

ii. How does access to educational e-service affect students' satisfaction at the University of Abuja?
iii. What are the challenges affecting educational e-service and students' satisfaction at University of Abuja?

Objectives of the Study

The broad objective of this study is to assess educational e-services and students' satisfaction at the University of Abuja, while its specific goals are to:
(a) Ascertain the implementation of educational e-service at the University of Abuja.
(b) Identify the impact of educational e-services on students' satisfaction at the University of Abuja.
(c) Find out the challenges affecting the existing educational e-service and students' satisfaction at the University of Abuja.

Statement of Hypotheses

This study is guided by the following hypotheses:
Ho_1: Educational e-service does not have a significant impact on student's satisfaction at the University of Abuja.
Ho_2: There is no significant relationship between existing challenges affecting educational e-services and student's satisfaction at the University of Abuja.

Literature Review

E-Service

The concept of e-service is an idea within the broad spectrum of electronic governance (e-governance). The concept of e-governance has been described in different terms, such as online governance, digital governance, competent government, mobile governance, and so on. (Manoharan and Ingrams, 2018). The letter "e" added to government and management refers to the utilization of electronic tools in rendering public services or goods to the general public. Under e-governance, we have concepts such as e-procurement, e-voting, e-participation, and e-services. The idea of e-service has a plethora of definitions, but however, they have one common feature, which the internet based services. The Electronic Service, shortened as 'E-Service', refers to any service rendered through electronic methods usually through internet-enabled devices or mobile devices (Bhuiyan, 2011). Ruyter et al. (2001) observed that e-service is a term that depicts technological applications with the aim of providing services that seek to strengthen the relationship between consumer and the provider of such services. In the view of Sukasame (2004), e-service has more meaning than just explaining electronics and service. He asserts that ideally, the e-service consists of different interactions and this mainly focuses on services between the consumer and the service provider done through the aid of internet devices. Surjadjaja et al. (2003) opines that there has been a paradigm shift in the operations of services, and this has to do with the use of internet-based devices to render services to the general public in a seamless manner and this has culminated in what is known as an e-service. The implementation of e-services has different purposes. Oseni and Dingley (2015) opine that one of the reasons organizations are adopting e-service, is for profit accumulation. The application of technology into business operations has made

products and services to reach out to a wide range of clients across geographical locations globally. For example, the use of social media by firms and clients has given customers and potential customers to have access to products and services. Online payments are made and this has reduced the cost of hiring personnel, and other overhead expenses.

Universities are the citadels of learning offering various services to their students, staff, and the general community. The university as an institution has several operations performed via electronic means. Hassan et al. (2011) submit that there have been considerable interest in the electronic services provided by public institutions in Nigeria. Significantly, the universities in Nigerian, in recent times, have offered a variety of educational e-services to their students. The payment of tuition fees, registration of courses and lectures, processing of transcripts, cost of hostel accommodation and continuous assessment of students are all carried out through electronic means. Kumar et al. (2007) suggest services offered by universities can be improved a whole lot through the adoption and implementation of e-services.

The scope and significance of e-service involved in providing opportunities for private and public organizations to deploy and developing an e-service will enhance customer/citizen interactions and experience. Kelleher and Peppard (2009) stated that there is a need for organizations to envisage deploying e-service delivery strategy, as this will not only give them a competitive advantage, but will propel them to success. However, the implementation of e-service comes with an unavoidable cost, and it is helpful to obtain meaningful feedback from the customers to improve the service. A dedicated online customer service agent in any organization benefits from e-services. Furthermore, the deployment and delivery of an e-service system have been associated with an increase in the ways businesses and their customers interact. Rowley (2006) concluded that e-service delivery contributes to the total service experience, and not just the consumer's experience and evaluation of e-service. Schware and Deane (2003) discuss major public e-service priorities, and they think that form processing, public complaints, information access, procurement, customer response, and polling are the most valuable services and the reasons why the general public goes online.

Students Satisfaction

The word satisfaction is derived from one’s joy or happiness based on needs and desires fulfilled (Saif, 2014). Satisfaction is derived when an individual’s performance is beyond his expectations. Hon (2002) submits that satisfaction is an experience of achievements based on the expected outcome. Ideally, an individual will be in a state of satisfaction when their desires, needs, or expectations are fulfilled, and this creates contentment (Rad and Yarmohammadian (2006). Satisfaction does not only depict happiness derived from positive achievements. In the submission of Kotler and Keller (2012), satisfaction refers to the feeling of pleasure or disappointment resulting from comparing perceived performance in relation to expected outcomes. Customers (students) will satisfy when services fit with their expectations (Petruzzellis and Rommanazzi, 2006). Put differently, satisfaction can be a function of the relative level of perception expectation in consonance with their perception (Mukhtar et al, 2015). One of the major beneficiaries of educational e-service of universities is the students cut across different levels and programs. In Nigerian public universities, we have several faculties such as humanities, law, science, management, administration, education, engineering, social sciences,

medicine, and environment. All these faculties have departments and various academic levels. The universities are saddled with the task of providing efficient educational services to this teeming population of students. The satisfaction students derive from the educational services from their universities may be positive or negative.

Elliot and Healy (2001) define students satisfaction as a short-term attitude resulting from a student's appraisal of educational service experience. Attitudes of individuals can be formed through experiences. Thus, universities that render efficient educational services to their students may have favorable ratings from students. Navarro et al. (2005) submit that students satisfaction refers to a positive antecedent of student loyalty. This definition explains that satisfaction would enhance students patronage and positive perception to the services being offered by the management of the university. Put differently, Elliot and Shin (2002), define student satisfaction as the disposition of students based on subjective appraisal of educational outcomes and experience. According to this definition, the emphasis is a subjective. Since educational e-services are majorly targeted toward the students, their judgments or disposition may be subjective and not objective. Mukhtar et al (2015), submit that student satisfaction can be defined as a function of different experiences level and perceived implementation concerning educational service. Educational e-services are offered to a large population of students and these students may have different experiences regarding the implementation of e-services and these would culminate into their perceptions or attitudes. Considering all the scholarly definitions discussed, students satisfaction can be defined as feelings of students' based on the utilization of services provided by their educational institutions.

Overview of Educational E-Service in Nigerian Public Universities

Several scholarly works of literature have been carried out on information technology in the administration of universities. The university can be seen as an educational institution offering service to the public. The university consists of students, staff, and the community where it is established or domiciled. In relation to the reviewed literatures, educational e-services in public universities in Nigeria can be summarized into three main areas:

1. Student administration
2. Staff administration
3. General administration

i. Student administration: One of the major essences of the establishment of universities is to enhance development through the training of students. Put differently, students are the major reason for the existence of universities. Students administration consists of a plethora of activities, such as registration of students' courses, timetable, continuous assessment, payment of school fees, hostel accommodation, processing students' identification cards, transcript payment, lectures, and so on. Obeng (2004) posits that the integrating of information communication technology into educational process has made these services more accessible to students across geographical locations.

ii. Staff administration: The staff consists of academic and non-academic staff. Staff administration involves the use of technology in terms of lecturing, submission of exams and test scores, recruitment, allotment of faculty and staff in the institution, leave management, and performance appraisal. This also includes relevant communication to and

from the institutions and among peers. The essence of the adoption of technology in staff administration is to facilitate the quick completion of voluminous work and retrieval of data (Obeng, 2004).

iii. General administration: Magni (2009) posits that a communication system in the university should also be in place to promote efficient administration. The adoption and implementation of technology in the university would bring out seamless delivery of services and coordination among the various departments by providing timely information to all concerned. Communication could be done internally or externally and the way and manner in which information is disseminated would have an impact on the general performance of the university. Public administration services may include communication between the relevant stakeholders, and sending of circulars to students and staff of the university.

Table 1: Overview of e-services in Nigeria Universities

S/N	Item	Categories of Contents
1	Student Administration	Application for admission via electronic media Students registration/enrolment via the use of computers Electronic form of timetable/class schedule Maintenance of students' attendance via computer usage Usage of E-media platforms to communicate students' academic details to their parents/guardians Notifications of information via use of e-media
2	Staff Administration	Employees' recruitment and job allotment via the use of computers Automation of attendance and leave management of staff members Performance appraisal for staff using e-media Usage of e-media to communicate with staff Usage of e-circulars to pass information
3	General Administration	Allocation of halls for examination using e-media Usage of e-kiosk to share information Results processing and display using e-media E-payment services Virtual/online classes

Source: Krishnaveni and Meenakumari, 2010 (Adopted).

Table 1 above describes item categories generated for information administration in Nigerian public universities. Some of the things are not rendered in the University of Abuja. Items in the table, such as the use of communication of academic details of students to their parents/guardians through e-media, and usage of electronic media for performance appraisal, are yet to be implemented in the University of Abuja. However, the University of Abuja has implemented online classes (virtual), using of electronic media by students to apply for admissions, etc.

Challenges Impeding the Implementation of Educational E-Service in Nigerian Public Universities

Although the implementation of e-governance has begun in Nigerian public universities especially, at the University of Abuja, e-governance activity in Nigeria is still relatively low. Some of the factors impeding the implementation of e-services include the following:

Low Information Technology Literacy/Digital Divide: Nigeria is a developing nation with evidence of a digital divide. As of January 2022, it was reported that the number of internet users in Nigeria was approximately 109 million and this is roughly half of the nation's entire population (Statista, 2022). Public universities have a larger students populations compared to their private counterparts, therefore, the majority of the students with low IT literacy are found in public universities. Despite the IT versatility of the younger generation, the overall professionalism about ICTs among the university staff is low, especially since many public servants resist change affecting work. Some staff finds it difficult to effectively use internet-based devices effectively. Some staff in public universities in Nigeria still prefer to access documents and circulars manually because of ignorance, inadequate IT knowledge, or resistance to change (Babatunde and Paschal, 2015).

The digital divide is another issue facing educational e-services in universities. There are still students and staff who are not computer literate and some who are literate and have access to modern internet-based devices. There are some students from indigent family backgrounds who cannot afford modern mobile phones or computers to aid their learning. Oyadiran (2017) submits that illiteracy and acceptance have remained a big impediment to the utilization of the platform of e-services. The higher the level of information technology education would enhance citizens' patronage on e-services.

2. Poor Information Communication Technology (ICT) infrastructure: One of the major problems affecting e-service in Nigerian public universities is the poor internet network coverage and the dearth of internet-based devices. Many Nigerian public universities are plagued with inadequate modern computers, and inadequate internetfacilities, inadequate computer laboratories, among others. The trend of usage of internet-based devices such as laptops, mobile have been on the increase however, it has not significantly reduced the problems of adequate information technology infrastructure in Nigerian public universities. (Lawan and Mohammed, 2018). Oyadiran (2017) posits that insufficient technology is crucial factor impeding developing countries towards full implementation of e-services.

3. Poor Maintenance Culture: This is one of the problems causing the dilapidation of public service properties or facilities. The maintenance culture of many public servants is relatively poor. There is a mindset of many that government properties belong to nobody; therefore poor attitudes are paid to the maintenance of computer gadgets or internet-based devices in the universities. An empirical study by Oyenuga et al. (2012) on maintenance of university facilities in developing countries showed that lack of planned the maintenance and inadequate maintenance policies is the bane of the university facilities problem, especially in Nigerian public university.

4. Cost and Poor Funding: Investing in ICT requires huge funds because of the cost of computers, installation of internet gadgets/electronic devices and fees, and maintenance.

The educational sector in Nigeria has not received the needed attention. Adesina (2022) reported that the Federal Government allocated the sum of N355.47 billion to 44 federal universities in the country and this budget allocation is inadequate due to the massive operations of the universities. The internally generated by these universities have not been adequate to acquire the needed modern technological devices to enhance educational e-services for the students and staff. Poor funding of these universities has resulted in many students seeking scholarships to study in developed countries or choosing affordable private universities within the country.

5. Inadequate trained Information Communication Technology (ICT) Experts: The successful implementation of educational e-services is dependent on the availability and expertise of ICT personnel available to the universities. The job description of ICT experts is to ensure the smooth running of web portals, virtual or online classes, students courses registration process are hitch-free, and whole lots of ICT services. The educational e-services of the universities in Nigeria have been marred with brain drain. Many Information Technology experts prefer to work in private sector organizations or in foreign companies abroad where there is better pay and modern facilities to work with (Paul and Ali, 2022).

6. Poor knowledge of Best Practices: Universities in developed countries have world-class ICT facilities for their students. The issue of poor networks, overpopulation, and other factors impeding e-services in developing countries, are either non-existent or very minimal. The inadequate knowledge of best practices has been one of the factors restraining e-services within universities. Paul and Ali (2022) revealed that raising awareness, and overcoming resistance to change are critical factors for the adoption and implementation of e-services in Nigerian universities.

7. Over Population of Students: In 2019, the number of undergraduate students in Nigerian public universities was over 1.8 million while over 103 thousand were enrolled in private universities (Statista, 2022). These figures showed the high rate at which internet facilities especially in public universities would be used. The overpopulation of students has affected the level of accessibility to educational e-services in Nigerian public universities. Students in public universities virtually struggle to have access to e-library services, hostel accommodation, and so on.

Theoretical Framework

This study was hinged on Technology Acceptance Model (TAM). The theory was adopted because public universities rely on the use of technology to ensure that educational e-services are offered to students. TAM is considered one of the most influential and commonly employed theories for describing an individual's approval of information systems. TAM, adapted from the Theory of Reasoned Action (Ajzen and Fishbein, 1980) and originally proposed by Davis (1986), assumes that an individual's information systems acceptance is determined by two major variables: Perceived Usefulness (PU) and Perceived Ease of Use (PEOU). The key proponents of this model developed it to explain the key factors that drive users to adopt the new information system and its wide acceptance. The key aim of the TAM is to expose the factors affecting the acceptance of computer applications in general. This model also gives room for researchers and practitioners to determine the inadequacy of a process (Davis, 1989). As postulated by David (1989), there is a correlation between the behavioral intent of the utilization of information technology

devices, and such behavioral goal tends to be influenced by the attitudes of the users. The assumed simplicity of application influences actions and usefulness.

This model applies to this study in the sense that Nigerian universities use technology to meet their goals. Modern administration has relegated the traditional methods. The advent of information systems has taken educational e-services to a new level. The technology acceptance model is an ideology of information management to model how students and staff use and implement information technology. For instance, the number of internet users in Nigeria has increased tremendously since its inception. As of January 2022, the registered internet users are approximately 109 million (report from Statista, 2022). This figure is mind-blowing, knowing that universities can leverage this to reach out to more customers and expand their coverage.

The paradigm for using technology suggests that the intention to conduct decides the use of an information system but that the intention to conduct also depends on the approach of the individual to the system and their perception of its use. As opposed to internet advertising, consumers still weigh other factors. These are factors that affect e-service and these factors are a bad internet connection, lack of trust, lack of timing, and a payment issue (Ekwueme and Akagwu, 2017). The knowledge of TAM helps students to take decisions as regards the educational e-services offered to them. This also explains the perceived comparative modern networking technology and students use of the internet to satisfy their academic needs. Two factors that lead to recognition and acceptance by most students are the perceived usefulness and ease of use. Other factors, as level as literacy, funding, and maintenance culture, can affect students' usage of educational e-services especially at the University of Abuja.

Methodology

A survey design was employed for this study. A survey design is a research method that describes the characteristics of the population or phenomenon that is being studied (Adi, 2019). The purpose of adopting a survey research design is that it is suitable to elicit the opinions, attitudes, and perceptions of respondents regarding to the implementation of educational e-services and students satisfaction at the University of Abuja. Also, one of the advantages is that this research design can be carried out on a small or large-scale population. The total population for this study is placed at 25,897, and this consists of a total number of team and total number of students of the University of Abuja. According to the staff nominal roll in the Registry Department of University of Abuja, (2018), while the entire number of staff in the University is 2,372 while the total student population is put at 23,525 (Statista, 2022). The sample size of 202 was derived by using Taro Yarmane's (1967) formula. The formula is being given below:

$$n = \frac{N}{1+N(e)^2}$$

Where n=sample size
N =population of the study 25,897 being the total of the staff of the University of Abuja and students.
e = Tolerable error (in this case, 5%)

$$n = \frac{25,897}{1+25,897\ (0.05)^2}$$

n = 392.

The researcher's adopted both simple random sampling and purposive sampling techniques because these two techniques give equal chances for respondents to be selected for the study. Also, purposive sampling was used to select appropriate respondents based on the researcher' judgment. The researcher adopted linear regression, chi-square and correlation analysis as statistical inferential tools in testing study's hypotheses of the study using Statistical Package for Social Sciences (SPSS v23).

Data Presentation and Analysis

Table 2 displays the descriptive result of the implementation of educational e-services at the University of Abuja. The mean score of 4.14 and SD of 1.12 indicated that most of the respondents agree that there are active email services for students at the University of Abuja. Most of the respondents attested to the fact that there is a website provision for course registration and fee payment as shown by the mean score of 4.12 and SD of 1.14. A mean score of 4.12 and SD of 1.14 indicated that most of the respondents confirmed that there is Learning Management System (LMS) for tests/assignment submission.

Table 2: The nature of implementation of educational e-services at the University of Abuja

Descriptive Statistics

Items	N	Mean	Std. Deviation (SD)	Decision
Email services	371	4.14	1.12	Accepted
Website interface for course registration and fees payment	371	4.32	.79	Accepted
Learning Management System for tests/assignments	371	4.12	1.14	Accepted
YouTube recorded lectures	371	3.88	1.15	Not Sure
E-Library services	371	1.97	1.22	Rejected
Google Meet for virtual classes	371	4.27	1.07	Accepted
Telegram/Facebook for information dissemination and interaction	371	4.12	1.10	Accepted
E-payment services	371	4.28	.85	Accepted
Valid N (listwise)	371			

Source: Field Survey (2022).

There is no general agreement to as to whether there is active YouTube recorded lectures for students as revealed by the mean score of 3.88 and SD of 1.15. The mean score of 1.97 and SD of 1.22 indicated that the majority of the respondents confirmed that there is no adequate e-library services for students at the university. The mean score of 4.27 and SD of 1.07 and revealed that the majority of the respondents affirmed positively that virtual

classes is being carried out via the Google Meet platform. The mean score of 4.12 and SD of 1.10 showed that the university disseminates and interacts with students via Telegram/Facebook platforms. E-payment services are carried out by students at the university, as revealed by the mean score of 4.28 and SD of .85.

Table 3: Effect of implementation of educational e-services on students' satisfaction at the University of Abuja

Descriptive Statistics

Items	N	Mean	Std. Deviation	Decision
Virtual class is convenient and reliable	371	2.45	1.52	Rejected
Tests/Assignments are conducted on e-platforms effectively	371	2.90	1.08	Not Sure
Internet networks hinders effectiveness of virtual classes/tests on e-platforms	371	4.16	1.13	Accepted
Examination results can be accessed effortlessly on the school portal	371	4.10	1.21	Accepted
Lectures are better delivered through e-platforms unlike physical contact	371	1.77	1.22	Rejected
Time allocated for virtual classes is not adequate	371	4.10	1.22	Accepted
My academic performance has improved based on virtual classes	371	2.62	1.30	Rejected
I am satisfied with e-payment services	371	3.59	1.23	Not Sure
I am satisfied with the social media channels used for online classes/interactions	371	2.90	1.46	Not Sure
I am satisfied with how e-services are being delivered in terms of hostel accommodation, fees payment, library services and information dissemination	371	1.86	1.11	Rejected
Valid N (listwise)	371			

Source: Field Survey (2022).

Table 3 displays the descriptive result of implementation of educational e-services on students' satisfaction at the University of Abuja. The mean score of 2.45 and SD of 1.52 revealed that the majority of the respondents disagreed that virtual class is convenient and reliable. Tests/Assignments are not conducted on the e-platform effectively according to the mean score of 2.90 and SD of 1.08. A mean score of 4.16 and SD of 1.13 revealed that the majority of the respondents agreed that poor internet network has hindered the smooth running of virtual classes/tests on e-platforms. Most of the respondents agreed that examination results could be accessed effortlessly on the school portal, as revealed by the mean score of 4.10 and SD of 1.21. The majority of the respondents affirmed that lectures are not better delivered through e-platforms, unlike physical contact, as revealed by the

mean score of 1.77 and SD of 1.22. One of the reasons why students agreed that virtual lessons are inadequate is because of inadequate time allocation for lectures. It was revealed by the mean score of 4.10 and SD of 1.22. The mean score of 2.62 and SD of 1.30 revealed that students academic performance has not improved due to the nature of virtual classes. The mean score of 3.59 and SD of 1.23 indicated that there is consensus on whether students' are satisfied with the e-payment services of the university. There is also no consensus on whether students are satisfied with the social media platforms used for lectures and interaction, as this was shown by the mean score of 2.90 and SD of 1.46. The mean score of 1.86 and SD of 1.11 indicated that the most of the students are not satisfied with how e-services are being delivered in terms of hostel accommodation, fee payment, library services, and information dissemination at the University of Abuja.

Table 4: Challenges affecting educational e-services and students' satisfaction at the University of Abuja

Descriptive Statistics

Items	N	Mean	Std. Deviation	Decision
Over population of students	371	4.33	.98	Accepted
Poor Maintenance Culture	371	4.32	1.07	Accepted
Poor Internet network connectivity and inadequate modern electronic devices	371	4.00	1.38	Accepted
Inadequate ICT experts	371	4.46	.98	Accepted
Poor Funding	371	3.42	1.36	Not Sure
Poor knowledge of best practices	371	4.21	1.04	Accepted
Low ICT literacy/Digital Divide	371	3.98	1.35	Accepted
Valid N (listwise)	371			

Source: Field Survey (2022).

Table 4 shows the descriptive result of challenges affecting educational e-services and students' satisfaction at the University of Abuja. Overpopulation of students had a mean score of 4.33 and SD of .98 (Accepted); poor maintenance culture had 4.32 and SD of 1.07 (Accepted); poor internet network connectivity and inadequate modern electronic devices had mean of 4.00 and SD of 1.38 (Accepted); inadequate ICT experts had 4.46 mean score and SD of .98 (Accepted); poor funding had 3.42 and SD of 1.36 (Not Sure); poor knowledge of best practices had 4.21 mean and SD of 1.04 (Accepted) while low ICT literacy/digital divide had 3.98 mean score and SD of 1.35 (Accepted). From the result, it was discovered that there was no consensus on whether poor funding affects educational e-services at the University of Abuja.

Test of Hypotheses

Re-statement of Hypothesis One:

Ho_1: Educational e-service does not have a significant impact on student's satisfaction at the University of Abuja.

Table 5: A model summary of educational e-services and student's satisfaction at the University of Abuja

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.811[a]	.658	.654	.65556

Source: Field Survey (2022).
a. Predictors: (Constant), E-payment services, YouTube, LMS, GoogleMeet
b. Dependent variable: Student's satisfaction

Table 5 displays model summary of educational e-services and student's satisfaction at the University of Abuja. From the result, the independent variables (e-payment services, YouTube, LMS and GoogleMeet) and a dependent variable (student's satisfaction) have a correlate of .811, as shown in table 5. The given correlation of 81.1 made it clear that there is a strong and positive relationship between educational e-services and student's satisfaction. The coefficient of determination between the independent variables (e-payment services, YouTube, LMS, GoogleMeet) and the dependent variable (students' performance) is 0.658. This means that changes in the independent variable (e-payment, YouTube, LMS and GoogleMeet) account for 65.8 percent of the variations or changes in the dependent variable (student's satisfaction).

Table 6: ANOVA result on educational e-service and student's satisfaction at the University of Abuja

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	301.972	4	75.493	175.666	.000[b]
	Residual	157.290	366	.430		
	Total	459.261	370			

Source: Field Survey (2022).
a. Dependent Variable: Student's Satisfaction
b. Predictors: (Constant), E-Payment services, YouTube, LMS, GoogleMeet

The result of ANOVA as shown in table 8 indicates that the model is fit and significantly significant. The alternate hypothesis is accepted based on the F-value of 175.666 and a P-value of 0.05. This implies that educational e-services (e-payment, YouTube, LMS, GoogleMeet) has significant impact on students' satisfaction.

Table 7: Coefficients of educational e-service and students' satisfaction at the University of Abuja

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	6.289	.189		33.272	.000
	LMS	.011	.036	.011	.295	.768
	GoogleMeet	-.087	.050	-.084	-1.740	.083
	YouTube	.042	.032	.043	1.309	.191
	E-Payment	-.993	.068	-.761	-14.573	.000

a. Dependent Variable: Students' satisfaction

Table 7 displayed the coefficients of variables. The most significant educational e-services to student's services were found to be LMS (=.011, t = .295, p<0.05) and YouTube (=.032, t = 1.309, p<0.05).

Re-statement of Hypothesis Two:
Ho_2: There is no significant relationship between existing challenges affecting educational e-services and students' satisfaction at the University of Abuja.

Table 8: Chi-Square Test of relationship between challenges affecting educational e-services and students' satisfaction at the University of Abuja

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	480.123[a]	16	.000
Likelihood Ratio	453.185	16	.000
Linear-by-Linear Association	106.814	1	.000
N of Valid Cases	371		

Source: Field Survey (2022).

Table 8 shows the Chi-Square Tests result regarding challenges affecting educational e-services and student's satisfaction at the University of Abuja. According to the table, calculated chi-square is X^2 (480.123) is greater than the tabulated chi-square of (453.185). The null hypothesis is rejected and the alternate hypothesis accepted. Thus there is significant relationship between challenges affecting educational e-services and students' satisfaction at University of Abuja.

Table 9: Correlation result showing relationships between challenges affecting educational e-services and student's satisfaction at the University of Abuja

			Inadequate ICT experts	I am satisfied with how e-services
Spearman's rho	Inadequate ICT experts	Correlation Coefficient	1.000	-.327**
		Sig. (2-tailed)	.	.000
		N	371	371
	I am satisfied with how e-services	Correlation Coefficient	-.327**	1.000
		Sig. (2-tailed)	.000	.
		N	371	371

Source: Field Survey (2022).
**. Correlation is significant at the 0.01 level (2-tailed).

Table 9 shows the spearman correlation result of the relationship between challenges affecting educational e-services and students' satisfaction at University of Abuja. Reject the null hypothesis if the calculated value is greater than the tabulated value and accept otherwise. The p-value of 0.000 is greater than the significant level of ($\alpha = 0.05$) and *rho* = -0.327 at a sample size of 371, therefore we conclude that there is a fragile negative relationship between challenges affecting the implementation of educational e-services and student's satisfaction at the University of Abuja. By this we mean the two variables move in opposite directions.

Discussion of Findings

The nature of implementation of educational e-service at the University of Abuja

The University of Abuja as one of the federal universities in Nigeria, has embraced educational e-services for its students. The study findings revealed that e-services available for students include the following: email services, website interface, Learning Management System (LMS), YouTube recorded lectures, GoogleMeet, Telegram/Facebook, and e-payment services. The study findings showed that the e-library services have not been functioning. Students of the university can receive information from the school management on their email addresse, pay their fees, use biometric to register their courses. The Learning Management System (LMS) was created for students, especially distant learning students, to register their courses, carry out their continuous assessments/tests and also download available materials to aid their learning process. GoogleMeet has been effectively used by lecturers for their students. From the result, students' were not sure of the school's YouTube platform. The university's management has utilized Telegram/Facebook to improve social interaction with the students and community. Also, the university has fully implemented the Treasury Single Account (TSA) policy which is aid e-payment service. Students can pay their fees electronically into the TSA using the remitta platform. This collaborates with the submission of Adegoroye and Yinus (2015) that e-services have been gaining ground in Nigerian public service organizations. E-services have been able to provide a wide range of services to citizens without difficulty.

Impact of educational e-service on students' satisfaction at the University of Abuja

The findings from hypothesis one revealed that there is the correlation of .811 between educational e-services and student's satisfaction at the university of Abuja, which signified a solid and positive relationship between educational e-services and student's satisfaction. The coefficient of determination between the independent variables, and dependent variable was also 0.658. Also, changes in the independent variable (e-payment, YouTube, LMS and GoogleMeet) account for 65.8 percent of the variations or modifications in the dependent variable (students satisfaction). Based on this result, the study supports the claim that some students do not have positive attitude or satisfaction with some of the educational e-services rendered by the management of the university. Virtual classes have not been convenient and majority of the students still prefer physical contacts and this may be due to inadequate allocation of time to courses which may be hinder in-depth explanations by the lecturers. Students sometimes find it difficult to access the e-platforms for virtual classes due to poor network connectivity. Oye et al. (2011) submit that one of the reasons responsible for poor educational service is the dearth of ICT experts in the universities which have resulted to students dissatisfaction.

Challenges affecting educational e-service and students' performance at University of Abuja

The relationship between the challenges affecting educational e-services and students satisfaction at the University of Abuja was tested using Chi-Square and Spearman (rho) correlation inferential statistics. The chi-square result of X^2 (480.123) which was more significant than the tabulated chi-square of (453.185), signified a positive relationship between challenges affecting educational e-services and students' satisfaction at the University of Abuja.

This shows that overpopulation, poor maintenance culture, poor internet network connectivity, inadequate ICT experts, poor funding, poor knowledge of best practices and low ICT literacy/digital divide were all significant factors hindering educational e-services and causing students dissatisfaction. The study of Kazeem and Dingley (2014) supports that poor funding is one of the critical challenge affecting e-services and implementation in Nigeria. The study of Oye et al. (2011) also consolidates this research finding that inadequate ICT experts, poor internet network connectivity have impeded e-services in Nigerian public universities.

Conclusion

The universities are established to provide quality educational services to students and promote national development through research and community services. The adoption and implementation of educational e-services in Nigerian public universities have been a lofty idea. However, there have been several challenges that have marred the success of educational e-services especially at the University of Abuja. This study identifies the nature of educational e-services available to students of the University of Abuja, impact of educational e-services on students' satisfaction and challenges impeding educational e-services and students' satisfaction at University of Abuja. The study concludes that the management of public universities (especially the University of Abuja) have made reasonable efforts to ensure students access educational e-services. However, issues such as poor internet network, insufficient ICT experts, mode of lecturing delivering on e-platforms, inadequate allocation of time for virtual classes and other factors have affected accessing e-services, and at the long run, caused students' dissatisfaction.

Recommendations

The results from the data analysis have revealed some salient areas the management of Nigerian public universities and other stakeholders should try and resolve. The following are recommendations based on the findings from the study:

1. The management of the University of Abuja and the Ministry of Education should provide adequate funds for modern ICT facilities so that students can have access to educational e-services. The internally generated revenue should be expanded to increase the revenue base of the university. Another way of improving funding is through collaboration with private sector organizations such as multinational companies, Non-Governmental Organizations (NGOs), and banks. Adequate monitoring and evaluation of such disbursed funds should be encouraged.
2. Training and retraining of staff should be encouraged in management of Nigerian public universities and this can be done through a public-private partnerships. ICT experts in private firms should be actively engaged to train staff on the effective use of modern electronic devices in rendering educational e-services to students. Also, the issue of low literacy rate/digital divide among staff can be tackled effectively through this method.
3. The e-library services should be revamped by the University management. The management of the University of Abuja should adopt best practices in maintaining an e-library and some of these practices are contents centralization, updated and recent learning

materials, full accessibility, user-friendly electronic devices and multi-format, and appealing content.

4. The management of the University of Abuja should provide ways to curtail overpopulation of students accessing educational e-services. The National Universities Commission (NUC) policies on students' admission intake should be strictly adhered to enhance students' accessibility to educational e-services.

5. Poor maintenance culture on the part of students and staff should be dealt with. Awareness on the importance on the need to imbibe good maintenance culture of the universities properties should be carried out periodically. Strict penalties should be put in place for offenders.

6. The university can partner with telecommunication companies to build more network gadgets/devices within the university campus so as to improve the quality of network connectivity for students to access educational e-services.

7. A periodical assessment of students views on educational e-services should be implemented by the university's management. Students should be allowed to rate or give feedback concerning their accessibility and use of educational e-services. This assessment would enable the university management to know the weakness, and strengths of educational e-services policies, and enhance students satisfaction.

8. The Ministry of Education, Universities management and other relevant stakeholders should adopt in-depth periodical assessments of educational e-services in public universities, especially the University of Abuja. This would enable the various educational stakeholders to know the current global trend and adopt best practices to boost the satisfaction level of students.

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NOTARYAL DEED: HISTORY OF MOLDOVAN LEGISLATIVE UNCERTAINTY

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Abstract: *This paperwork aims to investigate the notarial deed, especially its legal nature, and the development of the legal expression "notarial deed" in the legislation of the Republic of Moldova. Although the authentic form is used to ensure the civil circuit, the permanent changes in the legislation in the field of notarial procedure do not correspond to this objective, thus violating the principle of security of legal relations, and the attempts to improve it do not cease. On March 31st, 2022 the Parliament of the Republic of Moldova adopted amendments to the Law no. 246/2018 in the second reading. Thus, inter alia, for the fourth time, the essence and content of the "notarial deed" has undergone adjustments. In the content of this research, you will find all the approaches of the notarial deed that have been used in the legislation of the Republic of Moldova, both in terms of history and in terms of comparative aspects with the legislation of other states. As a result of this research, you will inevitably come to the conclusion that the last edition adopted by the legislative authority may lead to the finding of the nullity of several notarial deeds to be prepared, on purely formal grounds, which are due to the imperfection of the proposed edition. Experiments at the law level without a thorough analysis in the field create premises for a new Regulation, which must solve the problems created and remove the negative effects of the previous edition. Finally, the author proposes a new legal framework, which can achieve this objective and would provide clarity either for the state and the exponent of its power – the notary, or for the persons, who turn to the notary to obtain qualified notary assistance. The proposed edition is based on the level of the legal culture currently existing in civil society and at the same time ensures a clarity of the legal terminology used in the field of notarial procedure.*
Keywords: *notarial deed, notarial activity, notarial form, endorsement, notarial certificate, notarial document, legal act*

The legislation in force of the Republic of Moldova does not contain a lucid definition of the expression "notarial act". A historical look at the period of independence indicates that this "vice" of national legislation has already become a tradition. In this respect, although the notary Act of 1997 (reference 1) ses that expression, it does not provide a clear definition, which would describe the content of the notarial deed. Only in Article 2 paragraph (3) of this law [1] are elucidated some of its legal effects. The next law, which replaced the Law regarding notaries from 1997, was the Law regarding notaries from 2002 (reference 2). This legislative act also used the expression examined in the absence of a clear definition. At the same time, in Article 3 paragraph (2) of this law we find a wider list of the legal effects of the notarial deed. Even though the Law regarding notaries from 2002 was largely repealed, the Law on Notarial Procedure (reference 3) instead of clearly enjoying it, has brought more uncertainty, given that besides the notion of "notarial deed" it also introduced into circulation the expression "notarial action". Of course, in Article 5 paragraph (8) of this law [2] is preserved the tradition of explaining the meaning of the "notarial deed" by the legal effects it produces, but a definition is long awaited and did not appear so far.

The implementation of the Law on notarial procedure has generated a multitude of

interpretations, which resulted in a diversified notarial practice. Probably in order to unify the notarial practice, the Law on notarial procedure was amended and supplemented by Law no. 78/2022 (reference 4). However, in the opinion of the author, this amendment can create even more serious problems than the previous edition. It would be incorrect to say that the Moldovan legislator is the only one who has omitted the introduction of the notion of "notarial deed" in the legislative framework. In Romania, the Law of public notaries and notarial activity, no. 36/1995 (reference 5) also does not contain the necessary definition, and Article 7 of this legislative act [3] provides for its legal effects, similar to the legal framework in the Republic of Moldova. A more detailed study of the legislation of other States in this field is presented in Mr. Schin George Cristian's PhD thesis (Schin, 2021).

We will start to identify the definition with the fundamental principles of the Latin notary system (Adopted by the Bureau of the Commission for International notarial Cooperation on 18 January 1986 and by the Permanent Council of the Hague on 13, 14 and 15 March 1986). It should be noted that, implicitly, by the Constitutional Court of the Republic of Moldova Decision no. 23/2001 (reference 7) these principles were recognized as sources of law in the Republic of Moldova. According to Article 5 of these principles, *notarial documents are those that the notary draws up, authenticates and keeps in his archive, ranking them in chronological order*.

REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 creating a European Enforcement Order for uncontested claims (reference 8) it gives the definition of "authentic instrument", which means: *(a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or (b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them*.

Legal literature contains multiple definitions of notarial deed. Without claiming to have a detailed study of these [4], we will report some definitions, which we do not find in the nominated study. In his PhD thesis, Mr. Schin George Cristian proposes the following definitions of the notarial deed: *Lato sensu*, the notarial deed is a species of the civil legal act, which manifests itself as an authentic act, drawn up by the notary or other authority empowered with notarial attributions, reflects a legal fact, implies legal consequences and has a special probative power. *Stricto sensu*, we define the notarial act as the decision issued by the public notary or other persons authorized by law with notarial attributions, drafted according to special procedures, composed of stages, whose sequence is based on the provisions of the law, oriented toward the appearance, modification or termination of the subjective rights and obligations of the person (Schin, 2021, p. 97).

Russian authors Volodin A. and Garin I. propose the following definition of the notarial deed: The notarial deed is a document containing the necessary requisites, drawn up by the notary on paper or in electronic form in the process of conducting the notarial procedure in the cases provided by federal law (Volodin, Garin, 2011, p. 50). According to other Russian authors, Maghizov R. and Minsabirova T., the notarial deed represents the result of the notarial activity, which has an objective form of expression, corresponds to the requirements of the legislation of the Russian Federation, the international norms recognized in the Russian Federation and the international treaties to which the Russian

Federation is a part, notarial traditions, it is drawn up by a special subject - a notary who has a special legal status; it is a legal fact that authenticates the rights, an enforceable title, a document, a proof, including confirmation of the existence of the established circumstance, which does not need to be proven, which is presumed to be true (Maghizov, Minsabirova, 2019, p. 43).

At the same time, no attempt to distinguish between the notarial deed and the notarial document has been identified in the legal literature, considering them as synonyms. Unlike the notarial act, the notarial action enjoys greater attention. Thus, the notarial action obtained a legal definition in Article 5 paragraph (9) of the Law on notarial procedure (reference 3) [5]. In his PhD thesis, Mr. Schin George Cristian provides the following definition: The notarial action is a public service intended to ensure the protection of the legal rights and interests of the subject of law, and consists of a system of acts, committed by the person carrying out the notarial activity, under the conditions of the legislation in force, as a result of which a document (or fact) is assigned special legal force. (Schin, 2021, p. 78). At the same time, we note that Russian authors Volodin A. and Garin I. propose the following definition: Notarial action means a public legal-state act, which is defined by law as a "notarial action", performed in accordance with the special procedure, regulated by law, on behalf of the Russian Federation by a notary or the person in charge, in the field of non-litigious jurisdiction, with the application of the rules of the corresponding branch of law (Volodin, Garin, 2011, p. 23).

Of course, the public-private nature of notarial activity is unanimously recognized in the legal doctrine. At the same time, notarial deeds, according to its legal nature, are acts of application of the law, on the one hand, as well as acts of guarantee of the right, on the other hand. The guarantee of the right is manifested by the fact that the basic role of the notary is to avoid the occurrence of the dispute (it is part of the non-litigious procedure), so that the notarial deed guarantees the rights and legitimate interests of the persons who are involved with this notarial deed.

The public-private character constituted premises for the different approach of the legal nature of the notarial deed. In the legal literature we observe several directions: a) the notarial deed has the legal nature of administrative law; b) the notarial deed is a civil legal act (of private law); c) the notarial deed has a mixed legal nature (of public-private law); and d) the notarial deed is *sui-generis*. However, an attempt was made to categorize different types of notarial deeds, by their legal nature, in order to be in line with all these theories [6]. In this context, we can see the non-consistency of the position of Mr Schin George Cristian who, on the one hand, defines the notarial deed as a species of a civil legal act and, on the other hand, recognizes the mixed legal nature (public-private law) of the notarial deed (Schin, 2021, p. 97).

The lack of clarity at theory and legislative level resulted not only in a different notarial practice, but also in a different judicial practice. Thus, the problem arose in the correct legal qualification of the judicial procedure for contesting the conclusion of the notary of refusal in the drafting of the notarial deed and in the fulfillment of the notarial action: some judges applying the provisions of the Administrative Code of the Republic of Moldova (reference 12) (reference 13), and other judges applying the provisions of the Code of Civil procedure of the Republic of Moldova (reference 14). We hope that this uncertainty has been partially solved by Law no. 78/2022, as Article 63 paragraph (2) of the Law on the organization of the activity of notaries, no. 69/2016 has been amended

(reference 15) [7]. However, the procedure for contesting other acts and actions of the notary which, according to paragraph (1) of the same Article, are to be examined in the ordinary courts according to the competence established by law. Even the conclusion of the refusal issued by the notary is itself a notarial action.

It should be pointed out that, in addition to the conclusion of the refusal, the notary also issues the conclusion of other notarial actions (e.g., the conclusion of the postponement, the conclusion of the suspension, the conclusion of the rectification, the conclusion of the reconstruction of the notarial deed, the conclusion of the rejection of the application for dissolution of marriage, the conclusion regarding the ordering of the expertise), as well as in a notarial procedure (e.g., conclusion of dissolution of marriageby agreement of the spouses, conclusion of the investment with executory formula, conclusion of appointment of the custodian of the estate). This raises questions about the legal nature of the notarial deed. Even if contesting of the notarial deed is not a determining criterion in determining the legal nature of the notarial deed, however, it remains unsubstantiated that contesting a notarial deed with an element of extraneity is to be carried out in accordance with the special procedure (reference 16, art. 461 alin. (2), lit. g)). Some people may consider it discrimination. The author considers that the *status quo* of the procedure for contesting the notarial deed is to be restored, and the cases will be examined in the order of the special procedure. The argument is a very simple one - the notary authenticates the rights and certifies the legal facts. Regardless of the notary's competence, the result of its realization is the finding or refusal to establish a certain legal fact or a certain right. The actions of the notary are always impartial and independent, without any interest on the part of the notary (although, in the literature, especially the criminal one, the interest of the notary to obtain the fee for the notary's assistance is sufficient in order to be held criminally liable), for this reason, and the justification of this interest before the court in the procedure for contesting the notarial deed or the refusal to draw up the notarial act has no legal support. Special attention is also needed to the issue of the prosecution of evidence by the court. Thus, in examining the contestation of a notarial deed or a notarial refusal, the court is not limited to the statements made before the notary and the evidence presented to the notary, in particular their form, but allows the applicant to present other evidence, including witness hearings, expert conclusions, etc. Sometimes, the court annuls the conclusion of the notary's refusal by motivating its own judgment on the basis of these additional evidence and not only those previously offered by the notary. The author supports the purpose of the law to defend the legitimate interests of persons by judicial means, but the administrative litigation procedure also has an unpleasant result for the notary - the payment of the damage caused by a canceled refusal. Therefore, although the actions of the notary were and are absolutely legal and well founded, and the annulment of the refusal due to other evidence that the notary did not handle, the court remains to be obliged to charge the notary with the costs of the trial and, where appropriate, the compensation of the property damage caused, and sometimes the moral one, which does not correspond to the principle of equity.

It is indisputable that a notarial deed is a legal act. The classical classification of legal acts distinguishes between private legal acts (where the consent of the exposed person is free) and public legal acts (where the exposed person is bound to a certain consent). Thus, the private legal act is a civil legal act, and in the category of public legal acts can be reported: Acts of the judicial power, acts of the executive power (administrative acts), etc.

By the way, scientists who consider the notarial deed of *sui-generis*, as a rule, report the notarial deed specifically to the category of public legal acts. Analyzing the notarial action in terms of the existence of free consent, we note that the notary does not have this freedom, being obliged by the competence assigned by the law to draw up the notarial deed, arguing any contrary decision in concluding the refusal.

At the same time, one of the basic principles governing the notarial procedure is the non-litigious nature of the notarial procedure. (reference 3, art. 2 letter f)). This principle emphasizes that, *inter alia*, the role of the notary consists in attributing a legal force of public authority to private or public acts, but only in the situation where the realization of this competence does not lead to the occurrence of a dispute or is not contrary to the will of the persons required by law. The scope of intervention of notarial activity exceeds the limits of the Regulation of private law. It is incorrect to qualify the procedure for legalizing a copy or legalizing a signature as procedures governed solely by private law. A notarial deed can also produce legal effects in other branches of law: Constitutional law (when the signature is legalized on the citizens' acquisition request, etc.), administrative law (when the signature is legalized on the agreement when the local council decision on the assignment of land in private property is annulled), etc.

Of course, the classification of legal facts is not found in the legal space. Discussions on this subject do not cease, origins have still been identified in Roman private law. The permanent development of society creates premises for adjusting these classifications based on the current situation. In this connection, the opinion of highlighting corporate acts in separate legal acts is recently supported (or, the civil legal act requires the consent of the exposed person, and in the case of corporate legal acts the unanimous will is not claimed in all cases, but the will of the simple or qualified majority is sufficient, which indicates that some shareholders, shareholders, etc. may be against this act, but the act will produce legal effects). It will be attemped to argue that even the classification offered to legal acts will be broadened, and a third group will be created (besides private legal acts (civil and corporate) and public ones), which will include the notarial deed. *Prima facie*, the notary's will/decision to perform the notarial action is required. However, this opinion, although largely argued, is not entirely true. However, even if it has a different position than that stated by the applicant for notary assistance and does not wish to draw up the notarial deed (for moral reasons or assuming that it is an abuse of right or simulation), but it has no basis for refusal – the notarial deed is to be drawn up. In other words, there may be notarial deeds drawn up by the notary, but without the notary's desire, although in all cases the will of the state, the exponent of which is the notary and not the will of the notary individually shall be respected. At the same time, the will of the applicant is not necessary in all cases. Naturally, for the authentication procedure, the will of the contracting parties or other persons provided for by law is required (e.g., in the case of the disposal of a mortgaged immovable property by the mortgage lender in the exercise of the mortgage right, the owner - the mortgage debtor, as a rule, is against this contract, for which reason the legislator does not even claim this consent), and in the case of other notarial procedures (certification of facts in cases provided by law, etc.), consent does not even constitute a condition for the fulfillment of the requested notarial action. As a result, we observe the specificity of the notarial deed by the fact that in order to have a legal force of public authority, the will of both the applicant for notary assistance and the state is required, while in the case of private legal acts - the will of a private person is sufficient, which does not require confirmation

from a public authority, as well as in the case of public legal acts - there is enough will of a public authority, which is not dependent on the will of the private person it is aimed at.

The complex nature of the notarial deed, which contains elements of public law and sometimes elements of private law, has created difficulties in regulating the notarial procedure. From the start, we notice that the Law on notarial procedure does not have at its foundation a clear, well-determined concept, which would distinguish between: Notarial activity, notarial procedure, notarial process, notarial deed and notarial action. The identification of all these notions exceeds the purpose pursued by the author, therefore we will stop at only some important aspects for the legal qualification of the notarial deed. According to Article 4 of the nominated law (reference 3), the notarial activity is composed of: a) the preparation of notarial deeds; b) the fulfillment of notarial actions; c) the fulfillment of notarial procedures; and d) offering notarial consultations. These forms of notarial activity may be supplemented by e) preparation of legal consultations in notarial matters as specialists (Art. 11 paragraph (2) of the examined law (reference 3)), although this form may constitute a variety of the general form of offering notarial consultations.

Although the forms of notarial activity are easily separated from the targeted norm, art. 11 paragraph (1) of the Law on notarial procedure, although it contains reference to notarial deeds and actions, in fact it also contains notarial procedures. The author supports the position of scholars, who consider the notarial procedure by its content to be a broader one than a notarial action. In other words, the notarial action is only part of the notarial procedure (see, for example, Volodin, Garin, 2011, p. 45-46). It should be noted that, according to the opinion of these scholars, the notarial deed drawn up is the result of the notary action carried out! In other words, in a notarial procedure the notary performs various notarial actions. These actions may result in a notarial deed drawn up or may result in a refusal conclusion in the preparation of a notarial deed. Moreover, a notarial procedure may contain several actions and notarial deeds. For example, in the framework of the procedure for organizing and conducting tenders (reference 3, art. 39) various notarial deeds can be drawn up: drawing up the tender minutes, issuing certificates on ascertaining the procedural stage of the auction and its results, authentication of the sale-purchase contract, etc.; in the procedure of dissolution of the marriage by agreement of the spouses (reference 3, art.art. 41-42) in the same way, various notarial deeds can be drawn up: legalization of the copy of the marriage certificate, authentication of the application for dissolution of the marriage of the spouses, issuance of the extension of the deadline for withdrawal of the application for dissolution of the marriage of the spouses, issuance of the conclusion of dissolution of the marriage of the spouses, as the case may be, authentication of the agreement on the payment of maintenance and the establishment of the residence of minor children, as the case may be, authentication of the contract for the division of property shared by the spouses, etc.

Beyond the criticisms related to the legislative technique [8], at first sight we notice the confusion of the legal terms. Thus, in Article 5 paragraph (3) of the examined Law, it is stipulated that *the notarial deed is drawn up in the form of authentication, legalization and certification*. From this norm we deduce, for example, that authentication is a form of elaboration of the notarial deed. However, in art. 31 paragraph (4) of the given law, the expression *"... in the process of authentication of the legal act ..."* is used, and in paragraph 5 of the same article it is already stipulated that *"In the procedure of authentication of contracts ..."*. The same confirmation of the existence of an authentication procedure is

found in Article 45 paragraph (5) of this Law: *"...the authentication procedure"*. From all this it is clear that authentication is one of the varieties of notarial procedure and not of notarial deeds, even if Article 5 paragraph (3) of the Law on notarial procedure reports otherwise. In this context we could also report that there are notarial deeds that are performed in other procedures, than those of authentication, legalization and certification. For example, the protest acts of the bill of exchange, the protest acts of the checks, the protest act of the sea, the deed of revocation with the executory formula, etc.

Even if in the legislation of several States the correlation between the notarial deed and the notarial action corresponds to the one supported by the author [9], the definition of notarial action used in the Law on notarial procedure does not allow us to confirm this fact. According to Article 5 paragraph (9) of the Law in question, the notarial action is necessary for the preparation and execution of a notarial deed or for the fulfillment of a notarial procedure, and according to the content, the notarial action represents a whole (and not a single act or a particular act) acts and acts issued by the notary. The wording is very ambiguous and unsuccessful, which we observe at the same time with the application of this rule. For example, in the procedure of dissolution of the marriage by agreement of the spouses, the notary draws up several notarial deeds. However, if it is necessary to apply the provisions of the quoted norm, it follows that these notarial deeds are suddenly transformed into notarial actions? The second sentence of this paragraph relates that *the provisions of this Law on the notarial deed are also applicable to notarial actions, insofar as the law does not provide otherwise*. At first glance, this statement tries to give us an affirmative answer to this question, although rather it tries to support another concept of differentiation of the notarial deed and the notarial action - based on the object: the notarial deed is the subject of the authentication procedure (it is an authentic instrument or, in other words, in authentic form), and the notarial deed is the subject of other notarial procedures.

The attempt to find a solution by interpreting in the system the provisions of the Law on notarial procedure has failed, because the law in question does not relate the specifics of the notarial action in a notarial procedure or a notarial deed, the given expression being used only in general formulations (it can be refused, postponed, suspended, etc.).

Following the purpose of positive interpretation, we consider that within the legislation of the Republic of Moldova the notion of notarial action is to be seen in the dynamic sense of notarial activity, while the notarial deed must be examined in the static sense of notarial activity, fixing the results of notarial actions, as a positive result (which satisfies the requirement of the applicant for notarial assistance) of the actions of the notary.

Continuing the examination of the notarial deed as a document, we note that it can be drawn up both on paper and in electronic form (as an electronic document). The recognition of the equal legal force of the notarial deed displayed in an electronic document and the paper one is beneficial and supports the use in notarial activity of information technology tools. At the same time, the form of the notarial deed may be different depending on the type of notarial deed: as a result of the authentication procedure, the notarial deed takes the form of an endorsement (also called the notarial endorsement, the notarial deed endorsement, the authentication endorsement, etc.); as a result of the succession proceeding, of certifying the facts provided by law, of receiving in the deposit of financial means, documents and financial instruments, of receiving the documents in storage and in other cases provided by law, the notary certificate is issued; as a result of the protest of the bills of exchange, the act of protest of the bills of exchange is drawn up

according to the model provided by the special legislation. Naturally, these forms of the notarial deed provided by Art. 5 and Art. 24 of the Law on notarial procedure do not constitute an exhaustive list, being supplemented by the special rules of this law (e.g., it can be set out in the form of a conclusion or minutes). So, we notice that the notarial endorsement, the notarial certificate, etc. represent different forms in which the notarial deed is exposed. However, even in Article 5 paragraph (6) of the Law under consideration [10] we identify a mismatch: if the endorsement is a form of the notarial deed, then why does the legislator use the conjunction "and" between the notarial deed and the endorsement? The grammatical interpretation leads us to the conclusion that the notarial deed and the endorsement are notions with proper meanings between them.

Studying the Law on notarial procedure, we also observe provisions from which it follows that notarial endorsement is a component part of the notarial deed. Thus, the duplicate notarial deed reproduces the content, including the notarial endorsement (reference 3, art. 26 paragraph (2)), corrections and additions to be specified in the text of the notarial deed and at the end of the authentication endorsement (reference 3, art. 28 paragraph (3)). Probably, in order to be in agreement with these provisions, by Law no. 78/2022 (reference 4), art. 5 paragraph (4) from the Law on notarial procedure was exposed in another editorial: *The notarial deed, besides the text that sets out the content of the legal act, includes the notarial endorsement, without which the notarial deed is null.*

This provision can be criticized from a simple fact that, as we established below, the notarial deed is a document drawn up as a result of any notarial procedure, both authentication and certification, legalization, etc. As a result, the form of the notarial deed constitutes not only the notarial endorsement, but also the notarial certificate, the protest act, the conclusion, etc. Following these assumptions, we note that the notarial deed may not contain the notarial endorsement. This conclusion also follows from the provisions of the order of the Minister of Justice of the Republic of Moldova no. 59/2019 (reference 17), which in the approved models of the notarial certificate does not contain the notarial endorsement, from the provisions of the order of the Minister of Justice of the Republic of Moldova no. 126/2019 (reference 18), which in the approved model of the ithe conclusion of the investment with executory formula does not contain the notarial endorsement, as well as in other normative acts.

Earlier, the primary edition was criticized, because not every notarial deed contains the presentation of the content of the legal act, but only the one drawn up in the authentication procedure.

The legal norm in question nullifies any notarial deed, which does not include the notarial endorsement. The positive interpretation of these amendments draws the conclusion that, implicitly, the Moldovan legislator changed the concept of the notarial deed and the notarial action, so that the notarial deed obtained the meaning of the result only of the authentication procedure, because only within the notarial authentication procedure the drafted document contains the exposure of a legal act, which is confirmed by the application of a notarial endorsement, applied by the notary. In other procedures, the notarial deed does not contain the exposure of a legal act (with some exceptions, but these exceptions do not constitute the rule that emphasizes this type of notarial procedure), as well as does not always result in the application of the notarial endorsement (even if the notarial endorsement will not be the authentication one, legalization or certification).

Of course, this approach does not explain the existing inconsistencies and elucidated

infra, but it removes from the nullity the notarial deeds, which do not comply with the provisions of Article 5 paragraph (4) of the Law on notarial procedure in the current edition, in the hope that in a short period the normative framework will be adjusted accordingly, possibly, and taking into account the draft that will be proposed next. Another solution - the interpretation of denying the existence of this legal rule (because it does not correspond to the content of the whole law) seems too harsh and does not correspond to the will of the legislator.

In the notarial procedure, the notary carries out actions of different legal nature and importance. Some actions are part of the notarial procedure, being necessary for the preparation of a notarial deed (e.g., verification of the applicant's exercise capacity, establishing the applicant's identity, registration in the notarial register), the second group of actions is also part of the notarial procedure, but is auxiliary (e.g., requesting information from other persons, extracting data from public registers and other sources), the fulfillment of which supports the final purpose of drafting the notarial deed, as well as the third group of actions, although it is part of the notarial procedure, but exceeds the intended purpose (e.g., presentation of information about the notarial deed performed to other public authorities, archiving of notarial documents, etc.). For the purpose of delimitation of notarial actions resulting in different legal effect, there is a need to separate the notarial document and the notarial deed, underscoring that the notarial document is a broader notion, which includes any act drawn up by the notary, including the notarial deed. Thus, the notarial action results in the preparation of a notarial deed or is directed directly for this result, even if for various reasons it did not reach this result (the conclusion of refusal was issued), and the other factual actions are part of the respective notarial procedure, directly or indirectly, for the preparation of a notarial deed.

Regarding the content of a notarial deed or, in a broad sense, of a notarial document, it includes both the form of direct expression of the notarial deed (e.g., notarial endorsement) and another text, which is attached to the notarial deed, if any. Thus, the private will is united with the will of the state in a single document. We will specify that, traditionally in the Republic of Moldova the notarial endorsement is added to the private deed and not vice versa (as, for example, in the State of Israel) or is incorporated in the "notary's endorsement" (as, for example, in Spain). The eddition of law *ferenda* described below is not the final result of the author's research, but represents only a transition stage to a coherent legal framework in the field of the notary process.

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The proposed edition for amending and supplementing the Law on notarial procedure

Article _. The notion of notarial procedure

(1) Notarial procedure is the activity of notaries with external effect, aimed at providing notarial consultations, examining the circumstances, preparing and drawing up the notarial deed or another notarial document, carried out in accordance with the provisions of this law and other laws.

(2) Providing notary assistance by drawing up a notarial deed or another notarial document, offering a notarial consultation are component parts of the notarial procedure.

(3) Depending on the notification of the applicant for notary assistance and the legal requirements, the notary may carry out the notarial procedure in the form of certification, legalization, authentication or otherwise regulated by this law or other laws.

(4) The notarial procedure is considered to have started from the moment of notification by the applicant for notary assistance or, only in the cases expressly provided by law, from the moment of the notary's self-notice.

(5) The notification of the notary assistance in the absence of a reservation made in writing by the applicant is also an expression of the applicant's consent to the processing of personal data and of those

necessary in the requested notary procedure. Consent shall also remain valid if notarial assistance has not been granted or has been refused.

Articolul _. Notarial activity

(1) Notarial activity represents the totality of notarial deed, de facto actions, as well as notarial actions performed by the notary as representative of the public power, on behalf of the Republic of Moldova, through which the law enforcement is organized and the law is directly applied.

(2) Notarial activity on the territory of the Republic of Moldova is carried out exclusively by notaries invested with powers of the Ministry of Justice.

(3) The Notarial Chamber develops and approves the quality standards of notary assistance.

Articolul _. Notarial document

(1) The notarial document is the document that records any action prior to the preparation of the notarial deed in order to establish, verify and ascertain the legal facts necessary for the provision of the notarial assistance, as well as the result of any notarial action that can be exposed in the form of: Notarial endorsement, notarial certificate, notary's conclusion, protest act, minutes etc.

(2) To the extent that it does not conflict with the nature of the notarial document and the special actions in its preparation, the legal rules governing the preparation of the notarial deed shall apply to any notarial document.

(3) The notarial document shall contain:

a) office of notary;

b) the date the notarial document was drawn up;

c) name of notary;

d) the place where the notarial document was drawn up, in the case of drawing up outside the office of the notary, specifying the circumstances justifying the drawing up of the document in that place;

e) a brief description of the actions taken by the notary to establish the facts required by law for this type of notarial procedure and their outcome, if they influenced the decision taken by the notary in this notarial procedure, as well as the result of these actions;

f) signature of notary;

g) notary's stamp.

(4) The notarial document may be drawn up in paper form or in electronic document form, having the same legal force.

(5) The facts ascertained by the notary and reflected in the notary document expressly are presumed to be established with certainty and must not be proved by the person in whose favor it is presumed.

(6) In case of drawing up the notarial documents on special forms of strict evidence, they are registered at the Notary Chamber. The form and content of the special forms on which the notarial documents are drawn up are approved by the Council of the Notarial Chamber.

(7) The Ministry of Justice elaborates and approves the requirements for the content of each type of notarial document, after consulting the Notarial Chamber.

(8) The Notarial Chamber develops and approves the models of the notarial documents, in accordance with the legal requirements and quality standards of the notarial assistance.

(9) The acts of protest of the bills of exchange shall be drawn up according to the model presented in Annexs no.3 and 4 to the bill of exchange Law no.1527/1993.

Articolul _. The notarial deed

(1) Notarial deed is the document, drawn up by the notary in full, drafted by the notary or presented by the applicant, which reflects the circumstances established by the notary in the course of the notary action fulfilled, guarantees the compliance of this document with the legal requirements and assigns to it a legal force equal to the acts of public authority.

(2) If the notarial document requires the signature of the applicant for notary assistance and, where applicable, of other participants in the notarial procedure, the document drawn up shall be accompanied by the notarial endorsement. In the given case, the notarial act also includes the direct text of the document, on which the notarial endorsement applies.

(3) If the notarial document does not require the signature of the applicant for notary assistance, the notarial act shall take the form of the notarial certificate or, in the cases provided by law, the conclusion of

the notary. Within the succession proceeding, certification of the facts provided by law, receipt in deposit of financial means, documents and financial instruments and in other cases provided by law, the respective certificate shall be issued.

(4) The notary draws up the minutes if the result of the notarial action is not clear at the beginning of the preparation of this notarial document. The notary draws up the minutes if the result of the notarial action is not clear at the beginning of the preparation of this notarial document.

(5) In addition to the content provided for any notarial document, the notarial certificate shall contain, as the case may be:

a) name or name of the holder;

b) the facts established by the notary, other mentions or findings resulting from the notarial procedure or which the notary considers necessary.

(6) The notarial deed, bearing the stamp and handwritten signature of the notary or the electronic signature of the notary, is of public authority, is legally presumed, truthful and has evidentiary force and, where applicable, enforceability provided by law.

Articolul _. Notarial action

(1) Notarial action is a fact or a system of facts undertaken by a notary, in accordance with the special procedure provided by law, aimed at establishing, verifying or ascertaining the facts and circumstances necessary for the preparation of the notarial document.

(2) The provisions of this Law on the notarial deed are also applicable to notarial actions, insofar as the law does not provide otherwise or does not correspond to the nature of the notarial action.

Articles 4, 5 and 24 are repealed.

NOTES:

[1] The deed performed by the notary, bearing his signature and seal, is of public authority and has the probative force provided by law.

[2] The notarial deed bearing the stamp and signature of the notary is of public authority, is presumed to be legal, truthful and has probative force and, as the case may be, executory force provided by law.

[3] The deed performed by the public notary, bearing its seal and signature, is of public authority and has the probative force and, as the case may be, the executory force provided by law.

[4] Such a study can be found in Mr. Schin George Cristian's PhD thesis (Schin, 2021, p. 57-62).

[5] The notarial action is a set of acts undertaken and acts issued by the notary, aimed at establishing the facts and circumstances necessary for the preparation and execution of the notarial deed or the fulfillment of the notarial procedure. The provisions of this law on the notarial act are also applicable to notarial actions, insofar as the law does not provide otherwise.

[6] See PhD thesis (Schin, 2021, p. 79-90).

[7] The new edition: *The notary's refusal to perform the notarial deed or action can be challenged according to the Administrative Code.*

[8] The Law on the notarial procedure has as object not only the notarial procedure, but also the notarial activity, which is a broader notion, as well as notarial deeds and actions, which are examined separately by the notarial procedure. At the same time, the law does not contain the definition of "notarial procedure", which creates the impression that the title of the legislative act does not correspond to its content (the content exceeds the title).

[9] For example, another approach exists in Germany, where a notarial deed is the authentic instrument, in other words the act drawn up as a result of the notarial authentication procedure, and the result of the other procedures is called a notarial action.

[10] The notarial deed and the notarial endorsement are drawn up on paper or in the form of an electronic document, having the same legal force.

SUPPORT MEASURES GRANTED BY THE EUROPEAN UNION THROUGH EBI TO THE ROMANIAN COMPANIES

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Abstract: *The pandemic caused by SARS-COV 2 virus represented an economic shock at global level. In Romania, like in the case of many other member states, this shock was felt, but during this period it proved to be resistant, also being supported by the aid measures which were crucial for reducing the effects of the pandemic. The support granted under EU Recovery and resilience facility is a unique opportunity to stimulate investments in the member states. The European Investment Bank under this programme brought their contribution to financing investments for sustainable growth.*
Keywords: *support measures, recovery plan, pandemic period, economic recovery, economic support*

Introduction

At the present moment, global economy faces a major economic crisis, some specialists stating that the impact of this sanitary crisis registered a much larger extent compared to 1929 crisis. Romanian economy as well as the economy of other member states was affected by this pandemic especially if we take into account the financial and economic relations between the European and global structures. Similar to other European economies, the Romanian economy through their economic and financial structure was very vulnerable to the impact of this pandemic. Many sectors of our economy like automotive industry, raw materials processing are only two of the sectors which mainly contribute to GDP and which were seriously stricken by this pandemic.

Intervention of the European Union

The European Union very quickly reacted in fighting against Covid-19 through two strategic axes. Member states proved to be united in implementing some common interventions, in order to support the economies of some member states which were economically unbalanced by this pandemic. To reduce losses caused by the pandemic at the economic and financial level depended to a great extent on the size and quality of state's interventions in real economy. The member states with stronger financial markets could ensure a better profitability at the level of their own companies. The intervention of the European Union in supporting the economies of the member states was made through complex actions well determined on different levels. The first set of measures was to ease economic competition rules.

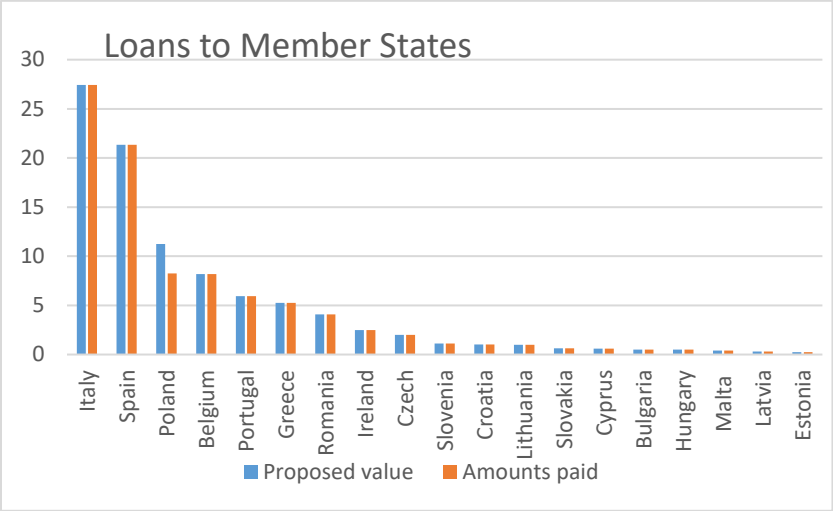
Easing the restrictions imposed to granting state aids to companies under the State Aid Temporary Framework made possible to grant a direct financial intervention in economy to all EU member states, fact which seemed impossible before the crisis.
Another set of measures taken by the European Union to mitigate sanitary pandemic under SURE instrument was to ensure liquidities to finance drugs, tests, medical equipment to support member states in fighting against COVID-19 pandemic. The European Investment Bank managed to put at the disposal of state members a liquidity package in amount of €1,300 billion for the national banks of the member states.
Under the SURE instrument the member states received loans to support public expenditure for the preservation of employment, this being a temporary support to mitigate unemployment risks.

The member states affected by the SARS COV-2 pandemic may receive financial assistance up to €100 billion in the form of loans to address increases in public expenditure for the preservation of employment. The SURE instrument is created by EU in order to support citizens and to eradicate the economic issues caused by the pandemic.
The SURE instrument is a second line of defence, which supports technical unemployment and other similar measures, for the member states which during this period face this kind of situations. These loans granted to the member states under SURE instrument are supported by guarantees from the Member States. SURE instrument is an expression of EU solidarity, whereby the Member States agree to support each other through the Union by making additional financial resources available through loans. 19 EU member states have received financial support from SURE for a total of almost €94.3 billion. Out of the 19 member states which applied for this financial support, some received partially or totally the requested sum. All available resources under this instrument sum up to €100 billion.

Table 1. Financial support provided by SURE

Country	The proposed amount of the loan	Amounts paid
Belgium	8,197 billion €	8,197 billion €
Bulgaria	511 billion €	511 billion €
Czech	2 billion €	2 billion €
Cyprus	603 billion €	603 billion €
Croatia	1,02 billion €	1,02 billion €
Estonia	230 billion €	30 billion €
Greece	5,265 billion €	5,265 billion €
Ireland	2,473 billion €	2,473 billion €
Italy	27,438 billion €	27,438 billion €
Latvia	305 billion €	305 billion €
Lithuania	957 billion €	957 billion €
Malta	420 billion €	420 billion €
Poland	11,236 billion €	8,236 billion €
Portugal	5.934 billion €	5.934 billion €
Romania	4,099 billion €	4,099 billion €
Slovakia	630 billion €	630 billion €
Slovenia	1.113 billion €	1.113 billion €
Spain	21,324 billion €	21,324 billion €
Hungary	504 billion €	504 billion €
Total	94,3 billion €	89,6 billion €

Source: The European Commission



Source: The European Commission

As it can be noticed, Italy is the first ranked country in terms of allocation which under this programme received €2.438 billion from EIB. The hardest-hit country by the sanitary pandemic was Italy, the beginning being even devastating especially from the social point of view which later had severe economic repercussions. It provides financial support in the form of loans granted on favourable terms from the EU to Member States. These loans unde SURE instrument were created in order to help member states to address increases in public expenditure for the preservation of employment under the conditions caused by the sanitary crisis. The granted loans helped the member states to cover the costs related to national schemes of technological unemployment and other similar measures the support economy.

EU bonds with social impact issued under SURE instrument – to finance this instrument there are issued bonds with social impact. Under this instrument the European Commission issued bonds in value of €89.6 billion in 6 rounds, but these must be used only to a social objective. The role of this instrument is to keep people in jobs during this period sensitive from the economic point of view. This instrument consists of bonds with a maturity date of 5, 10 and 15 years. The bonds were oversubscribed, resulting in very favourable pricing terms. Collected funds were transferred to the state members under the form of loans in order to help them cover directly the costs related to technological unemployment and other similar measures the support economy in this period.

Next Generation –financing the Recovery and Resilience Plan

The EU long-term budget and the Next Generation Programme represent the largest package of financial assistance the European Union has ever granted to its member states. The financial resources sum up to €2,018 billion, resources which will be used to rebuild Europe after Covid-19 pandemic. A reconstruction whose goal is to make Europe more ecological, more digital and more resilient. The new long-term budget will strengthen the mechanisms of flexibility, in order to guarantee it can meet some unforeseen needs. It was projected in such a way as to meet present realities as well as future uncertainties. This

programme of consolidated financing created at European level is assigned for the period 2021-2027, thus the goal of this programme is to recover the economy on medium and long term.

The main elements of the agreement:

Over 50% of the amount will support modernization, for example by:

- research and innovation, through Horizon Europe;
- a fair climate transition and a digital transition, through the Fair Transition Fund and the Digital Europe program;

In addition, the package focuses on:

- modernizing traditional policies, such as cohesion policy and the common agricultural policy, in order to maximize their contribution to the Union's priorities;
- combating climate change, with 30% of EU funds, the largest share of the European budget to date;
- biodiversity protection and gender equality

Table 2. Total allocations under the multiannual financial program 2021-2027 and from NextGeneration EU

	CFM	NextGeneration EU
1. The single market, innovation and the digital sector	149,5 billion €	11,5 billion €
2. Cohesion, resilience and values	462,7 billion €	776,5 billion €
3.Natural resources and the environment	401 billion €	18,9 billion €
Migration and border management	25,7 billion €	-
Security and defense	14,5 billion €	-
Neighborhood and the whole world	110,6 billion €	
7. European public administration	82,5 billion €	
CFM TOTAL	1210,9 billion €	806,9 billion €

Source: The European Commission

NextGeneration EU

NextGenerationEU is a temporary recovery tool worth more than € 800 billion designed to help repair the immediate economic and social damage caused by the coronavirus pandemic. Following the COVID-19 pandemic, Europe will be greener, more digital, more resilient and better prepared to meet current and future challenges. Recovery and resilience mechanism: central to NextGenerationEU, with EUR 723.8 billion in loans and grants available to support EU countries' reforms and investments. The aim is to mitigate the economic and social impact of the COVID-19 pandemic and to make European economies and societies more sustainable, resilient and better prepared for the challenges and opportunities offered by the transition to a green economy and the digital transition. Member States are working on their recovery and resilience plans to access funds under the Recovery and Resilience Mechanism.

Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU): NextGenerationEU also includes EUR 50.6 billion for REACT-EU. This is a new initiative that continues and expands on crisis response measures and the consequences of the crisis through the Coronavirus Response Investment Initiative and the Coronavirus Response Plus Investment Initiative. It will contribute to an ecological, digital and robust economic recovery. The funds will be directed to

- European Regional Development Fund (ERDF)

- European Social Fund (ESF)
- European Aid Fund for the Most Deprived (FEAD)

These additional funds will be made available in the period 2021-2022. NextGenerationEU will also supplement funding for other European programs or funds, such as Horizon 2020, InvestEU, Rural Development or the Fair Transition Fund (JTF).

Table 3. Breakdown NextGeneration EU

Recovery and resilience mechanism (RRF)	723,8 billion €
of which credits	385,8 billion €
of which grants	338,0 billion €
React EU	50,6 billion €
Horizon Europe	5,4 billion €
EU Invest Program	6,1 billion €
Rural development	8,1 billion €
The fund for a fair transition (JTF)	10,9 billion €
RescEU	2 billion €
TOTAL	806,9 billion €

Source: The European Commission

Under this programme Romania will benefit of a consistant non-reimbursable assistance of about €33 billion and of a reimbursable assistance of €55 billion, this representing a huge opportunity for our country to fight against the economic effects created by this pandemic. All these financial resources available to our country will have to be rigorously organised in order to get benefits as substantial as possible. For our country to attract cofinancing and prefinancing funds means to create a budgetary framework which meet these requests. In order to make this budget Romania will have to identify the necessary sources of liquidity in order to attract these funds. In order to attract these non-reimbursable funds the state has to make the planned expenses and later it addresses the reimbursement requests to the European Commission in order to recover the money. In order to get reimbursable assistance, the state will have to invest in the real economy so that it generates the needed incomes the state will use to reimburse the funds.

In the present Romanian economic and financial circumstances the use of this assistance must follow three main directions of investment:

In the health sector, to cover the expenses effectively needed to fight against Covid-19 pandemic. All the expenses caused by the pandemic in the health sector, from testing, quarantine, purchase of drugs to paying doctors on the front line must be correlated to the real needs of people and not to huge expenses.

At economic level, recession which is caused by the decrease of consumption which is the result of the laid-off people in this period, fact which automatically made the buying power drop. The state must take action in order to boost consumption so that consumption, at its turn, lead to an economic increase, and an important factor in consumption increase is unemployment decrease.

To support businesses in crisis period by financing the stocks of raw materials, which ensure the economic cycle in the crisis period. Thus, economic assistance was offered by financing the companies in difficulty to avoid interruption in the economic chain and finally at the level of national economy.

It must be underlined the fact that it is important that these European packages of financial assistance should be effectively used, and the idea that the state must assign its own budgetary resources to support the economy must not be eliminated. Some of the EU member states assign major resources of financial assistance, at least two figure in percentages from the national GDP. For example, Germany assigns more than 50% in the total state aid resources. In Romania budgetary grants represent less than 10% of GDP and even assisted by the Recovery and Resilience Plan it will not recover the economic gap from 2021. At European level, besides the traditional financing which offered the need of liquidity in pandemic in all Europe, it took action and offered the risk capital when companies were recovering and financed on long term innovation and new technologies.
The survey of EIB group regarding investments (EIBIS) published annually mentions 13,500 EU companies, including Romania. In 2021, 480 Romanian companies took part at this survey. The analysis made by EIBIS shows that the number of Romanian companies which made investments in the last financial year is very low due to the sanitary pandemic. The only investment on short-term that 45% of the Romanian companies made during this period was to digitise their activity in order to survive the crisis.

The Covid-19 impact on Romanian companies will be a long-term one, the uncertainty regarding the future remains the most mentioned obstacle in making investments (80%), followed by the reduced availability of qualified staff (73%). "The lack of access to financing continues to worry. Several companies, compared to the ones in the European Union, consider it to be an obstacle, and 12% of them may be considered to depend on external financing. The percantage is much above the EU average (5%) and it shows a tendency on long term".

Due to the losses caused by the pandemic to which are added these measures of assistance under the form of secured credits, more than a quarter of Romanian companies are indebted, 28% external debts and 16% EU debts, while the infusion of capital was mainly made by the owners of the companies (13%), only 5% from the EU. Public investments will play a major part in recovering the economy of our country. The use of funds under the Recovery and Resilience Facility is essential in developing Romanian companies at digital level and directed to green economy. Companies need an infusion of capital to improve the financial health on a solid basis of growth.

Conclusions

The survey of EIB group regarding investments (EIBIS) emphasises the extent of the large economic impact and the reply of government policies of assistance. Romanian economy showed resistance, and recovery is now in full development. As a conclusion we may state that Covid-19 caused a shock at global level but it was fought against through a series of support measures. The Romanian economy was affected by the sanitary pandemic, but with the measures taken at internal level and with the support of goverment policies it managed to stabilize till the present moment. The support measures offered by the European Union to support the economic activities in this period of crisis were very important in the economic assistance of the countries affected by the sanitary pandemic.

Romanian companies are aware of the changes and challenges imposed by the pandemic, but in order to unlock investments it is needed to find solutions to the problems the inadequate workforce and the difficult acces to financing face at the present moment.

The assistance granted to the member states, including Romania, under the EU Recovery and Resilience Programme is an opportunity to stimulate investments, and it must be adequately used in order to get economic benefits in the future. EIB plays an important part in the economic assistance of companies for durable growth, but the new challenges of the sanitary crisis and, at the present moment, other economic actions and changes must also be taken into consideration.

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THE EVOLUTION AND UNCERTAINTIES OF THE FIXED ESTABLISHMENT CONCEPT

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Abstract: *The following paper makes a radiography of the ``fixed establishment`` notion specific to the VAT field, by highlining the requirements that have been attached to this concept by the CJEU in its case-law, having regard also to the specifics of the cases. The analysis shows that the concept's uncertainty has not been unveiled and, as it results from the working documents of the VAT Expert Group, despite the need of more clarity, it is highly improbably that actions in this regard shall be undertaken by positive measures. The reason is represented by the high factual dependence of this concept. This must be also the reason why, although over the time the CJEU seemed to attach some requirements to the content of this concept, the result of their application is not predictable. In the meantime, the taxable persons and the tax administrations have to face this uncertainty and argue their positions in courts of law. That should not be an effect of a harmonised tax using autonomous concepts. Unfortunately, at this stage, no one can provide clear cut answers on the existence of a fixed establishment; instead, the taxable persons probably must prepare a defence file, taking into consideration what is known until now in this regard.*
Keywords: *VAT; fixed establishment; case-law;*

The relevance of the fixed establishment concept

The concept of fixed establishment is specific to the VAT field. Although both the VAT Directive (2006/112/EC) and the Implementing Regulation (282/2011) use the concept of fixed establishment, a definition of that concept is to be found in the Implementing Regulation, representing an illustration of the case-law of the CJEU on that concept. It is not yet possible to ascertain precisely the reasons behind the adoption of the institution of fixed establishment in the field of VAT, just as it is not yet very clear which are the situations in which an entity constitutes a fixed establishment in another Member State. As such, unlike the permanent establishment, a notion on which the OECD has drawn up instructions in its Commentaries to the Model Convention and on which a number of certainties can be issued, the fixed establishment is still an enigma and the case-law of the CJEU in the field, the staff working documents of the European Commission recommend that an objective analysis should be carried out on a case-by-case basis, under available information and facts.

Of course, such a recommendation does not come very much to the aid of taxpayers, because it is quite possible that an objective assessment, in the absence of clear limits or benchmarks, will be carried out differently by the tax authorities and by taxpayers.

Article 11 of Regulation 282/2011 defines as follows the fixed establishment:

"1. For the application of Article 44 of Directive 2006/112/EC, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable structure in terms of human and technical resources to enable it to receive and use the services supplied to it for its own needs.

2. For the application of the following Articles, a 'fixed establishment' shall be any establishment, other than the place of establishment of a business referred to in Article 10 of this Regulation, characterised by a sufficient degree of permanence and a suitable

structure in terms of human and technical resources to enable it to provide the services which it supplies: (...)
3. The fact of having a VAT identification number shall not in itself be sufficient to consider that a taxable person has a fixed establishment".

The first paragraph provides a definition of passive fixed establishment (as a beneficiary), the second provides a definition of active fixed establishment (as provider).
One would point out that, at this point, establishing the existence of a fixed establishment is of importance only from the point of view of the place where the services are provided and not with regard to the supplies of goods. Moreover, from the texts of art. 11 above, results also an approach to the fixed establishment from the perspective of the ability to receive/use and provide services. As such, if a fixed establishment is deemed to exist, the taxable person would be regarded as established in the territory of the State where the fixed establishment is situated, with the result that any services supplied by the fixed establishment should be regarded, from the point of view of the place of supply, as being supplied by the fixed establishment. For example, if the recipient of the service is established in the same State where the fixed establishment is located, then we will be in the presence of a domestic supply of services (with VAT) and not of an intra-Community or extra-EU supply of services (exclusive of VAT), even if in both cases the same rule of determining the place of supply of services applies: B2B.

Similarly, if a fixed establishment would be the recipient of the services, the place of supply of the services would be assessed according to the State where the fixed establishment is situated (these are services provided under the B2B rule). As such, any services received by the fixed establishment from suppliers located in the same State will be invoiced with VAT (in the absence of an exemption) and will no longer represent intra-Community supplies of services, net of VAT. It should be noted that the registration of a company for VAT purposes in another Member State (directly or through a tax representative) does not give rise to a fixed establishment, nor does it change the regime of services rendered or received by that entity.
As mentioned above, perhaps the most difficult task is to determine whether there is a fixed establishment, given that the benchmarks resulting from the above definitions allow for fairly broad interpretations.

The requirements of a fixed establishment

It follows from the above definitions and the case-law of the CJEU that the following are cumulatively required for the existence of a fixed establishment:
(a) „a sufficient degree of permanence and an appropriate structure in terms of human and technical resources".
a.1. „sufficient degree of permanence"

The VAT Expert Group (VAT Expert Group 13th meeting, 2 May 2016) recognises that, from the perspective of this criterion, taxpayers lack any guidance. As such, although it is considered that the degree of permanence of the fixed establishment does not derive from a single transaction, it is not known whether that degree of permanence should be assessed by reference to the transactions carried out by the taxable person or whether other factors should also be taken into account. It is considered that the operation of a workshop for a period of one year satisfies the criterion of the degree of permanence, in so far as the

premises where the workshop is situated are constantly used (VAT Expert Group 13th meeting, 2 May 2016, p. 44).

If, given the structure of the business, the taxable person would have access to the premises only 1 day every 2 months then it is considered that there would be no fixed establishment (VAT Expert Group 13th meeting, 2 May 2016, p. 45). An access of 2 days/week could support both interpretations, in favour of and against the existence of a fixed establishment (VAT Expert Group 13th meeting, 2 May 2016, p. 43). In the absence of clear instructions, accompanied by examples, it is recommended that the taxable person's intention, from the point of view of the degree of permanence, is examined at the time of the transaction or before the start of the transactions, on the basis of objective elements, and not *ex post*, after they have been carried out, since, on the one hand, the taxpayer should bear a tax burden increased by tax accessories, and, on the other hand, the premises for a double taxation are created (VAT having already been collected).

a.2. „an appropriate structure in terms of human and technical resources"

The existence of the human and technical resources is, in theory, cumulatively required (for a different approach see the *Welmore* case, mentioned below) and the resources thus existing must enable the fixed establishment either to receive and use the services for its own needs or to provide services. The sufficiency of human and technical resources is assessed on a case-by-case basis, depending on the nature of the fixed establishment's activity, and should enable the fixed establishment to benefit from or provide services.

(b) „the ability of the establishment to receive the services supplied and to use them for its own business needs/to provide the services"

From VAT point of view, the existence of a fixed establishment must be taken into account when services in which it participates or which are for the benefit of the fixed establishment are supplied or received. For example, in *Welmory*, C-605/12, the Polish company argued that the infrastructure it makes available to the Cypriot company does not enable the Cypriot company to receive and use for its business the services supplied to it by the Polish company, as the human and technical resources for the business carried on by the Cypriot company, such as computer servers, software, servicing and the system for concluding contracts with consumers and receiving income from them, are situated outside Polish territory. The Court stated that if the facts alleged by the Polish company were shown to be correct, the referring court would then be led to conclude that the Cypriot company does not have a fixed establishment in Poland. In case of services provided/received by the entity (in which the fixed establishment does not participate), the rules on the place of supply will have to be considered by reference to the place where the entity is established.

Case-law of the CJEU on the notion of ``fixed establishment``

Whilst the definition of the fixed establishment exists in the EU VAT legislation, it has been largely left to the CJEU to provide guidance regarding this notion and its scope of application. The first landmark decision is *Berkholz*, Case 168/84, based on which art. 11 from the Implementing Regulation was adopted. However, the challenges of the new economic realities determined the revision of the fixed establishment concept, with the effect of bringing more uncertainties regarding this concept. In *Berkholz*, the issue was if a German company, operating gaming machines on board of ferries, especially when

located outside the territorial waters, constituted a fixed establishment. By referring firstly to the rationality test, the Court pointed out that the place where the supplier has established his business is a primary point of reference in order to determine the tax jurisdiction over a given service, and that regard is to be had to another establishment from which the services are supplied only if the reference to the place where the supplier has established his business does not lead to a rational result for tax purposes or creates a conflict with another Member State (para. 17). In the following paragraph the Court mentioned the two requirements that have to be fulfilled in order for a fixed establishment to be considered to exist, for the purpose of the general services place of supply rules: (1) an establishment must be of a certain minimum size; (2) both the human and technical resources necessary for the provision of the services must be permanently present. Advocate General Mancini observed that it does not matter whether or not the human and technical resources belong to the taxable person, as long as, in the latter case, it has control over them. The Court concluded that ``*it does not appear that the installation on board a sea-going ship of gaming machines, which are maintained* ***intermittently****, is capable of constituting such an establishment, especially if tax may appropriately be charged at the place where the operator of the machines has his permanent business establishment*``.

The same conclusion, the lack of the fixed establishment, was reached by the Court in *Faaborg-Gelting Linien*, Case 231/94, although, in this case, the human and technical resources were permanently present on the ferry. The key argument of the Court was represented by the rationality test, i.e., the place of supply has as main point of reference the place where the taxable person has its place of business/establishment, another place being used only if the application of the primary point of reference did not lead to a rational result for VAT purposes. From these two cases results that the Court resorted to the rationality test as defining factor in order to exclude the qualification of fixed establishment in situations in which such a creation would lead to an avoidance of paying the VAT. In the *DFDS,* Case C-260/95, the Court analysed whether an English subsidiary of a Denmark company may constitute a fixed establishment, having a specific subject the regime of tour operators. The Court ruled out that where a tour operator established in one Member State provides services to travellers through the intermediary of a company operating as an agent in another Member State, VAT is payable on those services in the latter State if that company, which acts as a mere auxiliary organ of the tour operator, has the human and technical resources characteristic of a fixed establishment. In *ARO Lease BV*, Case C-190/95, the Court had to answer the following question: Where a leasing company established in one Member State (the Netherlands) leases cars under operational leases to clients established in another Member State (Belgium), in which Member State are the leasing services supplied for VAT purposes? Contrary to the expectations, following the decision previously delivered in DFDS, the Court was reluctant to create a fixed establishment. In the *ARO Lease BV* the CJEU refers to the independence that the fixed establishment should enjoy in the provision of the services: ``*Consequently, when a leasing company does not possess in a Member State either its own staff or a structure which has a sufficient degree of permanence to provide a framework in which agreements may be drawn up or management decisions taken and thus to enable the services in question* ***to be supplied on an independent basis****, it cannot be regarded as having a fixed establishment in that State*`` (para. 19).

In *Luxemburg Leaseplan,* Case C-390/96, the Court repeated literally its point of view in the *ARO Lease BV* case. That lead the literature to the opinion that the DFDS decision applies only in very specific circumstances (Terra and Kajus, 2014, p. 702). In *RAL,* Case 452/03, the dispute in the main proceedings arose from a tax avoidance scheme, whereby, by establishing an offshore subsidiary (Guernsey) to operate the machines, by separating that function from ownership and operation of the premises, an UK mainly based group of companies wanted to escape the VAT liability on gaming machine services (by claiming that the place of supply of the gaming machine services is in Guernsey) and to recover the input VAT (related to services provided to it by the other members of the group). The offshore established subsidiary activity consisted in permitting the access to the public to use the slot gaming machines, leased to it by another company from the group, on the premises made available by a second company from the group, both established in UK. The management of the machine was subcontracted to a third company from the group, also established in UK. The question was if the persons whose presence is an important factor in conferring a fixed character on an establishment must be employed or directly dependent on the provider. According to the Advocate General in the case, this would lead to absurd results. He gave the example of an establishment where the security staff are the only people with keys to the establishment and are in charge of opening and closing the premises at regular hours. Such persons are certainly indispensable to ensure that the establishment does not operate merely intermittently. They deserve to be considered as human resources whose permanent presence is necessary for the provision of the services in the establishment to take place and, therefore, to confer a fixed character on the establishment. In any case, it would certainly be unacceptable that such an establishment would cease to be characterised as a fixed establishment of the supplier of the services by virtue of the fact that he had decided to outsource the activities of security in the establishment to an independent security company.

The Court decided the case ruling that the provisions of article 9(2)(c) of the Sixth Directive (77/388/EEC) are applicable (arts. 53 and 54 of the VAT Directive): the supply of services consisting of enabling the public to use, for consideration, slot gaming machines installed in amusement arcades established in the territory of a Member State must be regarded as constituting entertainment or similar activities, so that the place where those services are supplied is the place where they are physically carried out. The alternative, implying the analysis of the fixed establishment notion, would lead to intricate result, keeping in mind the rationality test from *Berkholz,* as the evident purpose of levying VAT would mean that there is a fixed establishment outside the territory where the supplier has his place of business, even in the absence of any personnel. The question is whether in this case, in the absence of the provisions article 9(2)(c) of the Sixth Directive, the Court would have resorted to the general principle of EU that abusive practices are prohibited, settled in future case regarding indirect and indirect taxation (*Cussens and Others*, C-251/16, paras. 28 and 31; *N Luxembourg 1*, C-115/16, C-118/16, C-119/16 and C-299/16, para. 101).

The *Planzer Luxemburg* case*,* C-73/06, concerned an issue regarding the refund of VAT and implied a company registered in Luxemburg, with a sole shareholder in Switzerland, having as director two employees of the sole shareholder and living in Switzerland and Italy. The Luxemburg company had the registered office at the same address where thirteen other companies had their registered office. *Inter alia*, the Court examined whether, in the eventuality of the lack of a place of business in Luxemburg, the existence of a fixed

establishment could be determined, independent in its scope. In this regard, the Court ruled that, concerning transport activities in particular, the fixed establishment term implies, at least an office in which contracts may be drawn up and daily management decisions taken, and a place where the vehicles used for the said activities are stored. By contrast, registration of those vehicles in the Member State concerned is not an indicator of a fixed establishment in that Member State. A fixed installation used by the undertaking only for preparatory or auxiliary activities, such as recruitment of staff or purchase of the technical means needed for carrying out the undertaking's tasks, does not constitute a fixed establishment. In joined cases *Daimler and Widex*, C-318/11 and C-319/11, the questions were whether a taxable person established in one Member State (Denmark in *Widex* and Germany in *Daimler*), carrying out technical and research work, not including taxable transactions, in another Member State (Sweden), through its subsidiary, can be regarded as having in that other Member State a fixed establishment.

The Court pointed out that such an examination included two cumulative conditions: the existence of a fixed establishment and those transactions be carried out from that establishment. The question is if such transactions must be actually carried out or if the mere ability to carry them out is sufficient. The Court ruled in favour of the second alternative and thus decided against the existence of a fixed establishment, without examining if the two companies in the dispute had a fixed establishment. However, in answering the third question in case 318/11, the CJEU pointed out that the interpretation given to the concept of 'fixed establishment from which business transactions are effected' is not called into question by the fact that the taxable person has, in the Member State where it has applied for refund, a wholly-owned subsidiary, the purpose of which is almost exclusively to supply the person with various services in respect of its technical testing activity. The Court mentioned that a wholly-owned subsidiary is a taxable legal person on its own account and that the purchases of goods at issue in the main proceedings were not made by it. In addition, the Court mentioned that ``*it is appropriate to point out that, in the case which gave rise to the judgment in* ***DFDS, the independence of the of status of the subsidiary was disregarded in favour of the commercial reality only to ascertain which of the parent company and the subsidiary had actually carried out the active taxable transactions of supplies of services in dispute in the main proceedings*** *and, subsequently, which was the Member State of taxation for those transactions*``.

In *Welmory*, Case C-605/12, the Court had to significantly revise the concept of fixed establishment, for the first time appearing to depart from the strict physicality of the concept. In this case a company from Cyprus, the activity of which consisted in operating a system of electronic auctions, provided e-commerce services to a Polish one, represented by making an auction website available to the Polish company and issuing and selling 'bids' to customers in Poland. At the same time, the Polish company provided services to the Cypriot one, represented by advertising, servicing, provision of information and data processing and the place of supply of such services was at issue, i.e., whether the Cypriot company has a fixed establishment in Poland. Having regard to the activity performed by the Cypriot company in Poland (services provided to the Polish company), the Court noted that the fact that they can be carried on without requiring an effective human and material structure in Polish territory is not determinative. In such a case, an appropriate structure – such as computer equipment, servers and software – could qualify as a fixed establishment (para. 60). How much of this ``appropriate structure`` was necessary to qualify as a fixed

establishment remained unclear (De La Feria, 2022, p. 5). The introduction of a new criterion – ``appropriate structure``, raises the question of how far the traditional perceptions are fully clarified and whether further additional criteria can be expected. Moreover, it is not entirely clear what the requirements of the structure in question should be in order to satisfy the fixed establishment's constitution. The mentioned non-exhaustive examples – computer equipment and software, are two different manifestations of in/tangible assets (Dulevski 2022, p. 47). Case C-547/18, *Dong Yang Electronics,* re-examines the possibility for fixed establishment's constitution via a subsidiary; in this case the subsidiary belonged to a Korean company. CJEU drew attention to the ``economic and commercial realities`` and, therefore, the treatment of an establishment as a fixed establishment cannot depend solely on the legal status of the entity concerned (paras. 31 and 32). As a consequence, it cannot be stated categorically that the subsidiary does not form a fixed establishment (para. 30); however, the supplier is not required to inquire, for the purposes of such an assessment, into contractual relationships between the two entities. In *Titanium*, C-931/19, a company whose registered office and management were located in Jersey let, subject to tax, a property which it owned in Vienna to two Austrian traders. Although the company had an intermediary (agent) in Austria, the responsibilities of this intermediary excluded the important decisions concerning the letting of the property in question. After the decision delivered in *Welmory*, having regard to the new developed criterion of ``adequate structure``, it was expected that the Court would rule in favour of the existence of a fixed establishment, even in the absence of the company's own human resources in Austria. However, this did not turn out to be the case. In a very concise reasoning, by referring to its previous case-law, namely *Planzer Luxembourg* and *ARO Lease*, the Court decided that ``*a property which does not have any human resource enabling it to act independently clearly does not satisfy the criteria established by the case-law to be characterised as a fixed establishment*`` (para. 45).

The conclusions regarding the fixed establishment case-law before *Berlin Chemie A. Menarini*, Case C-333/20, is presented us such:``*As far back as the late 1990s, it was argued that if the CJEU did not drop the human resources element from the fixed establishment concept, the tax system would be "slowly committing suicide". In Welmory the Court did just that. The key question in that case was whether Court would depart from previous case law, and endorse the possibility of a virtual fixed establishment, and whilst it fixed establishmentll short of removing the physicality nexus, it did clearly depart from the Berkholz line of case law. (...) The decision in Dong Yang seemed to confirm that Welmory was not accidental, and that the Court was now set on that path. Titanium puts this assessment into doubt: given the option to continue on the path set out in Welmory and Dong Yang, further extending the concept of fixed establishment, or to retreat into a more limited concept, as set out in older case law, the Court opted for the second.*
(...) ***We now must await additional guidance from the Court in pending cases with added anxiety****. If the Court follows the same approach as in Titanium, then it will add credence to the view that Welmory and Dong Yang were but a temporary departure from its traditional approach; on the contrary, if the Court goes back to a wider interpretation of the concept of fixed establishment, then Titanium might come to be seen as a fluke in the otherwise clear path towards a modernisation of the concept of fixed establishment*``(De La Feria, 2022, pp. 7-8).

One of the long-awaited pending cases referred to above is Case C-333/20, *Berlin Chemie A. Menarini*, in which the Court delivered its decision on 7th of April 2022. This is a Romanian case, in which the CJEU was asked if a company which has its registered office in one Member State (Germany) has a fixed establishment in another Member State (Romania) because that company owns a subsidiary there that provides it with human and technical resources under contracts stipulating that that subsidiary provides, exclusively to that company, marketing, regulatory, advertising and representation services that are capable of having a direct influence on the volume of its sales. It is important to mention that the German company has a tax representative in Romania and is registered for VAT here; the German company owns 95% from the capital of the Romanian one and is its only client. The considerations of the Court are the following:

(a) As to the place of supply of the services in question, it should be borne in mind that the most appropriate, and thus primary, point of reference for determining the place of supply of services for tax purposes is the place where the taxable person has established its business, and it is as an **exception** to that general rule that a fixed establishment of the taxable person may be taken into consideration, **provided certain conditions are satisfied** (para. 29). The underlying logic of the provisions concerning the place where a service is supplied (art. 44 from the VAT Directive) requires that goods and services are taxed as far as possible at the **place of consumption**.

(b) The **existence** of a fixed establishment must be determined **by reference to the taxable person receiving the services** not to the taxable person supplying them (para. 30).

(c) Taking into consideration those pointed out above, the concept of a 'fixed establishment' refers to any establishment characterized by a (1) sufficient degree of permanence and a suitable structure in terms of human and technical resources to **(2) enable it to receive and use the services supplied to it for its own needs**.

Regarding the **FIRST CONDITION**, the Court was asked to decide whether it is necessary for those human and technical resources to belong to the company receiving the services or whether it is sufficient for that company to have immediate and permanent access to such resources through a related company, which it controls as a result of its majority shareholding. The Court referred to its case-law, in order to answer this question, as art. 44 from the VAT Directive and art. 11 para. (1) from the Implementing regulation, are silent in this regard: ``*it must be borne in mind that* ***consideration of the economic and commercial reality is a fundamental criterion for the application of the common system of VAT****. Therefore, the classification of an establishment as a 'fixed establishment' cannot depend solely on the legal status of the entity concerned (para. 38)*``.

The existence, in the territory of a Member State, of a fixed establishment of a company established in another Member State may not be deduced merely from the fact that that company has a subsidiary there. Such a classification depends on the **substantive conditions** set out in art. 11 of the Implementing Regulation, **which must be assessed in the light of the economic and commercial realities.** ``*Although it is not a requirement for a taxable person itself to own the human or technical resources in order for that taxable person to be regarded as having a sufficiently permanent and appropriate structure – in terms of human and technical resources – in another Member State, it is however necessary for that taxable person to have the right to dispose of those human and technical resources in the same way as if they were its own, on the basis, for example, of employment and leasing contracts which make those resources available to the taxable person and cannot*

be terminated at short notice (para. 41). To make the existence of a permanent establishment subject to the condition that the staff of that establishment be bound by an employment contract to the taxable person itself and that the material resources belong to it in its own right would amount, on the one hand, to a very restrictive application of the criterion set out by the wording of Article 11(1) of Implementing Regulation No 282/2011. On the other hand, ***such a criterion would not contribute to a high level of legal certainty in determining the place where services are deemed to be supplied for tax purposes, if, in order to transfer the taxation of supplies of services from one Member State to another, it were sufficient for a taxable person to cover its staffing and material needs by having recourse to various service providers*** *(para. 45)*``.

The Court gave the following guidance to the national court in order to determine whether the parent company constitutes a fixed establishment through its subsidiary established in another Member State: It is apparent from the order for reference that the German company did not have its own human and technical resources in Romania, but that those human and technical resources belonged to the Romanian company. However, according to the referring court, the German company had permanent and uninterrupted access to those resources, since the agreement for the provision of marketing, regulatory, advertising and representation services, concluded in 2011, could not be terminated at short notice. On the basis of that contract the Romanian company made technical resources (computers, operating systems, motor vehicles), among other things, available to the German company, but above all human resources of more than 200 employees, including, in particular, more than 150 sales representatives. It is also apparent from the order for reference that the German company is the sole customer of the Romanian company, which provides marketing, regulatory, advertising and representation services exclusively to it. **THE COURT**: given that a legal person, even if it has only one customer, is assumed to use the technical and human resources at its disposal for its own needs, it is only if it were established that, **by reason of the applicable contractual provisions**, the German company had the technical and human resources of the Romanian company at its disposal as if they were its own that the German company could have a suitable structure with a sufficient degree of permanence in Romania, in terms of human and technical resources.
As to the **SECOND CONDITION**, the Court pointed out that it is important to distinguish the services supplied by the Romanian company to the German company from the goods which the German company sells and supplies in Romania. They are distinct supplies of services and goods which are subject to different schemes of VAT. The elements of the case showed that the Romanian subsidiary company **was not directly involved** in the sale and supply of pharmaceutical products by the German company on the Romanian territory and **did not enter into commitments with third parties in the name of that company** (the staff of the Romanian company merely took orders from new wholesale distributors of medicinal products in Romania and forwarded them to the German company, and sent invoices from that German company to its customers in that Member State. The fact that such an activity is capable to have direct impact on the performance of the German company's economic activity seems to be insufficient).

Very important, from the facts of the case resulted that **the human and technical resources which were made available to the German company** by the Romanian company **are also those through which the Romanian company supplies the services to the German company**. Yet, the same means cannot be used both to provide and receive

the same services. The Court reached the conclusion that if the facts as highlighted in the decision are established, the **German company does not have a fixed establishment in Romania,** since it does not have a structure in that Member State allowing it to receive services there provided by the Romanian company and to use those services for the purposes of its economic activity of selling and supplying pharmaceutical products.

Therefore, the **close link with the economic activity** of the German company, the **direct impact on the performance of that activity** and the fact that the **Romanian company was formed specifically with the aim of providing exclusively to the German company** the services which it needs in order to carry on its business in Romania, were not taken into account by the CJEU in order to ascertain the fixed establishment capacity of the Romanian subsidiary. It seems that in this case, which sheds some more light on the fixed establishment concept and restricts the practice of the tax authorities based on the previous case-law, the Court highlighted the second criterion to be fulfilled in order for a fixed establishment to be considered to exist, probably because the examination of the first criterion would have brought to a conclusion favouring the existence of a fixed establishment.

It is clear, that:

a. From the perspective of an adequate structures in terms of technical and human resources, the contractual and, we would add, factual relationship should not lead to a conclusion that the human and technical resources of the subsidiary are at the disposal of the parent company. The decisions related to these resources should belong to the subsidiary. The exclusion principle: human and technical resources used to provide the services cannot be the same one that would create a fixed establishment (receive those same services).

b. The services provided by the subsidiary should be distinguished from the other activities caried out by the mother company in the state of the subsidiary. The fact that such services are linked with the other activities carried out by the mother company in the member state of the subsidiary is not sufficient to ascertain that they are provided for the use of the subsidiary viewed as a fixed establishment. The potential subsidiary-fixed establishment must be involved (decision-making aspect) in the performance of the activities in favour of which the services are provided.

c. These two substantive conditions must be assessed in the light of the commercial and economic realities, meaning that if the relations between companies are structured in a way that has no economic and commercial reasons (i.e., having as main or one of the mains objective tax reasons), and the normal assessment would be in favour of a fixed establishment, there will be no impediment in qualifying the subsidiary as a fixed establishment, as the court did in *Dong Yang Electronics*, C-547/18.

Conclusions

Two general conclusions can be inferred from the above presentation. On one hand, the notion of fixed establishment presents a high degree of uncertainty, both for taxpayers and tax administrations of the Member States. On the other hand, the content of this notion is adjusted by the CJEU on a case-by-case basis.

The cumulative requirements of human and technical resources had to be met when the EU was at risk of VAT losings (*Berkholz*) or when VAT was requested for refund (*Planzer*

Luxembourg), however the human element seems to succumb to a more general criterion of ``adequate structure`` in other cases (*Welmory*). Also, for the purpose of taxation purposes, in cases in which the human and technical resources requirement is met, the rationality test is performed in order to link the services with the place of business of the taxable person (*Faaborg-Gelting Linien).* Although normally the subsidiaries are independent taxable persons (*Daimler and Widex), t*he commercial and economic realities may transform a subsidiary into a fixed establishment of the parent company for VAT purposes (*DFDS, Dong Yang*). However, human and technical resources used to provide the services cannot be the same one that would create a fixed establishment (*Berlin Chemie A. Menarini).*

The fixed establishment must be able to receive the services for its own use and/or supply the services (*Berlin Chemie A. Menarini)* on an independent basis (*ARO Lease and Lease Plan*); it is not clear, however, if the independence criterion regarding the receipt/supply of services could and should be analysed in the same way as the independence in relation to the parent company (*FCE Bank,* C-210/04). We agree with the VAT Expert Group that ``the topic of fixed establishment causes legal uncertainty, bureaucracy, cash-flow issues and ultimately result in VAT costs`` and that positive and practical criteria should be laid down in order to clarify this topic (VAT Expert Group 28th meeting, 30 November 2020, p. 8). It is doubtful that such criteria will be developed, at least not at the legislative level, considering that the Commission services opinion is that a fixed establishment requires a case-by-case handling, being a very delicate, difficult and a contentious subject for the member states (*Ibidem*). Considering this, the CJEU remains the only one from which we expect further clarification; there is no doubt that they are still needed.

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LEADERSHIP IN AN INTERGENERATIONAL GAP – A STUDY OF MANAGERS' VIEWS OF MANAGEMENT AND LEADERSHIP OF GENERATION Z EMPLOYEES

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Abstract: *The entry of Generation Z into the work cycle sets many new questions for managers especially in light of various generational characteristics, post-COVID-19 effect adds the challenge of labor turnover and difficulties retaining staff. In the past management and leadership were a key factor affecting employees, and this will continue, but what are Generation Z employees looking for? This article presents qualitative research conducted in Israel with high-tech company managers dealing with a generation of employees who are less committed to organizations and more to themselves leading to new values in the world of work. The research aims to map management and leadership skills and styles expected to influence employees and connect them to a manager and organization. The research revealed that managers identified six core skills required to create leadership for Generation Z: authenticity, training ability, flexibility and change, emotional intelligence, interpersonal communication, and ability to provide ongoing feedback. These research findings provide a thinking infrastructure about the world of leadership in generational change and an understanding that the intergenerational gap leads to changing management and leadership style.*
Keywords: *Generation Z, leadership, management, High-tech managers in Israel*, *world of work*

Introduction

The post COVID-19 era in the world of work has set new challenges for managers and organizations especially in light of employees' behavioral changes with an emphasis on younger employees from Generation Z, born between 1995 and 2010 (Seemiller & Grace, 2018). Labor turnover alongside the scarcity of workers in many fields have become a core challenge (Reiser, 2022). A Microsoft report on working trends in 2022 revealed that 58% of Generation Z employees are considering changing work in the coming year, compared to 43% of employees from previous generations (Moot, 2022). One of the ways in which organizations today operated to cope with work turnover is the development of managers in organizations with an understanding that managers' leadership and behavior in the past which may continue to be an important factor in the world of work in the future, affecting employees and leading to organizational outcomes (Yukl, Mahsud, Prussia & Hassan, 2019). In the contemporary world of work, managers deal with four generations of employees (baby boomers, generations X, Y, Z) under one roof with each having different expectations of their managers, each with different needs and motivating factors. Intergenerational diversity indeed contributes to organizations in a range of areas such as creativity, but also leads to conflicts requiring managers to adapt their management style to generational and employee characteristics. The entry of Generation Z increases this challenge and has recently been explored from various angles and in different countries

(Kirchmayer & Fratricová, 2020; McCrindle & Fell, 2020; Racolţa-Paina & Irini, 2021). This article is based on qualitative research conducted in the Israeli high-tech industry, which constitutes 10% of the labor market in Israel and recruits thousands of young employees from Generation Z every year (Israel Innovation Authority, 2021). This generation's characteristics alongside rapid employee turnover poses many questions for high-tech industry managers with regard to management skills, management and leadership style which will allow to strengthen commitment and retain employees. The purpose of this article is to present findings from a qualitative research of managers' perceptions of management style and leadership in front of generation Z, the research is based on interviews with managers and presents a number of management skills required to create engagement and commitment, the article includes a brief literature review on the characteristics of generation Z and a review on intergenerational leadership, the qualitative research methods , key findings collected from the analysis of the interviews as well as discussion and conclusions from the research.

Literature Review

Generation Z Employee Characteristics

Although Generation Z has entered the work cycle only in recent years, many studies have categorized the work qualities of this generation compared to previous generations, since this generation grew up in the technological world and is very confident with technology and its integration into the world of work, and their choices are different from those of previous working generations and challenge managers and human resource managers (Lanier, 2017; Singh, 2014; Singh & Dangmei, 2016). This generation matures late and behaves so in their personal and working lives (Twenge, 2017), seeks flexibility, creativity and a desire to experience a range of jobs (Seemiller & Grace, 2018). Work life balance led by Generation Y continues to be as important for Generation Z employees (Lanier, 2017; Twenge, Campbell, Hoffman, & Lance, 2010) alongside the importance of work environment, relationships and motivation Generation Z employees seek (Kirchmayer & Fratricová, 2020). Generation Z seeks personal growth in their workplace and require ongoing feedback (Lev, 2022), in fact they have led to changes in the psychological contract between managers and employees in everything related to employees' place and development in organizations (Schroth, 2019). Their motivational factors at work and different from previous generations, and are more intrinsic than previous generations (Mahmoud, Fuxman, Mohr, Reisel, & Grigoriou, 2020). Racolţa-Paina and Irini's (2021) study in Romania showed a generation of employees looking for transparency and innovation in the world of work. Generation Z employees are much more honest in their approach and despite their lack of employment experience, they expect good salaries and very good to unrealistic conditions (Racolţa-Paina & Irini, 2021).

In his research Chillakuri (2020) clarified the intergenerational gap in the world of work and identified six essential variables enabling faster entry of Generation Z into organizations and affecting their success: non-repetitive meaningful work, performance management accompanied by immediate feedback, work home balance, personal connection alongside being able to work digitally with managers, organizational and big picture understanding as well as personal learning and development (Chillakuri, 2020).

The COVID-19 period sharpened the intergenerational gap in the world of work, studies conducted during this period indicated that in this time of uncertainty the need for stability and security in Generation X was highlighted in contrast to Generation Z that sees little importance in this value, but for whom pleasure from work is extremely important ((Mahmoud, Reisel, Fuxman, & Mohr, 2021). Working from home for a protracted period of time is difficult for Generation Z who feel less productive when only distance working, hybrid working is a perfect solution for this generation, which needs social interaction at work (McCrindle & Fell, 2020). A Linked-in survey published in May 2022 in the U.S.A. showed that 70% of Generation Z employees experienced career awakening symptoms following COVID-19, were bored or wanted to change jobs, 33% had already decided to seek other work or a new field, 30% were looking to develop or change their role within their organizations (Moot, 2022). In summary, Generation Z in the world of work constitutes a new challenge for managers, but also brings opportunities for organizations.

Intergenerational leadership – the concept of leadership had been thoroughly examined and has many definitions. Kotter (1990) defined leadership as the ability to create change, he saw management and leadership as two separate complementary components (Kotter, 1990). Yukl (2012) argued that fundamentally leadership in organizations is in fact the effect of personal and collective efforts to achieve a common aim (Yukl, 2012). Leadership has the ability to improve team performance in an organization. Several studies have presented the intergenerational differences in perceptions of the employees' assessment of leadership in the world of work (Bako, 2018; Sessa, Kabacoff, Deal, & Brown, 2007), which is greatly influenced by generational qualities, their leading values and qualities and behaviors for which employees look in managers. The literature and research have tended to examine the topic of leadership extensively, but is there also an intergenerational gap in employees' need for management and leadership style? Professional literature is divided about this and points to a number of approaches. Differences between generational characteristics and existing organizational conflicts, employees' experiences and values lead to the need for different intergenerational leadership (Sessa, Kabacoff, Deal, & Brown, 2007; Al-Asfour & Lettau, 2014). In Sessa, Kabacoff, Deal, & Brown's (2007) study, they found an intergenerational difference in assessing leadership qualities, the baby boomer generation (1945-1965) sought wise, persuasive and diplomatic leaders with political abilities, experience and long-term views, credibility was the supreme quality looked for in leaders. Generation X (1965-1980) sought optimistic, persuasive and experienced leadership capable of seeing the broader picture. This generation looked for leaders focused on listening, encouragement and feedback. Generation Y (1980-1995) sought loyal, creative leaders who showed caring and paid attention to employees personally. Bako (2018) identified an intergenerational gap in views of intergenerational leadership, according to which Generation Z was different from previous generations in its expectation of risk taking leadership, willing to sacrifice, awakening conflicts and encouraging diversity. Laudert (2018) maintained that Generation Z, in light of its characteristics, expected authentic and adaptive leadership capable of inclusivity. Petrucci and Rivera (2018) presented the need for digital leadership in light of intergenerational changes and employees becoming more technological, they viewed the influence of Generation Z on developing leadership and the need for managers to motivate employees to connect with them, provide feedback digitally as part of new leadership expected of managers (Petrucci & Rivera, 2018).

Another approach argued not to classify leadership according to intergenerational gap and generational thinking but according to life expectancy, developmental perspective because it better comprehends dynamics related to age, relevance to leadership, followers and leadership development (Rudolph, Rauvola & Zacher, 2018). Research about Generation Z's own management ability and leadership in the VUCA era conducted in India taught much about the intergenerational gap in management and leadership. Hameed and Sharma's (2020) research found that Generation Z had a gap in management abilities in the VUCA reality, particularly in global leadership despite characteristics of impulsivity and assertiveness. This generation with problems in a range of qualities will find it difficult to function in complexity and will prefer to be led than lead (Hameed & Sharma, 2020).

Methods

This study was conducted using qualitative methodology, a research approach that is not considered science seeking to expose legitimization, but science looking for meaning and allowing researchers to observe, understand and interpret human behavior to produce new knowledge (Tzabar-Ben Yehoshua, 2016). It is an approach based on people's stories, which researchers help them tell, reveal and to which they present meanings. Spoken and written words are a key means of qualitative research (Shkedi, 2003). The qualitative research stages were based on Creswell's stage approach (Creswell & Creswell, 2018). The qualitative methodology was chosen out of a desire to understand managers' views of management and leadership of the younger generation through open conversations and without adhering to prescribed criteria or measures.

Research Aim and Methodology

To identify management and leadership skills needed in working with Generation Z employees.This study employed a purposeful sample focusing on choosing participants best representing the population from which it was chosen that can teach us about the examined phenomenon (Mason, 1996). Interviewees were chosen after criteria were defined for participants: high-tech management, managerial seniority, managing employees from a range of generations including Generation Z. In addition, Shkedi (2014) argued that interviewees require other characteristics that make them suitable for research needs: ability to express themselves, sensitive to others, comfortable with being questioned, capable of separating their thoughts and experiences and ability to devote the time needed for research (Shkedi, 2014). The research population chosen were managers from Israeli high-tech companies understanding that they have coped with the broad entry of young employees into this industry and have experienced labor turnover and low employee commitment to their organizations. 15 participants from the field of high-tech representing small and medium-sized companies as well as middle managers from large and even international companies, human resource managers from high-tech companies. All participants came from a management background and managed employees from different generations, which enabled them to compare intergenerational gaps.

Two tools were used to collect data in this study: (1) a research diary documenting the researcher's thoughts, ideas and feelings throughout the process from the stage of planning the research and choosing research tools, through data collection and analysis stages (Bloor & Wood), 2011. (2) semi-structured interviews adhering to a list of fixed

order questions to ensure that requirements were identical for all interviewees. In contrast to structured interviews, semi-structured interviews provide more opportunities for participants to elaborate and encourage them to include clarifications and adress additional issues (Bryman, 2016; Fontana & Frey, 2005).

For research purposes, a 22 items questionnaire was chosen, validated by four experts and tested with a small pilot. Interviews were conducted between September 2021 and January 2022. Because of COVID-19, all interviews were conducted and recorded on Zoom, all participants gave informed consent, which was also recorded. Data was analyzed in a number of stages including collecting recorded interviews and the researcher's diary, transcription of interviews from recordings and validation (Clandinin & Connelly, 2000), reading data and identifying key characteristics (Maykut & Morehouse, 1994), mapping and analyzing words that became categories (Rallis & Rossman, 2012) by focusing on key words emphasizing intergeneration management and leadership in the world of work. Categories were also partially based on theoretical views (Guba & Lincoln, 2005) and finally themes addressing management and leadership were analyzed (Flick 1998). Findings were arranged in tables and the frequency of chosen issues analyzed.

Research Findings

Six core components emerged from category analysis in the field of management and leadership, which managers from generations X and Y identified as most important in their work with Generation Z employees:

Authentic leadership – managers identified a strong need among Generation Z employees for authentic leadership based on managers' ability to engender trust with employees, leadership based on values of personal example, transparency, reliability honesty and integrity. "*I feel that young employees in my company look in leadership for transparency, honesty and integrity, you cannot sell them stories*", stated interviewee 11, a development manager in a large high-tech company. This behavior is also seen in managers' ability to connect employees to organizational aims through authenticity. "*A manager who creates authenticity leads and stirs his employees to identify with organizational aims*", stated interviewee 3, a human resource manager in a high-tech company. Managers presented Generation Z employees as those whose personal interests are paramount and there is a real difficulty connecting them to organizational aims. Authentic leadership is a key tool in attaching employees to organizational goals and commitment, "*Defining aims and including employees who integrate personal with organizational values, leads to them achieving targets on their own*" stated interview 13.

Manager as coach – managers raised this component in light of the need they identified among Generation Z employees for rapid personal and professional development within a company. Managers understood that Generation Z employees will not remain over time in an organization, but as long as they feel as they are developing personally and professionally they will remain. The high-tech world is highly noticeable for its dynamism and work turnovers and this study highlighted managers' understanding of the importance of the ability to be personal and professional development coaches in the management and leadership of the younger generation, "*An employee, in my opinion, expects to learn from the manager, he seeks professional, educating and developing authority, a professional figure*" was a statement made by interviewee 4, a human resource manager in a large high-

tech company. Another statement from a group manager in a high-tech company (interviewee 1) emphasized the understanding of what Generation Z employees seek, "*A manager is a means of development for an employee*" and therefore, managers understand the need for a coaching approach combining professional coaching alongside developing employee capabilities, encouraging doing and providing a sense of constant development in a company.

Flexibility and change – the VUCA era reflecting a world of many rapid changes and uncertainty closely connects to the behavior of Generation Z employees, therefore an adaptive management method works well with employees from this generation, in contrast to traditional management. Managers identified the need for a new type of management leading to the ability to change rapidly, managers' ability to be flexible, accept frequent changes and react quickly. Technological tools in high-tech also create change, work has moved from management in mails to faster and more immediate task management systems such as: Jira and Slack. Managers maintained that Generation Z employees' technological conduct was also influential and encouraged the need to be flexible and fast. "*They work very fast, which also affects the manager*", said interviewee 11, a development manager. In the COVID-19 era, with the transition to home working, managers had to change their management patterns, flexibility added another dimension to management style, distance management, activating young employees, coaching and controlling tasks, "*When we worked in offices it was easy to micromanage, it is much more difficult in home working and therefore how we manage changed"*, stated interviewee 8, a development manager in a start-up company.

Interpersonal communication – managers viewed interpersonal communication as a key to connecting young employees, the digital era in which most communication passed through digital channels such as emails and WhatsApp messages, creating a distance between managers and employees and therefore interpersonal communication became more important. "*High-tech managers are less professional in communication and do not know how to bridge the gap*", stated interviewee 7, a manager in a large high-tech company. His statement clarified the gap existing today in the field of management in high-tech industry where managers are very professional but experience difficulties establishing good communication with employees. In managers opinion, COVID-19 increased the gap because of an absence of social encounters, Zoom did not fully bridge the need to establish good communication and as evidence of this is the statement of a development manager that employees recruited during COVID-19 did not connect well to managers and teams for a long time mainly because of an absence of interpersonal encounters. Managers saw this skill as a key tool to attach Generation Z mainly the ability to pay attention to needs, "*They expect me to pay attention and be available to them*", said interviewee 12, head of a development team in a start-up company.

Emotional intelligence – the need to see employees, relate to them, show empathy and connect to them is more powerful when referring to Generation Z. Generational characteristics such as assertiveness, looking at themselves and need to be at the center of things led managers in this study to float emotional intelligence skills as critical to successfully working with Generation Z. "*Successful managers are people's people*", interviewee 1, a group manager in a large high-tech company said, and the ability to connect with employees is important to every employee from every generation but so much more so with Generation Z. This generation's uniqueness stood out in what interviewee 10,

managing director of a small cyber company said, "*No one wants a tough manager, but Generation Z looks for a manager who is a friend who knows how to laugh and connect*". The need for a connection and to see managers as friends has increased in comparison to previous generations. Generation Z seeks attention and caring from mangers. "*It is very important for me to be attentive and caring*", said Interviewee 12. These are employees who seek a personal relationships. "*I show the importance and need to be patient especially with young employees*", stated interviewee 9, a development manager at a high-tech company, who highlighted the need to integrate patience with employees precisely in a highly dynamic, fast and impatient reality where the resource of time is so dear in management work.

Give ongoing feedback – managers viewed the issue of feedback as an important management and leadership skills, which must be developed in working with the younger generation. "*Managers who know how to give feedback are better, good feedback helps grow people*" stated interviewee 13, a human resource manager. Employees' need for feedback has changed both because of Generation Z characteristics and the rate at which activities occur and therefore, Generation Z employees expect different feedback both in its format and frequency. "*Feedback is super important for them but reading from a sheet of paper won't work*", said interviewee 2, a group manager in a high-tech company who raised the importance of integrating feedback into daily activities and using a range of tools starting with a short phone message or email to a personal conversation about performance. Managers saw a generation of employees seeking immediate, here and now reactions. "*Always expecting warm feedback*", said interviewee 11, a development manager. This approach requires managers to adapt as they were used to only providing arranged and periodic feedback. Feedback was seen as part of managers' coaching and accompanying process with employees, "*Part of holding an employee's hand is pointed feedback*" stated interviewee 12, head of a development team.

Managers feared feedback because it immediately produces an expectation among employees for salary rewards. "*Feedback automatically produces for am employees, especially a young one a link to a salary request*", said interviewee 4, a human resource manager, and therefore it is important to know how carry it out constructively and not in a manner creating salary expectations.

The qualitative research in fact mapped six essential management and leadership components needed to work with Generation Z: authenticity, manager as coach, flexibility and change, interpersonal communication, emotional intelligence, and change to feedback approach to employees.

Discussion

The research findings presented an approach combining a range of management and leadership skills managers need in their work with Generation Z. In a world of rapid change and slightly different generational characteristics, there is no one management model for working with the new generation. Managers have to develop a basket of skills and apply them according to individual employees. Authentic leadership (Avolio, Gardner, Walumbwa, & May, 2004; Walumbwa, Avolio, Gardner, Wernsing, & Peterson, 2008) will probably suit many of the characteristics working with Generation Z. Like other studies concerned with authentic leadership for Generation Z (Al-Asfour & Lettau, 2014;

Laudert, 2018), this research raised Generation Z's need for morality, integrity, justice and transparency. These needs are added to flexibility and change reflecting management in the VUCA era and coping with uncertainty (Yehezkel, 2020) where managers must react quickly, have technological abilities in face of a highly technological savvy and fast generation and in fact, develop alongside flexibility, digital management as well (Petrucci & Rivera, 2018) combining technology with management and ongoing contact with employees both to manage tasks and adapt them to employees and their use in other actions such as passing on shared information, rapid employee feedback and more. The coaching approach also has an important place as presented by Schroth (2019) where Generation Z was more emotional and needed managers who know how to coach supportively and reinforce them through ongoing feedback and attention to their needs. In the Israeli high-tech, managers understood that employee coaching skills are a complementary layer and important to coaching and employee development skills, which until now focused more on the professional and less the emotional. COVID-19 and the transition to hybrid working have clarified the view that communication with employees, and particularly young employees, requires a different approach than with Generation X and Y employees (McCrindle & Fell, 2020).

Emotional intelligence as a leadership component (Goleman, 2017) acquired a significant weight in this study. This finding synchronized with Machová, Zsigmond, Lazányi, & Krepszová's (2020) study showing a Generation Z's greater need for emotional intelligence than previous generations. Managers must show greater empathy and develop their social skills with employees, Generation Z seek managers who are friends and not bosses, true leadership and not a work organizer.

The conclusion derived from the research findings is that managers must consolidate a basket of skills to develop management and leadership, show intergenerational intelligence in their work, know how to suitable skills adapted to employees' personal needs. Improving managers' awareness and strengthening their skills are likely to enable a better connection with Generation Z employees, also affect labor turnover and establish organizational commitment. These skills are also important to previous generations, but the characteristics of Generation Z entering the workplace emphasize the need to combine and integrate management skills and adapt their power personally according to both managers' and employees' characteristics.

This study contributes to the understanding of the intergenerational gap and to the creation of a bridge between managers and employees, a practical contribution of the study is the correct training of the managers in organizations to deal with the change that is developing in the world of work.

Research Limitations

This qualitative research explored the views of managers in the field of Israeli high-tech, where managers testify that they blossomed in organizations mainly because of their professional skills and less owing to their management skills. Many viewed management skills as a personal gap needing improvement. The study did not examine employees' views, but only a management perspective and therefore, there is room to add research with employees that will provide a broader picture of management and leadership for Generation Z.

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GOVERNMENT RESPONSIBILITY IN FULFILLMENT OF COMMUNITY RIGHTS AFFECTED BY FLOOD IN DISASTER MANAGEMENT IMPLEMENTATION

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Abstract: *Law Number 24 of 2007 concerning Disaster Management stipulates that in the event of a disaster, the Government and Regional Governments are responsible for implementing disaster management. The community affected by the disaster is the party that must receive priority in handling, because this is a community right and is a constitutional right. The purpose of this study is to examine and analyze the form of responsibility of the Regional Government in fulfilling the rights of the people affected by the flood disaster in South Kalimantan Province. Through the socio-juridical research method (socio-legal) using an interdisciplinary or "hybrid" approach between aspects of normative legal research and a sociological approach using a qualitative analysis method, it will be possible to observe the suitability between das sollen and das sein, namely the integrity of detailed and thorough explanations of legal issues. between law in book and law in action. Based on decentralization, the delivery of government affairs by the central government to autonomous regions is based on the principle of autonomy, so that disaster management and management is not only the responsibility of the central government, but also the regional government plays a direct role together with the central government. The responsibilities and authorities of the Regional Government in disaster management cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect. The implementation of the Regional Government in fulfilling the rights of the people affected by the flood disaster includes 3 (three) stages, namely the pre-disaster stage, during emergency response and post-disaster. The fulfillment of community rights during emergency response is carried out through cooperation and coordination with related parties and the community. This pattern of fulfilling the rights of disaster-affected communities is carried out based on justice in line with regional development policies and regional autonomy.*
Keywords: *Responsibilities, Government, Community Rights.*

Introduction

Natural disaster is one of the natural events that cannot be controlled by humans, nature is moved with all the problems in it and then has an impact on humans as creatures

who live on it. Of the various kinds of disasters that often occur in Indonesia, one of which often occurs is the flood disaster which occurs during the rainy season. This flood occurs because during the rainy season water inundates an area within a certain period of time because the intensity of rainfall is very high and occurs continuously and as a result of the diminishing catchment area so that the carrying capacity and environmental capacity are no longer capable of being carried out exceed capacity. Humans in the context of managing the environment must be wise, because what humans do in the context of development continues to increase from year to year, but the development carried out in addition to having a positive impact also creates a negative impact, namely the risk of pollution and environmental destruction so that the basic structure and function ecosystems that support life ecosystems can be damaged as a result of development, one of the problems that often arises today is the problem of flooding which is repeated every year. This kind of thing will become a social burden, because in the end it is the community and the government who have to bear the burden of recovery.

However, regardless of the cause of this flood, the most important thing at this time is to take quick steps for handling and overcoming this flood disaster. So that people affected by this flood disaster immediately get help. Moreover, from the legal aspect, there is already a basis for local governments to act in dealing with disasters because through decentralization of government and the granting of power from this regional autonomy system, flood handling and mitigation is the responsibility of Articles 8 and 9 of Law no. 24 of 2007 concerning Disaster Management. Anyone would not want a disaster, but when a disaster comes no one is able to avoid it. Moreover, at the same time our country is still trying to cope with non-natural disasters due to the covid 19 pandemic. Which has resulted in the government and regional governments having to work extra hard to cope with both (covid 19 non-natural disasters and flood disasters). This of course must receive mutual attention, and is a separate issue whether the local government has fulfilled the rights of the people affected by the flood disaster. Because it is true that protection against disaster threats and flood disaster management for affected communities is the responsibility and authority of the Government and Regional Governments. For this reason, from the community side, it also needs to be examined to see what the responsibilities and authorities of the Government and especially local governments are in providing protection against disaster threats and flood disaster management for the community as well as fulfilling the rights of people affected by floods because this is a constitutional mandate.

Research method

This research method uses a socio-juridical approach (socio-legal) by using an interdisciplinary or "hybrid" approach between aspects of normative legal research and a sociological approach by using qualitative analysis, namely by analyzing data in depth, holistically, and evaluative-analytically by providing a comprehensive conceptual assessment to examine and analyze the legal aspects of the responsibilities and authorities of the Government and Regional Governments in the fulfillment of human rights at the time of a disaster, so that in the end they can observe das sollen and das sein. This is to meet the need for a more detailed and thorough explanation of legal issues in a more meaningful way by making a comparison between law in book and law in action.

Results and discussion

Government Responsibilities in Disaster Management

Currently the Government is trying to implement sustainable development as a standard that is not only intended for environmental protection, but also for development policies, meaning: preservation of environmental functions, equality between generations, awareness of community rights and obligations, prevention of destructive development that is not responsible for the environment, and is obliged to participate in implementing sustainable development at every level of society (Hardjasoemantri, 1999). The environment is very important for human life and other living things. Obtaining a good and healthy living environment the embodiment of human rights, as stated in the 1945 Constitution of the Republic of Indonesia which states that a good and healthy environment is a human righat and constitutional right for every Indonesian citizen. The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia mandates that the Government of the Republic of Indonesia protect the entire nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life and participate in implementing world order based on independence, eternal peace and social justice. The state must respect, fulfill and protect the right to a good and healthy environment. A good and healthy environment is a citizen's human right, the state is responsible for the fulfillment of this citizen's human rights. The state must be able to provide protection for human rights. The form of fulfillment of the protection of the rights of citizens to obtain a good and healthy air environment can be in the form of preventive protection, namely prevention from happening, or in the form of repressive protection.

The State Administrators of the Republic of Indonesia are the bearers of the mandate of the Preamble of the 1945 Constitution, namely to protect, promote, enforce and guarantee the fulfillment of the human rights of every citizen of the Republic of Indonesia. As regulated in Article 28 I paragraph (4) of the 1945 Constitution, "The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the Government". Then from the community side, there are also constitutional guarantees for the environment as stated in Article l 28H paragraph (1) of the 1945 Constitution which states: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to health services." So it is proper for the community to be guaranteed the fulfillment of these rights in order to realize the welfare of the community, especially in getting a healthy and adequate environment as well as a guarantee of maintaining a sustainable environment for life support. Furthermore, this provision is implemented in Article 65 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, which states "everyone has the right to a good and healthy environment as part of human rights", as well as in Law No. Law Number 39 of 1999 concerning Human Rights (HAM), Article 3 states "the community has the right to a better and healthier environment". The meaning of this provision is that the state guarantees the right to a good and healthy environment as a constitutional right for every Indonesian citizen so that everyone is protected from pollution that can endanger public health. Law Number 39 of 1999 concerning Human Rights (HAM), Article 8, “Protection, promotion, enforcement and fulfillment of human rights are primarily the responsibility of the Government”.

South Kalimantan Province as one of the areas with high potential for disaster occurrence, arrangements related to the protection of community rights in the event of a disaster are contained in the South Kalimantan Provincial Regulation No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. Article 11 contains the rights of the community affected by the disaster, which reads:

Aeryone has the right: get social protection and a sense of security, especially for disaster-prone community groups; receive education, training, and skills in disaster management; obtain written and/or verbal information on disaster management policies; participate in the planning, operation, and maintenance of programs for the provision of health care assistance, including psychosocial support; participate in decision-making on disaster management activities, especially those related to themselves and their communities; and carry out supervision in accordance with the mechanisms regulated for the implementation of disaster management. Every person affected by a disaster has the right to get assistance to fulfill basic needs. Everyone has the right to obtain compensation due to disasters caused by construction failures. In addition to the rights as referred to in paragraph (1), paragraph (2) and paragraph (3), the community gets protection and guarantees for the right to: religion and belief; culture;

economics and politics; education; healthy environment; profession; health; and sexual.

Provisions regarding the procedure for providing assistance and compensation as referred to in paragraphs (2) and (3) are regulated by governor regulations

The rights of the community in the event of a disaster in the perspective of justice must be fulfilled by the Central Government together with the Regional Government without any exceptions, because this has become the mandate of the Laws and Regional Regulations of the Kalimantan Province. The government's responsibility in fulfilling human rights in the event of a disaster, as stated in Article 24 of Law no. 24 of 2007 concerning Juncto Disaster Management Article 11 Regional Regulation of South Kalimantan Province No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province.

The obligations and responsibilities of the state in the framework of a right-based approach can be seen in three forms (Khairunnisa, 2018):

Respect: it is the obligation of the state not to interfere in regulating its citizens when exercising their rights. In this case, the state has an obligation not to take actions that will hinder the fulfillment of all human rights.

Protecting: it is the duty of the state to act actively for its citizens. The state is expected to act actively in guaranteeing the protection of the human rights of its citizens and the state is obliged to take measures to prevent violations of all human rights by third parties.

Fulfilling: it is the obligation and responsibility of the state to act actively so that the rights of its citizens are fulfilled. The state is obliged to take legislative, administrative, legal, budgetary and other measures for the full realization of human rights.

The three forms of state obligations and responsibilities, each of which contains an obligation to conduct, which requires the state to take certain steps to fulfill a right, and an obligation to result, which requires the state to achieve certain goals. certain goals to meet measurable substantive standards. In addition to the three main obligations in the implementation of human rights, the state also has an obligation to take steps, to guarantee,

to ensure, to recognize, to try to (to undertake), and to improve/promote (to promote) human rights. So that in the end, even when a disaster occurs, people's rights can still be fulfilled.

The Central Government together with the Regional Government are the servants needed by the community in dealing with various disasters, including floods. Through the decentralization of government and the granting of power to regional autonomy, the direct role of the Central Government as well as regional governments in disaster management and management is not only the responsibility and authority of the central government but jointly with regional governments, as stated in Law No. 24 of 2007 concerning Disaster Management Article 5, namely "The government and local governments are responsible for the implementation of disaster management". Furthermore, it is regulated in Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management. The government together must take an appropriate policy to overcome it. The Government and Regional Governments are responsible for protecting the entire community with the aim of providing protection for life and livelihoods, including from disasters in the context of realizing community welfare. The responsibility of the government together with the regional government has been regulated from a legal aspect so that it becomes the basis for the Government and Regional Government to act in dealing with disasters because through decentralization of government and the granting of power from this regional autonomy system. The responsibilities and authorities of the Regional Government in the disaster management system cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect (Heryati, 2020), then the handling and mitigation of flooding becomes the responsibility and authority of the local government as stated in Articles 8 and 9 of Law no. 24 of 2007 concerning Disaster Management.

As for Article 8 which states: Responsibilities of local governments in disaster management include: guaranteeing the fulfillment of the rights of communities and refugees affected by disasters in accordance with minimum service standards; protection of the community from the impact of disasters; disaster risk reduction and integration of disaster risk reduction with development programs; and allocation of disaster management funds in adequate regional revenue budgets.

Article 9 The authority of the regional government in the implementation of disaster management includes:

stipulation of disaster management policies in the region in line with regional development policies;

making development plans that include elements of disaster management policies;

implementation of cooperation policies in disaster management with other provinces and/or districts/cities;

regulation of the use of technology that has the potential as a source of threat or disaster hazard in its territory;

formulating policies to prevent the control and depletion of natural resources that exceed the natural capacity of the territory; and

controlling the collection and distribution of money or goods in its territory.

Further, regarding the responsibilities and authorities of local governments in handling and controlling floods, it is regulated in Article 11 of Regional Regulation no. 06

of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. In the concept of a welfare state, this refers to the role played by the state in providing various services and benefits to its citizens, especially in the maintenance of income and health as well as housing, education and social activities, including in terms of disaster management. because this is indeed in line with the goals of the state to be realized as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia which states that the purpose of the state is to "protect the entire Indonesian nation and the entire homeland of Indonesia and to promote general welfare, educate the nation's life and participate in implementing world order based on freedom, lasting peace and social justice". Therefore, the protection of the entire nation and the improvement of general welfare are the important responsibilities of the state.

The constitutional guarantee for the fulfillment of community rights in disasters is contained in Law no. 24 of 2007 concerning Disaster Management, Government Regulation Number 21 of 2008 concerning the Implementation of Disaster Management. South Kalimantan Province is contained in Regional Regulation No. 06 of 2017 concerning Amendments to Regional Regulation Number 12 of 2011 concerning the Implementation of Disaster Management in South Kalimantan Province. Constitutionally there is protection of the community's rights to the fulfillment of rights if affected by a disaster, then the community should be guaranteed the fulfillment of these rights, because this is indeed in line with the goals of the state to be realized as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia which states that statehood is "to protect the entire Indonesian nation and the entire homeland of Indonesia and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice". Therefore, the protection of the entire nation and the improvement of general welfare are the important responsibilities of the state.

Fulfillment of the Rights of Communities Affected by Floods in the Implementation of Disaster Management

The purpose of the Indonesian state is contained in the preamble to the Constitution of the Republic of Indonesia, one of which is to protect the entire nation. Protection of the entire nation can be interpreted as an effort by the state to protect all levels of society as mandated by human rights. In line with that, every development with a human rights perspective always applies the values and principles of Human Rights (HAM) in every step and process. With this step, it is believed that the state still has an obligation to respect, protect and maintain the stability of its people through human rights. This is done with the aim of upholding justice and realizing equal protection in every society in Indonesia (Rahayu, 2012). Human rights protection in terms of environmental protection and management, is that people have the right to a clean and healthy environment. It also aims to prevent disasters from occurring and to create a balance of environmental harmony. Therefore, environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement (Syahrul, 2012).

Environmental management plays an important role in preventing and reducing the impact of disasters through environmental management. President Joko Widodo has stated that disaster prevention and prevention is not enough just to build infrastructure physically. because of environmental management, this is no less important to pay attention to (Ministry Of State Secretariat Republic Of Indonesia, 2020). A good and healthy environment is a human right and a constitutional right for every Indonesian citizen. The ability of a harmonious and balanced environment should be preserved, so that any changes made need to be accompanied by efforts to achieve environmental harmony and balance at a new level. The preservation of a harmonious and balanced environmental capability leads to harmony between development and the environment, so that the two cannot be contradicted with each other (Bethan, 2008). The 1945 Constitution and Law no. 32 of 2009 concerning Environmental Protection and Management (UUPLH) has stated that a good and healthy environment is a human right of every Indonesian citizen, which means that on the other hand it is the authority of the government. Based on UUPPLH and also the existence of regional autonomy, the authority in the environmental sector can be delegated to the regions to be implemented by the regions. Law No. 23 of 2009 concerning Environmental Protection and Management is the legal umbrella that forms the basis for making policies regarding environmental issues in Indonesia. Therefore, all further regulations related to the environment both at the level of laws, government regulations and other implementing regulations which are instruments of policy (Instrumenten Van Beleid) must be in line with Law no. 23 of 2009.

Human rights are actually a generalization of basic human rights which in a functional framework are referred to as human rights principles. These principles are the alienable principle, the equality principle, the non-discrimination principle, the universal principle, the eternal principle and the interconnectedness, dependence and undivided principle (Gunakaya, 2017). Thus, in all circumstances the rights of the community must of course be a serious concern, especially when it comes to disasters, as a form of responsibility of the Government and Regional Governments, on the other hand, people who are affected by disasters such as floods must also get priority in handling floods, because this is a right. society which is their constitutional right because it has been guaranteed in Article 26 of Law no. 24 of 2007 concerning Disaster Management. The rules contained in the regulation read as follows:

Everyone has the right:

get social protection and a sense of security, especially for disaster-prone community groups;

obtain education, training, and skills in disaster management.

obtain written and/or verbal information regarding disaster management policies.

participate in the planning, operation, and maintenance of programs for the provision of health care assistance, including psychosocial support;

participate in decision-making on disaster management activities, especially those related to themselves and their communities; and

carry out supervision in accordance with the mechanisms regulated for the implementation of disaster management.

Every person affected by a disaster has the right to get assistance to fulfill basic needs.

Everyone has the right to obtain compensation due to disasters caused by construction failures.

The provisions of Article 26 paragraph (2) of Law no. 24 of 2007 concerning Disaster Management above, it can be interpreted that every person affected by a disaster does not exist unless they will receive assistance to fulfill basic needs. Although normatively there is a government responsibility in fulfilling human rights in the event of a disaster, it must still be instilled that humans must be responsible for the surrounding environment, humans in order to manage this environment must be wise, because what humans do in the context of the development of the environment. year by year continues to increase, but the development carried out in addition to having a positive impact also has a negative impact, namely the risk of pollution and environmental destruction so that the basic structure and function of the ecosystem that supports the ecosystem of life can be damaged as a result of development.

However, of course, it is also necessary to pay attention to the obligations of the community. Article 27 of Law no. 24 of 2007 concerning Disaster Management states that everyone is obliged to: a. maintain a harmonious social life of the community, maintain balance, harmony, harmony, and the preservation of environmental functions; b. carry out disaster management activities; and c. provide correct information to the public about disaster management. Realizing that national development activities on the one hand will contribute to improving the quality of the welfare of the community, but on the other hand, the community also has an obligation to maintain a harmonious social life, maintain balance, harmony and environmental sustainability so as not to cause concern for permanent environmental degradation. in the long run. Therefore, prudence is also needed in formulating a development agenda, especially towards the environment from the threats and negative impacts of development itself. So that disasters such as floods do not happen again in the future.

The implementation of disaster management according to Law Number 24 of 2007 which includes 3 stages, namely pre-disaster, during emergency response, and post-disaster. Disaster mitigation is also part of efforts to reduce the impact of disaster risk, both through physical development as well as awareness and capacity building in dealing with disaster threats. A series of efforts in disaster mitigation aims to increase awareness and increase the community's ability to deal with disaster threats. This disaster mitigation activity acts as an action to reduce victims during a disaster (Saandhyvitri, 2015). The disaster mitigation carried out includes disaster management, disaster mitigation policies and strategies and in the form of disaster mitigation actions (Fadhli, 2019).

The implementation of disaster management at the pre-disaster stage includes situations where a disaster does not occur, and situations where there is a potential for a disaster to occur. When a flood disaster occurs, it is an emergency response activity. The implementation of disaster management during emergency response includes:

a. rapid and precise assessment of the location, damage, and resources;
b. determination of the status of a disaster emergency;
c. rescue and evacuation of disaster-affected communities
d. fulfillment of basic needs;
e. protection of vulnerable groups; and
f. immediate recovery of vital infrastructure and facilities

The pattern of fulfilling the rights of disaster-affected communities is carried out on a justice-based basis in line with regional development policies and regional autonomy. Implementation of the implementation of the fulfillment of community rights when

affected by floods is firstly by conducting a quick and accurate assessment of the location of damage, and resources, determining the status of a disaster emergency, then by collaborating and coordinating with related parties and the community for rescue and evacuation of disaster-affected communities, fulfillment of basic needs, and fulfillment of the needs of vulnerable groups, as well as with the immediate restoration of vital infrastructure and facilities for the community. Assistance is provided according to needs and in line with what is needed by the community when a disaster occurs.

Conclusion

Based on decentralization, the delivery of government affairs by the central government to autonomous regions is based on the principle of autonomy, so that disaster management and management is not only the responsibility of the central government, but the regional government also plays a direct role together with the central government. The responsibilities and authorities of the Regional Government in disaster management cover 5 (five) aspects, namely the legislative aspect, the institutional aspect, the planning aspect, the funding aspect, and the capacity development aspect. Constitutionally, the fulfillment of the rights of disaster-affected communities has been protected as stated in the legislation. The implementation of the responsibility of the Regional Government in fulfilling the rights of the people affected by the flood disaster includes 3 (three) stages, namely pre-disaster, during emergency response and post-disaster. Disaster mitigation is an integral part of efforts to reduce the impact of disaster risk on the community. Emergency response when a disaster occurs is carried out through cooperation and coordination with related parties and the community. The pattern of fulfilling the rights of disaster-affected communities is carried out on a justice-based basis in line with regional development policies and regional autonomy. In order for the fulfillment of the rights of flood-affected communities to be more optimal and targeted at being given to the community, it is necessary to have coordination in the field regarding the distribution of assistance provided, especially assistance provided directly by the community to disaster areas.

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POTENTIAL AND IMPLICATIONS OF DISPUTES OVER THE AUTHORITY OF THE NATIONAL HUMAN RIGHTS COMMISSION AND THE INDONESIAN NATIONAL POLICE

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Abstract: *National Human Rights Commission is positioned as an independent state institution at the same level as other state institutions which in carrying out its functions and authorities stand on a par with other state institutions whose authority is granted by law. Although vertically it has an equal position with other state institutions, in carrying out its functions, duties, and authorities, this commission must report to the President and the DPR. Article 18 Paragraph (1) Law Number 26 of 2000 concerning the Human Rights Court states that investigations into gross human rights violations are carried out by the National Human Rights Commission. In carrying out its duties, National Human Rights Commission has the authority to receive reports or complaints from a person or group of people regarding the occurrence of serious human rights violations. Police in Article 2 Law Number 2 of 2002 which is the function of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community. If a criminal case occurs later the handling of the case is carried out by the police with the authority of investigation by the Police because it is considered an ordinary crime, but at the same time the case is also investigated by the National Human Rights Commission as a crime against humanity which is part of the National Human Rights Commission. human rights violations. Therefore, related to this condition, a struggle for authority may occur due to differences in the interpretation of the crime which then causes the National Police and National Human Rights Commission to declare authority to each other. The authority dispute between the National Police and National Human Rights Commission then could not be resolved within the executive government because National Human Rights Commission is not a state institution under the President, nor can it be resolved through the Constitutional Court as referred to in Article 24C paragraph (1) of the 1945 Constitution because the object of authority disputed by the two state institutions is powers granted by law.*
Keywords: *Potential, Implications, Disputes, Authority, National Human Rights Commission, Indonesian National Police*

Introduction

Law enforcement is not a new figure in our homeland, it is very important to talk about because this is not only the duty and mandate of the 1945 Constitution, but furthermore on the other hand it is also a milestone as well as a bulwark for upholding law and justice. This is related to the future continuity of justice seekers in Indonesia (Hasibuan,

2007). In its journey, the Indonesian National Police as the spearhead of legal services in Indonesian society is part of one of the law enforcement pillars of the criminal justice system, namely the police, prosecutors, judiciary, and society. Law enforcement is an activity to harmonize the relationship of values that are outlined in the rules, and solid views and manifest them in attitudes, acting as a series of final value elaborations to create peaceful social life (Soekanto, 1983). National Human Rights Commission is positioned as a state institution. Independently domiciled at the same level as other state institutions which in carrying out their functions and authorities are established by law and in carrying out their functions, duties, and authorities this commission must report to the President and the DPR (Hamidi & Lutfi, 2010).

State auxiliary bodies are independent, which are useful as supports and help assist the transition process. In addition to helping the transition process, these supporting institutions are also idealized to layer or improve existing institutions but whose performance is unsatisfactory, involved in corruption, collusion, and nepotism, and the inability to be independent of the influence of other powers (Mochtar & Satriawan, 2008). The establishment of the National Human Rights Commission as an independent institution is also based on the law of Article 28I Paragraph (4) of the 1945 Constitution which states that: the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. The government in this case is the President of the Republic of Indonesia who has ratified the Human Rights Law (as the legal basis for the establishment of the National Human Rights Commission). Therefore, National Human Rights Commission is located as a state auxiliary agency (Hamidi & Lutfi, 2010).

National Human Rights Commission is positioned as an independent state institution at the same level as other state institutions which in carrying out its functions and authorities stand on a par with other state institutions whose authority is given by the 1945 Constitution. Although vertically it has an equal position with other state institutions, in its implementation The functions, duties, and authorities of this commission must report to the President and the DPR (Hamidi & Lutfi, 2010). Meanwhile, judging from the other functions it carries out, National Human Rights Commission has the task and authority to provide opinions based on the approval of the Chairperson of the Court on certain cases that are currently in the judicial process, if in that case there are violations of human rights in public matters and examination procedures by the court which are then carried out. The opinion of the National Human Rights Commission must be notified by the judge to the parties (Karisma & Ariana, without year). From this function, the National Human Rights Commission performs some of the functions of the court (semi-judicial) so that it is under the supervision of the Supreme Court.

In general, human rights are defined as basic rights that every human being is born with as a gift from God Almighty. This means that these human rights are not given or given to other people, groups, or the state (Parlindungan, 2013). Therefore, human rights cannot be taken or revoked, ignored, reduced, or taken away by power but must be respected, maintained, and protected (Bawa, 2013).

Meanwhile, judging from the other functions it carries out, National Human Rights Commission has the task and authority to provide opinions based on the approval of the Chairperson of the Court on certain cases that are currently in the judicial process, if in that

case there are violations of human rights in public matters and examination procedures by the court which are then carried out. The opinion of the National Human Rights Commission must be notified by the judge to the parties (Karisma & Ariana, without year).

A violation of Human Rights (HAM) can be legally processed through the Human Rights Court (Amiruddin, 2021). However, the Human Rights Court can only adjudicate gross human rights violations as stipulated in Article 1 point 3 of Law Number 26 of 2000 concerning the Human Rights Court. Then, what is meant by gross human rights violations are the crimes of genocide and crimes against humanity. The definition of the crime of genocide is any act carried out with the intention of destroying or destroying all or part of a national, racial, ethnic group, or religious group, by:

a. killing group members;
b. cause serious physical and mental suffering to group members;
c. create conditions of living for the group which will result in its physical destruction in whole or in part;
d. imposing measures aimed at preventing births within the group; or
e. forcibly transferring children from one group to another

Meanwhile, the definition of a crime against humanity is one of the acts committed as part of a widespread or systematic attack in which it is known that the attack was directed directly against the civilian population, in the form of:

a. murder;
b. extermination;
c. slavery;
d. forced expulsion or displacement of the population;
e. deprivation of liberty or deprivation of other physical freedoms arbitrarily in violation (principles) of the basic provisions of international law;
f. torture;
g. rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or sterilization or other equivalent forms of sexual violence;
h. persecution of a certain group or association based on political equality, race, nationality, ethnicity, culture, religion, gender, or other reasons that have been universally recognized as prohibited under international law;
i. enforced disappearance of persons; or
j. apartheid crime.

Article 18 Paragraph (1) states that investigations into gross human rights violations are carried out by the National Human Rights Commission. In carrying out its duties, National Human Rights Commission has the authority to receive reports or complaints from a person or group of people regarding the occurrence of serious human rights violations. Meanwhile, for the investigation and prosecution of gross human rights violations carried out by the Attorney General.

Meanwhile, the Police in carrying out their main duties, based on Article 14 paragraph (1) of Law Number 2 of 2002 concerning the Indonesian National Police (Sadjijono, 2005), the police are tasked with:

a. implementing regulation, guarding, escorting, and patrolling the community and government activities as needed;

b. organize all activities to ensure security, order, and smooth traffic on the road;
c. fostering the community to increase community participation, public legal awareness, and community compliance with laws and regulations;
d. participate in the development of national law;
e. maintain order and ensure public security;
f. coordinate, supervise, and provide technical guidance to the special police, civil servant investigators, and other forms of self-defense;
g. conduct investigations and investigations into all criminal acts in accordance with the criminal procedure law and other laws and regulations;
h. organize police identification, police medicine, forensic laboratories, and police psychology for the purposes of police duties;
i. protect the safety of body, soul, property, society, and the environment from disturbances of order and/or disaster, including providing assistance and assistance by upholding human rights;
j. serve the interests of the community for a while before being handled by the authorized agency and/or party;
k. provide services to the community in accordance with their interests within the scope of police duties; as well as
l. carry out other duties in accordance with statutory regulations.

Methods of research

This type of research is normative legal research, namely research that examines laws and regulations relating to the regulation of dispute resolution between state institutions under the law and carries out a series of actions or processes to find legal problems, whether it's a legal vacuum, obscurity of norms and conflict of norms or finding legal principles in the regulation regarding efforts to resolve disputes over authority between state institutions under the law. The focus of this legal research is to find out the regulation of dispute resolution of authority between state institutions whose authority is given by law as a consequence of the concept of separation of power in running a legal state to ensure the value of legal certainty and also to examine and analyze how to reconstruct the arrangement of dispute resolution of authority between state institutions.

Results and discussion

Potential dispute over the investigation authority between the National Human Rights Commission and the Indonesian National Police

Law enforcement problems will always occur as long as human life exists, the more humans grow and develop, the more various law enforcement problems occur. Talking about law enforcement, of course, cannot be separated from the matter of officials who occupy strategic positions as law enforcers, namely Police, Prosecutors, and Judges, which are limited to professional matters (Arief, 2001). Police in Article 2 Law Number 2 of 2002 which is the function of the state government in the field of maintaining security and public order, law enforcement, protection, shelter, and service to the community. The concept of a state of the law is that government authority comes from laws and regulations, which means an authority that must be sourced from the applicable laws and regulations, so that

in a state of the law the application of the principle of legality becomes one of the main principles that become the main basis in the administration of government, especially for developing countries. a legal state that adheres to the civil law system (Continental Europe). Thus, every government administration must have legitimacy, namely an authority granted by law (Hatta, 2009).

In addition, the existing criminal justice system is considered no longer able to protect human rights and transparency in the public interest is increasingly being felt. The fact shows that many people prefer to settle criminal cases they experience outside the system (Zulfa, 2011). Renewal of the Indonesian Police Act, Law Number 2 of 2002 is intended to further strengthen the position and role of the National Police as a government function including maintaining security and public order, law enforcement, protection and protection, and services to the community who uphold human rights. important in realizing legal promises into reality (Rahardjo, 2000).

If a criminal case occurs later the handling of the case is carried out by the police with the authority of investigation by the Indonesian National Police because it is considered an ordinary crime, but at the same time the case is also investigated by the National Human Rights Commission as a crime. against humanity which is part of the violation of human rights. Indonesian National Police has the authority to conduct investigations into criminal acts based on the authority granted by law in Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with: conducting investigations and investigations against all criminal acts in accordance with the criminal procedure law and other laws and regulations. Meanwhile, the National Human Rights Commission also has the authority to investigate acts of crimes against humanity because they are part of violations of human rights, where the authority of the National Human Rights Commission is also given by law as regulated in Article 18 paragraph (1) of the Law Number 26 of 2000 concerning the Court of Human Rights states that: Investigations into serious human rights violations are carried out by the National Human Rights Commission. then in relation to these conditions, there may be a struggle for authority due to differences in the interpretation of the crime, which then causes the Indonesian National Police and the National Human Rights Commission to declare authority to each other. Likely, this will later lead to a dispute over authority between the Indonesian National Police and the National Human Rights Commission regarding the authority of the investigation.

Based on the potential dispute of authority between the Indonesian National Police and the National Human Rights Commission, it is necessary to first analyze whether there is a possible legal route for resolving the dispute over authority, the first thing that must be analyzed is the position of the state institution. Indonesian National Police based on Article Law Number 2 of 2002 concerning the Indonesian National Police in conjunction with the explanatory rule of Article 7 paragraph (2) states that the Indonesian National Police is a state institution led by the Head of the Indonesian National Police whose position is under the President and The accountability of the Indonesian National Police is also directed to the President in accordance with the law, the responsibilities referred to include, among others, related to preventive and repressive functions. So it is related if there is a dispute of authority that occurs in the Indonesian National Police, the responsibility may be in the hands of the President because based on this provision the Indonesian National Police is under executive power, namely the President, then the Indonesian National Police may

follow the direction of the President as the leader of the executive power. as stated in Article 4 paragraph (1) of the Constitution that the President of the Republic of Indonesia holds governmental power according to the Constitution. However, it turns out that its position is different from the National Human Rights Commission, where the National Human Rights Commission is a state institution that is not under any branch of power, including the executive, as explained in Article 1 point 7 of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. explained that the National Human Rights Commission hereinafter referred to as the National Human Rights Commission, is an independent institution whose position is at the same level as other state institutions whose function is to carry out the assessment, research, counseling, monitoring, and mediation of human rights.

The definition of an independent institution is a state institution that in carrying out its duties is not under the authority of other state institutions, including the President (Ramadani, 2020). Therefore, the dispute over authority between the Indonesian National Police and the National Human Rights Commission cannot be resolved within the executive government because the National Human Rights Commission is not a state institution under the President, and the laws relating to the National Human Rights Commission both in the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights explains that the National Human Rights Commission and Law Number 26 of 2000 concerning the Human Rights Court there are no provisions governing the settlement of authority disputes over investigations of violations human rights are severe so that the issue of dispute over the authority of state institutions between the Indonesian National Police and the National Human Rights Commission regarding the implementation of the authority to investigate the same case due to different interpretations of a criminal case has not yet been established. regulations or laws that regulate the settlement mechanism, which means that in the future it seems that there is a need for a judicial mechanism or forum to resolve disputes of authority like this (Fakhrazi, 2017).

Implications of the dispute on the authority of the National Human Rights Commission with the Indonesian National Police in terms of investigation

Potential disputes over the authority of the Indonesian National Police and the National Human Rights Commission over each of these state institutions are the result of declaring mutual authority over a criminal case that is interpreted differently by the two state institutions, resulting in a dispute. Where the Indonesian National Police declares a case to be an ordinary criminal act which is the authority of the Indonesian National Police based on Article 14 paragraph (1) letter g of Law Number 2 of 2002 concerning the Indonesian National Police, the police are tasked with: all criminal acts in accordance with the criminal procedure law and other laws and regulations. At the same time, the National Human Rights Commission is of the opinion that in the same case, it is stated that case handled by the Indonesian National Police is an extraordinary crime that is under the authority of the National Human Rights Commission based on Article 18 paragraph (1) of the Law Number 26 of 2000 concerning the Court of Human Rights states that: Investigations into gross human rights violations are carried out by the National Human Rights Commission.

The Indonesian National Police based on Article 8 Law Number 2 of 2002 concerning the Indonesian National Police in conjunction with the explanatory rule of

Article 7 paragraph (2) states that the Indonesian National Police is a state institution led by the Head of the Indonesian National Police whose position is under the president and the accountability of the Indonesian National Police is also directed to the President in accordance with the law, the responsibilities referred to include, among others, related to preventive and repressive functions. Regarding the existence of the National Human Rights Commission, which is a state institution that is not under any branch of power, including the executive, as explained in Article 1 point 7 of Law Number 39 of 1999 concerning Human Rights, it is explained that the National Human Rights Commission, hereinafter referred to as the so-called National Human Rights Commission is an independent institution whose position is at the same level as other state institutions whose function is to carry out studies, research, counseling, monitoring, and mediation of human rights.

Sukarno once said that the Pancasila philosophy had a family spirit because it was first presented to the general public as the basis for the philosophy of the Republic of Indonesia that would later be established. And human life is based on the Pancasila philosophy, so the Indonesian people see it as family life (Sumantri, 1992).

The principle of individual responsibility is not only recognized in the International Tribunal but is also recognized in all criminal law systems in the world. So this form of individual criminal responsibility is already a general principle in law, both national law and international law (Bassiouni, 1999).

Therefore, the dispute over authority between the Indonesian National Police and the National Human Rights Commission cannot be resolved within the executive government because the National Human Rights Commission is not a state institution under the President, and the laws relating to the National Human Rights Commission both the Law Number 39 of 1999 concerning Human Rights explains that the National Human Rights Commission and Law Number 26 of 2000 concerning the Human Rights Court there are no provisions governing the settlement of authority disputes over investigations of violations human rights are severe, and if they are brought to the settlement of disputes over the authority of state institutions through the Constitutional Court, they certainly cannot be accepted because the National Human Rights Commission is not a state institution whose authority is given by the Constitution and the object of the dispute is the authority of state institutions. It is also not the authority granted by the Constitution. So that the issue of dispute over the authority of state institutions between the Indonesian National Police and the National Human Rights Commission related to the implementation of the authority to investigate the same case due to differences in interpretation of a criminal case, no mechanism or law regulates its resolution so that it may have an unfavorable impact on the process. handling the investigation of a criminal case.

The impact of no regulation on dispute resolution of the authority of the Indonesian National Police and the National Human Rights Commission in this case in the future may lead to human rights in the investigation process because between the Indonesian National Police and the National Human Rights Commission as a result of each defending each other different interpretations of the same case, and an acknowledgment that each state institution has the authority to carry out the legal process of the investigation which will lead to a struggle for the authority to investigate the same case. If the seizure of authority will continue to occur without any resolution, then in addition to the handling of overlapping investigations and the ambiguity of the case being handled by which state institution, it is declared as an alleged case of ordinary criminal crimes or gross violations of human rights

in the investigation process. There are at least two ways that are known in the International rules on non-discrimination relating to the prosecution of individual accountability in international law for serious crimes in human rights violations, namely, first, the principle of non-discrimination is a form part of the perspective content in several norms. international human rights law and second, non-discrimination figures as cardinal principles of international law which explain how human rights norms, in general, should be applied (Sunga, 1992).

The implications of the dispute over the authority of state institutions over the authority of the investigation will become a new chapter/problem that is getting wider if the National Human Rights Commission succeeds in delegating the results of the investigation process into the case to the Prosecutor's Office for the next process, namely the investigation process. prosecutor's office. Regarding crimes related to gross violations of human rights which were investigated by the National Human Rights Commission, at a later stage, the law ordered the National Human Rights Commission to submit files on these cases to the prosecutor's office as a state institution authorized to conduct investigations into cases of gross violations of human rights because the task of investigating cases of gross human rights violations is carried out by the Attorney General. So the dispute over the authority of state institutions will widen when the prosecutor's office and the Indonesian National Police exercise their investigative authority which runs at the same time and in the end, the Indonesian National Police, at a stage deemed sufficient, will submit the dossier of investigation of the case to the Prosecutor's Office as a criminal case ordinary, which means that the prosecutor holds the results of the same legal process but is stated with different allegations of criminal acts, namely between ordinary crimes and crimes of gross violations of human rights. Of course, the prosecutor's office will experience difficulties when there is a process of delegating two cases from the Indonesian National Police and the National Human Rights Commission with the same object of the case on different criminal allegations, and if later the prosecutor does not want to take the risk of experiencing an authority dispute with the Indonesian National Police Indonesia or the National Human Rights Commission caused if the prosecutor's agency decides to choose one of the overflow cases. Then, the prosecutor may decide to return the case file to each of the institutions that submitted it, namely the Indonesian National Police and the National Human Rights Commission, to settle first whether a case is a violation of an ordinary crime or a gross violation of human rights.

Conclusion

In the case of a dispute on authority between state institutions, the National Human Rights Commission and the Indonesian National Police, there will continue to be obstacles in the settlement process, thus causing the case to be unable to proceed and the legal process is considered unable to resolve a case that is being processed to obtain justice. In this case, it is possible that legal objectives related to legal certainty may not be fulfilled because a case is hampered due to a conflict of investigation authority dispute between the Indonesian National Police and the National Human Rights Commission resulting in uncertainty about which legal process from state institutions should run and if it is hampered and in the end, there is no legal process. further developments, the community or victims in particular in this case will certainly not get justice from the state, it is important then later this authority

dispute needs to be resolved by establishing a mechanism through legal arrangements to resolve the authority dispute through a court forum that will be determined later.

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