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Jostling for Space in Africa's Business Periphery: A Review of the Growing Competition Between Indigenous and Chinese-Owned Enterprises[1]

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This paper reviews recent research and related studies on the ongoing competition between Chinese and local entrepreneurs in the lower rungs of Africa's business sector. Several studies have noted that since entry, Chinese firms have been able to undercut African entrepreneurs, thanks to superior networks and better financing. However, other findings portray more positive impacts of Chinese presence, including higher employment and tax revenues, and better supply of goods and services. It is possible to surmise that this jostling for space in Africa's business periphery will not last. Ultimately, it must yield to changes in the host countries' political economy and market environments.

I. Introduction

1.1. Purpose

This paper is a review of studies on the impact of Chinese entrepreneurs in Africa's business periphery. It seeks clarity on several aspects of the Africa-China debate. Given that they compete directly with local firms, while at the same time providing employment and other amenities to people at that level, what is the impact of Chinese businesses on local welfare? Are they contributing to Africa's development i.e. the "win-win" postulated in official pronouncements or is the continent, as often alleged, merely a means to Chinese entrenchment? The review also examines the extent to which the heightened criticism of China's presence in Africa, including charges of racism and neo-colonialism, is to blame on geopolitics, notably those emanating from the West's fear of a resurgent China. Finally, it assesses how much of the ongoing debate should be of concern to Africa's policymakers as they craft strategies for sustainable development.

1.2. The Africa-China Debate: De Ja Vu

Although China was once a poor and famine-prone country, its global emergence in recent decades has been a source of much inspiration and hope for Africa and the rest of the Third World i.e., with the message that "poverty is not destiny." In turn, Africa-China relations have taken center stage in the geopolitical discourse, notably in the West, where the view seems to be that the Chinese are wielding undue economic and political

[1] Work on this paper commenced while I was still attached (as visiting fellow) to the Institute for African Development at Cornell University. A version of the paper was presented at the African Business Conference held at Universite' Laval, Quebec, 18-21 May 2022. I thank Prof. Issouf Soumare for the invitation.

influence on the African continent, but without clear-cut strategies to countervail it (Hanauer and Morris, 2014; Mohan and Tan-Mullins 2009).

Indeed, with somewhat resonant analogy, French (2015) sees Africa as China's second continent, where upwards of a million migrants are building a wholly new empire. The latter, although an exaggeration, has resonance in some quarters in Africa and beyond (Haugen and Carling 2005; Konde 2018; Los Angeles Times 2017; Marysse and Geenen 2007/8).

In discussing China's role in Africa's development, the focus has tended to dwell on the People's Republic of China (PRC)'s unprecedented investment in the continent's infrastructure—airports, bridges, dams, internet infrastructure, ports, power evacuation lines and systems, railways, and roads, its reputedly insatiable demand for natural resources (oil, coal, copper, rare earths, gold etc.), and its "scorched-earth" approach to dominating the continent's consumer market. But the impact is proving to be much broader, touching on the political economy of the host countries, the regional context, sector transformation, and global ramifications, while also reflecting push factors in China itself (ACORD 2016; Airault 2007; Liu 2013; Mhango 2019; Ngwa 2019; Weng et. al. 2018; Driessen 2016).

Some authors have argued that despite the broad and sometimes acrimonious Africa-China debate, China's wish to assert itself and capture markets is not exceptional in the broader context of geopolitics and global market dominance (Hanlon 2017; Tull 2006). In previous decades, the West went through pretty much the same strategic moves as it sought to assert its power i.e. build infrastructure in its spheres of influence to open up countries for trade; and provide support to allied developing countries through concessionary trade credits and project finance, while encouraging own multinationals to play a leading role in project implementation.

However, many studies have noted that in spite of China's geopolitical and market imperatives in Africa, the true legacy of its presence there might lie more at the human than the technical level. This is because the subtext of China's state-led investment in Africa is the migration and employment of upwards of a million Chinese individuals, their families, and networks, to the continent in the previous two decades, and the impact that has had on individual countries (Gu 2009; Huang 2013; Park and Chen 2009).[2]

Although the presence of large numbers of Chinese entrepreneurs in Africa's business sector is largely taken for granted today, the seemingly logical outcome of decades of extensive Chinese infrastructure construction in Africa, it was nevertheless unprecedented in terms of numbers, the short time it took to put in place, and its potential economic and political implications (Postel 2017; Yuan San 2015).

Previous waves of foreign immigration into Africa, such as those of Indian or Pakistani

[2] Li (2010) has put it succinctly in the introduction to his case study of Chinese investors in Zambia's Copperbelt: "we should make sense of the connection between certain Chinese activities and the political economy of local society in Africa, connect Chinese dynamics to the African context and analyze the Chinese presence in well-grounded contexts."

citizens in East Africa or Syrians and Lebanese in West Africa, were of a decidedly different pattern and intensity (Saldanha 2013; Jones 2007). These earlier migrant groups had had a longer period to entrench themselves during the colonial period and had achieved an uncontested claim on the breadth of the business sector, including small shops in the villages i.e., *dukawallah*.

Post-independence, migrants were squeezed out of the lower echelons of the business sectors, leading in cases to remigration, while their larger companies were nationalized in places such as Tanzania, Uganda, and Zambia. These moves were referred to by the socialist-leaning governments of the time as marching towards "economic independence"—the implication was that only political independence had been achieved thus far.

The causes of recent Chinese migration to Africa have been different from those of the past (Biggeri and Sanfilippo 2009). However, lacking robust frameworks for futures planning and scenarios analyses, few governments in Africa can adequately assess the impacts of Chinese immigration. Fewer still have endeavoured to analyse what the socioeconomic impact of Chinese investment, including on debt accumulation, the environment, and general social welfare, would have on their development.
Researchers argue that if, as in the case of previous waves of immigration, local African entrepreneurs are simply displaced by the new Chinese entrants, either for lack of superior networks or owing to the latter's cultural hegemony, not much learning or transfer of technology will take place, and a unique opportunity for the Chinese diaspora to contribute to Africa's development would have been lost (Oonk 2013; Spring and Jiao 2008).

1.3. Outline of the Review

This review of the literature on the impact of Chinese entrepreneurship in the micro, small and medium enterprise segments of Africa's business sector draw on published academic research, mainly from the social sciences, country studies commissioned by international organizations and NGOs, and some media reports and analyses.

The rest of the paper proceeds as follows: Chapter 2 looks at some of the contradictions inherent in China's promotion of Africa's development and its private citizen's search for livelihoods in Africa's business sectors, especially at the lowest levels. Chapter 3 discusses differences in performance between Chinese and local entrepreneurs. Chapter 4 concludes the review.

II. China in Africa's Business: Inevitable Contradictions

2.1. The Political Economy of Chinese Presence

Several studies have argued that the competition between Chinese and indigenous businesses has important consequences for host countries' political economy. The "new kids on the block" are competing directly with local entrepreneurs for business projects of similar size and sector description i.e., restaurants, groceries, commodity trading, artisanal mining, agricultural production, poultry, house construction, hotels and guest houses, money lending, fish mongering, "natural" medicine, hawking, and selling old clothes etc.

Chinese entry has had both positive (i.e., better supply of goods and services, employment opportunities, higher revenues) and negative effects (i.e., displacement of local entrepreneurs, erosion of urban safety nets). The informal sector can no longer be relied upon to be a safety valve for the urban economy (Geerts, Xinwa and Rossouw 2014; Xiao 2015).
In the retail sector, the loss of customers to the more efficient Chinese operators, with their vast import networks, has caused much resentment among indigenous traders—with threats of boycotts—leading in cases to violent incidents, and the intervention of the authorities[3] (Mungai 2019; Wonacott 2012).

2.2. Muddled Nomenclature: "Win-Win" versus Global Imperatives

Africa-China relations, while steeped in storied historical links and alliances, have had to adapt in recent decades to changing global imperatives—including the global political and economic rise of the PRC (Alden and Chichava 2014; Cao 2013).

African leaders have been enthused by China's "tripod of historical legitimacies" which posit that a shared past of colonial domination requires both South-South cooperation and the development of alternative-minded development strategies i.e., the developmental state, promotion of industrial development, mutual benefit and upholding the principle of self-determination. These ambitions have been reiterated in the One-Belt-One-Road approach that has been rolled out by China in recent years.

In turn, African countries have looked to China to champion their causes in the UN and other international institutions, and more recently financing the continent's infrastructure push. Regular China-Africa meetings have been held at heads of state levels to discuss relations and plot the road ahead.

On its part, at least in policy pronouncements, China considers Africa to be an important geopolitical partner, a key ally in the global power play (at the UN[4] and similar forums for example) and, given the continent's ongoing demographic transition, a future growth pole for the world. It is not surprising that Africa-China relations have been referred to by both sides as "win-win."

Still, the massive entry of Chinese entrepreneurs into Africa[5], as has happened in the last two decades, was bound to muddle the waters and unleash an avalanche of less

[3] The Mail and Guardian (January 25, 2015) observed that anti-immigrant violence was quite common in Africa, with Somalis being attacked in Nairobi and Soweto, and Chinese in Congo and Zambia, a result of poor economic times in host economies.
[4] For example, in pursuit of a major foreign policy plank, the One China Policy, PRC has in recent decades managed to get all African countries, excepting Eswatini, to abandon their recognition of Taiwan in favour of Mainland China.
[5] This was more in the realm of "unintended consequences" i.e. emanating from the loosening of policies around private entrepreneurship and international travel back in China during the late 1990s than of systematic policies design by PRC. Some studies (Driessen 2016) have argued, however, that since Deng Xiaoping's opening-up policy of the late 1970s, encouraging outward Chinese migration has been at the center of the country's overall economic policy thrust, with emigration helping to find livelihoods for thousands of displaced rural dwellers, and later softening the blow of structural transformation that had led to losses of industrial jobs.

than complimentary responses: charges that the Chinese were displacing locals in business ventures, increased dependence on Chinese imports, de-industrialization in Africa, domestic deference to Chinese global policies, and loss of "self-determination," contradicting an important rider of Africa-China relations (Chan 2013a, 2013b; Zi 2015).

In explaining China's long-lived relations with Africa, the example of the two thousand-kilometre TAZARA railway project embarked on from Dar es Salaam in Tanzania to the Zambian border is often given (New York Times, 1971). However, it also gives an example of a different China during that time. In contrast to today, the Chinese builders of the TAZARA railway returned home en masse, while many workers on today's Chinese infrastructure projects chose to remain behind i.e. the push and pull factors are completely different (French, 2015; Jayaram, Kassiri and Yuan San 2017).

It is also instructive that in the 40 years since the TAZARA railway was built, China has become a global power, while Tanzania and Zambia remain relatively underdeveloped. In spite official claims to the contrary, China and its Africa partners were not equal partners then and are much less so now—in these circumstances, "mutual benefit" as a concept is illusory (Chan 2013a).

Given, in addition, China's ubiquitous financing of African infrastructure, researchers, opposition parties and other stakeholders are now tendentiously talking about the rise of Chinese neo-colonialism in Africa (French 2015). It is also insightful that thinktanks in the West have taken lively interest in the China-Africa debate, although emphasizing the policy duplicity of China as an emerging global power has a false tone to it (Hanauer and Morris 2014).

Allusions to China's hegemonic ambitions aside, Chan et. al. (2013) have noted that, in spite lofty official protestations[6], Africa is only a cog in the wheel of China's global economic ambition and thrust. Chinese FDI to Africa, as a percentage of the total, has fluctuated in the lower single digits in the past decade. Most African countries have a large trade deficit with China, in spite substantial exports of African raw materials to the country, including oil. Total China-Africa trade comprises only about 4% of Chinese trade with the world.

Some researchers have charged that in spite Africa's small size in China's trade relations, the continent has become a convenient dumping ground for leftover products i.e., not good enough for the West, including polluting technologies, and sub-standard products. Further that the continent has become a staging point for the export of China's excess labor, not the most skilled, shed by the country's modernizing manufacturing sector (Driessen, 2016)[7].

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[6] See for example the article in the People's Daily, February 16, 2012 entitled: "Chinese investments in Africa cement friendly ties."

[7] "Get out" pressures in China have included rising labor costs, industrial overcrowding, cutthroat competition, more stringent environment legislation etc. It is no longer as easy to make it from scratch for relatively young people as in the past. Many young Chinese have been forced to seek their fortune elsewhere.

However, there is a danger in generalities. Research by Mckinsey, the consultancy company (Jayaram, Kassiri, and Yuan San, 2017), suggests that Chinese engagement with African countries could be divided in four distinct types: robust partners (for example Ethiopia and South Africa); solid partners (i.e., Kenya, Nigeria, Tanzania); unbalanced partners (i.e., Angola, Zambia); and nascent partners (Cote d'Ivoire, DRC). Hence, and not surprisingly, the type of official engagement enjoyed by China with African countries impacts the nature of relations that Chinese entrepreneurs enjoy at the local level (Hellendorff 2011).

2.3. African Policy Responses

Generally, domestic groups not linked to the ruling parties, including labour unions, trade associations and NGOs, have, often opportunistically, been critical of how African governments have dealt with China (Tang 2017). They note that the Africa-China relationship is asymmetrical, pointing especially at the lack of transparency in the infrastructure and resource extraction deals, including payment terms, and their implications for debt sustainability.

Few African governments have attempted to respond directly to their critics, but also significantly few are backing away from what has so far proven to be a useful means of pushing Africa's development agenda forward with Chinese support.

However, given the rising level of domestic disgruntlement directed at aspects of Chinese presence, some governments have taken steps in areas of immediate concern, especially those posing social unrest. For example, on the issue of Chinese displacement of local entrepreneurs from profitable segments of the informal sector and SMEs, some African governments have issued new regulations targeted at restricting foreign entry (in some cases targeted directly at new Chinese businesses) at the lower end of the private sector distribution. In areas such as hair-saloons, eateries (other than Chinese restaurants), and retail shops, foreign participation has been banned altogether.[8]

In several cases, notably Cameron, Kenya, and Nigeria, African governments have sought to strengthen immigration and investment permit processing procedures, but bureaucratic shortcomings and corruption have deterred progress (Gadzala, 2019; Ngwa 2019; Liu 2019). Thus, while investment permits are issued on the promise of millions of dollars of new projects, with investors often allotted land by the Government for their proposed businesses, few of them actually take off. A survey of ongoing private investment in Uganda (Bank of Uganda, 2018) has indicated that several foreign investors initially designated as manufacturers and potential exporters had surreptitiously reverted to retail trading and importing.

Nevertheless, it would be wrong to conclude that the support of African governments for Chinese investment is fading. In Uganda, for example, the Government has allocated

[8] Angola is illustrative in this regard. See Herculano Coroado and Joe Brock "Angolans resentful as China tightens its grip," World News, Reuters, July 8, 2015.

parts of its military assets to guarding Chinese entrepreneurs (Reuters 2018)—the latter were concerned with the seemingly targeted robberies that Chinese companies have encountered in recent years. In Senegal, the authorities continued to support Chinese presence in the country, seeing it as a balancing act to Lebanese businesses, for example (Cissé 2013).

A broader question posed by some of the studies is whether African policymakers are drawing the right lessons from the Chinese miracle that they so admire (Huang 2013, Mazimhaka 2013; Ross, Omar, and Xu 2019).

While the Chinese model was not perfect, studies nevertheless point out that the Chinese miracle was partly based on staggered controls in the business sector, strategic allocation of both foreign exchange and domestic credit, and constrained foreign firm access to strategic sectors of the economy—especially at the lower levels of the business sector.

In China, strong institutions, including at the sub-national levels, were crucial for policy implementation, accountability, and the promotion of an effective regulatory environment. Good planning was key for the success of government strategies, and poor performance was sanctioned i.e., policymakers sought policy coherence.

They argue that while today Chinese entrepreneurs compete “freely” against indigenous entrepreneurs in many African countries, such a scenario would have been inconceivable in China during the earlier phases of its industrialization, when foreign entry was virtually barred. However, these lessons on “how China made it” do not appear to have been absorbed to any large extent by African policymakers.

III. Jostling for Space in the Business Periphery

3.1. Chinese versus African: Superior Networks or Cultural Hegemony?

The studies reviewed underline that while China, the state, might be pursuing nondescript geopolitical ambitions with its African investment, its private citizens are in Africa principally to make money (Alden and Chichava 2014; Brautigam 2003; Liu 2013).

The big argument being made in favor of increased Chinese engagement in African business is that they have been able to flourish, in spite the litany of structural and policy impediments including lack of foreign exchange, inputs, and technical skills. However, sceptics have charged that complaints about skills and work habits are simply excuses for Chinese firms to import Chinese labor (Men 2014; Van Djik and Warmerdam 2012; Gu 2009; Dollar 2016).
On the other hand, local entrepreneurs blame their difficulties on unfair competition, lack of access to credit, and official policies that favor foreign than domestic investors (Xia 2019).

Zambia’s Copperbelt provides a microcosm of the experience of Chinese entrepreneurs in negotiating their way into urban strongholds in Africa, in the face of political disaffection and worker discontent in host countries (Elcoate 2018; Hairong and Sautman 2013; Konde 2018; Negi 2008; Wonacott 2012). As in other parts of Africa, Chinese presence on the Copperbelt, and Zambia more generally, has conjured tales, some quite contrived, of indigenous entrepreneur marginalization and labor casualization (Lee 2009). For example, the fact that a substantial portion of the burgeoning sovereign debt is owed to state agencies from the PRC has set off rumors that key infrastructure assets such as the electricity parastatal (ZESCO) and the new airport are at risk of annexation by China, an implausible outcome but one broadly believed by swathes of the population. Similarly, some domestic pressure groups, with little pretense to accuracy, have argued that large patches of land are being bought for the construction of exclusive communities for new Chinese migrants etc. (Zambian Watchdog, 2018). These protestations might not be sufficient to shift public policy in Zambia but indicate that the embrace of Chinese entrepreneurs at the periphery levels of the economy will be recalcitrant and divisive.

However, in a study of what influences local attitudes to Chinese businesses on the Copperbelt, Li (2010) blames the overt hostility, charges, and myths on a general lack of understanding, especially in the West, of the type of engagement that China is seeking with Africa. Chinese investors on Zambia's Copperbelt, he argues, are there for the long haul, trying to make a real difference in the region and the country. In spite of this, and owing to an inherent bias against anything Chinese, firms from the PRC are more apt to be criticized locally for shortcomings than their counterparts from the West. According to Li (2010), these biases explain to a large extent why efforts by Chinese firms to respond to both workplace and environmental concerns in recent years have not been appreciated by their detractors.

3.2. Impact on Local Businesses

Recent estimates indicate that there might be up to 1 million Chinese residents in Africa, mainly engaged in entrepreneurial activities of one type or the other. Between 2000-2014, there was a total of some 10,000 Chinese-owned and operated companies on the continent (designated, from the Chinese point of view, as national, provincial, municipal, and private) (Feng and Pilling, 2019; Jayaram, Kassiri, and Yuan San, 2017).

By 2015 i.e. before the beginning of fiscal consolidation and relatively lower growth in China, estimates of total investment outlays in Africa reached some US$500 billion.[9] Thus, while Chinese investment in Africa in 2000 equalled some 2% of that of the US, it was some 51% of the US in 2015, with projections suggesting parity by 2020. In other words, Chinese investment in Africa, whatever the disclaimers, is not inconsequential.

By now, the charges leveled against increased Chinese presence in Africa, especially in the business sector, have been repeated so frequently that they have become almost stylized facts (Sanghi and Johnson 2016;) i.e. Chinese investment is not benefitting Africans; China prefers to deal with "captured" African governments and avoids interaction with a critical civil society; China extracts Africa's natural resources with little concern for environmental impact; China bankrolls Chinese entrepreneurs at the

[9] See Chinese investment in Africa: which sectors get the most? | World Economic Forum (weforum.org)

detriment of local firms; and that China is exporting labor to Africa, while it has little sympathy for labor rights at home and in host countries.

In a study of Chinese investment in Uganda, Van Dijk and Warmerdam (2012) interrogated some 49 Chinese companies about some of these charges, while Men (2019) looked at similar issues in a case study of Tanzania and Niikondo and Coetzee (2009) and Tityende (2015) that of Namibia. The studies' results were equivocal on one of the oft-repeated charges i.e. that Chinese policy tends to conflate aid, trade, and private investment in Africa. The studies show that the Chinese state machinery expends little effort in supporting Chinese entrepreneurs at the lower levels of the business sector in Africa, nor does it solicit host governments on their behalf. However, it encourages them to establish trade associations that can project and defend their interests in the host country (Li 2010).

Still, this has not prevented local political opposition groups from going into overdrive in their claims of Chinese "takeover"[10], often requiring push back from local Chinese trade associations or embassies in host countries (Spring and Jiao 2008).

There is evidence that Chinese entry is beginning to elicit structural changes in Africa's informal economies, forcing local entrepreneurs to do things differently (Feng and Pilling 2019; Ross, Omar, and Xu 2019). Some studies suggest that Chinese presence and its disruptive potential has been beneficial for African business, while others argue that it has promoted technological adoption in some sectors, notably irrigation systems in agriculture and aspects of manufacturing and marketing (Weng et. al. 2018; Xia 2019).

Although the learning curve has been steep, many local entrepreneurs are beginning to compete favorably with Chinese counterparts (Onjuni and Fee 2019). Many now order goods directly from China or other parts of Asia and are skipping local Chinese middlemen altogether (Dankwah and Valenta 2019). Moreover, many African traders have learnt some Mandarin and travel to China for the best deals. They have small enclaves of their own in Hong Kong and mainland China, in a form of the Empire Strikes Back (Lyons, Brown and Zhigang 2012; Matthews and Yang 2012).

Studies also indicate that given a choice, Chinese entrepreneurs prefer good economic environments, with efficient bureaucratic systems, to those where corruption is rife i.e., they want to be left alone to focus on their businesses (Brautigam 2003).

A study of Ghana (Dankwah and Valenta 2019) indicates that Chinese entrepreneurs there have had to adjust to complex business relationships, involving at least three Ghanaian groups. The first group includes Ghanaian traders with own capital, who, though the main competitors of the Chinese, nevertheless are forced to seek favors from them owing to language constraints or difficulty of getting visas to China.

The second group comprises petty traders, who are totally "collaborative" as they get their goods directly from Chinese wholesalers, often on credit. To this group also

[10] Newspapers, notably in Zambia, Cameroon and Kenya have highlighted (seemingly rare) cases of chicken raising, maize roasting in markets and selling of vegetables on the roadside as examples of this "takeover."

belongs Ghanaians who provide services to Chinese firms or rent them properties.

The third category is competitive and even confrontational. It includes the Ghanaian Union of Traders, who seek to pursue the interests of their members in every way possible.

These examples indicate that contrary to media reports, Chinese firms are not able to run roughshod over domestic business interests and often must negotiate their way carefully through the host country's political minefields.

In responding to the "space wars" above, African policymakers will need to choose between the pursuit of a laissez faire approach, which allows foreign investors to enter virtually all sectors of the economy without hinderance or one which is carefully calibrated to maximize opportunities for local entrepreneurs, by restricting foreign entry in certain sectors, such as the low-tech retail and service industries, while keeping an eye on employment and consumer welfare. The latter approach, and not laissez faire, was incidentally the one that China used in earlier phases of its industrialization.

IV. Conclusion

In conclusion, the presence of Chinese entrepreneurs in the lower rungs of Africa's business sector has had real impacts on local livelihoods and the host economies. However, contrary to the often-hysterical depictions in the media, impacts are not always negative. Yes, many local entrepreneurs have been outcompeted by the superior networks and better financing of the Chinese businesses, but many local entrepreneurs have devised coping mechanisms of their own, including strengthening their own networks, cutting out middlemen, and even learning Mandarin. Above all, studies attest to better supply of goods and services as well as increased local employment caused by Chinese entry.

This has not meant the absence of friction and discontent in many countries and communities as Chinese communities negotiate their way into African economies. The economic environment and political economy of countries have been key determinants of the nature of local responses.

Many studies show that there is serious resentment attached to the perceived underhandedness of Chinese business dealings, including insufficient concern for the environment, poor labor rights, and even incidences of racial insults (Goldstein 2018). Some studies dismiss some of the latter as isolated "teething" problems and the fact that reputational challenges arise from the many small Chinese companies, "answerable to no one back home", that are operating in Africa today.

Finally, many studies have highlighted the tension between China's win-win approach to Africa and the market imperatives of running successful businesses. While the PRC has been able to straddle the two stances in recent years, the accumulation of African debt across the board shows that a more stringent, and results-oriented approach i.e., a calibration of Africa-China relations to ensure sustainability, will need to be pursued in the future.

It seems that Chinese entrepreneurs are ahead of the game between and within countries. Already, Chinese businesses are drifting toward more stable and better run African economies i.e., Kenya and Senegal, and toward more technically oriented sectors of the economies where their activities have better returns and a more predictable horizon i.e., they are behaving like business entities elsewhere in the world.

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Determining the Liability for Carriage of Goods by Road in West Africa – Can OHADA Uniform Rules on Transport be a Foundation?

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(Damilola Osinuga and Co)

Economic integration has been on African leaders' lips since the Organization of African Unity was created in 1963. The justification for this is not implausible — to promote regional trade and ensure economic prosperity. On January 1, 2020, African nations opened their borders to duty-free trade of goods and services under the continental free trade agreement. Transport of commodities is without a doubt essential for market access and intra-African trade. The low purchasing power of the populace and the geography of the continent, which is made up of a sizable number of landlocked provinces, favours road transportation. However, in West Africa, there is no uniform legal framework for determining liability for goods carriage by road. This article investigates whether the OHADA Uniform Rules on Transport can serve as a foundation for a West African liability regime.

I. Introduction and Statement of Problem

Transport is an essential human activity globally. It is crucial to every economy and plays a major role in the development of any economy. It can be said to be indispensable (Delgcay Murat & Kdogan Kağan, 2011). Transport creates market access and valuable links between regions and economic activities (Delgcay Murat & Kdogan Kağan, 2011). Inadequate transport limits a country's ability to maximize the use of its natural resources and distribute food and distribute other finished products. It also helps to integrate local regions. (Edith Aghadiaye Olamigoke & Adebayo Adewunmi Emmanuel, 2013) It is rudimentary to state that transportation includes carriage by air, rail, sea, and road.

Numerous pieces of literature, points to the fact that carriage of goods by sea is by far the most popular mode of transportation for trade between countries (89.8%) (Llano, De la Mata, Díaz-Lanchas, & Gallego, 2017). However, for door-to-door trade, road transport is the most convenient, particularly when multimodal transport such as ship-to-door or door-to-ship is involved.

To be competitive at the global level, Africa as a continent need to ensure the seamless movement of goods within the continent and its sub-regions. Accordingly, the cost and quality of road transport services is critical to competitive trade.

The establishment of the African Continental Free Trade Area ("AfCFTA") is an opportunity for Africa to improve intra-Africa trade. Conversely, the African continent and its sub-regions need an efficient transport system to facilitate efficient cross-border movements and consequently achieve the goal of reducing the barriers that affect the seamless movement of goods and people. To further lay credence to the importance of transport to AfCFTA and regional trade in Africa, at the 31st Ordinary Session, on July 1st and 2nd 2018, Nouakchott, Mauritania, transport was listed as one of the top five priority areas adopted by the African Union for initial commitment (African Union, 2018).

Road transport dominates African trade. According to a World Bank study (World Bank, 2017), the trade value of about US$200 billion is transported through road networks connecting strategic trade corridors such as deep-sea ports and economic hinterlands (Sinate, 2018). It is estimated that road transport accounts for 80 to 90% of passenger and freight traffic (Commonwealth Network, 2020).

Road transportation is the economy's lifeline in the local regions (Oladipo O. Olubomehin, 2012). Research shows that the use of roads for the carriage of goods and passengers is of more significant influence on the economy than it used to be. (Chartres John, 1989).

One important issue to address in the issue of road transport in Africa is the inadequate uniform legal framework for determining parties' liability in the event of loss or damage arising from a contract of carriage of goods by road. The lack of certainty as it relates to its legal liability is the primary source of inefficiencies in the cross-border road transport system (Etiyel Chibira, 2020). The lack of certainty of law in this area could lead to increased non-tariff trade cost such as litigation, legal opinion and enforcement of a judgement. There is, therefore, a need to eliminate all non-tariff barriers (including legal uncertainty relating to carriage of goods by road) to achieve the aim of the AfCFTA (*to create one African market*).

This paper seeks to discuss the importance of road liability in achieving regional integration. The paper discusses the current lack of a liability regime, and its impact on economic and regional integration in the Economic Community of West African States (ECOWAS) region. The paper submits that the Organisation pour l'harmonisation en Afrique du Droit des Affaires ("OHADA") existing uniform rules for carriage of goods by road can be a foundation to achieving certainty in relation to carriage of goods by road in West Africa. The paper will also be a contributor to the discussion of a relatively recent academic interest area, i.e., road liability in West Africa regional integration. The available literature on the subject in West Africa is very limited and scarce.

This paper will restrict its scope to West Africa. This is based on the premise that the African Union ("AU") stated that Regional Economic Communities ("RECs") will serve as building blocks to the African Economic Community and urged the RECs and the AfCFTA Secretariat to collaborate in the implementation of the AfCFTA Agreement.[11]

[11] See the Resolution of the Assembly Of The African Union Thirteenth Extraordinary Session (On The Afcfta) 5 December 2020 Johannesburg, South Africa Virtual Platforms (Zoom).

Accordingly, RECs will take steps *to* deepen their own integration and promote continental integration initiatives.[12]

II. Importance of Road Transport to Trade in West Africa

The role of Africa in world trade is marginal, having a meagre share of 2.4% in global exports (Schmieg, 2016); yet, trade is central to development in Africa. (Luke, 2020) African leaders and stakeholders recognize that trade is a proven potent engine for economic growth and development. Hence the reason that there have been many efforts to liberalize trade on the continent by effective regional integration.

Regional integration and the growth of the internal market can play an essential role in the development of Africa. Trade within Africa has unique growth potential. Research shows that intra-African exports have increased rapidly in the last few years by 25%(Economic Commission for Africa, 2012); accordingly, regional trade offers more significant potential to economic development and growth (Schmieg, 2016).

Despite the potential for growth that regional trade has, there are trade barriers that have affected Africa's economy. These challenges ranges from fluctuating commodities prices, high cost of transportation, lack of infrastructure, technological challenges, and high tariffs among member countries. For example, the cost of transportation is three times higher than the cost of transportation in other African regional economic communities (Organization for Economic Cooperation and Development & World Trade Organization, 2015).

The above analysis underscores the fact that whilst regional trade is a priority in comparison to international trade, there are muddles confronting seamless regional trade. This underlines the importance of establishing of the Continental Free Trade Area ("CFTA")[13].

To allow deeper integration, in January 2012 at the 18th African Union Summit of African Heads of State held in Addis Ababa, fifty-four African Union member states agreed to establish the CFTA.[14] A framework agreement for the establishment of the AfCFTA was signed by 54 nations,[15] making it the world's largest free trade area into force.[16] The Agreement finally came into force on January 1, 2020. The AfCFTA was

[12] Proximity of nations increases the potential for trade amongst them therefore the Acqis principle is a welcome idea.

[13] Before the establishment of the CFTA, there has been negotiation for an African Economic Community since the adoption of the Lagos Plan of Action in 1980. The efforts were then consolidated by the Treaty Establishing the African Economic Community (Abuja Treaty) which was adopted on 3 June I991 and entered into force on 12 May 1994. Finally, in 2012, African leaders agreed to establish the CFTA.

[14] The AfCFTA has been negotiation for an African Economic Community since the adoption of the Lagos Plan of Action in 1980. The efforts were then consolidated by the Treaty Establishing the African Economic Community (Abuja Treaty) which was adopted on 3 June I991 and entered into force on 12 May 1994.

[15] As at September 2021, 39 African Countries have deposited their instrument of ratification. (Tralac, 2021).

[16] *As at Ju*ly 7, 2019, 54 countries have signed the signed the ACFTA leaving Eritrea as the only nation out of not to sign up to the deal.

signed to boost trade, boost economic growth, and strengthen integration among African countries. The pact is expected to boost intra-African trade by making Africa a single market, harnessing the immense potential of its 1.2 billion people and its cumulative GDP of over US$3.4 trillion. The United Nations Economic Commission for Africa ("UNECA") estimates that the implementation of the Agreement could increase intra-African trade by 52% by 2022 (Economic Commission for Africa, African Union and African Development Bank, 2017) (compared with trade levels in 2010) and double the share of intra-African trade (currently around 13% of Africa's exports) by the start of the next decade.

Article 5 of the Agreement establishing the African Continental Free Trade Area stipulates that the existing RECs will serve as building blocks and will continue to exist. Further credence is given to this by Article 19(2) of the Agreement establishing the AfCFTA [17] and Article 8(2) of the Protocol on Trade in Goods.[18] The implication is that AfCFTA envisages a situation whereby RECs achieve full regional integration, which will be the foundation for achieving a collective, integrated African society. Accordingly, efforts must be made by existing RECs to achieve regional integration. Moreover, research has shown that countries with close borders and geographical proximity are likely to trade more with each other because of connectivity and market access (Eddie Norton & Michael Rolfe, 2021).

It is expected that with AfCFTA in place, road transport will take a dominant position, mainly because the quality and density of the road network are better than the available railway network in Africa, particularly in West Africa. Road transportation brings flexibility, speed, convenience, and adaptability (Poliak, Tomicova, Cheu, Fedorko, & Poliakova, 2019).

There is no doubt that carriage of goods by sea is a popular means of transportation, but the burden on maritime transportation is overwhelming and there is a need to look for an alternative (Imran Ur Rahman, Buddhi Prasad Sharma, & Enitilina Fetuu, 2020). Furthermore, as earlier discussed, road transport is used a lot as a sub-transport segment.

Regional roads are a good measure to increase production and economic activities within the regions. They can lead to better outcomes and socio-economic development of the regions and thus the country (Chandra & Thompson, 2000).

In West Africa, road transport is also the most used sub-sector of transportation. Although, in comparison to other regions in Africa, West Africa has a relatively well-developed regional road network (Ranganathan, 2011). However, with the potentials of

[17] "Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves".

[18] "Notwithstanding the provisions of this Protocol, State Parties that are members of other RECs, which have attained among themselves higher levels of elimination of customs duties and trade barriers than those provided for in this Protocol, shall maintain, and where possible improve upon, those higher levels of trade liberalisation among themselves".

intra-African trading and the possibility of a surge in demand for door-to-door delivery and multimodal transportation, there is no gainsaying that road transportation is essential to regional integration and transit facilitation.

Twenty five percent of West African countries are landlocked and depend on coastal countries for access to regional and international markets. The expansion of the transport infrastructure and development of transportation is of fundamental importance for the movement of people and goods, but also for the promotion of intra-regional trade, value chain development, and commercial/economic opportunities (World Bank, 2021).

Organizations like the World Bank have taken concerted efforts to assist West African countries to improve regional connectivity and ensure seamless mobility (World Bank, 2018). The African Development Bank ("AFDB") has also played a significant role in enhancing connectivity. The AFDB has supported projects like (1) Dakar – Bamako – Ouagadougou – Niamey Corridor; Dakar – Abidjan Corridor; (2) Abidjan – Lagos Corridor;(3) Lome – Ouagadougou Corridor; (4)Tema – Ouagadougou Corridor.(African Development Bank, 2019) This reiterates the importance of connectivity of roads to West African trade.

For AfCFTA to realize its full potential, all bottlenecks that may affect the seamless use of road transport must be reduced or, where possible, eliminated. Some of the efforts that should be taken concertedly include but are not limited to (Etiyel Chibira, 2021):

- ❖ Network quality and capacity improvement through intelligent transport systems

- ❖ Accelerated review, simplification and harmonization of corridor, transit agreements and procedures guided by the objectives of the AfCFTA

- ❖ Simplification of procedures, greater transparency in implementing the procedures and providing better information to the public regarding the procedures and border rules

- ❖ Regulatory harmonization in the transport environment and systems standardization to ensure market access for international carriers, interoperability for infrastructure and rules applied to carriers. E.g., "elimination of procedures and regulations that inhibit competition and efficiency."

- ❖ Reduced level of regulation of transport and logistics services as it pertains to market access and operating time for trucks; and encouraging increased competition in the provision of these services

- ❖ Improved coordination and cooperation by between corridor management institutions, regulatory authorities and other import corridor structures and stakeholders

- Address road transport regulatory fragmentation among trading partners (Etiyel Chibira, 2020)

III. Addressing the fragmentation of cross border road transport liability in West Africa through a unified road transport liability regime

The role of transportation in creating seamless trade in any economy cannot be overemphasized in any international trade literature. There is no doubt that the African Union and ECOWAS perspective is to create a single market. The idea will give rise to freedom of goods and services within Africa.

Indisputably, Law is a fundamental instrument of all transnational economic integration (Helmut Wagner, 2007). However, several unharmonized national, bilateral, corridor and multilateral instruments relating to road transportation could affect the movement of goods by road. These instruments, or sometimes a lack of instrument dealing with regulatory control, regulatory requirements, liability in the event of damage, market access standards and regulations, may lead to regulatory inconsistencies and inefficiencies that create barriers to non-tariff trade. However, this study highlights the lack of harmonization associated with the carriage of goods by road in West Africa.

Globally, the international convention governing a contract for carriage of goods by road is the Convention on the Contract for the International Carriage of Goods by Road, popularly known as the CMR. Most African states[19] are not a party to the CMR.[20] Unlike in Europe, the CMR does not create a uniform liability regime for road transport in Africa, considering that less than 5% of the countries in Africa have ratified the CMR. Also, there is no regional instrument from the African Union, nor a REC adopted legal framework for West Africa by ECOWAS (with the exception for some states which are members of OHADA). For other countries, liabilities are determined by the contractual provisions of parties to a road carriage, where there is a contract. Where there is no contract, national legislation and tort laws are resorted to determining parties' liabilities in a contract of road carriage.

The OHADA[21] Acte Uniforme Relatif Aux Contrats De Transport de Marchandises Par Route which can be translated as OHADA Uniform Act Relating to Contracts for the Transport of Goods by Road ("AUDTMR *OHADA*"), governs the liability of carriage of goods by road between members of the OHADA.

Putting the current status of legal framework into context within West Africa, it means that some countries in West Africa have a mandatory regime for carriage of goods by

[19] Only Morocco and Tunisia are parties to the CMR countries among 55 African Nations.

[20] Entered into force on 2 July 1961.

[21] OHADA was established by a treaty signed on October 17, 1993. The purpose of this Treaty was to harmonise the business law of African States through the development and adoption of simple, modern, and appropriate standard rules to the situation of their savings. It was conceived that uniform treaties on commercial law would promote a stable business environment and the expeditious resolution of disputes. Today, OHADA has unified eight subjects: general commercial law: January 1, 1998; company law: January 1, 1998; securities law: January 1, 1998; debt recovery and enforcement law: July 10, 1998; bankruptcy law: January 1, 1999; arbitration law: June 11, 1999; accounting law: January 1, 2001, for consolidated accounts; January 1, 2002 for combined accounts; and the law regulating contact for carriage goods by road: January 1, 2004.

road by virtue of their membership of OHADA, whilst some others do not have any legal framework governing the liability of carriage of goods by road.

Accordingly, the conclusion of a contract for international carriage by road is more complicated for a carrier. Parties would be left to determine their liabilities, duties, and rights by negotiating their desired terms in a contract. Freedom of contract is a well-known principle; however, it is not without its disadvantages. Most carriers have different standard terms and conditions. These contracts are drafted to be in favour of the carrier and are definitely a lopsided contract (Stevens, 2004). This is because the carriers, in most instances, have the economic advantage and would accordingly not be able to negotiate the contract. Whilst having a standard contract, is a good self-help and highly useful, it does not eliminate the need to improve the law governing road carriage in West Africa.

Furthermore, the current fragmented framework places an onerous responsibility on the carrier to have a good knowledge of national transport regulations of the different countries in West Africa to transit the corridors of the region. To complicate this, different countries have different legal systems and different applications of contracts leading to legal uncertainty even in determining liabilities in the event of claims. An example to illustrate this point is below.

A consignment from Lagos to Abidjan would pass through countries like Nigeria (which does not have any legal framework on road carriage), through Togo, Benin, and Burkina Faso before getting to Abidjan (all of which have a legal framework for carriage of goods by road). Where there is a written contract on jurisdiction and choice of law, it might be a bit easier to determine the law by looking at the text of the contract. Where there are no written contracts, it might be a bit more complex. Whilst it is agreed that conflict of law rules will apply, the application in Africa, and West Africa in particular, is not entirely certain. The understanding of conflict of laws in Africa is minimal (Chukwuma Okoli, 2019) and might even be said to have stagnated.[22] The consequence of leaving the resolution to conflict of laws will lead to uncertainty.
The lack of a uniform regime would create different standards for liabilities, compensation, and evidence of a contract, such as consignment notes and what should be considered a contract of carriage. Issues such as a competent jurisdiction could also remain uncertain, particularly when the place of loss or damage cannot be ascertained.

There is no doubt that uncertainty about the applicability of a legal regime casts doubt on every judgment concerning road carriage. Therefore, nothing should be spared to minimize or, where possible, eliminate doubt concerning the applicability of a legal regime.

Certainty is an essential principle of law. The certainty of law can be judged from the predictability of results obtained while resolving legal disputes. Vanessa Mak succinctly

[22] In Africa, there is no such thing as an "African private international law" or "African Union private international law" akin to, for example, "EU private international law".

defines the concept of legal certainty as "*the predictability of outcomes in legal disputes*".(Mak, 2013) Legal certainty includes the need for uniform interpretation and application of laws in an area of law (Alexander V. Demin, 2020).

An uncertain legal regime is clearly undesirable. Regions and countries with low legal certainty generally have uncompetitive economies. In an uncompetitive economy, prices tend to rise higher. The "*pursuit of higher returns*" and low level of competition threaten consumers in the country with low legal certainty (Fábio Ulhoa Coelho, 2015). Legal uncertainty has been said to be able to restrict the growth of an economy (A. Chong, 2000).

The current disharmonization of law regulating the carriage of goods by road leads to transaction costs and reduced economic trade and prosperity. Studies show that legal diversity increases the transaction costs of cross-border contracting and reduces the possibility of involvement of consumers and small businesses owners in transactions wherein the law is unclear (Helmut Wagner, 2007). It is usual for business owners to refrain from transactions in which costs of information such as law, administrative procedures, and legal opinion and the costs of enforcement are unpredictable (Helmut Wagner, 2007). This transaction cost will consequently lead to high transportation costs, which will impact on trade and likely affect a country's economic growth (Fujimura, 2004). Undoubtedly, legal uncertainty is regarded as a non-tariff trade barrier. Removal of trade barriers (*whether tariff trade barriers or non-tariff trade barriers*) is crucial to achieving the potential of free trade in West Africa.

The legal response to the uncertainty and unpredictability predicating the legal regime of carriage of goods by road in West Africa is harmonization. Adopting a uniform system of liability governing carriage of goods by road is an appropriate solution. Uniformity of law is not a new concept of law and dates to the earlier periods of civilization (Bokareva, 2019). Adopting a uniform liability system will provide the desired predictability because a uniform liability system will be applicable all through the carriage period. Furthermore, each party would know the extent of their liability, the rules applicable and the foreseeability of legal commitment.

In addition, a uniform liability system would help avoid enquiries as to where a loss occurred, and which law will be applicable – whether the law of a particular country is applicable or not. Accordingly, the adoption of a uniform liability system would eliminate unnecessary litigation.

A uniform liability regime on road transportation in West Africa would help unify the laws governing documentation of road transport consignments, principles of liability, the law governing determination of which courts have jurisdiction over road carriage claims, issues relating to time bar as well as the procedure for applying damages to claims from shippers and consignee. Such rules would further deal with the content of the carriage document and its effect on international transport of goods by road in West Africa. Issues such as the language of the contract documentation, number of copies of the document and the signature (whether electronic or physical) will also be addressed in the treaty. Issues relating to packing the goods for transport, carriage of dangerous goods, inspection of goods at the commencement of carriage and disposal of the goods will be addressed in such uniform set of rules.

Any uniform set of rules for carriage of goods by road transport in West Africa should determine the rights, duties, and liabilities of parties under an international road carriage contract. Such regime will be attractive when it is balanced and able to achieve a middle ground between the cargo and the carriers.

The proposed uniform rules should deal with important rights and duties of the parties involved in a carriage of goods by road contract. Topical issues such as consignment note, right of disposal, dangerous goods, delay, limitation of liability and carrier's defence need to be adequately addressed in the proposed set of rules. This paper submits that the set of rules should incorporate similar provisions of the CMR. This is based on the overall success that CMR have achieved over the last 5 decades. Furthermore, an entirely new uniform law may generate costs as opined by *Steven D.* Walt with regard to the United Nations Convention on Contracts for the International Sale of Goods (CISG) (Walt, 1999). Issues such as a lack of case laws may further increase cost and lead to uncertainty of resolution in disputes for a few years.

IV. Commentary on OHADA Liability Regime

The CMR, although largely successful in Europe, does not have many African signatories. This might be connected to the fact that when the Convention came into force, road connectivity in Africa was largely underdeveloped. However, the only road instrument governing carriage of goods by road in Africa is the AUDTMR OHADA. The AUDTMR OHADA derives valuable inspiration from the CMR.

The AUDTMR OHADA is applicable in sixteen countries, namely Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, and Togo. Among these sixteen countries, nine of them are members of the ECOWAS region. All French speaking countries in West Africa have adopted this uniform set of rules as the extant legal framework for carriage of goods by sea.

The OHADA Uniform Act on the Contract for the Carriage of Goods by Road ("AUDTMR *OHADA*") consist of 31 Articles and 7 chapters. The treaty entered into force on January 1, 2004. AUDTMR OHADA is binding for all members of OHADA because of its supranational character. The OHADA Treaty (i.e., the treaty establishing OHADA), pursuant to Article 10 of the Uniform Act of any subject overrides the domestic law provisions of member states (Paul Gerard Pougue, 2011). The provision of Article 10 states in direct translation that:

*Uniform Acts shall be directly applicable to and binding on the States Parties notwithstanding any previous or subsequent conflicting provisions of the national law. (*OHADA Treaty*, 1993)*

Article 1(1) of the AUDTMR OHADA stipulates that the treaty shall apply to every contract for the carriage of goods by road, when the place of picking up the goods and the place designated for delivery are situated in the territory of an OHADA State Party or on the territory of two different States, of which at least one is an OHADA Member. The law is automatically applicable and do not require the provisions of the contract of carriage to incorporate the provisions of AUDTMR OHADA (Ferrari Franco, 2001). Further reference was made to its mandatory nature in Article 28, which states that *"any stipulation which would directly or indirectly derogate from the provisions of this Convention shall be null and void."*

The AUDTMR OHADA pursuant to Article 3 states that a contract for the carriage of goods exists as soon as the sender and the carrier reach an agreement concerning the carriage of goods in consideration of an agreed price. Therefore, whether the Agreement is oral or written, once an agreement is reached for carriage of goods by road and there is payment for such carriage, the AUDTMR OHADA shall be applicable.

Article 4 of the AUDTMR deals with the requirement and content of a consignment note. The provision provides in Article 4(4) that the absence, irregularity, or loss of the consignment note does not affect the existence or the validity of the contract of carriage. Accordingly, the AUDTMR OHADA does not enforce strict conformity to Article 4's requirements and provisions.

The AUDTMR provides for a presumed liability. Article 16 (1) provides that the carrier shall be liable in the event of loss (total or partial loss), damages or delay occurring during delivery. Accordingly, the carrier is obliged to deliver the goods at the place and in the condition, he has received them. In the event of a failure to do so, he is liable, without the cargo interests having to prove fault.

Article 17 provides for a carrier's defences. A carrier can be exempt from liability if he can prove that the loss, damage, or delay was caused by a wrongful act or instruction by the shipper or consignee, by an inherent vice of the goods or by circumstances which the carrier could not have avoided, and the consequences of which he was unable to prevent. He can also be exempt from liability when the loss or damage arises from the special risks inherent in certain listed circumstances listed in Article 17(2) of the AUDTMR OHADA.[23]

Article 18 of the AUDTMR OHADA addresses the limitation of liability in the event of a loss, damage, or delay. The provision provides a limit of 5000 Franc CFA as compensation for damage, or of total or partial loss of the goods, except in instances where there is a declaration of a special interest in delivery. Compensation will be equivalent to the additional loss or damage that may be proven up to the total amount

[23] (a)use of open unsheeted vehicles, when their use has been expressly agreed and specified in the consignment note; b)the lack of, or defective condition of packing in the case of goods which, by their nature,are liable to wastage or to be damaged when not properly packed or when not packed ; c)handling, loading, stowage or unloading of the goods by the sender, the consignee or a person acting on behalf of the sender or the consignee; d)the nature of certain kinds of goods which particularly exposes them to total or partial loss or to damage , especially through breakage, rust, decay, desiccation, leakage or normal wastage; e)insufficiency or inadequacy of marks or numbers on the packages; f) the carriage of livestock.

of the special interest declared. The carrier will not be able to limit his liability where loss or damage occurred because of an act or omission of the carrier which was done with intent to cause such loss, damage or delay, or which was done recklessly and with the knowledge that such loss, damage or delay would probably result.[24]

The AUDTMR OHADA seem to have dealt with the challenges that arose in the case of *Quantum Corporation Inc. v Plane Trucking Ltd, per*[25] as to whether the CMR automatically applied to multimodal transport contract. The English court in this case was faced with questions of whether liability depends upon the carrier having explicitly contracted transport partially by road or whether a contract of carriage by road includes a partial transport by other means of transportation. The court dismissed Air France's claim that the CMR only applies to contracts involving road carriage from beginning to end. The Court decided that CMR can be applied to the road leg of a wider contract of carriage involving multiple modes of transportation. The approach taken in England on this point is different from the position in Netherland[26] and Germany.[27] However, despite the AUDTMR OHADA's similarity with CMR, Article 22 of the AUDTMR OHADA specifically states that it applies to all combined transport, accordingly, resolving a potential litigation area of whether AUDTMR OHADA applies to a contract of combined transport or not.

The AUDTMR OHADA also provides that an action should be brought within be one year from the date of delivery whilst notification must be made to the carrier within 60 days.[28] In a bid to avoid or minimize certainty of a competent court, Article 27 provides that disputes regarding road carriage contracts should be resolved by arbitration, while Article 28 provides the factors to determine a competent jurisdiction where parties have failed to choose a designated national court or arbitral tribunal.

V. AUDTMR OHADA as a Foundation to a West African Road Transport Liability Regime?

This paper suggests that the ratification of AUDTMR OHADA by the remaining members of 44% of ECOWAS member states can help establish a uniform set of rules of carriage of goods by road.

Standardization is an essential element of trade facilitation and regional integration. The AUDTMR OHADA affords contracting parties' legal certainty and legal foreseeability of the claims recoverable and claims that may be instituted against parties to a contract of carriage of goods by road. The adoption of a uniform set of rules like the AUDTMR OHADA implies that parties in a road transport contract would no longer have to bother with the fragmentation of legal regime governing a contract carriage of goods by road.

One positivity in consolidating and expanding the existing AUDTMR OHADA is that the expansion will reduce the possibility of conflicts of jurisdiction. There is no doubt that

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[24] Article 21 of the AUDTMR OHADA.
[25] Lord Justice Aldous, Lord Justice Mance and Lord Justice Latham [2002] EWCA Civ 350.
[26] See Rb Rotterdam 28 October 1999, *S&S* 2000, 35 (*Resolution Bay*); Rb Rotterdam 11 April 2007, *S&S 2009, 55 (Godafoss)*; Rb Haarlem 17 May 2006, *S&S* 2008, 43.
[27] BGH, 17 July 2008, TransportR 2008, 365.
[28] Article 25 of the AUDTMR OHADA.

the issue of liability for road carriage will be addressed in future. However, having a separate instrument for West Africa may create some undesirable conflict. For instance, where West Africa/ECOWAS decides to draft its own regional instrument, a West African country that has acceded to both AUDTMR OHADA and the new instrument might lead to some conflicts of jurisdiction.

Another benefit of the AUDTMR OHADA is that 9 of the 16 members of the ECOWAS are already parties to the instrument. Whilst the CMR is a significant influence of AUDTMR OHADA, the AUDTMR OHADA is a more attractive option than the CMR; this is because it is easier to have the whole region accede to a regional instrument than a region acceding to a global convention.

However, the AUDTMR OHADA is not entirely without its weaknesses. The first challenge of AUDTMR OHADA is that not all members of ECOWAS are members of OHADA. Six ECOWAS members[29] do not belong to OHADA and are not bound by the terms of the AUDTMR OHADA. However, this may be resolved by extending the application of the AUDTMR OHADA to every country within the ECOWAS. A look at Article 53 of the OHADA Treaty provides that any Member State of the African Union may become a member of OHADA. All English-speaking countries of the ECOWAS are members of the African Union and, accordingly, they are at liberty to join OHADA.

Furthermore, the provision of AUDTMR OHADA states that the instrument is applicable to every "*contract for the carriage of goods*". The implication is that for the provision of the AUDTMR OHADA to be applicable, goods must be sent and handed over to the carrier expressly for the purpose of transporting goods for a reward.[30] This means that where carriage of goods is just an ancillary carriage, like an obligation in a contract for the sale of goods, AUDTMR OHADA would not be applicable.(Ferrari Franco, 2001) Therefore, some contracts will be excluded from the application of AUDTMR OHADA. This restriction should be deliberately avoided to allow a legal manoeuvring of potentially knotty issues where the treaty would be applicable, thus getting into some of the problems encountered with the application of CMR in Europe.[31]

There may be a need to also a need to review some of the provisions of the AUDTMR OHADA. For example, the current monetary limit may require an upward review. Worthy of mention is the currency that the treaty employs is the CFA franc. This may be changed to a more acceptable currency considering that the Anglophone countries do not use CFAF as their official currency.

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[29] Nigeria, Ghana, Sierra Leone, Liberia, Cape Verde and Gambia.
[30] Article 2(a) OHBLA Act.
[31] Quantum Corporation Ltd v. Plane Trucking Ltd and Air France [2002] 2 Lloyd's Rep. 25.

VI. Conclusion

It is desirable to have a legal regime governing carriage of goods by road rather than leaving it to freedom of contract between parties. A uniform liability regime creates predictability and protects parties with weaker bargaining power. In addition, the outcome of liability will be consistent. Losses and damages sought will be predictable by stakeholders.

Allowing parties to determine the terms of contracts in relation to liability, documents, obligations, and jurisdiction might create unpredictability and uncertainty. A stronger party may take unfair advantage of the weaker party.

In consequence, if there is a need for a legal regime, there is no need to start from scratch. It is advisable that West Africa start with the use of AUDTMR OHADA, which was modelled upon the CMR convention. The CMR Convention is a successful convention that has regulated road carriage for more than 60 years.

The AUDTMR OHADA provides parties to a road carriage contract with a uniform set of rules, rights, duties, and liabilities. It is a balanced instrument because it balances the interests of the carriers and the cargo.

The AUDTMR OHADA is an example of an excellent sub-regional liability regime that seems to be working. The mandatory adoption and supranational character of the AUDTMR OHADA have shown how vital a road liability regime is to international trade. There is no doubt that legal rules must be consistent and practicable. The CMR, although a global convention, has not been able to achieve wide range acceptance in the African continent.

The author opines that acceptance will be more easily achieved if ECOWAS can consolidate on the existing liability regime of AUDTMR OHADA.

The overall conclusion of this article is that AUDTMR OHADA could prove as a fruitful foundation to create uniformity for carriage of goods by road. Uniformity of legal framework for liability in carriage of goods could help remove some unwarranted transaction costs such as litigation, provision of legal opinion and other ancillary issues arising from the uncertainty of the liability regime. If these costs are eliminated, there will be a ripple effect on transports cost, which means freight rates could be kept low. Consequently, the consumer would pay less for the products he is buying in the local shop.

While portions of the AUDTMR OHADA are insufficient and not adequate for immediate adoption by ECOWAS, despite the imperfection of the AUDTMR OHADA, it could be a starting point for the regulation of international carriage of goods by road in West Africa. Like every bilateral or multilateral treaty, it would not be devoid of criticism, but it would bring a certain level of certainty. The AUDTMR OHADA might just be a step towards achieving not just a West African road transport regime but also an African road transport regime.

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Torn between two pandemics: Poverty Pandemic and Coronavirus Pandemic in Nigeria

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The wave of coronavirus pandemic that hit the world coincides with Nigeria's struggles with her newly attained position as the poverty capital of the world. This paper argues that prevalent poverty is a pandemic that the world has learnt to live with, and that Nigeria is struggling to overcome. The agony of poverty in the country coupled with the coronavirus pandemic subjects the country to a quandary of a dual-pandemic scourge. The paper relies on secondary data and adopts a descriptive and analytic approach. It concludes that multidimensional poverty in Nigeria is pervasive and has become deepened by the pandemic which led to a shutdown of economic activities in various countries of the world. The paper recommends that the government should commit to schemes, policies and projects that aim at reducing [multidimensional] poverty to avoid the rise of new poor as well as be proactive in treating poverty as a pandemic capable of plunging the country into an abyss of underdevelopment.

I. Introduction

In 2021, 19 per cent of the world's population (i.e., 1.3 billion people) are multidimensionally poor. Half of these extremely poor people lived in five countries: India, Bangladesh, the Democratic Republic of Congo, Ethiopia, and Nigeria. These countries belong to two continents: Asia and Africa. Further, Sub-Saharan Africa and South Asia alone account for 85 per cent (i.e., 629 million) of the world's poor (Katayama & Wadhwa, 2019; United Nations Development Programme, 2021). In realization of this global poverty level, the United Nations agreed to – as part of its sustainable development goals – reduce inequality, end hunger, promote inclusiveness and end poverty in all its forms everywhere (Boto-Alvarez & Garcia-Fernandez, 2020).

To be sure, poverty is a universal phenomenon that plagues the world generally. As a global challenge, poverty can be argued to be a pandemic. As Suckling, Christensen & Walton (2021) contend, the incidence of global poverty is associated with global economic downturn causing about 9 per cent of the world population to live on less than $1.90 a day. Despite this global prevalence, poverty is pervasive in sub-Saharan Africa. The poverty rate in Nigeria is high and continues to increase in defiance of abundant human and material resources (Akinyetun et al, 2021a). Omoniyi (2018) observes that poverty has become widespread in Nigeria in the last four decades despite the economic boom of the 1970s. Alkire & Housseini (2017) submit that Nigeria alone is home to 15.4 per cent of the total number of Sub-Saharan African poor. Nigeria is also the country with the second-largest number of destitute in Sub-Saharan Africa, having 42.5 million destitute after Ethiopia which has 50.6 million destitute. Poverty in

Nigeria is widely observable whereby 40.1 per cent (i.e., 82.9 million) of the total population are vulnerable (Nigeria Bureau of Statistics, 2020). This is corroborated by the World Bank (2022) that with 4 in 10 Nigerians living below the national poverty line, about 100 million Nigerians are in extreme poverty and subject to the lack of education, sanitation, safe drinking water and electricity.

Etymologically, the word pandemic is derived from the Greek word *pándēmos* which means "of all the people, public, common, widespread." (Merriam-Webster dictionary, n.d.). It is derived from two words, *pan* (all) and *demos* (people) translating to 'involving all people' (Collins dictionary, n.d). A pandemic is also defined as "occurring over a wide geographic area (such as multiple countries or continents) and typically affecting a significant proportion of the population." (Merriam-Webster dictionary, n.d.). In this paper, emphasis would be placed on the following factors of poverty: 'occurring', 'wide geographic area' and 'significant proportion of the population'. This paper draws on the occurrence of poverty in a wide geographic area, such as is found in sub-Saharan Africa, Asia, Latin America and Europe, and among a significant proportion of the people, i.e. 19 per cent of the world's population, to classify poverty as a pandemic. The definition above suggests that a pandemic does not necessarily have to be a virus or flu rather a pandemic generally refers to a phenomenon that satisfies three major conditions i.e., it is expected to have occurred or been occurring, be prevalent in a wide geographic area, and affect a significant proportion of the population. Poverty can be considered a pandemic because poverty satisfies the conditions of occurrence in a wide area and among a significant number of people, and these characteristics fall under the definition of a pandemic. It is based on the premise that this study categorizes poverty as a pandemic.

Nigeria is the poverty capital of the world (Banjo, 2019; Kazeem, 2018) and this has led to the prevalence of phenomena such as infant and maternal mortality, low school enrolment rate, criminality, unemployment, inequality, deprivation, and exclusion (Iheonu & Urama, 2019). Shortly, after the declaration of Nigeria as poverty capital in 2018, there was an outbreak of Coronavirus disease in Wuhan, China, on December 8, 2019 – which was declared a pandemic on March 11, 2020, and has since spread to over 114 countries (Anjorin, 2020). This led to a forceful shut down of economic activities and social gatherings in countries of the world (Nigeria inclusive) (Amzat et al., 2020).

The thrust of this paper, therefore, is that just like the Coronavirus disease, poverty is a pandemic because it occurs simultaneously in a wide geographic area and affects a significant proportion of the world's population. This paper addresses a global issue that has serious implications for policymakers, governments, civil society organizations and the private sector actors. This paper is relevant to the literature on the studies conducted on poverty in Nigeria – the majority of which focus on the monetary aspect of poverty with little or no attention to other dimensions. The paper fills this gap by appraising poverty from a multidimensional perspective and further examines how it is compounded by the Coronavirus pandemic. To achieve the stated objectives, the paper adopts a qualitative approach that analyzes secondary data sourced from journal articles, newspaper articles, brief reports and government reports relating to the subject matter.

II. Poverty Incidence in Nigeria

The concept of poverty has evolved, from the inability to access food and other necessities to the inability of a large section of society's population to satisfy their basic needs (Rohwerder, 2016). Poverty, although having no prejudice for colour, race, region or endowment, remains related to the culture, beliefs, habits and environmental (both social and economic) conditions of the area in which people live (Nijara, 2017). As Chaturvedi (2019) argues, the concept of poverty is understood differently by people across the globe. That is, poverty is interpreted according to the realities of a particular people or population. This explains why Wolff (2020) claims that the concept of poverty is unstable. That is, what counts as extreme poverty in one area may be treated as mild in another. Nonetheless, as Egwea (2019) would have us believe, no matter how one looks at it, the concept of poverty centres on lack of access to resources or inability to meet one's needs. Egwea's view is supported by Townsend when Townsend (1979:31) asserts that "individuals, families and groups in the population can be said to be in poverty when they lack resources to obtain the type of diet, participate in the activities and have the living conditions and amenities which are customary, or at least widely encouraged and approved, in the societies in which they belong."

Meanwhile, poverty eradication, sustained, inclusive and equitable economic growth has been a challenge for developing countries. This makes the elaboration of sustainable development goals critical to Africa and global development. Africa was off track in achieving the targets of the Millennium Development Goals that expired in 2015 (Kindra & Wasswa-Mugambwa, 2015). A cursory look at the sustainable development priorities in Africa reveals that asides from peace and security, governance and institutions, financing, and capacity development, the various regions and sub-regions of the continent are faced with other developmental issues. In West Africa (to which Nigeria belongs) for example, poverty; gender equality; low quality of education; restricted access to affordable and good-quality health care; lack of sustainable water; non-inclusive growth; and lack of social protection for the poor and vulnerable, are salient issues the member countries are faced with (Economic Commission for Africa, 2015).
Indeed, the rising profile of poverty in Nigeria is alarming. For instance, about half of the Nigerian population lives in abject poverty; a number more than the total population of several African countries put together. It is unarguably factual that poverty has been massive, pervasive and engulfs a large proportion of Nigerian society. This results in hunger, ignorance, malnutrition, disease, unemployment, poor access to credit facilities and low life expectancy as well as a general level of human hopelessness (Orokpo et al., 2018). More so, the poverty trend in Nigeria is a paradox; the poverty level rises alongside economic growth. In other words, Nigeria is experiencing rapid economic growth but worsening poverty. That is, poverty amid plenty (Ajakaiye et al., 2016; Akinyetun et al., 2021a; Omoyibo, 2013). This view was substantiated by Danaan (2018) that the high level of poverty in the country comes amidst an abundance of human and natural resources and increasing national income.

Akinyetun (2016) argues that despite the revenue accruals from oil sales, Nigeria is still largely characterized by poverty and underdevelopment. However, this trend has persisted in the face of a multitude of poverty eradication programmes. Danaan (2018) submit that various programmes and schemes have been advanced to combat poverty in Nigeria, yet poverty alleviation remains a mirage. This failure is attributable to corruption, policy failure, poor design, lack of implementation as well as poor funding and discontinuity of anti-poverty programmes. Other challenges include overdependence on scarce public jobs, poor resource utilization and the lack of private initiative (Khan & Cheri, 2016). Emphasizing the above, Alemika et al (2015) assert that public funds appropriated for poverty alleviation programmes have been mismanaged by the legislators, ministers, state governors, and Ministries Departments and Agencies (MDAs) who control the deployment of resources for development. Meanwhile, the private sector that collaborates with the government on anti-poverty programmes has also been involved in corruption, either in the form of kickbacks, non-performance, or under-declaration of internal operations.

According to Obamwonyi & Aibieye (2014), many public policies directed at alleviating poverty in Nigeria have not lived up to their expectations and have failed due to paucity of funds, poor governance, and political interference. For instance/example, the programmes that have failed in Nigeria include: Operation Feed the Nation, Green Revolution, Nigerian Agricultural Insurance Cooperation, National Agricultural Land Development Agency, Nigerian Agricultural Cooperative and Rural Development Bank, Forestry Development Programme, National Economic Empowerment Development Strategy, Directorate of Food, Roads, and Rural Infrastructure, National Directorate of Employment, Better Life for Rural Women, Family Economic Advancement Programme and Family Support Programme – in no particular order. Taiwo & Agwu (2016) opine that these programmes usually fail because they do not focus directly on the poor; have been inflicted by severe budgetary; are often designed to serve as conduit pipes for draining national resources; lack vision for sustainability and are inappropriately and hurriedly designed.

Due to poverty, a majority of Nigerians find it difficult to access basic needs such as food, potable water, clothing, shelter, and sanitation. A majority also lack education, gainful employment, access to social and economic infrastructures, assets, skills, and self-esteem. This significantly limits the citizens' chances of advancing their capabilities and functionalities. As such, these poor people are often illiterate, in poor health and have a short life span (Orokpo et al., 2018). As such, Nigerians are subjected to extreme poverty from various dimensions, otherwise multidimensional poverty. This area has received less attention in the literature on poverty studies in Nigeria despite its growing significance. As a result, this paper will now examine the incidence of multidimensional poverty in Nigeria.

III. Multidimensional Poverty in Nigeria

The traditional conception of poverty is entirely based on the notion of income which in recent times has become inadequate in explaining the arbitrariness of deprivation observable in health, education, and living standards (Bourguignon & Chakravart, 2019). According to WHO (2012:12), "poverty is not only lack of income". Rather, "The implication, both of the social gradient in health and the poor health of the poorest of the poor, is that health inequity is caused by the unequal distribution of income, goods, and services and of the consequent chance of leading a flourishing life. This is not in any sense a 'natural phenomenon." The argument here presumes that poverty is beyond income [or the lack thereof]. The inadequacy of the concept of 'poverty to provide adequate explanations to these realities led to the outset of "multidimensional poverty" which presupposes a wide-ranging notion of poverty beyond income or consumption expenditures per capita (Oxford Poverty and Human Development Initiative, 2021).

As Wolff (2020) observes, defining poverty as the paucity of resources to meet a defined set of needs is restrictive because a defined level of financial resources is rarely sufficient to meet one's needs, without the critical input of other factors. Indeed, in certain cases, financial resources have proven less necessary than good health, in the achievement of set goals. Whereas in some other cases, the provision of public goods, or forms of social change have proven sufficient enough. Hence, the concept of multidimensional poverty seeks to define the poverty level among various individuals without basing the poverty line solely on income.

In measuring poverty, Nigeria favoured the consumption expenditures approach. Unlike the income approach, consumption expenditure is a true reflection of the satisfaction of a utility by a household (NBS, 2020). This is because income reflects the opportunity of attaining a particular state of well-being and as such has proven ineffective given that the sources of household income are multivarious and often difficult to remember or report accurately. However, the measurement of consumption is more comprehensive as it considers: (i) expenditures on food; (ii) expenditures on schooling and education; (iii) expenditures on health care of household members; (iv) expenditures on housing; and (v) expenditures on other non-food goods and services, like clothing, household items, small appliances, repairs, fuel, recreation, etc. (NBS, 2020). It is therefore apt to conclude that the Nigerian poverty measurement technique puts into consideration the multidimensional indices of poverty such as health, education, and living standard.

Amao, Ayantoye & Fanifosi (2017) employed the Alkire-Foster approach to estimate multidimensional poverty in Nigeria using education, living conditions, health, and assets as selected dimensions. The result of the study shows an inverse relationship whereby a reduction in the number of poor households, increased the intensity of poverty. It also shows that despite a generally high MPI in Nigeria, poverty is more prevalent in the northern part of the country. Meanwhile, Ajakaiye et al. (2017) measured multidimensional poverty in Nigeria and present evidence that poverty reduction in Nigeria is at variance with the rapid economic growth recorded in the last decade. For emphasis, health, housing, and education have deteriorated while the rural areas are experiencing the most significant declines in housing and education. The foregoing establishes that the incidence of multidimensional poverty is predominant in Sub-Saharan Africa and other parts of the world thus giving poverty a pandemic posture. Hence, we shall proceed to examine poverty as a pandemic.

IV. Poverty Pandemic

Kelly (2011) opines that the classical definition of a pandemic which describes it as an epidemic with a transnational presence or occurring in a wide area and affecting a large number of people is not restrictive. This is so because the definition does not lend itself to particularities on virology or disease severity. That is, a pandemic occurs on a global scale and affects a large number of people. This explanation is not in any way restricted to diseases or viruses but emphasizes the occurrence of a phenomenon on a global scale and involves a large population.

According to Downs (2005:1), a "pandemic is a global epidemic -- an epidemic that spreads to more than one continent". Like Kelly, Downs' idea of a pandemic is not suggestive of disease. Rather, it emphasizes the bloating of an epidemic in more than a continent. As Downs (2005) further argues, the definition of an epidemic is not so different from a pandemic except that a pandemic involves the occurrence of a trend in a widely defined area and involves an excessively high number of the population.

Research suggests that there is a causal relationship between poverty and disease, proposing that poverty is like a disease (Cooper, 2017; Heijmans, 2008). Cooper (2017) argues that even though the science that seeks to explain the biological effects of the stresses of poverty is preliminary, it nevertheless presents multiple mechanisms through which the effects of poverty on disease could happen, showing an inheritable component. Cooper's submission advances the argument that like disease, poverty can be inherited and passed down across generations. In his example, Cooper states that if a pregnant woman, is exposed to the stresses of poverty, her fetus and the fetus's gametes can both be affected, thus extending the effects of poverty to at least her grandchildren – which could go further. Heijmans (2008) observes that inheritable effects of stress have been observed through at least three generations from parents who survived mass starvation (Dutch Hunger Winter). Corroborating this stance, Cooper (2017) notes that the stresses of being poor have a biological effect that can last a lifetime. More so, there is evidence suggesting that these effects may be inheritable, whether it is through an impact on the fetus, epigenetic effects, cell subtype effects, or other means.

Given the above, poverty can also be classified as a disease and not merely an economic phenomenon. This is supported by Goodman & Conway (2016) that there is a fundamental difference in brain function of 8 to 12-year-old kids from low-income and affluent families as they played a game with electroencephalogram (EEG) caps on. The result indicates that kids from poor families had lower IQs and less effective executive functioning, which takes place in the prefrontal part of the brain – where working memory, semantic fluency and cognitive flexibility and the capacity to readily switch tasks take place. This lends credence to the argument that such socioeconomic disparities in brain structure and function are the direct consequences of early rearing in impoverished, chaotic, and stressful conditions (Goodman & Conway, 2016).

The asymmetry of outcomes for the poor is enormous because it is so expensive to be poor (Cooper, 2017). According to the World Health Report (2012), the costs associated with poverty manifest in infectious and parasitic diseases, infections, deficiencies, and death. To be very sure, most of the disease burden in low-income countries finds its roots in the consequences of poverty, such as poor nutrition, indoor air pollution and lack of access to proper sanitation and health education. The WHO estimates that diseases associated with poverty account for 45 per cent of the disease burden in the poorest countries. Moreover, infectious diseases are intricately associated with poverty in a vicious cycle. These diseases are characterized by high morbidity and mortality and mainly occur in resource-limited areas. They are more prevalent among the poor and vulnerable populations. They are among the ailments for years lost due to ill-health, disability, or early death. This, from a global perspective, leads to huge economic losses, both for the individual and society. This magnitude of economic loss occasioned by poverty has persisted for years and is becoming increasingly expected.

No doubt, the Coronavirus pandemic sent shockwaves around the world by claiming the lives of many people and engendering enormous economic loss. In the same manner, poverty has over the years given rise to the spread of diseases, death, and economic loss (Murray et al., 2014; Wang et al., 2017; Xia, et al., 2013), thus emphasizing its devastating consequence. This view was substantiated by Rees (2015) that with an estimated 1.2 billion living in extreme poverty (i.e., living on less than $1.25 per day) worldwide, the statistics of global poverty and infectious diseases run in parallel. Widely recognized diseases such as HIV/AIDS, malaria and tuberculosis are prevalent in poor areas, indicating that the relationship between poverty and diseases is emphatically intertwined. Rees, however, cautioned against assuming that infection reduces as poverty declines. Spikes in infection rates do occur when disastrous events such as natural disasters, conflict, or the outbreak of a disease like a coronavirus take place.

Rees (2015) further opines that poverty is also linked to health in a chicken-and-egg way, wherein one exists in part, because of the other. Poverty and poor health have a causational relationship whereby poverty increases the chances of poor health, while poor health creates an entrapment for communities susceptible to poverty. This view is rooted in the submission of WHO (2012:12) that posits "poverty creates conditions that favour the spread of infectious diseases and prevents affected populations from obtaining adequate access to prevention and care. Ultimately, these diseases...disproportionately affect people living in poor or marginalized communities. Social, economic and biological factors interact to drive a vicious cycle of poverty and disease from which, for many people, there is no escape."

The above submissions are true in the case of Nigeria where poverty permeates the country, with devastating effects on the majority of the population whilst increasing the chances of disease and illness. Akinyetun et al (2021a) note that poverty in Nigeria is extensive. This is evidenced in the number of people who: are exposed to unhygienic environments; lack access to electricity, water, and medical facilities; suffer from ignorance and illiteracy; are plagued by insecurity such as Boko Haram insurgency, banditry, unknown gunmen attacks, Fulani-herders attacks and identity crises; experience social and political exclusion; lack of access to government utilities and services; and are experiencing poor health, poor infrastructure and environmental issues. Akinyetun et al (2021a) measured multidimensional poverty in Nigeria using five indicators (clean water, stable power supply, quality education, housing/sanitation, and access to health facilities) and found that there is a widespread poverty incidence in Nigeria. They reported that for a more economically developed state like Lagos, the rate of illiteracy, unemployment, living conditions, access to electricity, water and toilet facilities is worrisome. For instance, 9% of Lagosians are illiterates; 15% are unemployed; 10% live in uncompleted buildings; 15% rely on an unconventional source of water; 50% depend on the unconventional method of electricity, while 8% engage in open defecation.

Akinyetun et al findings were corroborated by Onwuka (2021) that about 44% (i.e., 92.5 million) of the Nigerian population are poor, while half of the population live in absolute poverty. This high poverty rate is more pronounced in the rural areas where about 80% live below the poverty line. In addition to women being vulnerable due to restricted access to formal education and training, a high rate of children from the north are out of school and suffer from various diseases. Widespread poverty has also been worsened by a lack of access to credit facilities, infrastructure, and social services. Akinyetun and Ambrose (2021) opine that poverty is reinforcing, such that when not addressed, it becomes endemic and generational. This explains why the failure of past governments to tackle poverty in Nigeria has made it a recurring issue in the country's sociopolitical discourse with a devastating and disproportionate impact on the health of the people. The authors further submit that "poverty subjects people to a myriad of health challenges, diseases, and illnesses. Chronic childhood diseases, mental health problems, substance abuse, infant mortality, earlier adulthood mortality, ear and eye impairment, and vulnerability to fever are common among poor people in Nigeria" (p. 4).

From the foregoing, it is established that poverty, like a pandemic, occurs in a wide geographic area and affects a significantly large proportion of the world's population. More so, poverty is not just linked to diseases, it can be a stressor for the festering of diseases and can be inherited. In this regard, the simultaneous worldwide experience of poverty and its persistence over time is sufficient to categorize poverty as a pandemic as this is consistent with the classical definition of a pandemic as "an epidemic occurring worldwide". The poverty pandemic is a global challenge that plagues Nigeria particularly and threatens to stay with us indefinitely without decisive and actionable plans taken to fight it. Combating this has become imperative given that the onset of the coronavirus pandemic worsened the poverty incidence in the country and created a dual pandemic that is fast becoming a predominant new normal. This paper thence turns to appraise the incidence of the Coronavirus disease in Nigeria.

V. Incidence of Coronavirus Disease

The Coronavirus disease of 2019 (Covid-19) emerged in December 2019 in China in Wuhan city in Hubei province of China, and has since, spread across 210 countries and territories around the world. The World Health Organization (WHO) declared the novel human coronavirus disease (Covid-19) outbreak, a Public Health Emergency of International Concern (PHEIC) on January 30, 2020 (WHO, 2020). Since its outbreak in China, the virus moved to new epicentres: the United States of America, Spain, Italy, France and Germany, with over a hundred thousand confirmed cases. Amidst the risk posed by this virus to public health, the World Health Organization (WHO) has declared it a global pandemic and calls for health sectors of the world and government to take it seriously. Following WHO's declaration of the disease as a pandemic, and categorization of Nigeria as one of the 13 high-risk African countries concerning the spread of Covid-19, a Coronavirus Preparedness Group was constituted on January 31 in Nigeria. This became necessary since Nigeria is among the vulnerable African nations, given its weak healthcare system (Aifuwa, Musa & Aifuwa, 2020).

The first Covid-19 case in Nigeria was reported on 27th February, when a 44-year-old Italian was diagnosed with the disease in Lagos State. The case arrived at the Murtala Muhammed International Airport, Lagos on 24th February 2020 aboard a Turkish airline from Milan, Italy. He travelled on to his company site in Ogun state on 25th February. On 26th February, he presented himself at the staff clinic in Ogun and there was a high index of suspicion by the managing physician. He was referred to IDH Lagos and Covid-19 was confirmed on 27th February. As a result, a multi-sectoral emergency operations centre (EOC) led by NCDC was activated on the 28th of February at Level 3 (which is the highest level of response to public health emergencies). Meanwhile, Lagos and Ogun State Ministries of Health activated State-level Emergency Operations Centres. The Executive Governors and Honourable Commissioners in both States also held press briefings while two NCDC Rapid Response Teams were deployed to Lagos and Ogun State to support response activities on 28th February (NCDC, 2020). As of 13th October 2021, the number of confirmed COVID-19 cases in Nigeria was 208,154; 195,936 discharged cases and 2,756 confirmed fatalities (NCDC, 2021).

Meanwhile, various strategies have been adopted by countries of the world to control the spread of the virus. This includes containment, an individual measure of protection, authorization of the use of Hydrochloroquine and other drugs that have not been clinically tested, herbs, hygiene practices, stay-at-home campaigns, social distancing, and shutdown of economic activities (Addi et al, 2020). Without a doubt, Covid19 affects the way of life of people, as well as businesses across the globe (Addi et al, 2020) and gives impetus to the persistence of multidimensional poverty and hunger in Nigeria (Akinyetun & Ambrose, 2021). As a result, the next section turns to appraise the impact of Coronavirus disease on multidimensional poverty in Nigeria.

VI. Coronavirus Disease and Multidimensional Poverty in Nigeria

It has been suggested that covid19 increases the chances of multidimensional poverty in

Africa. Kharas and Dooley (2021) have observed that the pandemic led to a long-term concentration of poverty in sub-Saharan African countries characterized by conflict, fragility, and violence. It is projected that nine of the ten countries with the highest number of the extreme poor by 2030, will be from Africa. These countries include Kenya, South Sudan, Angola, Democratic Republic of Congo, Mali, Tanzania, Burkina Faso, Uganda, Venezuela, and Nigeria. It is further projected that the number of poor in Nigeria which was predicted to be 96 million by 2030 before the advent of covid19, is now predicted to increase by 16 million to 112 million by 2030. It is however important to note that the challenge of poverty in Nigeria is worrisome, despite the country's earnings from crude oil sales.

Akinyetun (2016) submits that crude oil is Nigeria's major foreign exchange earner, a major contributor to gross domestic product (GDP) and Federal Reserve's booster. External trade has increased since the discovery of oil in Nigeria and the economy has become heavily dependent on the oil industry; which continually serves as the life-blood of the Nigerian economy. As a result, the Nigerian economy is highly unshielded from the swing and volatility that characterizes the world energy price. Thus, the volatility in the price and sales of crude oil in the international market as affected by the Covid19 pandemic has exposed Nigeria's economy to shock.

Akinyetun et al (2021b) opined that the covid19 pandemic which occasioned a decline in the demand and supply of crude oil following the lockdown in many countries led to the plummeting of oil prices. This underscores the reduction in revenue from oil sales and reduced spending by the Nigerian government, as well as the subsequent inflation. For emphasis, there was an increase in the consumer price index resulting in to increase in the price of food items, pharmaceutical products, medical, as well as paramedical services. As Howton (2020) and Ozili (2020) note, due to the Covid-19 crisis and its consequent oil price drop, the poor have been disproportionately subjected to job loss, loss of remittances, rising prices, and disruptions in services such as education and health care. In other words, for a country like Nigeria that is already enmeshed in poverty, Covid19 posed an economic conundrum. Given that the pandemic disrupted access to school, health care facilities, and other critical services, it made living standards poorer – leading to a two-fold pandemic. Lain et al. (2020), submit that Nigeria is faced with the simultaneous challenge of combating the public health crisis of the pandemic alongside trying to bolster a weakening economy. This submission further emphasizes the significance of the dual scourge.

According to Nguyen et al. (2020), Covid19 created a new category of poor people: the new poor. New poor refers to those who were non-poor in 2020 but are now poor due to the Covid-19 outbreak. Montes et al. (2020) add that the pandemic particularly hurt sectors such as services and manufacturing where workers are in close proximity with other workers and other members of the general population. The incomes of self-employed workers outside of agriculture also fell because of the general slowdown in economic activity and mobility restrictions. In a survey carried out by Dabalen & Paci (2020) in Nigeria, 79% of respondents reported income losses and 42% of those who were previously employed are no longer working. Transfers from local and international remittances have also evaporated as workers in domestic urban areas and international migrants are hit hard simultaneously.

Lain et al. (2020) report that the majority of Nigerians see the pandemic as a threat to their households' health and financial future. The pandemic has led to a reduction in food consumption; increase in the price of farming/business inputs; job loss; school closure; lack of access to health care and staple foods; lack of income; and disruption of employment and income-generating activities. Since the coronavirus outbreak, most households have suffered economic shocks that far exceed any faced in recent years. The Covid19 pandemic threatens labour and non-labour income, with commerce and services being the hardest hit. Both non-farm enterprises and farming activities have been disrupted by Covid19. The authors report that rice, soap, and cleaning supplies were reported by households to be the most commonly needed items, but these items were not always accessible, and that school closure prompted by the pandemic greatly reduced children's opportunity to learn. In another study carried out by Andam et al. (2020:1) on the impacts of Covid19 on food systems and poverty in Nigeria, findings reveal that total "GDP fell by 23% during the lockdown. Agri-food system GDP fell by 11%, primarily due to restrictions on food services. Household incomes also fell by a quarter, leading to a 9% points increase in the national poverty rate." The authors also found out that there was a substantial increase in the national poverty rate of 8.7% points due to Covid-19, and that households lost almost a quarter of their incomes on average during the lockdown period. As such, 17 million more people fell into poverty in Nigeria. The estimated poverty impacts due to Covid-19 are mainly due to reductions in employment income.

Although Nigeria had a social welfare program termed N-power for the youth before the pandemic, it failed to mitigate the economic effect of the pandemic. N-power which was meant to provide job training and skills to young, educated Nigerians with a monthly stipend of N30,000 (i.e. $75), is largely restrictive. It conspicuously isolates the older citizens, the needy children and the uneducated. It does not consider all citizens vulnerable to unemployment and poverty in the country (Godwin, 2019). More so, Nigeria does not have a national database of her citizens who need a social welfare program or one that captures the number of households in need of disaster relief, educational assistance, health care assistance, food stamps, and unemployment compensation benefits. To be certain, since the wave of the pandemic hit the country, N-power's functioning has been erratic, thereby constraining the economic realities of its beneficiaries (Adeyeye, 2020; Anyanwu et al., 2020). Buttressing this submission, Ozili (2020) notes that the necessities of a national database and national social welfare program became expedient during Covid19. During the outbreak, "people had little to rely on, many poor citizens did not have welfare relief that could help them cope with the economic hardship at the time. There were no housing subsidies, no energy and utility subsidies to individuals that were most affected by the coronavirus outbreak" (p. 14). This inadequacy further exposed vulnerable people, households and poor individuals to severe pain and economic hardship during the outbreak as there was no way to reach them with relief packages or cash remittances.

The pandemic also led to an upsurge in unemployment, thus increasing the chances of poverty. In a study carried out by Akinyetun et al (2021c) to assess the impact of the Covid19 pandemic on youth unemployment, it was reported that:

Covid19 pandemic significantly limited human capital development in Nigeria as citizens could not acquire skills, training and education during the lockdown. They were also denied access to standard healthcare services due to the poor state of the sector and its strains occasioned by the need to cater to Covid19 patients. Given the postulations of the human capital theory that citizens are the economic units of the economy, the economic mishap attributable to the Covid19 pandemic, therefore, incapacitated the economic productivity of Nigerians.

The incidence of Covid19 impacted the pointers of human capital development like education, economic development and access to health care services. Schools were closed, businesses were shut down (some collapsed) while hospitals became overstretched. As a result, human capital became undermined. There is no gainsaying that Covid19 deepened the prevalence of unemployment and impaired the social and economic capital of citizens (p. 51).

According to Assessment Capabilities Project [ACAPS] (2020), because half of Nigeria's total urban population lives in slums, cases of malnutrition, untreated health issues, limited food and access to health services are not unexpected. These slums, particularly in Lagos and Ibadan, are characterized by a lack of clean water and electricity which increases the chances of waterborne diseases and malnutrition, as well as encourages the spread of Covid19. Onwuka (2021) claimed that the pandemic transmitted economic shocks to Nigeria as citizens were unable to access credit from formal or information sources leading to a decline in their consumption and standard of living. The author found out that many Nigerians could not secure a loan from the bank or other financial institutions leaving them with no financial resilience to cope with the effect of the pandemic. It was also found that the expenditure of many Nigerians was reduced thereby leading to limited food, hunger, and malnutrition. Meanwhile, "the inability of poor people to access basic amenities and deficiency of essential vitamins and minerals subject them to multidimensional disease, illness, and disorder" (Akinyetun & Ambrose, 2021:4).

Concerning schools, Ozili (2020) stress that during the Covid19 pandemic, formal educational activities, particularly in government-owned schools, were brought to a halt in Nigeria. These schools could not offer digital services. ACAPS (2020) maintain that over 46 million students couldn't attend classes because of the pandemic. For children from poor households, the challenge was double fold as they could not attend school and their parents could not afford home lessons at the same time. Due to school closures, the food intake of children enrolled in the national school feeding program was halted. This not only increased the incidence of hunger among these vulnerable children it also amplified the burden on their parents and took the contractors out of jobs; thus, having a multiplier effect on all concerned. The World Literacy Foundation (2020) notes that considering that schools in Nigeria, particularly in rural areas, do not have the technology to promote remote learning, their households lack the capacity, and the teachers are bereft of the requisite skills, these students (numbering millions) became academically neglected. Children from vulnerable and disadvantaged households were left struggling during this period as they lacked access to computers and other devices to ensure continuity in learning. Disturbingly, these children live in communities with poor or non-existent internet connectivity and unreliable power supply. Inevitably, this digital divide will further exacerbate the learning disparities among these children.

For agriculture, inter and intra-state movement restrictions have also restricted the activities of households in rural areas. These households and seasonal workers are struggling to access land during the planting season (March-June). Even though agricultural activities have not been completely inundated by the lockdown, these are taking place at lower rates than usual due to the pandemic (ACAPS, 2020). The World Bank (2020) reports that over 40% of Nigerians employed in non-farm enterprises reported a loss of income in April-May 2020. ACAPS (2020) opine that because 50% of the population in Nigeria is rural and to whom agricultural activities are essential, the subsistence of rural households is also affected. The reduction in agricultural production due to Covid19 containment measures and increased food prices risks worsening food insecurity in the country.

Obadofin (2020) add that although there was a shortage of food supply for Nigeria's growing population even before the outbreak of Covid19, particularly concerning three key malnutrition indicators: anaemia, overweight, and stunting, the pandemic exacerbated it. Between March 2020 and April 2020, the Consumer Price Index for food had increased by 1.18% due to increases in prices of potatoes, yam and other tubers, bread and cereals, fish, oils and fats, meat, fruits and vegetables. The pandemic also impinged on food availability and supply as some local farmers were unable to visit the farm. Besides, restricted access to markets for farmers also facilitated spoilage and wastage of highly perishable foods. The restricted movement, shortage of labour, access to farming essentials such as fertilizer and seedlings also affected productivity and harvest.

For Ozili (2020), the outbreak also brought challenges to the business environment in Nigeria as many businesses in the country operate a traditional come-to-the office-to-work model as opposed to a work-from-home model. Asides from internet services, digital bank transfers and telecommunication services, other businesses that hadn't developed a digital infrastructure were greatly affected. Emphasizing this view, ACAPS (2020) aver that the Nigerian economy is predominantly informal as 80% of employment in the country is attributable to the informal sector. These workers rely on daily work and cash payments. While a larger percentage of these people are poor, lack savings and assets, the sudden loss of income due to the outbreak led to an unseen economic scourge, thus entrenching their poverty incidence. To be very sure, the informal sector in Nigeria consists of activities such as street vending, daily labour, small-scale trading, farming and herding, home-based enterprises, repair and service provision and small-scale manufacturing. Many of these workers lost their incomes, purchasing capacity, savings and/or jobs, leading them into [deepened] poverty. Andam et al. (2020) submit that the lockdown measures put in place affected household incomes via employment income changes and falling foreign remittances. Therefore, households with stronger ties to the labour market and those sectors directly affected by lockdown measures, are affected more. The sectors affected include nonfood manufacturing activities, construction sites, transportation, storage and cargo handling, hotels, catering and food services, repair services, domestic workers, and other personal services.

The World Bank projects that in addition to the human cost, the number of poor people in the country is expected to increase by 7 million; this is 5 million more than the projected 2 million people before the pandemic, as a result of population growth. Undoubtedly, the pandemic disproportionately affects the poorest and most vulnerable, particularly women whose livelihoods have been directly impacted. Ogunkola et al (2020) observe that the effect of Covid19 in Nigeria is more pronounced among poor and vulnerable households – the majority of whom reside in rural areas. These people are typified by limited access to clean water supply, poor road networks, shortage of healthcare workforce, shortage of drugs, poor health facilities/structures, limited diagnostic testing capacity, infodemic and poor health literacy and generally poor living conditions. There is no gainsaying that given Nigeria's disproportionate handling of the pandemic, residents of the rural area will be further displaced into vulnerability, exclusion, and poverty. Meanwhile, the entire citizens of the country remain torn between two pandemics.

VII. Conclusion and Recommendations

The word pandemic has recently become one of the most used or looked up words in the search engines. Expectedly, this is not far-fetched from the realities of the Coronavirus disease which gave the world shudders. As such, the mention of the word pandemic is spontaneously linked to the disease, forgetting that just as the pandemic has proven dreadful, [multidimensional] poverty has continually presented similar challenges. Poverty and coronavirus disease has led to a rise in death, disease, health complications and economic loss, around the world. It is based on the proviso that the study argues that poverty and coronavirus disease are pandemics which have strained, nay, are straining Nigeria's development efforts. More so, the coronavirus disease has also complicated multidimensional poverty in Nigeria, especially in the areas of health, education and living standards. It is therefore pertinent to disentangle the dual-pandemic scourge that Nigeria is presently subjected to, one complexity at a time. This requires a manifold approach that treats the two pandemics separately, yet, as one. In this vein, the federal government of Nigeria must sincerely commit to schemes, policies and projects that aim at reducing multidimensional poverty in the country to avoid the rise of new poor, on the one hand. While on the other hand, the government must be proactive in dealing with Covid19 and future public health crises that are capable of exacerbating multidimensional poverty; particularly in the areas of health, education and living standards.

In specific terms, this paper recommends that the government should create a national database to facilitate a social welfare programme that will indicate the total number of poor and vulnerable. This will enable the government to allocate resources such as disaster relief, unemployment compensation benefits, food stamps and health care assistance to this category of people.

In addition, social protection programmes that are targeted at the most vulnerable should be created by the government. These programmes should adopt satellite data to track densely populated areas where the majority of the vulnerable are located to identify the intended beneficiaries of the scheme. Meanwhile, the programmes should be equipped with adequate self-sustaining control and monitoring mechanisms. Of equal importance is the sponsoring, passage and implementation of legislation that recognizes the right of Nigerians to social security. The legislation should encompass a feasible strategy for identifying the right beneficiaries of the programme to enable them to improve their living standard. Additionally, it is also recommended that the government in collaboration with the private sector and cooperative societies should make available microcredit with low-interest rates and flexible repayment plans for the poor. This will help them cope with the compounded economic and social shocks created by the pandemic. Finally, the government in conjunction with civil society organizations should ensure the provision of basic amenities and infrastructure to citizens of the country, particularly the vulnerable in rural areas. This should be done alongside a conditional nationwide cash transfer to ease the economic consequence of the pandemic.

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