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Generativity is a Core Value of the ESJ: A Decade of Growth

Erik Erikson (1902-1994) was one of the great psychologists of the 20th century¹. He explored the nature of personal human identity. Originally named Erik Homberger after his adoptive father, Dr. Theodore Homberger, he re-imagined his identity and re-named himself Erik Erikson (literally Erik son of Erik). Ironically, he rejected his adoptive father's wish to become a physician, never obtained a college degree, pursued independent studies under Anna Freud, and then taught at Harvard Medical School after emigrating from Germany to the United States. Erickson visualized human psychosocial development as eight successive life-cycle challenges. Each challenge was framed as a struggle between two outcomes, one desirable and one undesirable. The first two early development challenges were 'trust' versus 'mistrust' followed by 'autonomy' versus 'shame.' Importantly, he held that we face the challenge of **generativity** versus **stagnation in middle life**. This challenge concerns the desire to give back to society and leave a mark on the world. It is about the transition from acquiring and accumulating to providing and mentoring.

Founded in 2010, the European Scientific Journal is just reaching young adulthood. Nonetheless, **generativity** is one of our core values. As a Journal, we reject stagnation and continue to evolve to meet the needs of our contributors, our reviewers, and the academic community. We seek to innovate to meet the challenges of open-access academic publishing. For us,

¹ Hopkins, J. R. (1995). Erik Homburger Erikson (1902–1994). *American Psychologist*, 50(9), 796-797. doi:<http://dx.doi.org/10.1037/0003-066X.50.9.796>

generativity has a special meaning. We acknowledge an obligation to give back to the academic community, which has supported us over the past decade and made our initial growth possible. As part of our commitment to generativity, we are re-doubling our efforts in several key areas. First, we are committed to keeping our article processing fees as low as possible to make the ESJ affordable to scholars from all countries. Second, we remain committed to fair and agile peer review and are making further changes to shorten the time between submission and publication of worthy contributions. Third, we are looking actively at ways to eliminate the article processing charges for scholars coming from low GDP countries through a system of subsidies. Fourth, we are examining ways to create and strengthen partnerships with various academic institutions that will mutually benefit those institutions and the ESJ. Finally, through our commitment to publishing excellence, we reaffirm our membership in an open-access academic publishing community that actively contributes to the vitality of scholarship worldwide.

Sincerely,

Daniel B. Hier, MD

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Advantage of Backwardness: The Effect of Industrialisation on European Modern Design Movement

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Abstract

To answer specific questions of modern design history, historical analysis is needed, alongside chronicles and narrative, to promote deeper understanding. This paper, with the assistance of advantage of backwardness theory and the method characterised by historical sociology, focuses on the social origin of European modern design against the background of the industrial revolution. It aims to understand the link between technological change and the rise of modern design in Europe. The study starts with an explanation of the progress of industrialisation within those countries that were closely related to European modern design movement, and then investigates how this process diversely impacted the emergence of modern design in Europe through a comparative analysis on the interactive connection between industrialisation (as a case of technological change in modern times) and European modern design movement (as a cultural and social consequence of the change). This study particularly clarifies why the subsequent industrial countries, instead of the early industrial countries, had dramatically obtained the advantage to fully develop the modern design movement in Europe. It concludes that, in terms of technological change, advantage of backwardness played an important part in the origin of European modern design.

Keywords: European modern design, social origin, historical sociology, comparative study, advantage of backwardness

Introduction

The study of modern design history lays the foundation of theoretical system of modern design. As one of the sources of modern design, European modern design movement and its history have attracted attention from the academic world for many decades. Based on the previous investigations into this field, this article attempts to explore the historical process of European modern design movement over the period from the nineteenth century to the early twentieth century. The rise of modern design (a cultural and social phenomenon caused by technological change in modern times) has dramatically impacted aesthetic appeal as well as the social significance of architectures, products, and visual communications. Therefore, this article conducts a comparative analysis on the social origin of European modern design, using advantage of backwardness theory by Thorstein Veblen (2003) and Alexander Gerschenkron (1962). They successfully applied it to elucidate the development of national economy in European modern history. Interestingly, the countries that lagged behind the forerunners obtained the advantage. This article specifically aims to understand the link between technological change and the rise of modern design in Europe.

Although many art history researchers had already given continuous attention to modern design before this time, the 1930s can be considered as the starting point of academic research on modern design history. Nikolaus Pevsner, a British historian, wrote the earliest work on modern design history in 1936. His book, *Pioneers of Modern Design: from William Morris to Walter Gropius*, declared the real beginning of modern design history study.

Since the 1940s, based on Pevsner's classical study of the "narrative chronicle", some researchers have provided new studies on this issue. The remarkable works include *Mechanization Takes Command: A Contribution to Anonymous History* by Siegfried Gideon and *Theory and Design in the First Machine Age* by Reyner Banham. Against "heroic approach" of Pevsner, Gideon presented "anonymous history". As a result, the focus moved from the "historic force of heroes" to a much broader view on the impact of "impersonal industrial technology". Banham directed his academic insight towards design activities which had not been classically included into modernism's main trends, such as the Italian Futurism in the 1910s.

From the 1970s up to the 1990s, Penny Sparke, Adrian Forty, and Jonathan Woodham stepped into the same field. Their wide-ranging works included *A Century of Design: Design Pioneers of the 20th Century*, by Sparke; *Objects of Desire: Design and Society since 1750*, by Forty; and *Twentieth-Century Design*, by Woodham. Along with other upcoming researchers, they had a more comprehensive theoretical view. This allowed them examine modern design history and discuss it through diversified methods. Subsequently, this change strengthened the trend which indicated a

significant shifting from “narration of modern design under chronicle” to “analysis and interpretation on modern design from sociological and cultural views” (Banham, 1980; Sparke, 2019; Woodham, 1997; Forty, 1992). This new trend had an impact that continued into the twenty-first century.

As an investigation into European modern design history that was deeply involved in technological change, this article follows this main trend. The goal of the study is to discover the effect of the industrial revolution on the rise of modern design in Europe. It tries to clarify how the ideologists and designers in the early industrial countries won the dominant position of the industrial revolution but missed a chance to make modern design come into being. Also, it identifies how the ideologists and designers in the countries that lagged behind the forerunners have taken advantage of backwardness and led to the emergence of modernism.

Methods

By means of comparative study, this article aims to discover the effect of the industrial revolution on the rise of modern design in Europe, and to clarify why the subsequent industrial countries dramatically obtained the advantage to fully develop the modern design movement in Europe, instead of the early industrial countries. Historical sociology is employed and the object is concerned with the historical process of European modern design movement, namely, from the Arts and Crafts Movement to Bauhaus.

Although historical sociology appeared as a sub-field of sociology in the 1960s, a few classical sociologists or historians, e.g., Alexis de Tocqueville, Max Weber, and Marc Bloch, had already made their contribution. Thereafter, it became a specified research method from a diachronic standpoint to inspect social phenomena and conduct comparative study (Delanty & Esin, 2003; Skocpol, 2012). Historical sociology has the advantage of interpretation on the causality of social change in the long term, and the evidences can hardly be obtained by standardised approaches, e.g., conditioned experiments, interviews, or questionnaires. In this investigation, historical sociology is applied to illustrate the diversified action of technological change on the rise of modern design in Europe, taking full advantage of this method to investigate the long-run cultural and social phenomenon.

On account of invalidity of standardised experiments, interviews, or questionnaires for data collection, this study, like many other studies of historical sociology, depends on the contribution of historical evidences. However, its meaning is evaluated in terms of understanding rather than objective statistics (Collingwood, 1994; Tullock, 1965). This study mainly collects these kinds of evidences from the narratives of design history and architecture history, which provide historical facts for further analysis. Such

evidences belong to the past but prove valuable for sociological explanation. This study also makes subjective understanding a preferred approach in the investigation, since the meaning of social action cannot be understood only by outside observation, but by introspection, e.g., empathy (Weber, 1978, 2017). Their sociological significance can be learned in this way. Nevertheless, some sociologically valued hints were missing. This study, therefore, places emphasis on the understanding of the participants of European modern design movement in respect to their subjective aspects, e.g., attitude and judgement.

The main structure of the article is arranged in accordance with the methodological explanation earlier mentioned. First, the course of industrialisation in Europe is briefly clarified and the question “why modern design finally emerged in the subsequent industrial countries” will be defined. Then, following the interpretations under the subheading “hesitation in the early industrial countries” and “breakthrough in the subsequent industrial countries”, a comparative analysis is carried out to understand the effect of the industrial revolution on the rise of modern design in Europe. Subsequently, conclusions are drawn. This framework is based on two assumptions. First, the historical knowledge of modern design is acquired not only from chronicles and narratives but also from historical analysis. Second, an investigation into modern design history should not lose sight of the effects of ideology, attitude, and mentality on the historical process.

Results

The Course of Industrialisation in Europe

Since the nineteenth century, industrialisation has not only been a deciding factor in Europe’s modernisation, but also an important reason for the birth of European modern design. This consideration leads to an attempt to examine the course of industrialisation in Europe. Also, the timeline of industrialisation in European countries that were related to the historical process of European modern design movement need to be inspected.

A few European countries first completed industrialisation and are known as “the early industrial countries”. Accordingly, the countries which afterwards experienced industrialisation became “the subsequent industrial countries”. Although it is difficult to make a definite division between the early and the subsequent, a brief task has already been accomplished. In Europe, three countries, namely England, Belgium, and France, were leading the way (Cameron & Neal, 2002). The industrial revolution emerged in England for the first time. Belgium and France are the two continental countries which carried out the earliest work of industrialisation in the manufacture system (Belgium is the first one), and they followed closely after England at the beginning of the nineteenth century. Nonetheless, Germany, the Netherlands, Austria, Italy, and Russia are classified into another group,

since industrialisation was triggered much later in these countries. Compared with the others in the group, Germany had the advantage of efficiency. However, this country still showed the quality of retardation in the beginning when compared again with the early industrial countries, e.g., England or France.¹

Why Modern Design Finally Emerged in the Subsequent Industrial Countries

Based on the literature review, the different attitudes of the ideologists and designers towards industrialisation against the background of modernisation are disclosed. Their reactions did follow a trend that shifted from refusal to acceptance. The Arts and Crafts Movement in England and Art Nouveau in France and Belgium both strongly resisted the effect of industrialisation on the design activities. Vienna Secession in Austria indicated an ambiguous opinion on modern industry, which is regarded as a compromised colour. For instance, the architecture designed by Josef Hoffmann showed the simplified style although bore the localised decoration (Pevsner, 2005), and Otto Wagner delivered his kindness to modern technology and manufacturing methods in *Moderne Architektur* (Kruft, 2013). Accordingly, all the designers and artists from the organisations or the movements such as Deutscher Werkbund, Italian Futurism, De Stijl, and Russian Constructivism had an affirmative attitude to industrialisation, despite their diversified presentations. It is however questionable that the design movements in the early industrial countries expressed rejection and hostility regarding industrialisation, but the movements in the subsequent industrial countries (or the countries that lagged behind the forerunners) accepted it. Particularly, one could suppose that the ideologists and designers in the early industrial countries should have had the advantage, whereas the ideologists and designers in the subsequent industrial countries obtained the advantage. In order to respond to this, the potential causal links will be examined through the theory of advantage of backwardness, which has been introduced to interpret the restraints and consequences of economic progress of European countries in modern times (Veblen, 2003; Gerschenkron, 1962).

Hesitation in the Early Industrial Countries

Although the early industrial countries had won the dominant position in terms of economic development and industrialisation, it does not hint the same situation for the birth of modern design in Europe. In retrospect, the definitive effect of industrialisation on modern design has been demonstrably discovered in terms of visual form and social values. The ideologists or designers in the early industrial countries, however, could not stay in a position with this sort of retrospection. Despite the tremendous social impact on both

good and dark sides, industrialisation was a brand new phenomenon at the time. As civil citizens of the early industrial countries, the ideologists or designers were not confident of embracing modern technology and inevitably made an unconformable judgement on the relationship between industrialisation and design. This kind of opinion was noticeable in the Arts and Crafts Movement and in Art Nouveau. John Ruskin, for instance, had depreciated industrial products in *The Seven Lamps of Architecture* (Ruskin, 2012). William Morris did not only regard industrial manufacture system as evil (Pevsner, 1985) but also felt disgust for industrial metropolis. He looked upon London as a city with unqualified buildings and a mass of swindlers and slaves (Pevsner, 1985). Similarly, the designers of Art Nouveau insisted on seeking natural forms of decoration (Pevsner, 2005). They made it even more romantic, believed in handicrafts, and rejected industrialisation at the same level (Pevsner, 1985). The negative attitude was also caused by another factor. The designers (or artists), as well as the public intellectuals, who sensitively perceived the catastrophic aspects of industrialisation, were included in the movements of the early industrial countries. As regards visibility, the negative influences in their mind were far more conspicuous than the benefits, which emerged much later. Consequently, disgust became prominent among the dissidents (e.g., Ruskin or Morris) of a fast-capitalised society, alongside the industrialisation trend of design (Riseboro, 1982; Frampton, 2020; Raizman, 2010).

Nevertheless, the negative attitude to industrialisation was not the only voice that was heard in the early industrial countries. As Sparke and Forty have described, the British government managed to improve design by the education reform, the exhibitions, as well as other supports at the time (Sparke, 2019; Forty, 1992). A few European designers even perceived the importance of modern technology to the future of design. They looked forward to technological change. In England, William Richard Lethaby thought that decoration should be abolished in architecture and in machine, and James Nasmyth and John Dando Sedding accepted the updated technology and manufacture system (Kruft, 2013). In France and Belgium, Tony Carnier and Van de Velde also expressed a good opinion on the industrial society. Stimulated by the progress of industrialisation in the continent, Carnier conceived *Industrial City* and Velde opined highly of Art Nouveau but agreed on the value of modern machine (Pevsner, 2005). However, the positive attitude did not become a main trend. Although some design works, e.g., *Crystal Palace* and *Industrial City*, were realised or visualised by the pioneers in England, France, and Belgium, the design movements there adopted a resistant posture on industrialisation. In brief, the tendency had been dominated by the conservative movements instead of supports from the government or a small number of pioneers in the early industrial countries.

Breakthrough in the Subsequent Industrial Countries

When the focus moved to the subsequent industrial countries, the design movements had a far more positive attitude towards the same trend in this area. Exactly as putting the interpretation on the ideologists and designers in the early industrial countries, the ideology from the historical personages, who did alter the course of European modern design history, should be taken into consideration again, and their practice left a trace by which their ideological characteristics and effects can be learned.

In Austria, Adolf Loos was more radical than Wagner. He rejected any decoration and applauded the crucial function of modern technology as to architecture design (Frampton, 2007). His standpoint laid an ideological groundwork of the mechanical age, which was connected to the emergence of “international style” (Banham, 1980). In Italy, as narrated frequently in modern design history, the futurists, whose compliments mostly referred to the industrial manufacture system and public life in metropolis (Frampton 2007), already expressed unreserved and exaggerated praise for the potential aesthetic appeal of industrialisation.

Reviewing the attitudes of the design movements in Germany, the Netherlands, and Russia towards industrialisation and modern machine, this judgement is reconfirmed. Strictly speaking, modernism in the field of design emerged in these three countries. Namely, typical ideology and visual pattern of modern design have been developed in Germany, the Netherlands, and Russia. According to the records of the narratives, the breakthrough is of great significance from the perspective of comparison. Although there was full of diversities in terms of social backgrounds and visual presentation, e.g., functionalism and rationalism of Germany, formal aesthetics of the Netherlands, or political colour of Russia, they all agreed with the industrialisation trend of design, which led to the historic practice of modernism.

Along with their practice, the modernists explicitly claimed modern ideas. The artists of De Stijl voiced the value of machine regarding aesthetics, social culture, and even human spirit. Van Doesburg praised machinery as an incarnation of mankind and J.J.P. Oud acknowledged the aesthetic of mechanisation (Banham, 1980). The modern movement in Germany gave its strong backing as well. Deutscher Werkbund was founded in 1907 in order to promote industrial production in Germany and make a firm combination of German industry and design (Kruft, 2013). Herman Muthesius was confident of reaching this target (Kruft, 2013). Peter Behrens and Walter Gropius steadily followed his steps. No other than Deutscher Werkbund had taken the most farsighted view towards industrialisation, which determined the final direction and destination of the educational ideas and practice in Bauhaus. In the East, Russian designers’ enthusiasm was no less than that of Italian

futurists after the October Revolution. Alexey Gan expressed that art should be rooted in the factory in order to redefine the role of an artist (to abandon individualism and to absorb the aesthetic from the manufactured products) (Kruft, 2013). Moisey Yakovlevich Ginzburg viewed architecture as a simulation of machine and a new voice of machine aesthetics (Kruft, 2013). He also articulated that architecture is only an issue of function and its key role relies on rational plan, application of modern technology, assembling of prefabricated standard component, and industrialisation of construction procedure (Riseboro, 1982). Consequently, a positive ideological system of the relationship between industrialisation and design emerged and has been consolidated. This became a foundation for the later development of modern design in Europe (after the Second World War in particular). The far-sighted activists and even the radicals confirmed the achievements of the design movements in the subsequent industrial countries.

Discussion

Recalling the ideas of Ruskin and Morris in England or of Art Nouveau designers in France and Belgium, who all stood for natural forms and handicrafts, any reader could have been amazed by the contrary positions regarding the subjective feeling and attitude towards industrialisation. Only this contrast, however, suggests a determinant from an advantage of backwardness view. In terms of social value or effect of industrialisation, the ideologists and designers in the subsequent industrial countries made a better judgement than those in the early industrial countries. They had learned a lesson from their forerunners. This is the superiority of lagging behind, which is provided by the historical process. The ideologists and designers in the subsequent industrial countries recognised that industrialisation plays a major role in modernisation of design. Although with unexpected dissatisfaction, embracing modern technology became a symbol of modernisation. However, the ideologists and designers in the early industrial countries still had a strong illusion and lived in hope that designs could develop better without industrialisation. On the contrary, the ideologists and designers in the subsequent industrial countries had a dramatically changed idea. They considered how modern technology and machine could help design become better. In addition, the impact of the second industrial revolution should also be taken into consideration. The above-mentioned difference was enlarged through this new revolution, after which modern design in Germany and the United States (as the followers of the first industrial revolution but the leaders of the second industrial revolution) rapidly developed. It is in no sense a coincidence, given that the idea of standardisation or typology expressed by Muthesius resonated with interchangeability, assembly line, and scientific management emerging in America. Accordingly, while the movements in the

early industrial countries bitterly experienced the harm of modern industry to the social traditions (the Arts and Crafts Movement) and devaluation of aesthetic (Art Nouveau) although with the approach of the second industrial revolution, the movements in the subsequent industrial countries paid more attention to the kind of improvement industrialisation could make for the uncertain future of design. Such an awareness began in the age of Wagner and Loos (also of the pioneers in England, France, and in Belgium, yet their endeavours did not make the early industrial countries an origin of modernism), and continued through the period of Deutscher Werkbund, Italian Futurism, and De Stijl of the Netherlands. This led to the accomplishment by a convergence between Russian Constructivism and German Bauhaus. In the Arts and Crafts Movement and Art Nouveau, the positive attitude was by no means a main trend. However, in Italy, the Netherlands, Russia, and Germany in particular, accepting industrialisation was indeed becoming a consensus.

Conclusion

According to the analysis, the question mentioned earlier has been answered based on the course of industrialisation in Europe. For the acceptance of the industrial revolution, the different stages of European modern design movement showed the diversified performance and made a final step towards success. Although the early industrial countries had won the dominant position in terms of economic development and industrialisation, the ideologists and designers in this area could not essentially combine their design activities with industrialisation. It was discovered that industrialisation, accompanied by the corresponding aesthetic appeal and social significance in the field of design, became an approved idea of modernism in the subsequent industrial countries. This clarifies that the industrial revolution did not have modern design emerge in the early industrial countries. Nevertheless, it led to the emergence in the subsequent industrial countries (as the countries that lagged behind the forerunners in the process). As regards advantage of backwardness, force was exerted not only on economic progress in Europe but also on European modern design movement. On the other hand, the described mechanism does not suggest any meaning of determinism, since it played a part largely (not absolutely) through the historical personages, whose attitudes and judgement determined the tendency of European modern design at the time. This mechanism can only explain the unique process of European modern design movement and it will most probably be another picture against a changed civilisation background, for instance, in East Asia.

Notes

Regarding the issue of the early industrial countries and the subsequent industrial countries, see: *A Concise Economic History of the World: from Paleolithic Times to the Present*, chapter 9 and chapter 10, where Germany is included in the early industrial countries but also characterised by retardation.

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Housing System, Challenges, and Perspectives The Case of Georgia

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Abstract

Expired or Dilapidated multi-apartment buildings are one of the main problems in post-Soviet countries. Although different countries have periodically developed different ways to solve the problem, it has not been possible to solve it until new reform, because the analysis of the current practice shows that the only way to solve the problem is to dismantle the dilapidated multi-apartment residential buildings and build new ones instead. The present article discusses the history of the development of the housing system in Georgia, the preconditions of the housing crisis, the existing social programs in Tbilisi Municipality, and the reform aimed at the gradual replacement of dilapidated houses. The article focuses on the international experience related to housing fund management, including in the countries of the post-Soviet space. The scope of powers of the state, municipality, and owners, prerequisites for the replacement of damaged residential houses, and decision-making procedure are discussed. The replacement process, the general characteristics of the multi-unit residential buildings subject to replacement, and the challenges the social program faces are described.

Keywords: Housing system, Urban Development, Dilapidated House, Property Replacement, Expired buildings

Introduction

The presence of dilapidated buildings is an existential challenge for the capital's municipality. Solving the issue is important in the process of protecting people's lives and health. In 2022 The City Council of Tbilisi Municipality adopted a resolution, which determined the rules and conditions for the replacement of damaged houses.

Housing provision is seen as an institutional reform where responsibility is shared between the public and private sectors and the state. (Clapham, 2010, p. 23) In turn, the mentioned process is divided into several stages: the preparatory stage and consultation with the owners, the process of dismantling the damaged building, construction works, repair works, and handing over new residential premises to the owners (Asabashvili et al., 2018, p. 21). The existing housing policy in Georgia consists of the following components: Soviet construction, privatization, strengthening of the private sector and weakening of state responsibility, the emergence of compact settlements and legalization of state-owned areas, privatization of residential apartments, and Cooperation with condominium associations.

The municipality offers to rent an apartment to the persons temporarily evicted from the damaged buildings. Due to the mentioned measure, the spending part of the budget in this direction is large and the problem remains unsolved. It is necessary to gradually replace the Soviet-era buildings with modern buildings, which have passed their service life and have been given a degree of disrepair.

The Encyclopedia of Urban Studies defines "housing policy" as a set of government actions to achieve housing goals (Clapham, 2010, p. 39). The task may include improving the quality of the existing housing stock and implementing several measures to address the homeless problem. Effective measures of the government, in turn, create new opportunities in the process of strengthening and renewing condominiums and neighborhood relations, while stimulating business by encouraging the construction sector (Asabashvili et al., 2018, p. 46).

Methods

The research is based on the comparative-legal methodology. Hermeneutic, analytical, descriptive, historical, synthetic and other scientific methods are used. Legal practice, housing policy and right registration institutions of different countries have been studied using the mentioned research methodology. Contemporary challenges of the housing fund and theoretical and practical ways of solving existing problems.

The focus is on the origin and development of housing policy both inside and outside the country.

Results

Providing citizens with safe housing is the responsibility of every state. Over time, the states faced the need to update the housing stock. The reconstruction of existing dilapidated buildings has not turned out to be the most effective decision over time. It was necessary to find a more effective solution, such as replacing the old, dilapidated house with a new, comfortable one. The mentioned process involves the dismantling of the dilapidated house and the construction of a new residential house by the current construction standards.

The Soviet Legacy of the Housing Fund

The current situation of the housing fund in Georgia and the existing challenges are echoes of Soviet heredity, which begins in the 1920s. Rapid industrialization led to population growth in large cities, which exacerbated the existing housing shortage (Asabashvili et al., 2018, p. 49). On August 24, 1924, a resolution on "housing cooperatives" was adopted, which provided for the pooling of resources of the population and the state sector to improve the social conditions of the working class, which later became the basis for the creation and development of the housing fund in the country (Asabashvili et al., 2018, p.86). The act of 1957 "On the development of housing construction in the Soviet Union", in 10-12 years, aimed to eliminate the existing housing shortage. The Councils of Ministers of the Soviet Republic were instructed to approve plans for the placement of residential buildings in large cities without dismantling the existing residential buildings (Chikvashvili, 1989, p. 23). Individual housing construction was encouraged to the expense of the population, state funds for housing construction increased, and various organizations were instructed to use industrial methods in construction and increase the volume of production of building or other finishing materials (Asabashvili et al., 2018, p. 88).

The collapse of the Soviet Union and the transition to a new economic formation, like other fields, caused fundamental changes in the field of urban planning (Zazanashvili, 2017, p. 103). "Access to housing as part of the standard of living was recognized as a primary human right in 1948", Covenant on Social, Economic and Cultural Rights, 1994.

The so-called "Khrushovki" is a well-known project of Soviet architecture. The above-mentioned type of apartment is a 3-5-story multi-apartment residential house of the Nikita Khrushchev period, which is a complex of paneled or brick residential apartments. It was with this type of residential house that the development of micro-districts took place (Chikvashvili, 1989, p. 136-138). Even though the main architect of these residential houses was Vitaly Lagutenko, they are still referred to as "Khrushovkas". (<https://old.funtime.ge>, 2022) Since the 1950s, investment in

the housing sector was not considered an important development strategy and was evaluated as a "resource drain", a "consumer product" and a "social cost". According to the original idea, the Khrushchevki should be a temporary residence designed for 30 years, which would later be replaced by typical residential buildings. It is worth noting the statistics according to which 54% of the population of the Soviet Union was able to be satisfied during the 12 years of construction of the Khrushchev houses, which in turn alleviated the existing housing crisis. In terms of urban development, against the background of the existing "communal" and "barrack" type of housing, the "Khrushovki" type apartments, which had an individual sanitary unit and central heating, were a step forward. The term of operation of this type of residential house was determined for 50 years and it was considered a temporary and most effective measure to eliminate the existing housing shortage since the then Soviet government focused on reducing costs and construction period.

This decision was soon followed by the opening of two concrete slab manufacturing plants in Russia. Compared to traditional brick construction, the use of concrete slabs in the construction process has significantly reduced construction time and costs. (www.allnews.ge, 2022) The main characteristic of this type of house was that the ceiling thickness did not exceed 2.5 meters and there was no elevator, and in case of capital repairs, the house could last 150 years. However, over time, a different reality appeared, the population began to carry out unauthorized constructions, which over time contributed to the deepening of the damage to the building.

From the second half of the 1980s, the state's expenditure on housing construction was reduced, since the private sector had more active support in this direction and cooperative constructions were developed (Kemen, 2001, p.64). The housing crisis in Georgia began in the 1980s when the number of homeless people increased significantly as a result of natural disasters in the mountainous region, as well as the displaced population left homeless as a result of the war. As a result of the obligations taken by the eco-immigrants and IDPs, as well as the Soviet government to various groups, the housing crisis started in the 90s (Asabashvili et al., 2018, p. 108).

Currently, issues of building or construction on existing buildings are regulated by the Resolution of the Government of Georgia N14-39, which directly states that "Construction work is not allowed on multi-apartment residential buildings, the height of which is less than 2.7 m from the floor to the ceiling, do not have an elevator, the operation of which The term is set to a maximum of 50 years". (https://urbanreactor.org, 2016) Taking into account the mentioned record, today it is practically impossible to carry out any kind of construction on Khrushchev-type apartments. After the collapse of the Soviet Union, the housing fund was fully privatized, which led to a reduction in the state's responsibility in the process of creating and developing the

housing fund. In the conditions of a free market economy, construction activities are mainly the competence of the private sector.

More than half a century ago, in the conditions of urbanization of large cities, as a result of massive constructions, many multi-storey residential houses were built (Agrawal, 2001, p. 12). As already mentioned, most of them have expired and the housing fund in the countries of the post-Soviet space needs to be renewed. It should be noted that in the process of updating the fund, the state intervenes in private property and replaces the dilapidated residential house through cooperation with the owner.

The new stage of replacement of damaged houses is an interesting subject not only from the legal point of view, but also from the economic point of view (Arkus, 2006, p. 221). Without the support of the state and cooperation with the private sector, it is impossible to implement such large-scale social projects as the replacement of dilapidated houses.

Municipal Policy

The management of the housing system is separated at the state and municipal levels by the principle of institutional and territorial decentralization. In addition, various measures promoting the development of apartment owners' cooperatives have been introduced to the process. One of the components of the maintenance of the existing housing fund is the promotion of the development of condominiums (Asabashvili et al., 2018, p. 112). From this point of view, competencies are separated between the municipality's mayor's office and the board.

According to the new constitution of Georgia, the state is responsible for providing citizens with decent living conditions and protecting the well-being of the family. Since 2010, the City Hall of Tbilisi Municipality has approved the compensation program for the residents of the dilapidated residential buildings, according to which the board had to evict the people living in the dilapidated building for an indefinite period. Of course, the mentioned offer could not solve the main challenge for the capital city municipality in the process of replacing dilapidated multi-apartment residential houses and was a temporary measure to create a safe environment for the life and health of residents. By Resolution N35.50.1312 of December 26, 2012, the instructions for the program for the residents of dilapidated and uninhabitable houses in Tbilisi were approved, which was followed by the approval of the rules for the compensation sub-program for the residents of dilapidated houses budgeted by the Tbilisi Municipality Council in 2015 and 2018 (Asabashvili et al., 2018, p.116). The mentioned programs provided apartment rent compensation for persons who had unfit or dilapidated housing as a result of various conditions and did not have other alternative housing. In addition, the number of beneficiaries who are socially vulnerable or affected

by various natural disasters should be taken into account. A social housing program is available in the municipality.

A social house, European Social Charter, 2005, was built in 2017 to provide a temporary shelter for the homeless within the framework of the mentioned program, which is currently designed for 74 beneficiaries. The program for the replacement of dilapidated residential houses is based on the so-called "PPP" (Private-Public Partnership) model of cooperation between the public and private sectors, which on the one hand aims to encourage and support the housing sector, and on the other hand to improve the conditions of the owners of dilapidated residential houses, to build new residential apartments (Asabashvili et al., 2018, p. 122). It should be noted that the implementation of such large-scale social projects is associated with certain risks, where the local municipality takes a large part of the responsibility.

As part of the implementation of the municipal policy, in addition to creating a safe living environment, the value of newly built real estate increases significantly, which gives a part of the population the opportunity to improve their economic situation. Property is a matter of moral, philosophical and political values (Clarke et. al., 2005, p. 346). Having property, people establish certain frameworks within which their autonomy operates. That is why it is very sensitive for the state to present the mentioned social project with private owners, since the society always has at least a minimal feeling of mistrust, which limits them in the freedom of choosing a somewhat safe residential house.

Unfortunately, Georgia has a centuries-old experience of wars and conflicts. In the history of the country, the war figures in the 21st century with great pain and losses. From the point of view of scientific reporting, war loss is such a broad concept that it covers several fields of science at the same time. That is why the project of replacing dilapidated houses also applies to the compact settlements of displaced persons in terms of the transformation of property rights into real estate. In the 90s of the 20th century, after gaining national independence in Georgia and the collapse of the Soviet Union, severe socio-political processes arose, which were manifested by armed conflicts in the Autonomous Republic of Abkhazia and the Tskhinvali region. The population living in Tskhinvali and Abkhazia was forced to leave their place of residence, as a result of which the first settlements of internally displaced persons appeared on the territory of the country. Controversies first started in the territory of Tskhinvali (then South Ossetia Autonomous District), and then in Abkhazia. In 1992, ceasefire agreements were signed. Since then, both territories have remained largely outside the control of Georgia. As a result of the conflicts that occurred in the 1990s, the number of IDPs was 236,000. In August 2008, a new armed conflict emerged between Russia and Georgia in the territory of the Tskhinvali region, which resulted in the increase of the

occupied territories in the country and the emergence of a new flow of displaced persons, the number of which amounted to 17,000.

The process of rehabilitation of former collective centers and the low quality of repair works are still relevant. It cannot even meet the minimum standards of proper housing. Rehabilitation needs mainly include sewage and water supply systems, roof and load-bearing walls repair problems. These are the minimum living conditions that had to be ensured by the Ministry before the legalization of the building. Dilapidated buildings with varying degrees of damage and most of them are severely dilapidated.

In the 90s, in conditions when there was no relevant legal framework and structural unit, it was impossible to issue written permission from the state to resettle hundreds of thousands of displaced persons in a specific area (Shotadze, 2014, p. 122). In this case, due to the extraordinary situation, the oral consent expressed by the state was sufficient. The residential area under lawful ownership is the residential area where the IDP was resettled by the state, which was recorded in the database as an object of compact resettlement of IDPs, in which the Ministry reimbursed the costs of administration, household and communal services, including the consumed electricity, by the annual state budget, and which the state or It was private property.

The Concept of Property Replacement and The Importance of the Social Program

The process of satisfying the population left homeless as a result of the destruction of residential houses has always been a big challenge for the municipality. In addition, finding temporary accommodation and paying rent is only a temporary measure. Taking into account that the municipality enjoys a certain limit in the process of paying the rent for each family, living in an alternative space for the population turned out to be difficult from an economic point of view (Asabashvili et al., 2018, p. 124). Most of the housing stock has expired and/or certain geological processes have caused their damage, which progresses over time and fails to create the necessary conditions for a safe environment. Some of the mentioned buildings have been assigned different degrees of disrepair and have such problems that threaten the lives and health of residents, the safe operation of multi-apartment residential buildings, in particular, the elevators are faulty, the entrances, yards are not in order, the structural part of the building is damaged, which is expressed by penetrating cracks, the roof and foundation of the building. Over time, the building undergoes deformation, which in itself causes non-compliance with the current seismic norms. As a result of the engineering examination, it is clear that the living spaces do not meet the requirements of safe living standards and are unfit for use.

Tbilisi City Municipality has the experience of carrying out strengthening/strengthening works and the budget of the self-governing unit is increasing in this direction. It should be noted that currently the number of damaged multi-apartment residential buildings of the III-IV degree in the territory of the capital reaches 10,000 units, the rehabilitation of which is unprofitable due to the severity of the existing damages. (Tbilisi Real Estate Market Report, 2018.) It should be noted here that in difficult cases, the production of the mentioned works is temporary and the degree of damage still progresses over time. Of course, Building damage progression depends on the load of the building and the condition of the ground than the quality of the work performed.

The mentioned program is of state and public importance (Hills, 2004, p. 301), in connection with the existing emergency buildings and structures throughout Tbilisi, the City Hall of Tbilisi Municipality implemented reinforcement-strengthening measures, which were mainly aimed at removing the risks of collapse and collapse. Based on the accumulated number of problematic buildings over the years, it became impossible to effectively implement measures to strengthen amortized buildings, and it became necessary to introduce different approaches. Accordingly, according to the decision of the Government of Tbilisi Municipality, it was considered appropriate to replace the dilapidated multi-apartment houses located in different districts of Tbilisi Municipality with new multi-apartment houses, which will ensure the creation of a safe living environment for the population and will lead to the prevention of accidents caused by the collapse of residential houses. It is mentioned that on May 6, 2022, the City Council issued Resolution N10-48. The rule for the replacement of dilapidated multi-apartment residential buildings on the territory of Tbilisi Municipality" was approved.

The replacement program is a large-scale social project, the goal of which is to create safe and decent living conditions for residents (Shelter, 2010, p. 64).

Since the condition of the replacement buildings are shabby (3rd and 4th degrees of accident) and poses a threat to human life and health, it is important to implement the necessary measures within a short period.

Based on the scale of the event to be held and its sensitivity, it is advisable to provide design services for the replacement of depreciated residential buildings in different districts of Tbilisi with new ones by such types of design organizations that have similar experience in complex engineering solutions and public relations. In addition, one should have the ability to communicate with state agencies on the mobile phone, since the implementation of the mentioned project will be related to many conflicting circumstances. The process of carrying out construction and repair works

includes several stages, which implies the implementation of construction based on the agreed project and existing cost estimates, including the transfer of apartments to residents in a repaired state, the arrangement of additional apartments with white frame condition, and parking garages.

Considering all of the above, it is a matter of wide public interest and the protection of the safety of the population, some of whom are accommodated by district administrations due to the danger of sudden collapse and collapse of buildings and having to live in temporarily rented living spaces.

The purpose of the rule for replacing dilapidated multi-apartment residential buildings in the territory of Tbilisi municipality is to replace dilapidated multi-apartment residential buildings with new sustainable buildings, to ensure safe urban construction for human life and health, and to take care of the appearance of the capital. The mentioned rule does not apply to immovable monuments defined by the Law of Georgia "On Cultural Heritage".

Based on the purpose of the rule, a dilapidated house is defined as: "a multi-apartment residential building or a building containing a multi-apartment residential function, including the so-called Barracks whose level of disrepair is V, IV or III category and pose a direct threat to human life and/or health and are subject to dismantling or have already been dismantled. (City Council of Tbilisi Municipality Resolution No. 14-39, 2016) That is why each project is developed individually and the ratio is exceeded within the limits of reasonableness. The program for the replacement of dilapidated multi-apartment residential buildings located in the territory of Tbilisi Municipality envisages the replacement of only those buildings and structures with multi-apartment residential function, the degree of dilapidation of which is category V, IV, or III. In addition, the written consent of all owners to participate in the replacement program for damaged houses is a necessary prerequisite. The application of the interested person(s) must be attached to the Documentation/information determined by Resolution N10-48 issued by Tbilisi Municipality Council on May 6, 2022. In case of the appropriate decision by the Tbilisi Municipality Government, (NNLE) Tbilisi Development Fund will ensure the coordination of the process of replacement of multi-apartment residential buildings and the implementation of relevant works.

The above-mentioned resolution determines the list of necessary documents to be submitted by the interested parties. The application must be accompanied by: individual consents of the owners of the dilapidated building to participate in the project, a document determining the dilapidation of the building - an expert report, which can be issued by the National Bureau of Forensic Expertise named after *LEPL* Levan Samkharauli, JSC "Tbilisi

Municipal Laboratory" or another accredited expert body by, information about the cadastral code, area, and location of the relevant land plot, photos of the building.

After the project implementer examines the presented information and documentation, he ensures the purchase of a conceptual design project and detailed design-engineering services of a new building in place of the emergency house to be replaced by the law. The documentation presented within the scope of the service becomes the basis for the implementation of the state procurement regarding the construction, including repair works production services.

The valuable part of the project is that in the new building constructed in place of the dilapidated house, the interested person will be given an area equal to the area he owns. Space difference is allowed within reasonable limits, which is regulated by the agreement signed between the parties. The project implementer is guided by the data obtained based on the actual analysis of the accident area. The existing property of the persons interested in the dilapidated house is replaced by the space in the new building structure built on the land on which the dilapidated house was located. In some cases, it is necessary to use the land resource owned by the municipality, while the geological survey does not give a positive recommendation for the production of new construction and/or for the same reason, the arrangement of recreational space is planned within the framework of the urban policy. As part of the replacement program, relevant changes are registered in the electronic register of real estate (Clarke, Kohler, 2005, p. 138). In exchange for the real estate owned in the dilapidated building, the residents will be given a renovated apartment in a newly built multi-apartment residential building (Shotadze, 2014, p. 36).

It should be noted that during the replacement of the damaged house, the common property of the members of the condominium association, attic, basement, and garage are not included in the property of the interested persons. If the said premises are furnished and used for living, the project implementer is authorized to discuss the replacement of the said premises.

An important reservation of the rule is that if the interested person owns only the basement before the implementation of this rule, to facilitate the replacement process of the dilapidated apartment building, the project implementer. According to the agreement with the government of Tbilisi Municipality, it is authorized to redeem the said property. In this case, the value of the property is determined based on an expert's assessment with the reservation that it is located in a non-accident building. According to the rule, both residential and commercial premises are subject to replacement.

During the replacement process, if necessary, the interested persons will be provided with the apartment rent. The payment of apartment rent

compensation is ensured by the relevant district administration. In the interest of the interested person, a monetary sum will be given as compensation, if the replacement space is used by the owner for residential purposes.

The Act defines the condition of transferable areas, which for residential areas includes a full renovation of the economy class, including the finishing of bathrooms, while commercial areas are burdened with the condition of the so-called „White construction frame“.

In the resolution, a separate chapter is devoted to the conditions of replacement of the damaged house in the case of a mortgage, which takes into account the necessity of presenting the consent of the mortgagor, the redemption of the subject of the mortgage, and the control of the utilized and expendable limits. When changing the subject of a registered mortgage on a residential apartment and/or a space used for residential purpose / commercial space (to dismantle the subject of the mortgage and extend the same mortgage to the renovated apartment transferred to the ownership of the interested person in a newly built multi-apartment residential building), an individual written consent issued by the mortgagor is required. The mortgagee's right to the newly-built real estate/apartment taken into ownership will be transferred unchanged and with the same record as it existed in the extract before the dismantling, in the same order, date of registration, and other unchanged records in the National Public Registry Agency. The mortgage on the newly built space transferred in exchange for dismantling is unlimited, regardless of the squareness of the space and even if the received space exceeds the amount of the space subject to dismantling.

The above-mentioned conditions remain in force both concerning the person who represented the owner of the object subject to dismantling, as well as concerning his successor or any other third party who will take ownership of the newly built space and/or have the right to claim the space. As soon as the cadastral code is assigned to the newly built real estate/apartment received within the project by the owner of the subject of the mortgage in the project, the mortgage right is reflected in the extract in the National Public Registry Agency in the same order, continuously and completely. In terms of scope and order of registration, the same rule applies to the obligation registered on the replaceable property, for example, when the property is registered to the interested person with the right of redemption.

International Experience

To replace the existing housing fund, the countries of the former Soviet space have chosen different strategies, including Russia, which has approved a federal targeted program called "Housing 2015-2020". The program provided for the satisfaction of persons who did not have decent living conditions or belonged to different social groups: including more than three

minors living in one family, war veterans, disabled persons, and others (Asabashvili et al., 2018, p. 118). In 2020, Russia adopted a law on the renewal of the old housing stock, which is considered an important part of the country's urban policy development (Asabashvili et al., 2018, p.122). The purpose of the law is to create favorable living conditions for citizens, renew the living environment and urban areas, and attract private investments in the field of construction activities. Local municipalities were tasked with developing a plan for the demolition of dilapidated residential buildings and the construction of new multi-apartment houses instead. The municipality is authorized to determine the area where the replacement of the residential house will be carried out. The mentioned program also provides for building strengthening works. In the process of replacement, priority has been determined in areas where the period of operation of dilapidated houses reaches 78 years and, at the same time, they represent poorly populated residential units. To implement the mentioned project, it is possible to use the land resources owned by the state or the municipality. According to the law, in the process of replacing a damaged house in non-priority areas, a general meeting of owners is held. 2/3 of the votes are required to make a decision, and in case of objection by the remaining 1/3, the mentioned owners are subject to monetary compensation. According to the common opinion, the offer of monetary compensation cannot be considered an opportunity to improve living conditions. It is worth noting that in the process of replacing dilapidated multi-apartment residential buildings, both demand and prices for apartment rent have increased. In the Russian Federation, a unified register is being prepared for the registration of persons affected by unfinished construction within the framework of the project, as well as the procedure for issuing compensation is being developed.

Providing the population with affordable and comfortable housing is considered one of the most priority directions in Belarus. The citizen's right to housing is guaranteed by the Constitution of Belarus, in addition, the Housing Code applies. The state is actively building a housing fund to be given to various social groups for free or to be sold to them on preferential terms, while a program of one-time subsidies and preferential loans has been implemented. In addition to the mentioned direction, the country's challenge remains the process of reconstruction of damaged buildings and strengthening works. The authorities think that these measures are much cheaper than the construction of new buildings (Asabashvili et al., 2018, p. 129). The observation of Khrushchev-type residential houses in various fluctuations of the Soviet space showed that after the expiration of the operational period, the strengthening works of such buildings are only a temporary measure and not a long-term solution to the problem.

According to the Ministry of Industry and Infrastructure of Kazakhstan, there are more than 3000 dilapidated houses in the country. The State Program of Housing and Communal Development in 2020-2025 is leading the mechanism of renewal of the housing fund. The owners are given a replacement space of at least the owned space, but not less than a one-room apartment. The program promotes the presence of small-sized apartments in new projects, which will later be sold for commercial purposes. (<https://ism.kz>, 2022) The cost of construction of a new residential building and the price of apartments for sale per 1 sq.m. is determined by expert assessment.

Residents of Almaty will be able to live in new residential houses from 2023. The presence of dilapidated houses and the search for ways to replace them remain one of the important issues in the region. It should be noted that 40% of multi-apartment residential houses have been demolished. Private developers are building 17 apartment buildings. In Kazakhstan, an apartment building plan has been drawn up, which aims to gradually replace damaged houses. The process of the replacement of dilapidated houses envisages the dismantling of existing dilapidated buildings and the construction of new multi-apartment residential houses to replace them, including repair works. The example of Kazakhstan shows that different companies can perform the mentioned works. The mentioned project is implemented with funding from the state and municipal budgets, the majority of which comes from the budget of the local municipality. (<https://krisha.kz>, 2022) In addition, strengthening works of buildings and inventory of residential buildings are planned, and passports reflecting the current situation will be created, which will allow all interested residents to familiarize themselves with the technical condition of the building. (<https://vlast.kz/novosti/>, 2022) In Georgia, in the example of Tbilisi, the money for the renovation of the economy class is spent on the municipal budget, and Kazakhstan is considering finding different funds for this event. Since it is necessary for the new apartment given to the owners to provide an opportunity to live in it without interruption, it is unjustified to find the money to be spent on repair works from the private sector.

A total of 2,000,000 sq.m. is planned to be built in Almaty within the framework of the program to replace dilapidated houses. (<https://ism.kz>, 2022) Experts express the opinion that such large-scale constructions, along with solving the problem of replacing dilapidated houses, create the need to redistribute resources and determine their sufficiency.

The replacement program has had many critics in Kazakhstan. According to their opinion, as a result of new multi-story constructions, the urban balance is disturbed, since the new multi-story building requires more land resources, which partially involves the utilization of the surrounding areas. (<https://informburo.kz/>, 2022) In addition, the number of public

transport will be not enough, and the displacement of private transport will be limited. In Kazakhstan, the poor development of the central areas is observed, which burdens the center and is an obstacle to the urban development of the suburbs. According to critics, chaotically placed high-rise buildings can even change the wind speed and therefore the weather forecast.

"Rules for the Formation of the architectural appearance and urban planning of the City of Almaty" is a document that determines the coefficients of development, and urban development policy, both in densely populated areas and protected areas of historical and cultural monuments.

Development of degraded areas may be considered as a single sector or separately to replace multi-bay crawlspaces. Negotiations with investors involve the transfer of free land to them, to later build complex constructions on it. (<https://kz.kursiv.media>, 2022). The offer of temporary alternative space and renting out the demolished Buildings is done based on the "room-to-room" principle, regardless of their poverty. (https://tengrinews.kz/kazakhstan_news/, 2022) Rents in Kazakhstan have tripled over the past 5 years due to increased demand for apartments.

The problem of access to a well-furnished house and a comfortable living environment is also acute in the United States of America. This goal was formulated half a century ago in the "Act on Housing" (Hendey et. al., 2014, p. 124). Protecting the right to housing is insignificant, from an economic point of view, "in the process of dividing society into layers, where society divides material well-being and opportunities into two extremes - this is a trend that creates larger and larger gaps between the wealthiest of the country's population and among the rest, especially the poorest part; produces inequality that has a clear racial overtone and makes democracy impossible" (Bratt, et. al., 2006, p. 8).

In earlier eras, densely populated urban areas were devastated by cholera epidemics and the Chicago fire of 1871. The result of public response was the adoption of the law on "multi-apartment residential buildings", which laid the foundation for mass construction. Although American living conditions have improved since the nineteenth century, fires caused by faulty electrical wiring are still very common today.

In Latin America, like the post-Soviet countries, the housing problem began to be solved in the 1950s. If the existing housing in developed countries was a rental relationship, in Latin America the occupied spaces were soon privatized (Guerrero, 2016, p. 52). The country is familiar with the practice of arbitrarily occupying vacant plots of land. As a result, in the 1990s, massive housing construction began on low-quality lands in the peripheral areas, which met the minimum requirements. The development of such areas has limited the opportunities for employment, education, free movement, and access for the residents there.

Brazil has a long history of informal settlements called "favelas". This term first comes from the beginning of the 19th century. It became a real problem for similar types of settlements as a result of a large migration from the countryside to the cities (Ferguson, 2012, p. 38). Since 2003, interest in the housing sector has been renewed, and in 2004, the concept of housing fund development was formed. In 2009, the program "My House is my life" started, within the framework of which 2,000,000 square meters were built in two years. Since 2016, the temporary government has expressed its desire to continue the program within the scope of the existing economic conditions, which has hindered the massive nature of the construction (Arkus, 2006, p.134).

Conclusion

A residential apartment is an important element of the triumvirate - "Food, Clothing, Apartment" - and is always a necessity of life. (Oxford Dictionaries, English, 2004). Where a person lives plays an important role in the process of formation of personality and society. Living in conditions incompatible with decent housing deprives people of an equal opportunity to feel themselves as full-fledged members of society (Hills, 2004, p. 79).

In the process of replacing dilapidated multi-apartment residential buildings, new challenges arising from unplanned traffic flows are often not taken into account due to the density of buildings, the increase in population density, pressure on the environment, and the load on social infrastructure and engineering networks.

It is a matter of discussion why the municipality intervened in the process of replacing dilapidated houses and why the existing dilapidated buildings are not an attractive offer for investors. The main reason is the excessive expectations of the population. One's ideas and the desire to improve the existing conditions at the expense of an unreasonable increase in space make it impossible to negotiate with the investor.

In the process of implementing the program of replacement of damaged houses, it is important to integrate with adjacent sectors, including: ensuring compatibility with urban, social, transport, and household systems, and the correct distribution of necessary resources. Housing construction should be carried out in a planned frame format. Thus, housing constructions will become an opportunity to replace dilapidated multi-apartment residential houses and compensate the owners, as well as to satisfy homeless people with an apartment, since the mentioned program can become the basis for creating a housing fund.

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Les Actions en Responsabilité Médicale Pour Faute de Diagnostic: Aspects de Droit Comparé Français et Ivoirien

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Résumé

Si l'erreur de diagnostic ne constitue pas en elle-même une faute pénale, il en est tout autre de la faute de diagnostic qui prouvée, permet au patient d'engager la responsabilité du médecin- auteur du diagnostic, tant devant les juridictions judiciaires qu'administratives, outre les voies de règlement amiable du litige. Cette efficacité avec laquelle le législateur français entend prendre en compte les actions des patients-victimes contre les professionnels de santé pour la réparation des préjudices subis, reste inexistante en droit ivoirien, malgré les multiples dénonciations des manquements fautifs des médecins dans la prise en charge de leurs patients. Comme le souligne un auteur : « le droit comparé s'attache à une confrontation des divers systèmes de fonds et de formes et s'efforce d'en tirer les emprunts à des fins scientifiques et législatives. » Dans une telle perspective notre étude s'étant appuyée sur le droit français, a relevé les carences du législateur ivoirien en matière de droit de la santé. Mais encore, une absence concrète d'aide juridictionnelle dans le système juridique ivoirien devant permettre au patient victime d'une faute de diagnostic d'ester en justice pour exiger la réparation du dommage subi. L'étude alerte en conséquence, le législateur ivoirien sur la nécessité de s'inspirer du droit de la santé français, pour reformer son droit médical afin de juguler les fautes de diagnostic et garantir au patient un traitement sérieux de sa pathologie, conformément aux

données acquises par la science.

Mots-clés: Faute de diagnostic, responsabilité, professionnel de santé, victime, dommages

Medical Liability Actions for Diagnostic Errors: Aspects of French and Ivorian Comparative Law

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Abstract

If the error of diagnosis does not constitute in itself a penal fault, it is quite different for the fault diagnosis which, once proven, allows the patient to engage the responsibility of the doctor-author of the diagnosis before the judicial jurisdictions to identify ways of amicable settlement of the litigation. This efficiency with which the French legislator intends to take into account the actions of patient-victims against health professionals for the reparation of the prejudices suffered, remains non-existent in Ivorian law, in spite of the multiple denunciations of the faulty failings of doctors in caring for their patients. As one author has pointed out: "comparative law is concerned with a comparison of the various systems of substance and form and endeavours to draw on them for scientific and legislative purposes". With this in mind, this study, based on French law, identified the shortcomings of the Ivorian legislature in the area of health law. There is a concrete absence of legal aid in the Ivorian legal system, which enables a patient who has been the victim of a diagnostic error to take legal action to claim compensation for the damage suffered. The study therefore alerts the Ivorian legislator to draw inspiration from French health law, to reform its medical law in order to curb diagnostic errors and guarantee patients serious treatment of their pathology, in accordance with the latest scientific findings.

Keywords: Diagnostic errors, liability, healthcare professionals, victims, damages

Introduction

« *Je suis sûr que je me suis trompé pour coudre la vessie... »*

Cet aveu d'un médecin chirurgien ivoirien¹ à sa patiente, vingt-quatre heures après son intervention, illustre l'étendu de la faute du professionnel de santé. Mais encore, ce qui ressort de la déclaration ci-dessous en est plus édifiant :

« *Je soussigné Docteur Hervé, certifie assurer le suivi de M. Denis, d'origine ivoirienne, arrivé en France et chez lequel a été porté le diagnostic d'abcès froid thoracique pariétal. Ce patient avait été initialement exploré sur Abidjan où le diagnostic évoqué avait été celui de carcinome bronchique stadifié CT4N1M0, sans la moindre documentation histo-cytologique, et l'indication de pneumonectomie droite et pariéctomie +curage ganglionnaire avait été retenue² ! Le patient a donc souhaité bénéficier d'un second avis médical en France. Il a donc de peu échappé à une intervention chirurgicale très délabrante et inopportune³. »*

Fait illicite imputable à son auteur, la faute désigne d'abord un élément objectif dont le caractère illicite entraîne l'atteinte à un droit ou une obligation⁴. Elle peut également revêtir une dimension subjective, laquelle se caractérise par l'imputabilité supposant une action accomplie avec discernement, c'est-à-dire en pleine conscience de l'acte, dont l'auteur comprend la nature et la portée. En effet, plusieurs fautes médicales peuvent être relevées à l'encontre du professionnel hospitalier ou libéral, non seulement au moment de la consultation du patient avec la délivrance d'un diagnostic ou, à sa prise en charge effective (administration des soins), mais

¹ V. en ce sens, Tribunal de Commerce d'Abidjan, Jugement n° 4345/2017 du 28 juin 2018 : *Mme AMK c/ Clinique Médicale Sainte Justine d'Angré*.

² Pourtant, pour toute affection cancéreuse : 1- Le diagnostic est histologique et qu'un traitement spécifique ne doit être débuté sans preuve histologique. Toutefois, on peut évoquer un diagnostic (avoir une pièce opératoire pour l'examen histologique) et thérapeutique. Il pourrait être le fait d'une démarche de prise en charge en fonction du plateau technique. C'est pourquoi, les termes probable, suspicion ou évoque- traduisent que nous ne sommes pas devant un diagnostic de certitude. 2- Dossier du patient à présenter en réunion de concertation pluridisciplinaire (cancérologiques, radiologies, spécialistes de ou des organes touchés) pour affiner le diagnostic

³ *Le nom du patient a été changé*. Cas identique à cette patiente qui malheureusement n'a pas eu l'opportunité de venir demander un autre avis médical en France - « *Docteur, je ressens des douleurs au niveau de ma poitrine – notamment, mon sein droit.* » -

- « *Madame, ne vous inquiétez pas, après la consultation, je constate qu'il s'agit d'une simple douleur passagère, rentrez chez vous, cela va passer.* »³

Deux ans plus tard- à la suite des douleurs aigues ressenties par la patiente, celle-ci se dirige au Centre Hospitalier Universitaire le plus proche, où, après les examens et un scanner³, il lui est détectée un cancer du sein à un stade avancé, duquel les prescriptions médicales exigent une chimiothérapie immédiate, qui emportera sa vie.

⁴ Cornu Gerard, Vocabulaire juridique, Editions : Quadrige/PUF, Paris- août 2011, p. 447

aussi au cours de l'étape du suivi post-prise en charge médicale. En effet, si l'erreur inhérente à la faillibilité humaine guette le meilleur médecin, la faute qualifie le comportement que n'aurait pas le paradigme du *bonus medicus*⁵⁶. Notre étude se limitera néanmoins à la première étape, celle de la faute de diagnostic, comme évoquée dans le second cas cité plus haut. En effet, le diagnostic se définit comme « *l'acte par lequel le médecin groupant les symptômes morbides qu'offre le malade, les rattache à une maladie ayant sa place dans le cadre nosologique*⁷. » Dès lors, selon un auteur, quatre phases peuvent être relevées comme décomposant l'acte de diagnostic du point de vue intellectuel : d'abord « *l'établissement de la liste des symptômes par le patient, puis la classification selon une hiérarchie, ensuite la recherche de l'ensemble des diagnostics susceptibles de correspondre à ces symptômes, et enfin, le choix du diagnostic retenu*⁸. » L'importance du diagnostic est affirmée dans le Code de déontologie des médecins, lequel précise que : « *Le médecin doit toujours élaborer son diagnostic avec le plus grand soin, en consacrant le temps nécessaire, en s'aidant dans toute la mesure du possible des méthodes scientifiques les mieux adaptées*⁹. » Si ces indications soulignent la qualité du professionnel de santé habilité à établir un tel acte, notamment le médecin, il convient d'ajouter que toute défaillance ou manquement à ce devoir de précaution par celui-ci, s'apparente dès lors à une faute. Parler de l'action en responsabilité pour faute médicale nous conduit à appréhender la notion de responsabilité tant en droit public, duquel relève les établissements publics de santé, qu'en droit privé, duquel dépendent les établissements privés de santé. Dans ces deux cas, l'action en responsabilité ne peut être caractérisée que par la réunion cumulative de trois éléments : l'existence d'une faute, d'un dommage et d'un lien de causalité prouvé entre cette faute et le dommage. Autrement dit, le fait générateur (la faute) doit être la cause directe et certaine du dommage. En outre, l'article 1353 du code civil dispose que : « *Celui qui réclame l'exécution d'une obligation doit la prouver...* » Une telle affirmation soulève la charge de la preuve, laquelle revient de principe à la victime de la faute. Celle-ci peut agir par conséquent en responsabilité délictuelle ou contractuelle dans certains cas, sur le fondement des articles 1240 et 1241 du

⁵ Expression latine signifiant bon médecin,

⁶ Voir aussi, Y. Lambert Faivre, cité par Hureau J., Poitout D., *L'expertise médicale, en responsabilité médicale et en réparation d'un préjudice corporel*, Editions : Masson, 3^e édition, Issy-les-Moulineaux- février 2010, p. 196

⁷ V. Dictionnaire des termes techniques de Médecines, Maloine, 31^e édition 2012

⁸ Porchy-Simon Stéphanie, *Responsabilité pour faute de technique médicale*, Jurisclasseur Responsabilité civile et Assurances, fasc. N°440-40, 12 janvier 2021-mise à jour 28 février 2022, Lexis Nexis.

⁹ Article 33 du code de déontologie des médecins, cf. Art. R4127-33 du code de la santé publique

code civil.¹⁰ Autrement dit, il revient au patient voulant agir en responsabilité pour faute de diagnostic contre un médecin, d'apporter les éléments de preuves démontrant que le dommage dont il est victime est la conséquence du diagnostic qui lui a été prescrit. Mais alors, à quel moment cette réclamation peut-elle être intentée ? Selon l'article L.1142-28 du Code de la Santé Publique, « *Les actions tendant à mettre en cause la responsabilité des professionnels de santé ou des établissements de santé publics ou privés à l'occasion de (...) diagnostics (...) se prescrivent par dix ans à compter de la date de consolidation du dommage.* »

La consolidation peut être déterminée par « *le moment où les lésions se fixent et prennent un caractère permanent tel qu'un traitement n'est plus nécessaire si ce n'est pour éviter une aggravation, et qu'il est possible d'apprécier un certain degré d'incapacité permanente réalisant un préjudice définitif.* »¹¹ Il convient cependant de relever que l'absence de consolidation de l'état de la victime n'exclut pas l'indemnisation des préjudices à caractère temporaire.¹² En effet, avant la consolidation qui suppose que l'état de santé a cessé de se détériorer ou s'est stabilisé, le patient peut solliciter des provisions sur sa future indemnisation auprès de la compagnie d'assurance. La consolidation, en cela, ne correspond pas nécessairement à la guérison du patient. Afin d'obtenir l'approbation de droit comparé, notre étude sera appréhendée à l'aune des droits français et ivoirien en matière médicale. Toute chose qui implique de tenir compte des réalités ivoiriennes en termes de plateau technique. L'intérêt de cette analyse est d'envisager la place

¹⁰ Art. 1240 du code civil : « *Tout fait quelconque de l'homme qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.* », Art. 1241 du code civil : « *Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence.* »

¹¹ Voir en ce sens, la nomenclature dite « *Dintilhac* » cité par Gibert Sabine, *Guide de responsabilité médicale et hospitalière, quelle dimension du risque médical aujourd'hui ?* Editions : Berger Levrault, Paris 11 mai 2011, p. 234

¹² S'agissant notamment de l'obligation de sécurité de résultat, v. *infra* p.8 ; Voir aussi : <https://hadrienmuller-avocat.com/quel-delai-indemnisation-prejudice-corporel-apres-consolidation/> « *Avant consolidation, la victime peut solliciter une ou des provisions sur sa future indemnisation auprès de la compagnie d'assurances. Pour cela, elle peut passer un examen médical provisoire qui anticipe quelques-uns des postes de préjudices qui seront indemnisés plus tard. Cette provision doit lui permettre de subvenir à ses besoins pendant ce temps de consolidation. Par la suite, lors de l'examen d'expertise médicale post-consolidation, les préjudices temporaires devront apparaître dans la liste des postes à indemniser. Cette liste (qui s'appuie sur la Nomenclature Dintilhac), sépare les préjudices patrimoniaux temporaires (frais médicaux et autres dépenses de santé, frais divers, assistance tierce personne, perte de revenus, etc.) et les préjudices extra-patrimoniaux temporaires (déficit fonctionnel temporaire, préjudice esthétique temporaire et surtout souffrances endurées).* »

qu'occupe le droit de la santé, et plus spécifiquement la responsabilité médicale, en Côte d'Ivoire. Cette analyse sera faite au regard du droit français dont elle a hérité des dispositions à la suite de son indépendance en 1960. Dès lors, quelles sont les actions dont dispose le patient pour agir en responsabilité médicale à l'encontre d'un médecin auteur d'une faute de diagnostic ?

La réponse à ce questionnement invite d'abord à appréhender le régime applicable (I) avant un focus sur l'analyse jurisprudentielle ou la nécessaire modernisation du droit ivoirien de la santé (II).

I/ Les régimes généraux applicables à la responsabilité médicale pour faute

Selon l'article L.1142-1-I du code de la santé publique, parmi les actes relevant du régime légal de responsabilité pour faute, figure les « actes de diagnostics ». Avant de voir le choix des juridictions judiciaires (B), analysons d'abord le règlement amiable ou la saisine du juge administratif contre la faute de diagnostic (A).

A/ Les modes de règlements débutant par des voies non juridictionnelles

Certes le patient dispose d'une action disciplinaire (2) à l'encontre du professionnel de santé dont la faute caractérise un manquement à une obligation déontologique.¹³ Mais l'action disciplinaire n'a aucune finalité réparatrice¹⁴. Par contre un règlement amiable peut être mis en œuvre à la demande du patient mécontent (1)

1/ Le règlement amiable en présence d'une faute de diagnostic

Ainsi, par la prescription d'un diagnostic réalisé en amont dans un établissement public ou privé de santé, on peut constater une faute de professionnel de santé, en l'occurrence le médecin dans ce cadre-ci¹⁵. A la suite d'une faute médicale consécutive à des activités de prévention, de diagnostic ou de soins¹⁶ dont l'auteur est le praticien exerçant dans un hôpital ou ledit établissement public de santé (CSP), le patient victime du dommage qui en résulte dispose de plusieurs actions pour réclamer réparation. En premier lieu, une possibilité de règlement amiable est prévue par le Code de

¹³ Cette action peut aussi être engagée par le procureur de la République, le ministre de la Santé, le Préfet, le directeur de l'Agence Régionale de Santé (ARS) et du conseil départemental ou national de l'ordre.

¹⁴ Gibert Sabine, *Guide de responsabilité médicale et hospitalière, Quelle indemnisation du risque médical aujourd'hui ?* Sous -Section 2- *La responsabilité disciplinaire dans le fonction publique hospitalière*, p. 124-133

¹⁵ Art. 33 du code déontologie des Médecins, cf. art. R4121-33 du code de la santé publique

¹⁶ *Infra* p. 13-14

la santé publique.¹⁷ Pour se faire, la loi du 4 mars 2002 sur les droits des malades et la qualité du système de santé, a mis en œuvre les Commissions de Conciliations et d'Indemnisation¹⁸ (CCI) dans chaque Région. Celles-ci ont pour mission essentielle d'éviter les recours juridictionnels, en recevant les demandes d'indemnisation selon la gravité du dommage. Cette particulière gravité qu'établissent les CCI lors de la survenance d'un accident médical, d'une affection iatrogène¹⁹ ou d'une infection nosocomiale²⁰, est appréciée au regard de l'atteinte permanente à l'intégrité physique ou psychique, de la durée de l'arrêt temporaire des activités professionnelles ou du déficit fonctionnel temporaire. Les CCI comprennent la Commission nationale des accidents médicaux dont la mission est de mettre en œuvre la procédure d'expertise liée aux accidents médicaux. Cette Commission est affiliée au ministère de la Justice (art. 1142-24 CSP). De plus, les CCI prennent en compte l'Office National d'Indemnisation des Accidents médicaux (ONIAM)²¹, sous la tutelle du ministère de la Santé. S'il a pour mission essentielle d'indemniser les victimes des accidents médicaux au titre de la solidarité nationale, l'Office intervient également en cas de silence ou de refus explicite de l'assureur de l'auteur de la faute. Celui-ci peut refuser d'indemniser le patient victime, lorsque le préjudice subi par ce dernier relève d'une part de la solidarité nationale et d'autre part, de l'atteinte d'un certain seuil de gravité du dommage. Quel est alors le process ?

En France, dans le cadre de ce règlement amiable, le patient victime adresse sa demande à la Commission régionale dont dépend l'établissement public de santé. Celle-ci dispose d'un délai de six mois pour formuler un avis motivé et précis, lorsque le dommage engage la responsabilité d'un professionnel²² de santé ou un producteur²³ de produit de santé. Cet avis est transmis à l'assureur de l'établissement public, à l'exception de l'AP-HP²⁴, qui est son propre assureur. Ce dernier dispose de quatre mois pour formuler une offre d'indemnisation sérieuse à la victime, dont l'acceptation vaut

¹⁷ Dupont Marc, Bergoignan-Esper Claudine, *Droit hospitalier*, Editions Dalloz, 11^e éditions, Paris- 2022, p. 1067-1074

¹⁸ V. Loi n° 2002-303 du 4 mars 2002 relative aux droits des malades et la qualité du système de santé, Art. 1110-5 : « Toute personne a, compte tenu de son état de santé et de l'urgence des interventions que celui-ci requiert, le droit de recevoir les soins les plus appropriés et de bénéficier des thérapeutiques dont l'efficacité est reconnue et qui garantissent la meilleure sécurité sanitaire au regard des connaissances médicales avérées. »

¹⁹ Voir en ce sens *infra* p.7

²⁰ *Ibidem*

²¹ Il s'agit d'un établissement public à caractère administratif de l'Etat.

²² Article 1142-1 CSP

²³ Article 1142-2 CSP

²⁴ Assistance Publique -Hôpitaux de Paris au nombre de 38 au 8 avril 2022, V. en ce sens <https://www.aphp.fr/nous-connaître>

transaction²⁵ définitive et exclut toute possibilité de former une action en justice sur la même cause. Cependant, en cas de silence ou de refus explicite de la part de l'assureur de faire une offre, ou encore en l'absence d'assurance du responsable du dommage, notamment en présence d'une couverture d'assurance épuisée, c'est l'Office National d'Indemnisation des Accidents médicaux qui émet l'offre d'indemnisation et le paiement des indemnités, et ce dans les mêmes formes et délais que dans le cadre de l'assureur diligent. La transaction entre l'Office et le patient victime s'oppose à l'assureur qui peut contester le montant des réparations alloués devant le juge.

Toutefois, si la victime juge l'offre de l'assureur non sérieuse, elle peut saisir le juge administratif en contestation dans un délai de deux mois à compter de la notification de cette offre. Le juge saisi peut alors condamner l'assureur à une pénalité civile de 15% à l'encontre de l'Office, sans préjudice des dommages et intérêts dus à la victime.²⁶

Cependant, si la procédure de règlement amiable devant les CCI ne requiert du demandeur (le patient victime) aucune formalité particulière telle qu'une réclamation préalable auprès de l'établissement hospitalier en cause, il en est autrement lorsqu'il s'agit d'une action juridictionnelle contre ladite structure devant le juge administratif compétent dans le cas d'espèce.

Dans ce cadre, l'action en justice contre l'hôpital doit être précédée d'une réclamation adressée à l'établissement public de santé en cause, lequel dispose d'un délai de deux mois pour formuler sa réponse²⁷. La preuve du dépôt de cette demande peut être rapportée par tous moyens, notamment l'avis d'envoi ou de réception d'une lettre recommandée avec le cachet de la poste faisant foi. Rappelons que le silence gardé par le service hospitalier durant deux mois vaut décision de rejet²⁸ et fait courir par conséquent le délai de deux mois au patient -victime, pour saisir le juge par requête déposée au greffe du tribunal administratif. Celui-ci peut solliciter à cet effet le concours des experts médicaux pour apprécier l'existence de la faute médicale qui lui est rapportée. Aussi convient-il de relever que la loi du 4 mars 2002 a uniformisé les délais de prescription en matière judiciaire et administrative contre les actions en responsabilité pour faute médicale. De ce fait, l'intéressé dispose d'un délai de 10 ans à compter de la date de consolidation²⁹, pour porter son action devant

²⁵ Cf. Article 244 du Code civil, CAA Bordeaux 23 décembre 2010 ; 10BX01629 « *l'acceptation de l'indemnisation revêt le caractère d'une transaction et clôture toute contestation contentieuse.* »

²⁶ Article L1142-15, alinéa 9 CSP

²⁷ Article R. 421-1 du Code de justice administrative, cette règle de la décision préalable est prévue par le décret du 11 janvier 1965, qui permet dans certains cas à l'hôpital public de parvenir à un règlement amiable afin d'éviter le contentieux.

²⁸ Article R.421-2 *Ibidem*

²⁹ Article 1142-28

le tribunal administratif compétent³⁰. Le juge administratif, s'il estime que les faits sont établis à l'encontre de l'établissement public de santé, peut condamner celui-ci à réparer le dommage subi par le patient. Soulignons que dans ce cadre, l'indemnisation est entièrement supportée par ledit établissement. En outre, dans l'hypothèse où le demandeur à l'action saisit parallèlement le tribunal correctionnel, le juge administratif doit surseoir à statuer dans l'attente de la décision répressive.

En Côte d'Ivoire, contrairement à ce dispositif d'indemnisation amiable exposé ci-dessus, ni le système de santé ivoirien ni le droit le régissant ne disposent d'un outil similaire. La Côte d'Ivoire ne dispose d'aucun organisme de règlement amiable dédié aux accidents médicaux et fautes commises par les professionnels de santé ou les établissements publics de santé. Cette situation est d'autant plus regrettable que la majorité des patients victimes ont des revenus très faibles et ne peuvent prétendre pour prétendre porter leurs litiges devant les tribunaux.

Enfin, en ce qui concerne le droit ivoirien, le patient ne dispose d'aucune action amiable en indemnisation de son préjudice devant une chambre spécifique pour manquement à une obligation déontologique ou une faute de diagnostic, à l'encontre du médecin³¹. En outre, les conditions de saisine du juge administratif en matière contentieuse respectent les mêmes conditions d'exigence d'un acte préalable devant l'hôpital public. Cependant, le délai de prescription pour porter son action devant le tribunal administratif est de 3 ans à compter de la date de consolidation du dommage.

Si le règlement amiable est insuffisant, on peut recourir au règlement disciplinaire de la faute de diagnostic à l'encontre du médecin mis en cause. Qu'en est-il ?

Quid du règlement disciplinaire de la faute de diagnostic ?

2/ Le règlement disciplinaire de la faute de la faute de diagnostic

En droit français, une procédure disciplinaire ouverte au patient mécontent ou ses ayants droit³² peut être portée devant la juridiction ordinaire. Le patient devra formuler sa plainte contre le médecin par courrier adressé au Conseil Départemental de l'Ordre des Médecins (CDOM)³³ dont celui-ci

³⁰ Avant la loi de 2002, les délais de prescription en matière de responsabilité pour faute médicale des établissements publics de santé étaient de 4 ans. Une loi de 2016 a aligné ce délai décennal aux actions en indemnisation portées devant l'ONIAM

³¹ Voir en ce sens le Code de déontologie des médecins ivoiriens

³² https://www.conseil-national.medecin.fr/lordre-medecins/linstitution_ordinale/juridiction-ordinale

³³ Aucun délai de prescription n'est exigé pour cette procédure, à la différence des actions de droit commun.

relève³⁴. Le courrier doit mentionner en objet une demande de condamnation ou de sanction portant sur le comportement ou les actes du médecin dans l'exercice de ses fonctions de soin ou à l'occasion de ses fonctions administratives. A réception de la plainte, le CDOM organise obligatoirement une conciliation en présence du patient ou ses ayants droit, du médecin mis en cause et des conseillers ordinaires. Lorsque la phase de conciliation ne débouche pas sur une résolution du différend³⁵, le CDOM examine en réunion plénière les faits soutenant la plainte puis, par avis motivé, la transmet à la Chambre Disciplinaire de Première Instance (CDPI).³⁶ De là, si la plainte est jugée recevable, l'affaire est mise en instruction. A la suite de l'instruction, si le juge estime les faits avérés, le médecin mis en cause peut se voir condamner à un avertissement, un blâme, une interdiction d'exercer (avec ou sans sursis) la médecine pouvant aller jusqu'à 3 ans, ou encore une radiation du Tableau de l'Ordre, laquelle apparaît comme la sanction la plus forte.

Dès lors, deux voies de recours successives sont possibles, aussi bien pour le médecin mis en cause que pour le patient mécontent ou ses ayants droit³⁷, à savoir l'appel devant la Chambre Disciplinaire Ordinaire et, en cas d'insatisfaction, un pourvoi en cassation devant le Conseil d'État. Soulignons à ce stade de notre analyse, que cette action dont dispose le patient mécontent ou ses ayants droit est limitée aux médecins professionnels de santé du secteur privé.

En ce qui concerne les médecins chargés d'un exercice public³⁸, ceux-ci ne peuvent être attirés devant la CDOM que par les personnes limitativement citées par l'article L4121-2 du code de la santé publique³⁹. Dans ce cadre, le courrier portant la plainte du patient contre le professionnel de santé de service public adressé au CDOM et qui voit l'échec de la procédure de conciliation entrainera uniquement une saisine de Chambre Disciplinaire

³⁴ Cf. Article R4112-1 du code de la santé publique qui dispose :

« Le médecin, chirurgien-dentiste ou sage-femme qui demande son inscription au tableau de l'ordre dont il relève remet sa demande ou l'adresse par lettre recommandée avec demande d'avis de réception au président du conseil de l'ordre du département dans lequel il veut établir sa résidence professionnelle... » ; V. aussi : <https://www.conseil-national.medecin.fr/medecin/carriere/sinscrire-tableau-lordre>

« Conformément à l'article R.4112-1 du code de la santé publique, vous devez demander votre inscription auprès du conseil départemental de l'Ordre des Médecins du lieu où vous envisagez d'exercer (en cas de changement de résidence professionnelle déposez une nouvelle demande d'inscription). »

³⁵ Ce qui relève de manière générale d'une faible probabilité.

³⁶ Il existe en effet une chambre disciplinaire de Première Instance par région, placée auprès du Conseil régional de l'Ordre des Médecins. Cette chambre est présidée par un magistrat administratif, assisté par des médecins assesseurs conseillers ordinaires.

³⁷ Dans la mesure où celui-ci estime la sanction trop indulgente à l'encontre du médecin.

³⁸ Médecins des hôpitaux ou médecin conseil de sécurité sociale

³⁹

de Première Instance par le Conseil Départemental de l'Ordre des Médecins. Celle-ci prendra la forme d'une plainte propre du CDOM au regard des faits exposés par le patient mécontent. A noter que les voies de recours citées précédemment sont également ouvertes au médecin condamné à l'une des sanctions disciplinaires.⁴⁰

En droit ivoirien, la procédure disciplinaire est diligentée par le ministre de la Santé, de l'Hygiène Publique et de la Couverture Maladie Universelle qui est informé d'un manquement d'un professionnel de santé du service public par le « *Service veille* » dudit ministère (lequel reçoit l'alerte de l'hôpital en cause). Il ordonne alors une mission d'enquête conduite par l'Inspecteur Général de la Santé⁴¹. Ce dernier peut ainsi exiger des rapports des services du Centre Hospitalier Universitaire sur le médecin en cause. Cette enquête préliminaire est ensuite inscrite dans un rapport de l'Inspection Générale qui sera transmis au ministre de la Santé, de l'Hygiène Publique et de la Couverture Maladie Universelle. Après analyse, celui-ci décidera alors si les faits mettant en cause le médecin sont avérés. Dès lors, le ministre chargé de la santé pourra prendre toute mesure conservatoire pour l'examen de l'affaire par la suite. Il peut notamment ordonner la suspension immédiate des activités professionnelles du médecin mis en cause. Il peut par la suite demander au Directeur des ressources humaines (DRH) dudit ministère de prendre toutes les mesures pour attirer le médecin concerné en Conseil de discipline. Ce pouvoir permet ainsi au DRH de saisir le Conseil National de l'Ordre des Médecins⁴² qui, après instruction du dossier, peut condamner le médecin mis en cause à une sanction disciplinaire sans préjudice de condamnation matérielle.

Qu'en est-il lorsque le patient est victime d'une faute imputable au professionnel de santé ou à un établissement privé de santé (clinique) ?

B/ Le choix des juridictions judiciaires

Comme le précise l'article 1142-1 CSP, « ... *Les professionnels de santé mentionnés à la 4^e partie du présent Code, ainsi que tout établissement, service ou organisme dans lesquels sont réalisés des actes individuels de prévention, de diagnostic ou de soins ne sont responsables des conséquences dommageables d'actes de prévention, de diagnostic ou de soins qu'en cas de faute.* »

⁴⁰ Supra p. V. aussi les articles L4121-2 CSP ; L4123-2 du CSP ; et L4124-2 du CSP

⁴¹ <https://unite.ci/cote-divoire-chr-de-daloa-un-medecin-suspendu/> cf. *Le Ministre de la Santé, de l'Hygiène Publique et de la Couverture Maladie Universelle a été saisi par le service de veille du Ministère d'un cas de décès d'une patiente survenu au CHR de Daloa le 19 Aout 2022*

⁴²

Ce texte traduit un regard tant sur les activités médicales et paramédicales des professionnels ou des établissements de santé, que sur celles des services ou organismes en amont des diagnostics et des soins⁴³. Aussi, les conséquences dommageables mettent en évidence une faute médicale pouvant émaner notamment d'accidents médicaux, tels que les affections iatrogènes⁴⁴ ou les infections nosocomiales⁴⁵. En outre, si les professionnels de santé cités par l'article précédent renvoient aussi aux sage-femmes, pharmaciens et préparateurs en pharmacie, infirmiers, masseurs -kinésithérapeutes et les pédicures -podologues, les ergothérapeutes et psychomotriciens⁴⁶, ainsi que l'ensemble des professions de santé traitées par la 4^e partie du Code de la santé publique, il faut rappeler que le diagnostic relève de la compétence des médecins ou chirurgiens-dentistes. En outre, les institutions de soins de toute nature, publiques ou privées, et les services tels que les centres de santé ou structures de médecine du travail où s'exercent la prévention et le dépistage, sont visés de manière générale par la mention « ... *établissement, service ou organisme dans lesquels sont réalisés des actes individuels de prévention, de diagnostic ou de soins ne sont responsables des conséquences dommageables d'actes de prévention, de diagnostic ou de soins...* »⁴⁷

Par conséquent, en matière pénale, la faute médicale doit correspondre en une infraction légalement sanctionnée par le Code pénal⁴⁸. Le patient - victime porte alors son action contre l'auteur de la faute, donc de l'infraction (le praticien et/ou la clinique), devant le tribunal correctionnel à compter de la date de consolidation du dommage, dans un délai de 6 ans⁴⁹. Il peut notamment le faire par une plainte simple déposée au commissariat de police compétent, ou par requête portant plainte avec constitution de partie civile, adressée au Procureur de la République près du tribunal correctionnel du lieu de situation de l'établissement de santé. Rappelons qu'en cette matière, l'article 81 du code civil offre la possibilité d'une saisine d'office au procureur de la République,

⁴³ Notamment dépistages et vaccination

⁴⁴ S'agissant du dommage subi par le patient à l'issue d'un traitement délivré – médicaments, soins...

⁴⁵ Parlant notamment d'infection qui apparaît au cours ou à la suite d'une hospitalisation ou des soins alors qu'elle était absente à l'admission.

⁴⁶ En la matière, la loi du 24 février 2014- n°2014-201, portant diverses adaptations au droit de l'Union européenne dans le domaine de la santé, y a ajouté les professions d'ostéopathe ou de chiropracteur, v. art 1 et 2.

⁴⁷ V. en ce sens, Dupont Marc, Bergoignan-Esper Claudine, *Droit hospitalier*, 11^e édition, Editions Dalloz, Paris, janvier 2022, p. 1055

⁴⁸ Sur ce point voir par exemple, les *infractions des articles 223-1, 223-6, 221-6 du code pénal qui sanctionnent respectivement la mise en danger d'autrui, la non-assistance à personne en péril, l'homicide involontaire à l'intégrité physique ; mais également les articles 223-8, 511-1, 511-2, 511-15 et 223-10 du code pénal sur les infractions relatives à certaines activités sanitaires précises.*

⁴⁹ Délai de prescription en matière de délit confère article 8 du code de procédure pénale

lorsqu'il énonce que « toute mort suspecte doit être signalée au commissariat de police par l'établissement au sein duquel elle se produit. » Par ailleurs, lorsque l'infraction relève d'une gravité particulière, le procureur de la République peut saisir le juge d'instruction à l'effet de l'ouverture d'une information en sus des commissions rogatoires qui peuvent être mises en œuvre avec les officiers de police judiciaires.⁵⁰ Lorsqu'intervient la fin de l'instruction, l'affaire est renvoyée devant le tribunal correctionnel pour jugement. Soulignons que selon le principe : « le pénal tient le civil en l'état », lorsque la victime a saisi parallèlement à son action en responsabilité pénale la juridiction civile pour statuer sur les indemnités réclamées, celle-ci doit surseoir à statuer dans l'attente du prononcé du jugement correctionnel à intervenir. Cette situation peut être évitée dans la mesure où la plainte avec constitution de partie civile offre au patient-victime la possibilité de demander au juge pénal, outre la condamnation pénale du professionnel de santé ou la clinique, de se prononcer sur les dommages et intérêts.

Enfin, le patient -victime d'une faute médicale peut engager la responsabilité délictuelle du praticien devant le tribunal judiciaire statuant en matière civile, sur le fondement des articles 1240 et 1241 du code civil. Ces articles peuvent aussi être invoqués à l'appui d'une responsabilité contractuelle de l'établissement privé de santé. Dans ces cas, le délai de prescription de l'action civile est de 10 ans à compter de la date de consolidation du dommage.⁵¹

Le droit ivoirien, qui connaît ces deux actions, se distingue par ses délais de prescriptions, lesquels s'établissent à 3 ans et 30 ans à compter de la date de consolidation du dommage, respectivement en matière pénale⁵² et civile⁵³.

Qu'en est-il de l'application jurisprudentielle et de l'état du droit de la santé ivoirienne ?

II/ Le régime spécifique de la faute de diagnostic

La faute de diagnostic qui intervient dès la première rencontre du patient et le professionnel de santé est caractérisée par des critères spécifiques qui doivent être respectés par le patient-victime pour engager à bon droit la

⁵⁰ S'agissant des gendarmes ou officiers de police

⁵¹ Soulignons que ce délai s'applique également aux actions formées devant l'ONIAM à compter de la consolidation du dommage (point de départ du délai) V. en ce sens Article 188 de la loi de modernisation de notre système de santé du 26 janvier 2016 Civ. 2^e, 3 mai 2018, n° 17-13.763, Landel J. cité par Dupont Marc, Bergoignan-Esper Claudine, op.cit., « Point de départ de la prescription décennale en cas de dommages corporels », p. 1066

⁵² Article 12 du code de procédure pénale ivoirien, dans sa version issue de la loi n°2018-975 du 27 décembre 2018, *Journal Officiel de la République de Côte d'Ivoire N°4 du 13 mars 2019*

⁵³ Voir en ce sens le Code civil ivoirien

responsabilité du praticien. Delà, la caractérisation d'un manquement relevant d'une faute technique (A) paraît essentielle dans l'analyse des choix du praticien face à la pathologie du patient. Dès lors, l'aspect jurisprudentiel appelle une réforme nécessaire de la responsabilité médicale en droit ivoirien (B).

A/ Par la caractérisation d'un manquement relevant d'une faute technique

Si de manière générale la faute médicale s'analyse en trois catégories de manquement du médecin à l'encontre du patient : la faute d'imprudence⁵⁴ ou le manquement au devoir d'humanisme⁵⁵, et la faute technique, c'est cette dernière qui permettra de caractériser la responsabilité du médecin en matière de diagnostic médical. La faute technique suppose une méconnaissance par le médecin des normes scientifiques régissant la profession médicale. Elle est appréhendée depuis un arrêt Nicolas c/ Mercier, au regard des données acquises de la science⁵⁶. Ainsi, selon *l'obiter dictum* de l'arrêt Mercier, le médecin s'engage à donner « *des soins, non pas quelconques (...) mais consciencieux, attentifs et réserve faite de circonstances exceptionnelles conformes aux données acquises de la science.*⁵⁷ » L'arrêt Mercier rappelle que l'obligation de résultat ne peut être imputée au médecin auquel l'on ne saurait imposer une obligation de guérir son malade. Toutefois, les articles 1142-1-1 et 1142-11 -2 du code de la santé publique exigent l'obligation de sécurité de résultat pour les dispositifs médicaux – matériels, prothèses (...) utilisés pour les soins. En ce sens, il faut relever que cette obligation de résultat est relative à celle de ne pas causer un dommage au patient par les dispositifs médicaux engagés pour les soins. Ainsi, en ce qui concerne l'obligation de moyen tel que relevé dans l'arrêt précité, lequel reprend les termes de l'arrêt Mercier, il convient de souligner que le médecin a une obligation de donner des soins personnellement et en toute indépendance et ce, uniquement dans un

⁵⁴ Celle-ci peut s'analyser au regard de l'article L.1110-5-1 CSP, par l'appréciation du principe de la raison proportionnée après évaluation du rapport entre bénéfices escomptés du fait de l'acte de soins en cause et les risques encourus par le patient.

⁵⁵ Il s'agit des manquements aux règles et obligations régissant le respect de la personne malade et de la dignité. Cette défaillance fautive sanctionne généralement trois types de fautes, notamment, *lorsque le praticien refuse ses soins en considération de la liberté qui lui est offerte par l'article 47 du code déontologie des Médecins ; l'absence de consentement du patient à l'exception des cas où le praticien rapporte la preuve d'une urgence propre à le libérer de son obligation ; puis, le défaut d'information du patient.*

⁵⁶ *La référence aux données actuelles de la science a été abandonnée par la Cour de Cassation dans un arrêt du 6 juin 2000*

⁵⁷ Cass. Civ. 20 MAI 1936 – Nicolas c/ Mercier ; Cour de cassation 1^{re} chambre civile 16 mai 2013 n°12-21-338 : JurisData n° 2013-009394. V. aussi l'article 32 du Code déontologie médicale ; cf. Art. R-4127 du Code de la santé publique

but curatif⁵⁸. Dès lors, la conformité du médecin aux données acquises de la science relève de son devoir de science. L'interprétation de la faute technique nécessite plusieurs interrogations pour lesquelles une réponse appropriée du juge ne saurait être éclairée sans l'aide d'une expertise judiciaire. Celle-ci doit aussi être admise par le principe de collégialité face aux questionnements suscités par les expertises. Le principe de collégialité a été instauré par la loi du 4 mars 2002.⁵⁹

Aucun texte de droit ivoirien relatif au droit de la santé ne fait référence aux données acquises par la science, de sorte que l'interrogation demeure entière sur les moyens de contestations des actions dont pourraient être débiteur le médecin auteur d'une faute de diagnostic. Précisons que le code de déontologie date de 1960 et n'en fait aucune mention. Le principe de l'invocation du respect des données acquises par la science, tout comme l'actualisation des connaissances du médecin ivoirien, ne relèvent que de la seule appréciation du juge. Cette carence est regrettable à tous égards dans la mesure où elle met le patient victime du fait répréhensible dans une insécurité judiciaire quant au fondement légal de son action.

B/ L'analyse jurisprudentielle ou l'exigence de réforme de la responsabilité médicale de droit ivoirien

Face à la vacuité des textes législatifs et réglementaires en matière de droit de la santé ivoirien et l'amplitude des faits divers dénonçant des hypothèses de fautes médicales, l'exigence de réforme de la responsabilité médicale s'impose aujourd'hui (2). Cette nécessité est corroborée ; par l'analyse jurisprudentielle constatant les traitements des actions des patients - victimes à l'encontre des professionnels de santé (1)

1) L'analyse jurisprudentielle

L'évolution de la jurisprudence par le rejet des connaissances actuelles au profit des données acquises par la science a fait l'objet d'un ordonnancement législatif par le législateur⁶⁰. Toutefois, celui-ci est resté muet quant à la définition de la faute, laisse ainsi au juge un large pouvoir quant à son appréciation casuistique lors d'un dommage. En conséquence, le patient peut engager la responsabilité du médecin ou de l'établissement de santé public ou privé sur deux plans : soit la faute de technique médicale consistant en une méconnaissance des normes scientifiques régissant la profession médicale, soit la faute d'éthique médicale qui, dans le cadre d'un diagnostic, peut être appréhendée comme la méconnaissance des principes éthiques et déontologiques régissant les rapports entre le médecin et son

⁵⁸ Sous réserve des soins à visée esthétique ou des interventions relevant de croyances réalisant une mutilation prohibée.

⁵⁹ Mais dans les faits, un expert unique reste encore souvent désigné par la juridiction.

⁶⁰ V. en ce sens la loi du 4 mars 2002, *op.cit.*

patient⁶¹. S'agissant de la conformité du diagnostic aux données acquises de la science, il convient de rappeler tout d'abord que « *la responsabilité du médecin est subordonnée à la preuve d'une faute dans l'accomplissement de l'acte médical* », ⁶² laquelle doit être rapportée par la victime, le patient en l'espèce.

Ainsi, un arrêt de la première chambre de la Cour de Cassation affirme que le médecin s'engage à donner « *des soins, non pas quelconques (...) mais consciencieux, attentifs et réserve faite de circonstances exceptionnelles conformes aux données acquises de la science.* » ⁶³ Dès lors, si tous les actes médicaux sont soumis au respect des données acquises de la science, un préalable commun s'impose : l'obligation pour le médecin de s'informer avec précision préalablement à l'acte de diagnostic, de l'état de santé du patient⁶⁴. La Cour de Cassation a affirmé dans un arrêt important sa position sur cet aspect avec un fort intérêt didactique le 5 mars 2015, en ces termes : « *Attendu que l'obligation pour le médecin de donner au patient des soins attentifs, consciencieux et conformes aux données acquises de la science, comporte pour le praticien le devoir de se renseigner avec précision sur son état de santé, afin d'évaluer les risques en cours et de lui permettre de donner un consentement éclairé* » ⁶⁵ ... » Ainsi, les investigations de toute nature, à but préventif, informatif ou curatif, et les mesures préalables au traitement ou à toute intervention (chirurgicale notamment), doivent particulièrement avoir été accomplies, conformément aux données acquises de la science⁶⁶ afin d'établir un diagnostic sincère. Dans ce cadre, doit être écartée la responsabilité d'un médecin en raison d'un diagnostic initial qui s'était révélé par la suite inexact, dès lors que le médecin avait, lors de sa première visite, « *procédé à un examen clinique sérieux correspondant aux données acquises de la date des soins, et que les symptômes présentés par le malade pouvaient dans un premier temps conduire au diagnostic inexact.* » ⁶⁷ Inversement, devait être estimée « *fautive la persistance non justifiée dans un diagnostic dont le caractère erroné pouvait être justifiée dans un temps mais par la suite non.* » ⁶⁸ »

⁶¹ Voir en ce sens JCL Responsabilité civile et Assurance, Fasc. 440 -30 *sur les fautes d'éthique médicale*, Lexis Nexis,

⁶² CIV. 1^{re} 4 janv. 2005 n° 03-13.579 bull. civ n° 5

⁶³ Arrêt de la Cour de Cassation 1^{re} chambre civile du 16 mai 2013 n° 12-21-338 : *JurisData*, V. également Art. 32 du Code de déontologie médicale codifié en l'article R-4127 du code de la santé publique.

⁶⁴ Notamment, sur l'état de santé antérieur du patient

⁶⁵ Civ. 1^{re}, 5 mars 2015, Chaput c/ CPAM de la Côte d'Or, n°14-13. 292, à paraître au *Bull* ; *JCP* 2015, II 555, note M. Bacoche

⁶⁶ Civ. 1^{re}, 29 juin 2004, n°02-15-198

⁶⁷ Civ. 1^{re}, 1^{er} mars 2005, n°53-19.062

⁶⁸ Civ. 1^{re} 8 Juill. 1997, 2 arrêts, n°95-17-076 et 95-18-113, Bull. civ. I n° 238 et 239 ; *JCP* 1997 ; *Sur la caractérisation de la persistance de l'erreur de diagnostic fautive*, v. Cassation

Le respect des données acquises de la science s'applique également à l'équipement technique de l'établissement de santé publique ou privé. Devait ainsi être engagée la responsabilité d'une clinique obstétricale pour formation insuffisante de son personnel dans l'utilisation de son équipement technique⁶⁹. En outre, dans un arrêt du Conseil d'Etat en date du 27 avril 2011, celui-ci affirme que les recommandations de bonnes pratiques élaborées par la Haute autorité de la Santé sur le fondement des articles L.161-37 et R-161-73 CSP, ont pour objet, conformément aux obligations déontologiques auxquelles sont soumis les professionnels de santé, d'assurer au patient des soins fondés sur les données acquises de la science⁷⁰. Doit ainsi être engagée la responsabilité tant disciplinaire que civile du médecin qui ne respecterait pas les RMO et RBP⁷¹ reposant sur les données acquises de la science.⁷²

En outre, en cas d'exercice médical pluridisciplinaire, un médecin ne saurait être lié par le diagnostic établi antérieurement par un confrère, mais doit apprécier personnellement le résultat des examens et investigations pratiqués et, le cas échéant, en faire pratiquer de nouveaux conformément aux données acquises de la science.⁷³

On peut objecter la surcharge de temps de travail observée chez les médecins français, qui entraînent parfois des fautes de techniques médicales en matière de diagnostic notamment. Mais, la résolution de cette problématique ne saurait s'entrevoir uniquement dans l'ouverture d'une action judiciaire à l'encontre d'un tel médecin. En effet, dans une telle hypothèse de surcharge de travail, lorsque la faute de diagnostic est constatée, le législateur devrait exclure toute action pénale à l'encontre du médecin en cause et, ne maintenir que l'action civile à l'encontre de ce dernier outre les procédures disciplinaires. Cette mesure qui appelle par conséquent à une hausse du recrutement des médecins notamment par l'allègement des formalités d'intégration et d'installations des médecins étrangers souhaitant exercer en

civile 1^{re}, 13 novembre 2008, Société Mutuelle d'Assurance du corps sanitaire français, n° 07-18.008 ; JCP 2009. II 10030, note P. Sorgos.

⁶⁹ Civ. 1^{re}, 7 juillet 1998, Bull. civ. I n°239

⁷⁰ Conseil d'Etat, 27 avril 2011, Association FORMM DEP, n°334396

⁷¹ Il s'agit respectivement des Références médicales opposables (RMO) et les Recommandations de bonnes pratiques (RBP), qui sont issues de l'ordonnance modifiée n° 96-345 du 24 avril 1996 (Art L. 162-12-15 CSP), ont pour objet de déterminer les soins et prescriptions médicalement dangereux ou inutiles. Elles sont élaborées par la Haute Autorité de Santé. Toutefois, concernant les médicaments, ceux-ci relèvent de la compétence de l'Agence de sécurité du médicament et des produits de santé (ANSM). Enfin, soulignons que tous ces standards doivent être conformes aux données acquises de la science.

⁷² Conseil d'Etat, 12 janvier 2005

⁷³ Voir en ce sens, Civ. 1^{re} 30 avri. 2014, *El Khoutabi*, n° 13-14. 288, Bull. civ I. n° 77 ; JCP 2014, 1225, note P. Sorgos

France sans omettre une meilleure attractivité quant aux rémunérations salariales.⁷⁴

2) L'exigence de réforme de la responsabilité médicale en droit ivoirien

Avant de voir la nécessité des experts en présence d'une faute de technique médicale (b), examinons d'abord le Code de déontologie de l'Ordre national des médecins ivoiriens (a).

a) Par l'examen du Code de déontologie de l'Ordre national des médecins de la République de Côte d'Ivoire

Le décret n°55-1791 du 28 novembre 1955 portant Code de déontologie médicale⁷⁵ traite particulièrement de la qualification reconnue aux médecins⁷⁶, en énonçant les différentes compétences et disciplines desquelles la qualité de médecin s'acquiert par le doctorat en médecine. Si ce décret traite des moyens de recours à l'exercice de la profession, il reste muet sur les fautes médicales qui pourraient surgir des diagnostics du médecin.

C'est pourquoi, d'autres textes doivent être mis en évidence. Il est curieux et regrettable que le statut de la médecine en Côte d'Ivoire soit encore aujourd'hui sous le joug d'un texte colonial. Cette situation interpelle la particulière sensibilité du législateur ivoirien à l'intérêt de l'évolution des règles juridiques en la matière, et ce, au regard du droit français et du progrès de la médecine. En effet, le règlement relatif à la qualification de la qualité de médecin est établi par le Conseil national de l'Ordre des médecins et repose sur l'article 12 du décret cité précédemment. Même si le texte paraît ancien, il établit distinctement deux qualités dans la profession de médecin. Tout d'abord en ce qui concerne le médecin spécialiste qui, titulaire d'un doctorat en médecine, doit posséder exclusivement une discipline de compétence parmi les onze qui sont énumérées à l'article 2 dudit décret, bien que des exceptions existent pour certaines spécialités comme l'ophtalmologie (qui peut être cumulée avec l'oto-rhino-laryngologies). En second lieu, il y a la qualité de médecin compétent, qui peut exercer sa profession sans exclusion de cumul dans des disciplines particulières telles que la dermato-vénérologie ou la cardiologie et la médecine des affections vasculaires. L'article 4 du décret souligne que seuls deux disciplines peuvent être exercées concomitamment par le médecin compétent.

En outre, le règlement traite des voies de recours internes pour l'exercice plein et entier de la profession par les docteurs en médecine, en

⁷⁴ Voir en ce sens l'examen en commission par le Sénat *de la proposition de loi n°68(2022-2023) visant à rétablir l'équité territoriale face aux déserts médicaux et garantir à la santé pour tous*. V. <http://www.senat.fr/rap/l22-157/l22-1576.html>

⁷⁵ JORF 10 janvier 1957

⁷⁶ Distinguant entre médecin spécialiste et médecin compétent

omettant substantiellement le cas des litiges qui pourraient surgir des relations entre les médecins et les patients. Cela nous amène à faire appel au Code de déontologie de l'Ordre national des médecins de la République de Côte d'Ivoire, lequel rappelle à juste titre, en son préambule, que la création de cet Ordre est issue d'une loi N°60- 284 du 10 septembre 1960. Ainsi, bien qu'ostensiblement édité en 2013, ce Code n'apporte aucun changement au texte initial qui date du 10 septembre 1960. Cela illustre, une fois de plus, l'acceptation selon laquelle outre le législateur, l'Ordre des médecins ivoiriens serait insensible aux évolutions en la matière, et particulièrement au regard de la préservation des droits des médecins et des patients. Il convient de constater que cette négligence du législateur ivoirien satisfait certains médecins dont la responsabilité médicale peut être mise en cause. De même, l'ordre des médecins ivoiriens de manière générale semble être opposé à toute réforme compte tenu de l'absence de véritables propositions à l'exécutif en ce sens. Cette défaillance du législateur ivoirien explique la faiblesse avec laquelle l'action en responsabilité médicale est engagée par certains patients, malgré les multiples suspicions de fautes médicales soulevées de manière régulière par la presse ivoirienne. Elle se traduit également par certaines positions du juge ivoirien en matière de fautes médicales.

B) Par la mise à l'écart de la nécessité des experts en présence d'une faute de technique médicale

Un jugement rendu le 29 juin 2017 opposant un patient à la polyclinique Avicennes d'Abidjan, relève les faits selon lesquels, après avoir subi une première opération chirurgicale à la suite d'un diagnostic établissant une hernie inguinale bilatérale chez le patient, les douleurs de ce dernier n'ont cessé de persister, devenant plus intenses. Face à cette situation, le patient décide de consulter d'autres médecins, qui lui révèlent encore l'existence de la même pathologie, par conséquent non traité par la première opération. Aussi, prend-t-il à nouveau un rendez-vous avec un autre chirurgien, qui lui confirmera que l'opération du premier chirurgien n'a aucunement traité la pathologie du patient. Cette révélation faite, le second chirurgien procède à une seconde intervention chirurgicale sensée traiter la pathologie établie par le diagnostic. A la suite de celle-ci, le patient estimant qu'il a été victime d'une opération chirurgicale inopportune du premier médecin chirurgien, engage la responsabilité médicale pour faute de ce dernier, en réclamant une réparation totale du préjudice subi. Le Tribunal de première instance d'Abidjan, en sa 1^{re} chambre civile, ordonne une expertise médicale. Cependant, celle-ci n'aboutira à aucune conclusion ni résultat, le médecin chargé de cette expertise n'ayant pas réalisé la mission. Le Tribunal refuse alors de commettre un nouvel expert médical pour y être éclairé sur le processus de la faute relevée par le patient, et juge l'affaire en rejetant la demande du patient. Pour ce faire,

le Tribunal fait valoir que « *l'exigence d'une expertise médicale ne présente pas un caractère dirimant (contraignant) de sorte que son appréciation souveraine sur l'existence ou non d'une faute médicale peut être faite.* »

Ce jugement est contestable sur deux argumentations spécifiques. Tout d'abord, il est regrettable que le juge décide de passer outre l'expertise médicale défaillante, sans en désigner une autre, pour statuer sur le rejet de l'action du patient -victime. En outre, pour prononcer son jugement de rejet, le Tribunal décline la nécessité de commettre de nouveaux experts médicaux assermentés et écarte les avis des médecins consultés par le patient à la suite des douleurs ressenties après la première intervention chirurgicale, tout comme l'appréciation du second chirurgien qui relèvera que c'est bien sa seconde opération chirurgicale qui a réellement pris en compte la pathologie établie par le diagnostic du patient. Aussi, conclut-il que l'opération pratiquée par le premier médecin chirurgien de la Polyclinique Avicennes n'était aucunement conforme à la prescription émise dans le diagnostic qui révélait une hernie inguinale. C'est pourquoi, on peut s'interroger sur le jugement des premiers juges du fonds qui rejette la nécessité de commettre une nouvelle expertise médicale à la suite du silence gardé par le premier expert médical désigné. Ne peut-on pas suspecter à tout le moins le raisonnement « éclairé » du tribunal qui conclut au rejet de l'action du patient sur le fondement de l'inexistence des dispositions des articles 1382 et 1383 du code civil ivoirien⁷⁷ ?

Or, en présence d'une faute de technique médicale⁷⁸, comme cela apparaît dans ce cas d'espèce, le juge doit nécessairement faire appel à l'avis d'un expert médical assermenté pour en tirer des conclusions précises, et ce afin de provoquer un jugement garantissant au demandeur à l'action le respect de tous ses droits au procès équitable.

En effet, seul un rapport d'expertise et/ou, une contre-expertise aurait pu déterminer l'opération chirurgicale qui a été conforme au diagnostic du patient-victime dans ce cas. Cette nécessité s'entend dans la mesure où les deux praticiens relevant de cliniques différentes prétendent avoir pratiqué la meilleure intervention chirurgicale sur le patient, en vertu du diagnostic produit.⁷⁹ Ce jugement souffre ainsi d'une partialité manifeste, à laquelle les juridictions de second degré devront apporter une rectification claire. De plus

⁷⁷ Ces textes sont identiques aux articles 1240 et 1241 du code civil français *op.cit.*

⁷⁸ Rappelons qu'il s'agit d'une faute mettant en évidence les insuffisances du praticien sur les principes éthiques et déontologiques régissant les rapports entre le médecin et son patient.

⁷⁹ Voir en ce sens CIV.1^{re}, 3 novembre 2016, n°15-25348, Clinique Saint Michel et Clinique du Coudon, JCP 2016.1205, note P. Sargos ; D.2017.24 note O. Gout, RTDC 2017.163.Obs. P. Jourdain ; cf. Bergoignan-Eseper C., Sargos P., *Les grands arrêts du droit de de la santé*, Editions Dalloz, 3^e édition, Paris -2021, p. 234-254

face à ce constat, le silence des ayants droit apparaît aussi comme un encouragement au mutisme du législateur ivoirien. Or, la Cour de cassation française a pu affirmer dans deux arrêts du 30 avril 1976 que le droit à réparation du dommage résultant de la souffrance aussi bien physique que morale éprouvée par la victime avant son décès, étant né dans son patrimoine, se transmet à ses héritiers⁸⁰. Par conséquent on peut souhaiter une meilleure sensibilisation des populations ivoiriennes sur l'action en réparation des ayants droit au titre du dommage corporel subi par le *de cujus* à la suite d'une faute de diagnostic paraît essentiel.⁸¹ Or cette voie requiert du législateur une vulgarisation de l'aide juridictionnelle, encore trop peu limitée dans les juridictions ivoiriennes, afin de permettre un accès équitable à la justice pour tous. Cette ouverture permettrait *in fine* au législateur de se saisir des faiblesses des textes parcellaires concernant le droit médical ivoirien pour le réformer en s'inspirant du droit français.

En effet, pour éviter des erreurs telles que celle que nous avons évoquées quant l'appréciation de la faute médicale, et plus spécifiquement, la faute de diagnostic, une refonte du droit de la santé ivoirien est nécessaire. Cette exigence devrait aujourd'hui, mettre en évidence une réforme du Code de déontologie de l'Ordre des Médecins ivoiriens, et la création d'un Code de la santé publique ivoirien, en s'inspirant du modèle français, pour que cessent les multiples fautes de techniques médicales par l'amplification des fautes de diagnostics, qui chaque jour entraînent la disparition de plusieurs patients, lesquels, ne désiraient qu'une prise en charge médicale pour continuer de vivre.

Conflit d'intérêts : L'auteur ne déclare aucun conflit d'intérêts.

Disponibilité des données : Toutes les données sont incluses dans le contenu de l'article.

Déclaration de financement : L'auteur n'ont obtenu aucun financement pour cette recherche.

⁸⁰ Cass. ch. mixte, 30 avr. 1976, [2 esp.] : Bull. civ. n° 2 et 3 ; D. 1977, p. 185, note Contamine-Raynaud ; RTD civ. 1976, p. 556, obs. Durry ; Gaz. Pal. Rec. 1976, 2, p. 459. – Cass. Ire civ., 31 mars 2016, n° 15-10.748 : JurisData n° 2016-005782 ; Resp. civ. et assur. 2016, comm. 169, note H. Groutel ; Bull. civ. I, n° 1130

⁸¹ L'action en indemnisation du dommage corporel subi par le *de cujus* et transmissible à ses héritiers, est encadrée par le délai de 10 ans en droit français et 30 ans en droit ivoirien, à compter de la date de consolidation du dommage. En cela, ce délai prend en compte l'action préalablement engagée par le patient- victime du dommage avant son décès. Aussi, les ayants droit de celui-ci devront poursuivre la procédure dans le respect du temps restant au jour du décès de *de cujus* et conformément à la date de consolidation du dommage.

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Charles Wright Mills' Concept of "The Power Elite" Triangle According to the Georgian Model of 1990-2020

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Abstract

The paper presents similarities and differences of Charles Wright Mills's concept of "The Power Elite" triangle on the Georgian model of 1990-2020. The article presents a research on the Georgian analogue of the Mills concept in the context of church power, army and, in general, force power, economic and financial elites. It is also about the promotion of the bourgeoisie in the American society and the factors of developed skills, which essentially differentiates the American existence from the Georgian existence. In the article, I discuss the conditions, which represent The Mills concept, on the example of Georgia, how the factor of church power differs, which in our case plays the role of essential influencing power, what was the condition of the rulers of Georgia over the years against the background of the confrontation between secular and clerical power elites, and what is the overall result we got today. The article provides a qualification that is derived from research and analysis. The article explains why financially powerful groups and individuals in political and governmental layers are getting stronger in Georgia, why citizens do not have the appropriate conditions for influence, what factors prevent the strengthening of civic influence in Georgia. In some cases, the Mills constructions, like the example of Georgia, even look paradoxical, declaring that the state is one, while creating a radically different reality and trend. The article studies the influence of the Apostolic Autocephalous Orthodox Church of Georgia on maintaining power in Georgia and its characteristics. There are highlighted Mills views about democracy resources,

context and content comparability, the factors impacting the bourgeoisie in the development and strengthening democracy, that is represented quite differently in Georgian model. The article discovers the theoretic factors that hinders the development of democratic values in Georgia - the historical and modern contexts of aristocracy and feudalism, superiority of church hierarchy in maintaining power, secular authorities longing for authoritarianism and mutual subordination of secular and clerical power elites with the weird synthesis of partnership.

Keywords: Power elite, Higher circles, Church., Army, Business, Government

Introduction

Charles Wright Mills, a 20th century sociologist and journalist (1916-1962), is considered the founder of the concept of sociological imagination. Mills' main area of interest is to study the meaning of connections between the daily life of the individual and social forces, to understand the content and function of society, to determine the meaning of modern life and social structure in historical context, etc. In terms of modern social theory and critical analysis, *The Power Elite* (1956) is considered one of his most important works.

According to Mills, ordinary people are surrounded by everyday concerns, but within the same circles they cannot avoid external influences that they neither understand nor are subject to. The structure of modern society forces them to serve the ideas of others. That is why they feel that in an era when they have no way to influence public life, they also have no opportunity to shape their own lives according to their own thoughts and desires. However, Mills, discussing the example of America, says that in this regard, not all people are ordinary people, some of them, by centralizing the means of information and political power, have reached a position in American society that allows them to enter the lives of ordinary people, making their own decisions, and have a significant impact on the daily lives of others (12).

In the context of informational power, the American sociologist and journalist Walter Lippmann (1889-1974) discusses the ideas created by people through the media. It remains beyond our vision or reach. Therefore, it is the mass media that help us to create a "credible picture" of this unattainable world (2). Moreover, the unavailability of the truth and, at the same time, people's perceptions are presented to a number of theorists as a factor according to which what seems to us to be true is often more influential than the actual truth. According to Lippman, "Until we know what others think they know, we cannot understand the true meaning of their actions," this passage from

Lippman tells theorists that "perceptions are far more influential than even objectively characterized reality" (2,166).

According to Mills, the power elite consists of people who occupy positions that allow them to rise above the human space and make decisions that have significant consequences. According to his explanation, the power elite does not consist of single ruling people. Their important ideas and decisions are those of their own consultants and opinion makers. Hardy Merriman also talks about consenting participation in power. He explains that "institutions, organizations, and systems depend on the continued consent, cooperation, and obedience of many ordinary people" (4, 2). Charles Mills singles out the so-called famous faces and states that although these famous faces do not stand at the top of any power hierarchy, they have the ability to divert the attention of the audience or to manipulate the masses in a way that favors those who are at the top of the power.

Mills explains that the most important hierarchical institutions of modern society, that is - state corporations, as well as the army - they form the instruments of power. Mills discusses the example of American society in the power elite and says that no church can influence the same dose as the military. Here the author emphasizes the implications for young modern Americans.

Charles Wright Mills views are very important to analyze the Georgian power elites, its theoretic constructs and content that is examined in the mentioned article. The aim of the paper is to study the context of Georgia in relation to the Millsian power triangle concept. The article explores the influence of the Apostolic Autocephalous Orthodox Church of Georgia on the army and other Millsian power triangle constructs in the context of the power characteristics. It investigates the clerical power and its influence rate on authorities.

The represented paper studies the political attitudes and relations of Georgian secular elite powers with the church elite powers, how it was revealed and why, was it a collaboration, contradiction or struggle for superior power after the restoration of the independence of Georgia.

The article examines the opportunities and factors of turning the Georgian Orthodox Church into the power elite, its historical and modern contexts, society formation conditions and roles in historical context regarding the resources, the military and economic aspects and the church elite power reciprocity in business and other modern formations.

Here is explored the possibilities of the impact of society groups, its consciousness and civic participation on power construction, the contributing and hindering factors, the state of democracy and barriers for its development. The article examines the state of power triangle in Georgia and its perspectives according to Charles Wright Mills.

Main Part

When discussing power, Charles Wright Mills also discusses the influence of the church, however, on the example of the American society, he assigns a smaller function to the influence of the church compared to the army. Before I present the discussion of the Mills model on the example of Georgia, I will touch a little on the Hatschek approach of the relationship between the church and the state. The German philosopher Julius Hatschek (1872-1926) distinguishes between the monarchical and modern democratic authors of the relationship between the church and the state. "This attitude in the monarchy, which is expressed either in the subordination of the church to the state or in the subordination of the church to the state, is something first, historically given, the heavy yoke of which was gradually eased due to the development of liberating ideals" (8, 124). In the context of the comparative analysis given below, this dilemma of Hatschek paradoxically manifests itself in modern Georgia, which has declared modern democratic aspirations, but by nature carries the content of monarchical attitudes between the church and the state. Hatschek emphasizes that in modern democracy, individual freedom of conscience and cult is predominant, and the relationship between the state and the church is represented by the protection of this freedom. "Freedom of religion becomes, in a sense, the center of all political activity, the fulcrum of all civil rights and liberties between the individual and the state. Therefore, of course, it is also the basis of relations between the church and the state" (8, 125). Julius Hatschek is against the state dominating any one church, so that the rights of citizens who do not belong to this church are protected, including in terms of financing and managing citizens' taxes. According to a German professor, "since taking the side of one church leads to its superiority over others and, in addition, to lying on the conscience of those who do not belong to it and pay taxes, therefore, in order to fully ensure the freedom of conscience and cult, it is necessary to separate the church from the state" (8,125).

Several variables, which are expressed according to the model of Julius Hatschek and Charles Mills, are mutually contradictory in the reality of modern Georgia. On the one hand, we have declared democratic aspirations - "Georgia is a democratic republic" (9), on the other hand, there is a constitutional agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, according to which the church and the state are separated from each other (10), however, Charles Mills In relation to the model where he notes that no church can influence as much as the military agency, the reality of Georgia is somehow inversely proportional. The Church (meaning the Apostolic Autocephalous Orthodox Church of Georgia) is considered to be the most influential institution in our country, the trust coefficients, the same ratings revolve around the Georgian Orthodox Church and are equal to, the rating of the Armed Forces of Georgia is ahead

of or slightly behind the rating of the church in society, despite the fact that in recent years in Georgia the rating of the Orthodox Church is falling, but it is still considered the main institution of influence on public opinion, which has significant trust.

For example, according to the research of the International Republican Institute (IRI), the rating of the church in Georgia for the last five years is as follows: trust in the church - 2022 - 92%, 2017 - 88% / 2018 - 89% / 2019 - 85% / 2020 - 85% / 2021 - 79 %. The rating of Catholicos-Patriarch of All Georgia Ilia II in 2021 was 89% (7). According to the trend and proportion, in many cases, the results of the National Democratic Institute (NDI) and CRRC-Georgia research show the same trend (6). It can be said that the church and the army have always been close to each other in sociological surveys, in terms of trust. They compete with each other the most. However, in our case, there is one peculiarity, the army and the church do not exist independently of each other, but coexist, it can be argued that the army is even somewhat subordinate to the church (the influence of the church on the army). It is interesting that Mikheil Saakashvili, who lost his personal rating significantly soon after becoming president (in addition to the polls and the protest processes against him, we can also take the election indicators as an official benchmark - he received 97% when he became president in 2004, and 53% in the early presidential elections in 2008), we can say that the president failed to replace the church's ranking and influence on society, at the same time he tried to increase the prestige of the armed forces to such an extent that, using the metaphor of the army, he created an increase in the ranking of secular institutions against the church in the state.

Due to insufficient results, the third president soon tries not to compete with the Church at the expense of increasing the rating of defense as a state institution, but reaches a kind of compromise and works on the policy of "winning the heart" of the Church. If we look carefully, in the same period of time, taking the period of 2008 as a sample, the relatively earlier period of November 2007 (the emphasis is on November 7 - A.G.), as well as the period of forced resignation in 2008 and the surrounding events, here it can be seen that President Saakashvili is trying to maintain power as a tool, not so much to use the institution of defense, but to find a solution to maintaining power in a compromise with the Church. In this period, the strengthening of the church with material resources by the state is particularly strong. A similar level of church support can be observed only years later, on the part of "Georgian Dream", parallel to the indirect confrontation with the church, although this is the subject and period of another study.

Parallel to Mills' view of church influences and to some extent opposite, the psychotype of Mikheil Saakashvili himself in relation to the church is interesting, as well as the psychotypes of independent Georgian

rulers and heads of state in relation to the church, especially in relation to Patriarch Ilia II, because he is considered the face and symbol of the Georgian Orthodox Church.

For example, Zviad Gamsakhurdia, who represented the society as a faithful ruler, he was a person directed against the church elite, his confrontations with Patriarch Ilia II are known. Eduard Shevardnadze, as an old communist, was a typical atheist, however, he was pragmatically connected with Patriarch Ilia II, who played a positive and outstanding role in the legitimization of Shevardnadze's government and the stability of this government until 2003. Shevardnadze was not a religious person, despite his baptism, he often addressed Patriarch Ilia II as Mr. Ilia. He viewed the patriarch as an equal, episodically partnered entity to whom he was not mystically bound. This factor, it can be said, had a significant impact on the Patriarch's attitude towards Shevardnadze, which can be considered one of the key aspects in the events of 2003, where Patriarch Ilia II gave preference to Saakashvili and played an indirect, but important role in the management of the events of the 2003 "Velvet" Revolution.

Mikheil Saakashvili tried to strengthen the church, on the one hand, (giving importance, providing material and technical resources), and, on the other hand, he fought against it (ideological, discrediting, etc.). It was done willingly - it means material support - aut.).

Mills states that the family, the church, and the school adapt to modern life, while the government, the military, and the corporation shape it. According to Charles Wright Mills, the fate of modern man depends not only on the family into which he is born or entered by marriage, but also on the corporation in which he spends his best years, not only on the school where he is brought up in childhood and thought, but also on the state that does not let him himself for the rest of his life; Not only on the church, where he hears the word of God, but also on the army, where he is trained (12).

This ranking of Mills is interesting for the analysis of the determination of the political strategy towards the church during the Saakashvili period. Saakashvili, on the one hand, tried to create a counterbalancing institution for the church (after he failed to act as a counterbalance and soon lost 97% support) in the form of the Georgian Defense Forces, however, due to his insufficient success, he was soon forced to switch to the strategy of "engaging instead of dragging" with the church. Saakashvili was not in equal or pragmatic communication with Patriarch Ilia II. In part, he attacked him not with his own statements or direct actions, but somehow with the hands of his supporters, their mouths and expressions (12).

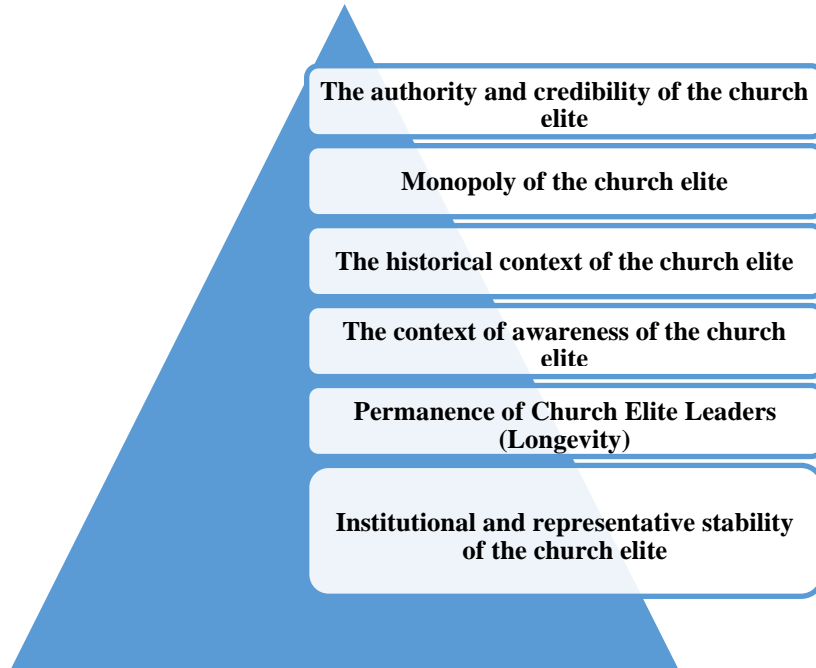
Giorgi Margvelashvili - as a non-executive president (as a result of the constitutional changes, Georgia moved to a semi-parliamentary, then to a parliamentary governance model, where the president was considered the head

of the country, although he had a symbolic function) did not give special importance to the church and its leader in official statements, for example, during the inauguration period, President Margvelashvili was not in an official marriage and considered the right to personal life, contrary to church expressions, to be an inviolable right. Margvelashvili was a judicious subject who faced the church and its leader with judgment and not so much with a mystical connection. Nevertheless, the patriarch soon managed to "tame" President Margvelashvili, instead of an interfering ideological opponent, Margvelashvili entered into more or less harmonious communication with the church hierarchs.

Salome Zurabishvili - the fifth president of Georgia, was also focused on judgment and evaluation for a while in the first years of the presidency and in the previous statements before the presidency, she came out with quite critical positions and opposed the agenda of the religious hierarchs, however, in the middle of the presidency, she also showed a harmonious, one might say, conformist attitude towards the church and its leadership. turned into a figure. Why should we consider the Georgian Orthodox Church as a new type of elite and how is power transferred to other centers of power? Can we say that the Orthodox Church in Georgia has become an independent center of power? - To determine this, I will refer to several main indicators, which, in my opinion, would give answers to these questions. I will list as indicators:

1. "Authority and credibility of the church elite".
2. „Monopoly of the church elite”.
3. „Historical context of the church elite.”
4. "Context of awareness of the church elite."
5. "Permanence (long-term) of church elite leaders."
6. "Persistence of the institutional and representativeness of the church elite."

See table 1.



The authority of the ecclesiastical elite, as mentioned above, is always high and has consistently solid **credibility**. The ecclesiastical elite, in the historical context, had a kind of **monopoly** of the visibility of the religious author. Although religious diversity exists historically in Georgia, Georgia has always been considered a "Christian" country, moreover, Orthodox Christianity was identified with ethnic and national identity, "Georgian" meant "Orthodox", while, apart from the fact that Georgia was a multi-ethnic country, its characteristic. In terms of religious relations, ethnic Georgians were also characterized by religious diversity (for example, in Meskheta there are still many Catholic villages where Georgians live, and many Georgians in Adjara believe in Islam, etc.). Despite this, Georgianness is still equated with Orthodoxy (however, in recent years, we can consider the number of non-Christian Georgians relatively increased, however, not enough). This process also has its own **historical context**, the majority of Georgian monarchs were closely connected with the Orthodox Christian Church.¹

Two more indicators are important for modern Georgia in the context of the power of the church elite and its formation as a center with power, it is the permanence of the church elite, the longevity of the religious leaders and the stability of the institutional and representativeness of the church elite. Among them, it is important that from 1977 to 2022, the Georgian Church is ruled by Patriarch Ilia II, during whose church rule political historical eras, leaders, ruling parties changed, revolutions, etc. took place. However, a kind

of permanent and most stable support in unstable and often chaotic social relations was the Orthodox Church and its ruler.

¹ e.g. Even before the existence of the united Georgia, even during the Kurapalats, the clerical authorities could even direct the life of the king and nobles, e.g. In the life of Grigol Khandztel (8th century), an episode was found when Ashot Kurapalat, who was the monarch at that time, fell in love with a woman. Their relationship was unacceptable to Grigol Khandzteli, Grigol Khandzteli asked Kurapalat to divorce the woman, despite the promise, Kurapalat could not do it, after which Grigol Khandzteli himself came to the young woman and sent her to the monastery of Mere with St. Febronia. Such influence and authority of the clergy has always been high in relation to the secular authorities. We can find the influence of a clergyman in the 5th century in the "Shushanik Simplicity", where Yakob Khutsesi is the main actor along with Shushanik. Shushanik, after the change of faith by her spouse, confronts the choice of her spouse, due to which she is executed by torture. This is described in the 5th century work "Simplicity of Shushanik". In general, the history of Georgian literature until the Middle Ages existed in the genre of hagiography, which studied the historical and ecclesiastical aspects related to the lives of saints, God's speech and sainthood. Hagiographical works also often described the conversion of people of other faiths to Christianity and their persecution ("Torture of Abo", "Torture of the Nine Brothers from Kola"), **writing and literature** were the main guides of Georgian public relations for a long time, which had a special communication purpose for historical memory.

It can be said that secular authorities would not have been established in Georgia without church support, which increased the importance of striving for closeness with religious leaders for secular leaders. We can present the relationship between the concept of the power of the church elite in the form of Table 2:

The power elite of the church

The permanence of the influence of the church elite

Historical context in governance

- Close connection with power
- Writing and public

Institutional and representative stability of the church elite.

- Stable power of the church elite
- Mainly sustainable power of the bishop

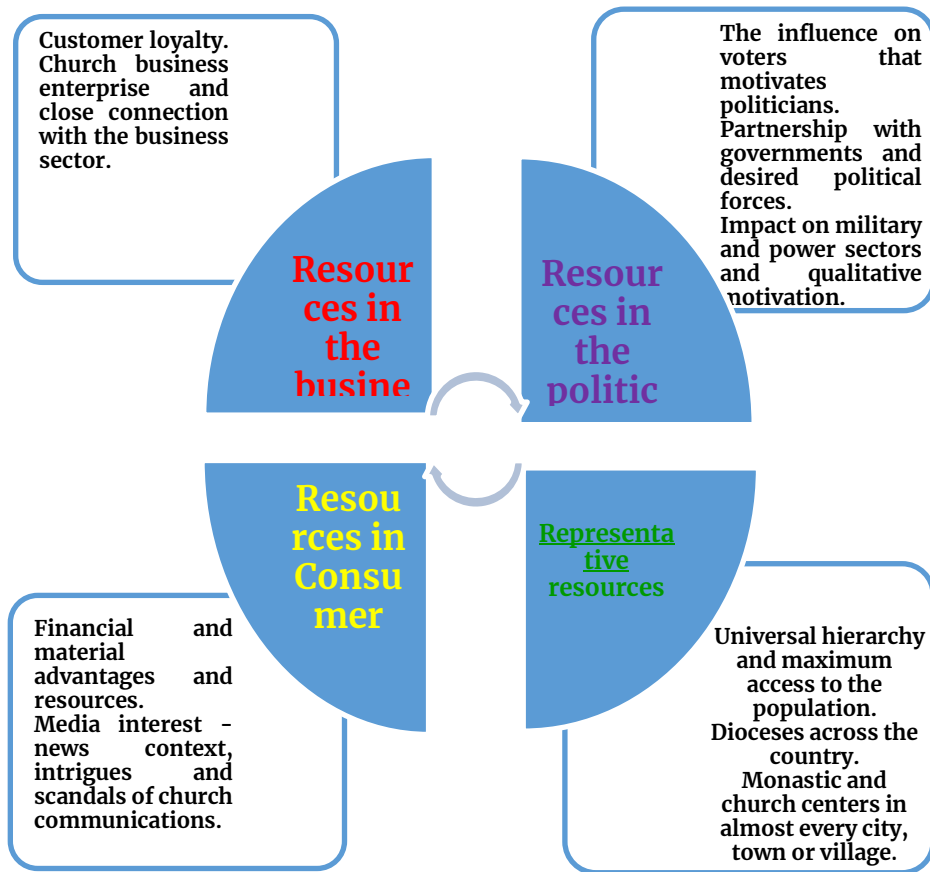
The authority of the church elite

Monopoly in relation to the religious compiler.

- Context of awareness.
- Distributed communication

What makes the Independent Church of Georgia a separate power elite today, apart from its historical concept? (presented in Table 2). The situation shows that there is an emphasis on such resource factors as:

- Resources in the business sector.
- Resources in the business sector.
- Resources in the military and political sphere.
- Resources in consumer marketing.
- Representative resources (branches - distribution - blueberry).
Conceptualization of resource factors is presented in Table 3.



By summarizing and interrelating the existing indicators, we can consider the Georgian Orthodox Church as a new type of elite and say that the Orthodox Church in Georgia has become an independent center of power, which makes the Millsian power triangle transformative in the context of Georgia due to its peculiarity.

Along with the ecclesiastical and defensive (military) influence, Charles Wright Mills discusses the economic factors, the fate of small and medium-sized businesses that have fallen under the power of large (giant) corporations. Mills explains this connection in terms of both administrative and political attitudes and relationships. Mills observes that the time has passed when there was economics on one side, and politics on the other, which included the military and had no influence on political or business life. Currently, there is an economy saturated with politics, which is connected to the power or military agencies by a thousand threads (12).

Mills points out that large corporations, as the main transmitters of directive decisions, are spillovers into different fields. According to his own

explanation, it was not always this way, when the public production was owned by many small producers. The theorist explains that political and military agencies are more involved in economic affairs, and depending on how they deal with matters, important decisions from each of the three hierarchies are controlled by the other two - in this way, economic, military and political institutions are closely related to each other (12).

What are corporate wars like in Georgia? - The political elites are trying to influence the corporate elites through this so-called influence. At the same time, they will be under mutual influence to create a "unified three". On the one hand, the elites are trying to get into political power (the lust of business sector owners for power, both in Shevardnadze's time, and in Saakashvili's time and especially in Ivanishvili's time, when oligarchic power prevails to a significant extent). Oligarchism, as a metaphor for narrow elite rule, in our case, expressed by powerful financial groups, appears to be an important, and in some cases dominant, part of the political elite of the 2012-2020 period. According to the declarations filled out by them, 23 of the 150 deputies of the Parliament of the 10th convocation are millionaires, that is, every 7th (3).

Inasmuch as the Mills power elite is presented in the form of a triple elite - economic, political and military elites (the latter military elite can be expanded and generalized in the context of power elites), according to how each of them takes away the power factor of this elite, the process is controlled by the other two - In our case, it is difficult to identify the military elite, as it includes not so much the defense agencies, but the forces in general - the Ministry of Internal Affairs, the Prosecutor's Office, the judiciary, and especially the security service, which are especially visible during the last two governments. Here, the power elite is sort of exported, assuming that the political elite rule them. However, the latter is under question due to their fragmentation, because the boundaries between the political elite and the power elite are not protected. The hierarchical size of power elites is amorphous, whether the political elite rules the powerful or vice versa, the powerful govern the political elite.

The factor of power elites in the USA is interesting, which is significantly different from the Georgian model. If in the USA the security service is idealized, in our case the security service(s) have been demonized under the last three governments (Shevardnadze, Saakashvili, Ivanishvili). A political analysis of American literature shows US policy toward power elites.²

Charles Wright Mills offers this formulation as theoretical postulates. He reviews the concept of corporations and names the factors that, according to the theorist, prevented the formation of a unified power elite, while small and medium entrepreneurship was more developed before the formation of

large corporations in the USA. The emergence of large corporations reduced the number and effectiveness of subjects of influence (means the effect of the influence and power of small and medium business representatives), and turned the managers of corporations into important participants of power (12).

²If we turn to Tom Clancy's novel, "Patriot Games", we will see that its main character, Dr. Ryan, is filled with the most noble characterizations. He teaches history at a military-naval training institution. He is a former Marine himself, which enabled him to prevent Irish terrorists from aligning with the royal family during his brief stay in London. He also knows how to shoot (this was taught by his father, who is a police officer), how to jump, he has a very quick reaction, his lectures are devoted to the issue of making decisions during sea trials. Gradually, the main thread is cut, Dr. Ryan works with the Central Intelligence Agency, first reporting to them on the problems of terrorism, and then moving to permanent work thanks to his strong intelligence and analytical abilities (11).

The work of the employees of the special services is imbued with omnipotence, mystery, and significance for the state. It is the intellectual aspect of this profession that is of special value and appears to us in a new way. These are intellectuals who are able to solve any task without leaving their office. The entire novel is imbued with the conviction that no matter how sophisticated the terrorists turn out to be, victory will still be on the side of the special services. Students love their teacher. One of the terrorists was arrested thanks to the vigilance of the patrol. The special services of Great Britain and the USA cooperate quite closely. In the novel, a clear preference is given to the faces of people from the special services. It is their intelligence that saves the nation from any oin of enemies. With Clancy as well, the terrorists carry out their intentions, which proves their real power, although in almost every case they fail to complete them as they have intended. In each case, they are faced with someone who, through the performance of their official or simply human duty (as in the case of Ryan himself in London), prevents events from developing in an unfavorable way, and the Central Intelligence Agency, in this regard, looks like a non-corrupt, incorruptible and powerful organization (11). It is interesting that Tom Clancy entered the 11 richest authors in the world in 2021. Clancy novels such as The Patriot Games, The Hunt for Red October, and The Holy Realm have become very successful in recent years. The film industry was interested in his work, and along with his worldwide success, he acquired large financial resources. Klens died in 2013, having earned \$300 million during his lifetime.

Mills states that in the imagination of the people, the power elite consists of empires that have the maximum that a person can have. This usually refers to money, power, prestige, and the way of life that allows for

the use of these goods. However, according to Mills, the people in these elites - these are not only the people who have the most, because they would not have "the most" if they did not occupy their special positions in important social institutions, because these institutions are at the same time power, wealth, prestige indispensable tools of exercising power. Mills clarifies that powerful people mean those who have the ability to exercise their will even when others oppose it. Accordingly, Mills states, no one can be truly powerful unless they have access to the management of important social institutions.

When discussing the triangle of the power elite, we can consider the triangle of power presented by the theorist and its scope for 2020 in Georgia, which at the given stage combines the influence of the powerful and the power of corporate managers. We see the process of how the owners of the business sector are replaced in political power in Georgia, where the tendency of financially strong groups to enter politics becomes more and more dominant.

Mills explains a similar trend with the prestige factor. According to him, prestige depends (and often exclusively) on access to advertising mechanisms. The theorist claims that advertising mechanisms are particularly important for the activities of all major institutions in modern America. In the process of this exchange-transition (from corporate to political power), a kind of "accumulation" of prestige is possible. Mills considers the process of transition to political power as a general indicator of accumulated prestige in various fields. He cites General Eisenhower as an example and adds that in his face, whom he represents, power and prestige are united, thus the latter's decidedly high flow (of power and prestige).

Prestige has a unifying quality like wealth and power. According to Mills, the higher the prestige you have, the more prestige you get.

Literature, as well as media, in the context of informational influence, offers a communication model with the public for appropriate positional or opinion formation. This communication can be explained by defining the communication tasks of public relations, according to which "the first task is to attract the attention of target groups of society. Second - to arouse interest in the content of the message. Based on this message, the third task is to create the desire and intention to act, and the fourth is to direct the actions of those who show behavior corresponding to the message" (2, 161)

I cited these novels as illustrative because Mills sees the US power elite as a common trend created by the results of the decisions made in the above-mentioned triad - the military control, the rulers of corporations, and the official rulers of the state unite to form the US power elite. These values can be interchanged. It is easier for the rich to get power than for the poor.

Those with high social status are more easily able to gain access to the management of resources that lead to wealth than those without this advantage (status) (12).

Mills states, "If we take a hundred more or less powerful Americans, the hundred richest, the hundred most famous, and take away from them the positions they hold in the governing social institutions, take away from them the human and financial resources at their disposal, and the means of mass advertising that work for them, they immediately become powerless, unknown and poor. According to the theorist, power is not rooted in the nature of its possessor, wealth is not in the person, notoriety is not an intrinsic characteristic that belongs to a certain person, to be famous, rich, powerful, for this you need access to powerful institutions, because the team positions in which people occupy, significantly determine the chances of receiving these highly valuable life goods (12).

These external factors - public status, status, wealth, influence, power - can they be considered as false external factors that people strive for? In this regard, the German philosopher Friedrich Wilhelm Nietzsche (1844-1900) is an interesting exponent, who ridicules this entire structure, from politicians and philosophers to poets and the rest.³

Charles Wright Mills also, in a way, indirectly echoes the Nietzschean pathos of the role of external, somewhat false factors in the social condition, where the human role is insignificant, although Mills singles out several factors due to which the American bourgeoisie managed to influence the creation of American power, the circumstance that American society did not undergo feudalism, that there was no nobility and aristocracy in America, even in the pre-capitalist era, which would have been in opposition to the big bourgeoisie. This, according to the theorist, is the condition that the American big bourgeoisie has monopolized not only wealth, but also power and prestige. Mills says that in America there were no hierarchical rulers of the church, no royal electors, no landlords with their castles, no persons who had a monopoly on the right to receive high positions in the army - that is, there were no elements that would prevent the enrichment of the bourgeoisie and the social development of the bourgeoisie through hereditary rights and He would create resistance in the name of prerogatives. However, the author also notes that this does not mean that there are no upper classes in the US. According to him, this arose from a "middle class" that had no recognized aristocratic advantages, and did not mean that they even remained middle class, while their increasing wealth helped them to achieve social advantages themselves. According to Mills, the American elite entered modern history as a bourgeois elite with essentially no historical adversaries (12).

³ Nietzsche's "Thus Spoke Zarathustra" was translated in Georgia by the Georgian literary scholar, political scientist and international law specialist Erekle Tatishvili. The famous essay "Friedrich Nietzsche" belongs to Erekle Tatishvili, where we also find a short summary of Nietzsche's attitudes. "Tarantulas", politicians who are respected because they serve the false beliefs of the crowd, like domestic cattle, easily stand on its hump, or like small cogs in the cart of big politics. He mocks philosophers, who remind us of ill-looking wild game and "wild horses kneeling by the den", despises scientists and likens them to "bags of flour covered in dust". "Zarathustra mocks the cultured and the educated, calling them "homeland of colorful pots", dangerous, Greece, the winds of thought, a skeleton worthy of extermination. It should be removed" (5, 11-12).

They had a monopoly on the right to receive positions - that is, there were no elements that would prevent the enrichment of the bourgeoisie and create an obstacle to the social development of the bourgeoisie in the name of hereditary rights and prerogatives. However, the author also notes that this does not mean that there are no upper classes in the US. According to him, this arose from a "middle class" that had no recognized aristocratic advantages, and did not mean that they even remained middle class, while their growing wealth contributed to their own social advantages. According to Mills, the American elite entered modern history as a bourgeois elite that essentially had no historical opponents (12)

Charles Mills' views on the participation of the bourgeoisie in power interestingly explain the dilemma of Georgia, why civil power cannot be formed in Georgia, and the authorities are formed in the form of thematic elites (business representatives, representatives of large corporations, recognizable faces - from sports and culture, etc.). In terms of the influence of the bourgeoisie on power and the creation of the bourgeois elite, in contrast to the history of the USA, the history of Georgia is built on completely opposite factors. If Mills considers the absence of nobility and aristocracy as an advantage of the American society, it is the opposite in the history of Georgia, for centuries, both before and after the Russian annexation, the class superiority of aristocracy and feudalism was evident. Georgia was ruled by the monarch and feudal lords in the territorial spaces, after the annexation of Georgia by the Russian side, the crown prince and those close to him, this process somewhat slowed down in the final part of the aristocracy's rule, and somewhat stopped after the Russian annexation and subsequent Sovietization, however, the models remained the same, because the traditional form of institutional influence changed its face. Within the party framework, the Socialist Soviet Republic of Georgia was ruled by the Communist Party, we can call the space of rulers a metaphor of "party aristocracy", after the restoration of independence this format changed, although the concept of

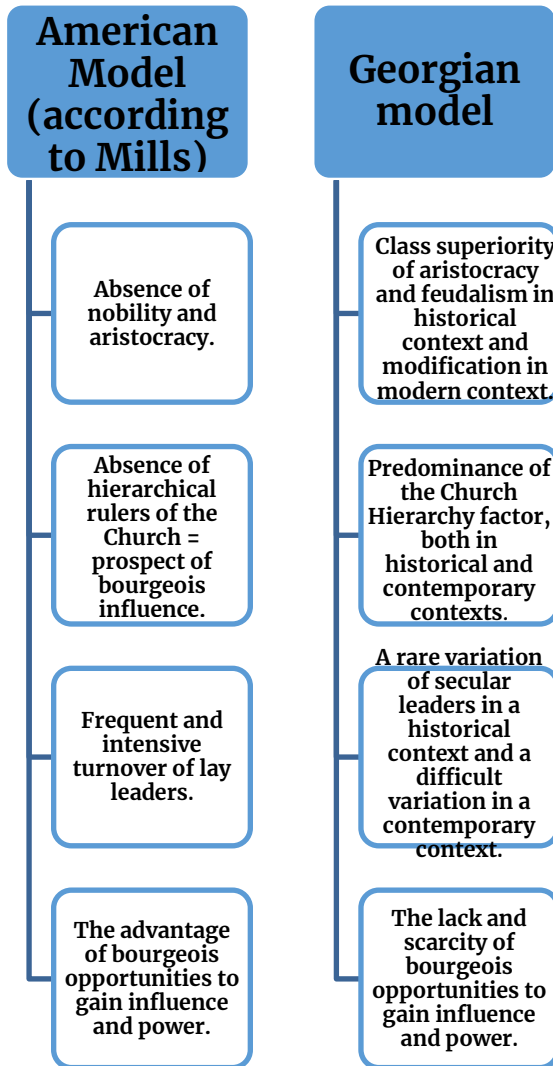
power remained the same, especially in terms of regional representations and in the form of narrow official "feudalism". This hierarchy of influence represents a modified variation of the Milsian "feudalism" and the "choice of the throne" to this day.

As noted, Mills also cites the fact that there were no hierarchical church rulers in the US, which would have reduced the influence of the bourgeoisie. In contrast to America, church hierarchs have always represented the most and sometimes the most influential subjects. The religious factor, on the one hand, attracted citizens in Georgia, and on the other hand, suppressed them, because civil behaviors were often dictated by church hierarchs. The Georgian Orthodox Church was primarily a stable influential institution with significant indirect power, where it had power but only limited responsibilities. The ecclesiastical structure created a stable power of church rulers, in contrast to secular powers, especially in recent years, when Patriarch Ilia II is the unchanging ruler of the Georgian Orthodox Church from 1977 to 2022.

Historically, Georgia has had "less variable" secular rulers, meaning representative status in the historical context and the context of maintaining power in the modern political era in Georgia. I mean in a historical context, e.g. Bagration dynasty; Crown Princes of Russia; Communist Party ruled by Moscow; After independence, Georgia's modern political era has been characterized by a context of power retention rather than democratic change, similar to some of the post-Soviet countries. Political entities in power do not yearn for democratic change, but individual political entities try to maintain power not through the desirability of voters, but through a kind of usurpation. This process is quite similar to a strange form of feudal, monolithic neo-feudalism, where political forces (Eduard Shevardnadze's rule 1992-2003, Mikheil Saakashvili's rule 2003-2012, and Bidzina Ivanishvili's force rule by 2022, in power since 2012) focus more on usurpation of power instead of competition.

Overall, Mills speaks of monopoly rights to receive power, which is conditioned by the factors just discussed in terms of influencing, receiving, and managing power. The factors that the theorist considers as preconditions for the possibilities of the bourgeoisie, according to Mills' model, are almost non-existent in our case or are small.

A comparative analysis of the components of the power triangle between the American model and the Georgian model is presented in Table 4:



In conclusion, it should be said that Charles Mills's concept of the triangle of "The Power Elite" on the Georgian model of 1990-2020 differs in many cases from Mills's American reality. Mills, on the example of the American society, slightly underestimates the influence of the church compared to the army. In Georgia, we have a different situation, the church and the army compete in the trust rating, but both the army and the church coexist so that the army is somewhat subordinate to the church in the context of influence. Instead of the separation between the church and the state, Julius Hatschek evaluates the format of subordination as a monarchical attitude, where the Georgia of 2022, which has declared the idea of a democratic state in the constitution, can also be seen paradoxically.

The research of the main trends in the governance of the ruling leaders of Georgia shows that, on the one hand, the ruling elites are in a "war" of power distribution and competition with the church, and on the other hand, the secular rulers cannot create proper trust in the citizens and, for the sake of profitability, political perspective or stability of power, are in a subordinate position. They sometimes find themselves with the religious hierarchy.

Charles Wright Mills also discusses economic factors and notes that large corporations are the main translators of directive decisions in other and even other areas. On the example of Georgia, there is an excessive tendency of financially strong groups or individuals to move into politics and governmental spaces.

Mills also singles out the factor of the power elites, which is different in this context from the example of the USA and Georgia, in terms of how public feedback is shown and processed by the power agencies in Georgia and the USA, if in the USA they are actively working on the reputation of the power elites and public needs, in Georgia, mainly , this space is either perceived as passive and less functional (eg army) or negative (MIA, security, etc.).

Mills discusses the external factors of gaining influence and power in society, wealth, public status and other types of context, however, at the same time, he emphasizes the ability of the American bourgeoisie to create influence and gives the reasons for this, where he emphasizes the absence of individuals in the United States with whom to monopolize positions in the army. There are opportunities, as well as the absence of those elements that prevented the bourgeoisie from enriching and advancing, in terms of these components, Georgia is represented more oppositely, where similar elements are more consolidated, and secular rulers are less variable, unlike the American model.

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Dynamique Urbaine et Litiges Fonciers à Toumodi (Centre-Sud de la Côte d'Ivoire)

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Résumé

Depuis 2013, année de passage l'autoroute du Nord, la ville de Toumodi connaît une évolution remarquable, tant au niveau démographique que spatial. La ville s'étale sur tous les fronts, et phagocyte l'espace rural. Cette dynamique n'est pas sans conséquence sur l'occupation du sol. Cette étude vise à comprendre les effets de la dynamique urbaine sur le foncier. La méthodologie s'appuie sur une observation de terrain, des entretiens semi-structurés réalisés auprès des autorités administratives, coutumières de la ville et sur une enquête par questionnaire. Les résultats révèlent que cette dynamique urbaine se manifeste par une croissance rapide de la population entraînant les besoins en logements. Aussi, Toumodi connaît-elle une croissance rapide induite par une croissance spatiale alimentée par la nécessité de répondre aux besoins en logements d'une population en perpétuelle croissance. La dynamique ainsi observée est perceptible à travers la tâche urbaine qui est passée, de 372 ha en 1989 à 1337,67 ha en 2020, soit un taux d'accroissement moyen annuel 2,7%. La course effrénée pour une propriété foncière en vue d'y bâtir un logement, rime ici avec une importante spéculation qui est souvent source de litiges fonciers. Ces litiges sont plus fréquents dans les quartiers périphériques qui enregistrent 70% des plaintes, contre 25% dans les quartiers péricentraux et 5% les quartiers centraux. Dans un contexte de cohésion sociale prônée par les autorités locales, des mesures

idoines doivent être prises afin de règlementer la transaction foncière en milieu urbain.

Mots-clés: Dynamique urbaine, Litige foncier, Toumodi, Côte d'Ivoire

Urban Dynamics and Land Disputes in Toumodi (Center-South of Côte d'Ivoire)

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Abstract

Since 2013, the town of Toumodi has experienced remarkable development, both demographically and spatially. The city spreads in all directions, covering up the rural area. This dynamics has a significant impact on land occupation. This paper therefore focuses on understanding the effects of urban dynamics on land. The methodology is based on field observation, semi-structured interviews with administrative, customary authorities of the city, and a questionnaire survey. The outcome shows that this urban dynamics is manifested through rapid population growth by increasing housing needs. Toumodi is experiencing rapid growth due to spatial growth of housing needs of the growing population. The dynamic observed is perceptible through the urban task that has shifted from 372 ha in 1989 to 1337,67 ha in 2020, which is an annual average growth rate of 2.7 %. The frantic race for land ownership in order to build a house aligns with a significant speculation, which is often a source of many land disputes. These disputes are more frequent in peripheral districts which record 70% of complaints, compared to 25% in pericentral districts and 5% in central districts. In a context of social cohesion advocated by the local authorities, appropriate measures must be taken in order to regulate land transactions in urban area.

Keywords: Urban dynamic, land dispute, Toumodi, Côte d'Ivoire

Introduction

La Côte d'Ivoire connaît une urbanisation accélérée. Pays le moins urbanisé de l'Afrique de l'Ouest en 1960, elle se présente aujourd'hui dans le peloton des pays les plus urbanisés de la sous-région ouest-africaine (INS, 2014). De 12% en 1960, le taux d'urbanisation est passé successivement à

32% en 1975, 39% en 1988, 43% en 1998 et 52.5% en 2021 (INS, 2021). C'est dire qu'en moins de 40 ans, le taux d'urbanisation a triplé, et deux habitants sur cinq résident en ville.

Pays fortement rural en 1960, la Côte d'Ivoire est donc devenue en moins d'un demi-siècle, un pays presque majoritairement urbanisé. Le nombre de villes de plus de 100 000 habitants est passé de 8 en 1998 à 17 en 2021 (INS, 2021).

Quant à la population urbaine, la Côte d'Ivoire aura réalisé sa transition urbaine entre 1998 et 2021. En effet, 15 428 957 personnes vivent dans les villes contre 13 960 193 (47,5%) en milieu rural.

Depuis 2021, 52,5% de la population ivoirienne est urbanisé (INS, 2021). Cette dynamique urbaine qui caractérise les villes ivoiriennes est en outre perceptible à travers l'étalement spatial et les pressions foncières sur les espaces périurbains et ruraux périphériques.

La ville de Toumodi n'est pas en marge de ces mutations urbaines. En effet, le Recensement Général de la Population et de l'Habitat (RGPH) de 1998 et 2014 révèlent que la population urbaine de la circonscription administrative a augmenté. En 1998, la ville comptait 38677 habitants ; en 2014 cette population passait à 43189 habitants, elle en enregistre en 2021, 88580 habitants (INS, 2021).

La dynamique urbaine observée à Toumodi a en outre une dimension spatiale qui s'observe à travers l'étalement des surfaces bâties. La superficie bâtie est passée de 353,79 hectares en 2014 à 1027, 17 hectares en 2017. Quant au nombre de quartier, il a presque doublé, car passant de 15 en 2017 à 25 en 2021 (INS, 2021).

Dans ce contexte d'accroissement démographique et spatial de la ville de Toumodi, la gestion du foncier urbain devient un problème pour les populations, les autorités administratives et coutumières, au regard de la multiplication des litiges fonciers. Comment la dynamique urbaine engendret-elle des litiges fonciers dans la ville de Toumodi ? Cette étude soulève le problème des litiges fonciers liés à la dynamique urbaine. Elle vise à comprendre les effets de la dynamique urbaine sur le foncier urbain à Toumodi. De façon spécifique, il s'agit de caractériser la dynamique urbaine ensuite, faire l'état des lieux des litiges fonciers, enfin déterminer les facteurs explicatifs des litiges fonciers.

1- Méthodes

Quatre méthodes de collecte de données ont été utilisées : la recherche documentaire, des entretiens semi-structurés effectués auprès des autorités administratives et coutumières, une enquête par questionnaire et l'observation de terrain.

La recherche documentaire a porté sur des ouvrages qui traitent de l'urbanisation en général et de la dynamique urbaine en particulier. Ce qui a permis d'avoir un aperçu général sur la situation de la dynamique urbaine, des problèmes fonciers et les typologies des litiges fonciers. Ces différents ouvrages ont permis d'appréhender la dynamique urbaine et les litiges fonciers.

Les entretiens ont consisté à recueillir auprès des autorités administratives en occurrence l'Institut National de la Statistique (INS, 2014), la direction régionale du Ministère de la Construction, du Logement, de l'Assainissement et de l'Urbanisme (MCLAU), la Mairie, le tribunal de Toumodi et les chefs coutumiers et communautaires des informations relatives aux effets de la dynamique urbaine sur le foncier et les litiges enregistrés. Les données recueillies ont fait l'objet d'une analyse de contenu, suivie de recoupage d'informations.

Quant à l'enquête par questionnaire, elle s'est faite auprès de 148 chefs de ménages ayants rencontrés des litiges fonciers, proportionnellement dans les 15 sur 25 quartiers que compte la ville. Le choix raisonné a été utilisé pour définir l'échantillon des personnes à interroger. Le nombre de ménages a été défini par échantillonnage à partir d'une base de sondage issue du Recensement Général de la Population et de l'Habitat de 2014 (RGPH, 2014). Ainsi un total de 148 identifiés ayants connu des litiges fonciers sont enregistrés dans le Tableau 1:

Tableau 1. Menages ayant connus un litige foncier

Type de litiges fonciers urbains	Ménages ayants enregistrés un litige foncier	Proportion
La vente de lots à plusieurs acquéreurs	104	70%
Litige foncier de lotissement non approuvés	22	15%
Litige foncier liés au morcellement de terrain	15	10%
Litige foncier entre le propriétaire terrien et le lotisseur	7	5%
Total	148	100%

Source : INS, 2014

Les données issues de ladite enquête ont été traitées avec le logiciel SPSS pour générer des tableaux et Excel pour les illustrations graphiques.

L'observation de terrain a permis de recueillir des informations sur les litiges fonciers ayant cours ou ayant été constatés dans la ville de Toumodi. Une grille d'observation a été utilisée à cet effet pour caractériser la dynamique urbaine et les types de litiges fonciers engendrés par cette dynamique urbaine.

La situation géographique de l'ensemble des acteurs interrogés a été géoréférencée à l'aide d'un GPS et exportées dans le logiciel ARGIS 10.2.1

pour conception des cartes de localisation et thématiques. Cette approche a été utile pour mesurer l'impact de la dynamique urbaine sur le foncier dans la ville de Toumodi.

Les travaux de terrain se sont déroulés dans 15 quartiers de l'espace d'étude (Figure 1).

Située au Centre de la Côte d'Ivoire et à 200 Km d'Abidjan la capitale économique et à 34 Km de Yamoussoukro la capitale politique, la ville de Toumodi est traversée par la route nationale A3 et délimitée dans sa partie ouest par l'autoroute du Nord.

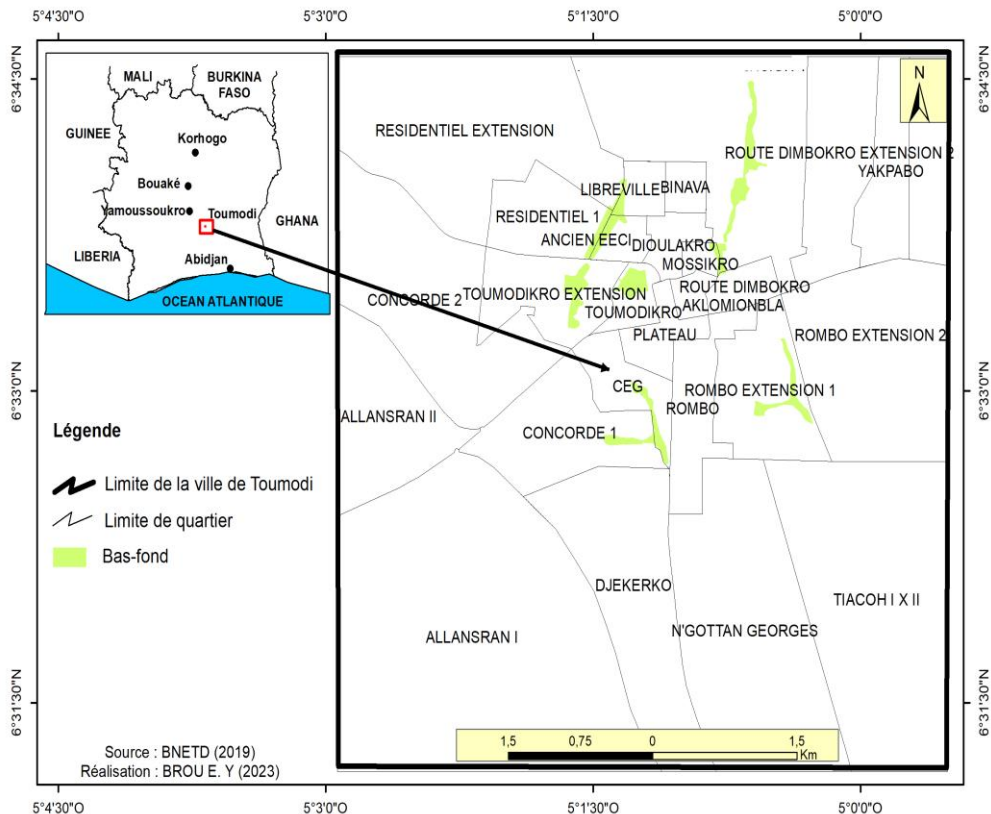


Figure 1 . Localisation de la ville de Toumodi

2- Resultats

2.1- Caractéristiques de la dynamique urbaine de la ville de Toumodi

- Une extension spatiale rapide de la ville

Toumodi est une bourgade où l'urbanisation a commencé à prendre effet au milieu du XIX^{ème} siècle. Elle était un carrefour de pistes, conduisant l'une vers Tiassalé et les ports de traites de la côte, l'autre vers Bouaké et les

empire du Nord, la troisième vers les filons aurifères de Kokumbo, à une trentaine de kilomètres vers l'Ouest (Bettignies, 1968).

Le développement de Toumodi a aussi bénéficié des effets de l'urbanisation, corrélés à sa fonction administrative de chef-lieu de département et sa position de carrefour sur les routes A3 et A4 (Kouacou, 2019). Tout ceci a eu un impact considérable sur l'évolution progressive de sa tâche urbaine (Figure 2).

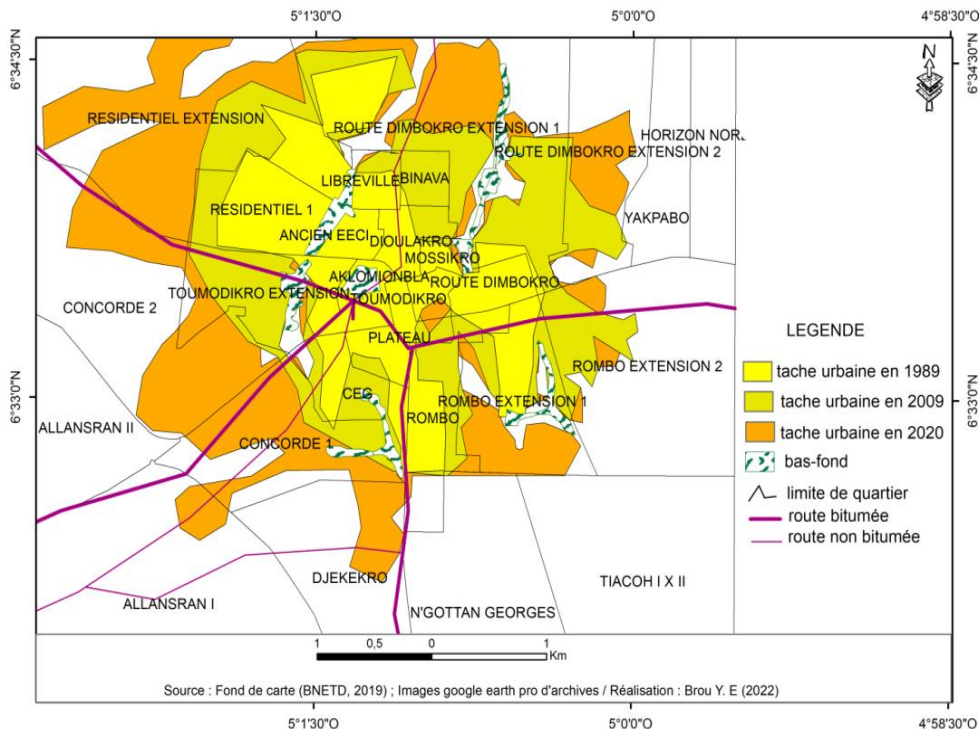


Figure 2. Tâche urbaine de Toumodi de 1989 à 2020

La Figure 2 montre qu'en 1989, la superficie de la tâche urbaine était de 372 hectares. En 2009, cette tâche est passée à 802 hectares, soit une hausse de 430 hectares. En 2020, la superficie de la tâche urbaine devient importante. Elle atteint 1337,67 hectares c'est-à-dire une augmentation de 535,67 hectares. Ainsi, de 1989 à 2020, soit en 31 ans, le volume de la tâche urbaine a augmenté de 965,67 hectares et le nombre de quartier est passé de 15 à 25 quartiers sur la période allant de 2017 à 2020 (INS, 2014). Tout ceci est le fruit d'importants projets de lotissement dont 63 viabilisés, 30 partiellement viabilisés et 15 non viabilisés (Dclaut, 2021). Selon la Direction de la Construction du Logement, de l'Assainissement et de l'Urbanisme de Toumodi, les lotissements viabilisés se localisent au Centre-ville et certains quartiers péri-centraux (Agbahansou, CEG, Commerce, Concorde I, Concorde II, Dioulakro, Résidentiel extension, Toumodi Résidentiel, Résidentiel extension route Yamoussoukro, Rambo

extension, Rambo extension II, Rambo, Route dimbokro extension I, Route dimbokro extension II , Toumodikro, Toumodikro extension, Zahakro et Comekro...).

Les lotissements partiellement viabilisés et les lotissements non viabilisés sont au nombre de 45, et situés dans la périphérie de la ville (Agbeli-djekro, Agbeli-djekro extension, behibro, binava extension Nord, Concorde autoroute, Yakpabo résidentiel, Quartier Akpo, Allasran, Rombo extension III...).

En somme, la vente des lots issus de ces projets de lotissement et le boom immobilier qui s'en est suivi, ont contribué à la dynamique spatiale de la ville de Toumodi.

-Une démographie accélérée

Les données des différents recensements de la population montrent que la ville de Toumodi a connu une croissance rapide de sa population de 1964 à 2021. La Figure 3 montre l'évolution de cette population.

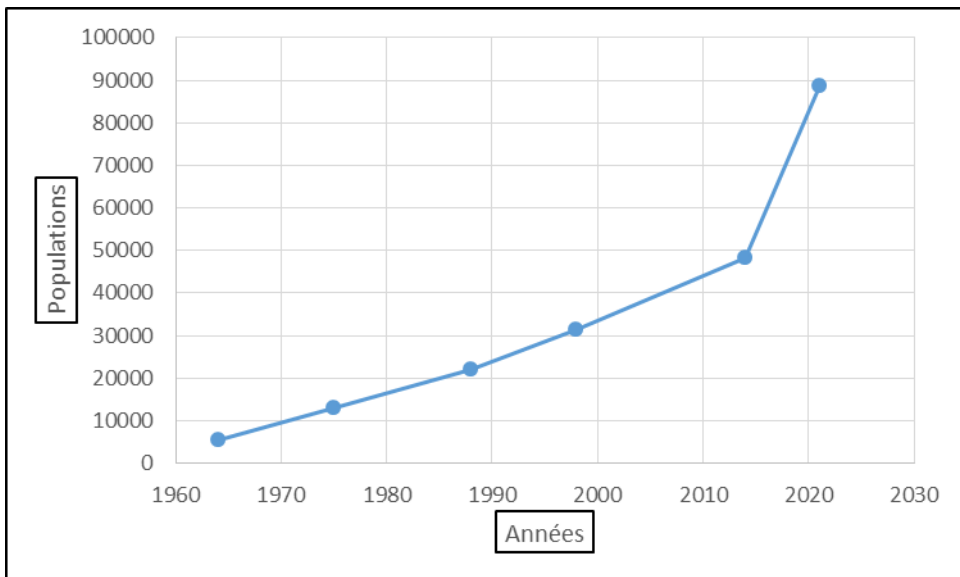


Figure 3. Evolution de la population de Toumodi de 1964 à 2021
Source : INS-RGPH, 1964-1975-1988-1998-2014,2021

Il ressort des différents recensements effectués entre 1964 et 2014 que la croissance de la population est accélérée à Toumodi. En effet, de 5.557 habitants en 1964, la population de Toumodi est passée à 12.983 habitants en 1975. En 11 ans, cette population a doublé.

D'une population de 12.983 habitants en 1975, elle est passée à 22.114 habitants en 1988, puis à 31.551 habitants en 1998 pour atteindre 43.189 habitants en 2014. Cette population est passée en 2021 à 88.580 habitants.

Les causes de cette poussée démographique sont d'ordre économique et social. En effet, Toumodi par sa position géographique, est une ville d'accès facile. De plus, l'émergence de certaines activités économiques telles que l'orpaillage clandestin et l'élevage favorisent la migration des ressortissants des pays voisins tels que le Burkina, le Mali, la Guinée. Enfin, certains migrants des pays voisins (13%) et ceux des migrations internes contribuent à la croissance démographique de la ville de Toumodi. La crise politico-militaire de 2002 à 2011 a eu un impact au niveau démographique avec l'afflux des déplacés de guerre.

Face à cette évolution, le besoin de se loger devient de plus en plus important, ce qui exerce une pression foncière sur l'espace périurbain.

-Une croissance économique

Les activités économiques qui font vivre la population urbaine de Toumodi peuvent être regroupées au sein de deux grands secteurs d'activités, à savoir le secteur secondaire et le secteur tertiaire.

Le secteur secondaire est constitué des unités industrielles qui se limitent à deux (2) sociétés de transformation du bois (scieries), une (1) société de fabrication béton, six (6) boulangeries, vingt-deux moulins.

Le secteur tertiaire, regroupe essentiellement les activités du commerce, du transport et de l'artisanat. L'activité commerciale est la plus importante du fait de la proximité de la ville de l'autoroute et de situation stratégique d'une ville carrefour.

Les activités du secteur tertiaire dans la ville se résument au commerce et service. Ce sont les activités les plus pratiquées notamment la couture (324), la coiffure (201), les boutiques de Mauritaniens (136), les maquis et restaurants (83), les menuisiers (63), la vente de téléphones (57), la maintenance téléphones et divers (52) et la mécanique (46) etc. Au total, le tableau révèle 1564 activités du secteur tertiaire. La prédominance de ces activités (70%) sont du domaine du commerce. Ces activités participent à la vie économique de la ville. Elles permettent à ceux qui les pratiquent d'être autonome.

Dans la ville de Toumodi, la prépondérance du petit commerce peut être classée dans le secteur informel. On entend par secteur informel, les activités qui échappent à un contrôle et une régulation effective de l'Etat. L'on peut ranger dans le secteur informel, les ventes de produits alimentaires (légumes, fruits, etc.), la vente de nourriture (aloco, poisson frit, attiéké, restaurant-maquis etc.), des quincailleries, les boutiques de Mauritaniens, les vulcanisateurs, les garages, les maquis, la vente de vêtements de friperies, les kiosques, etc. Ces activités occupent la plus grande partie de la population active de la ville et sont détenues par les étrangers africains (Nigériens, Mauritaniens, Maliens, Nigériens) et quelques Ivoiriens.

Le grand commerce regroupe les commerces et services pratiqués par les grandes sociétés commerciales. A Toumodi, Il regroupe les supermarchés, les stations-services et les sociétés de télécommunication. A cet effet, la ville compte quatre (04) stations-services dont deux (02) stations de la société pétrolière Shell, une (01) station de la société pétrolière Total et la dernière de la société Pétro Ivoire. En outre, la ville compte également cinq (05) supermarchés dont deux (02) de la société de demi-gros et détails CDCI, un supermarché de sococe, deux (02) de la société de gros et demi-gros BONPRIX et enfin un supermarché de demi-gros et détails anonyme. Concernant la télécommunication, la ville dispose de seize (16) équipements de réseaux dont deux (02) agences Moov, deux (02) agences Orange et une (01) agence MTN. Les huit (08) équipements de réseau restant sont des antennes.

Le gros commerce emploie contrairement au petit, une minorité de la population active de la ville de Toumodi. Il est détenu par les Libanais et les firmes multinationales et nationales. Néanmoins, il représente un grand enjeu économique pour le développement.

2.2- Etat des lieux des litiges fonciers

-Une croissance des litiges liées au foncier urbain

La dynamique démographique et spatiale renforce le besoin d'acquérir un terrain dans le but de se loger. Cette situation crée des litiges en constante évolution dans la ville, du fait des spéculations qui jalonnent les transactions. Les litiges fonciers s'observent enfin à travers les plaintes enregistrées auprès du tribunal de Toumodi de 2018 à 2020 (Tableau 1). A Toumodi, selon nos enquêtes de terrain, en milieu urbain lorsqu'un acquéreur est victime d'une anarque au niveau foncier. D'abord il cherche une suite favorable avec le propriétaire terrien ou le vendeur. S'il n'y a pas de solution, il saisit le chef du village de Toumodikro. Ensuite le chef à travers ses notables trouvent une suite favorable à l'acquéreur. Dans le cas où l'acquéreur n'est pas satisfait, il porte plainte contre le vendeur ou le propriétaire terrien. Au niveau de la Mairie, du commissariat, la sous-préfecture et les chefs traditionnels ces litiges se règlent à l'amiable donc il n'existe pas de données. C'est seulement à la justice les données sur les litiges fonciers sont disponibles.

Tableau 2. Nombre de plaintes liées au foncier de 2018 à 2020 dans la ville de Toumodi

Années	Effectif total de plaintes enregistrées	Effectif total de plaintes liées au foncier	Pourcentages %
2018	112	37	33,03
2019	130	55	42,30
2020	250	157	48,80
Total	492	249	50,60

Source : Tribunal de Toumodi, août 2022

En 2018, le nombre de plaintes liées au foncier urbain à Toumodi était de 37. Ce nombre va augmenter en 2019, passant à 55 plaintes. En 2020, le nombre de plainte augmente à une allure vertigineuse (157 plaintes), environ trois fois celles enregistrées en 2019. Leur nombre croissant pouvait s'expliquer par le développement des aménagements fonciers devenus source de revenu des propriétaires terriens. Cela s'explique aussi un règlement équitable par la justice en appliquant les textes relatifs en matière de conflit foncier urbain.

Les litiges fonciers sont donc une réalité vécue à Toumodi, et l'importance desdits conflits varient d'un quartier à un autre. En effet, les quartiers périphériques (où la tâche urbaine est prédominante (1337,67 hectares et récente) captent 70% des litiges enregistrés. Cette situation s'explique par le fait que l'espace périurbain abrite les nouveaux lotissements et la demande de lots y est plus forte. L'inadéquation entre l'offre et la demande d'acquisition de lots d'une population sans cesse croissante pousse certains propriétaires à vendre un même lot à plusieurs personnes.

Au niveau de l'espace intermédiaire compris entre le centre-ville et la périphérie, la tâche urbaine est relativement moins importantes (802 hectares), les litiges aussi (25%). Les cas de litiges enregistrés ici proviennent pour la plupart de délimitation des lots, de la vente des lots et de l'attribution des lots à plusieurs acquéreurs. Enfin, dans le centre-ville, la tâche urbaine est faible (372 hectares). Cet espace urbain enregistre le taux le plus bas des litiges fonciers (5%). Les conflits liés aux retraits des lots par les pouvoirs publics, surtout lorsque lesdits lots tardent à être mis en valeur après plusieurs années. La résolution des litiges s'effectue suivant trois niveaux de gouvernance (formelle et informelle). Il s'agit de la chefferie traditionnelle, de l'autorité administrative, et judiciaire. Chacune de ces institutions dans son domaine de compétence contribue à la résolution des litiges fonciers. Les litiges fonciers constituent une faible proportion des dossiers traités par le système légal formel.

-Répartition spatiale de litiges fonciers

Le risque de litiges fonciers dans la ville de Toumodi se présente à trois niveaux que sont le niveau faible, le niveau moyen et le niveau élevé. Le niveau de risque est déterminé en croisant l'aléa, en l'occurrence les conflits (en tenant des comptes de la fréquence des conflits dans le temps et dans l'espace) et les enjeux (humains et matériels). Ici, les enjeux sont représentés par la valeur monétaire de l'immobilier ou des lots, le niveau d'assainissement du site, le niveau de demande ou d'achat de terrain dans le secteur. Là où la fréquence des conflits est importante et que les enjeux humains sont énormes, le risque est élevé. Là où l'occurrence des conflits est importante et que les enjeux humains sont moins importants, le risque est moyen. Là où

l'occurrence des conflits est importante et que les enjeux humains sont moins faibles, le risque est faible (Figure 4).

Il ressort de la Figure 4 qu'au centre-ville le niveau de risque est faible. En effet, ce niveau bas de litiges est du fait que l'espace est déjà bâti. Aussi, il est difficile de tromper la vigilance d'un acquéreur pour lui vendre des lots appartenant à une tierce personne. Concernant le niveau de litiges fonciers moyen, ici, l'espace bâti est un peu éloigné du centre-ville. Il existe encore des espaces non bâtis qui pourraient intéresser les acquéreurs de lots. La demande de lots est moins. Le troisième niveau élevé de risque est l'espace situé loin du centre-ville. Le milieu où certains propriétaires ou démarcheurs trompent la vigilance des acquéreurs. Ainsi, on assiste à la vente des lots à deux ou plusieurs personnes créant des litiges. Certains acquéreurs profitent de l'absence de leur voisin pour étendre les limites du bornage initial de leur lot et cela peut occasionner des conflits avec le détenteur du lot squatté. Ce milieu à haut risque à Toumodi se localise dans les quartiers périphériques.

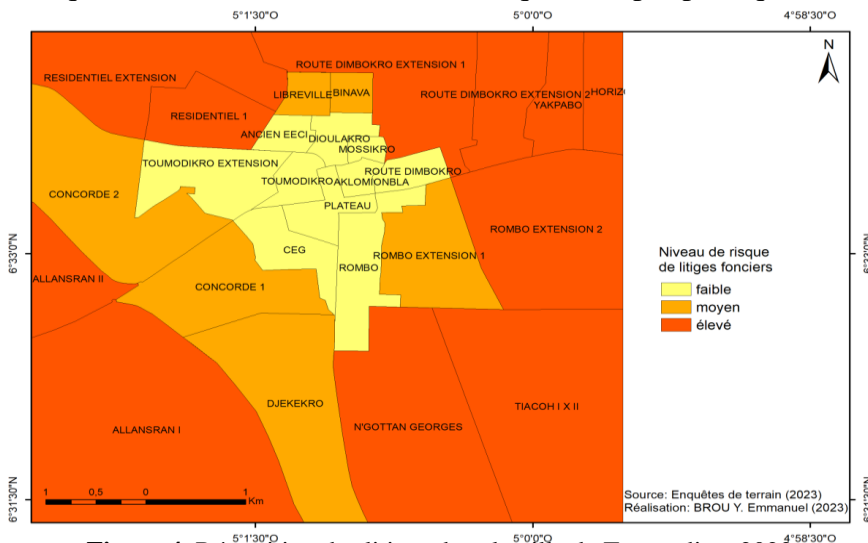


Figure 4. Répartition des litiges dans la ville de Toumodi en 2022

- Les types de litiges fonciers

Les litiges fonciers s'observent sur les aires d'extension de la ville. Ils sont plus fréquents au Nord et au Sud de la ville avec des proportions diverses et de types différents (Figure 5).

Dans la ville de Toumodi, selon nos enquêtes de terrain, il ressort que 104 personnes ont connu un litige foncier lié à la vente de lots à plusieurs personnes avec une proportion de 70%. Aussi, signalons que 22 personnes sont victimes de litiges liés au lotissement non approuvés soit 15%. En outre 15 personnes ont été victime de litige entre le propriétaire terrien et le lotisseur

(5%) et 7 personnes victimes de litiges fonciers liés au morcellement de terrain(10%).

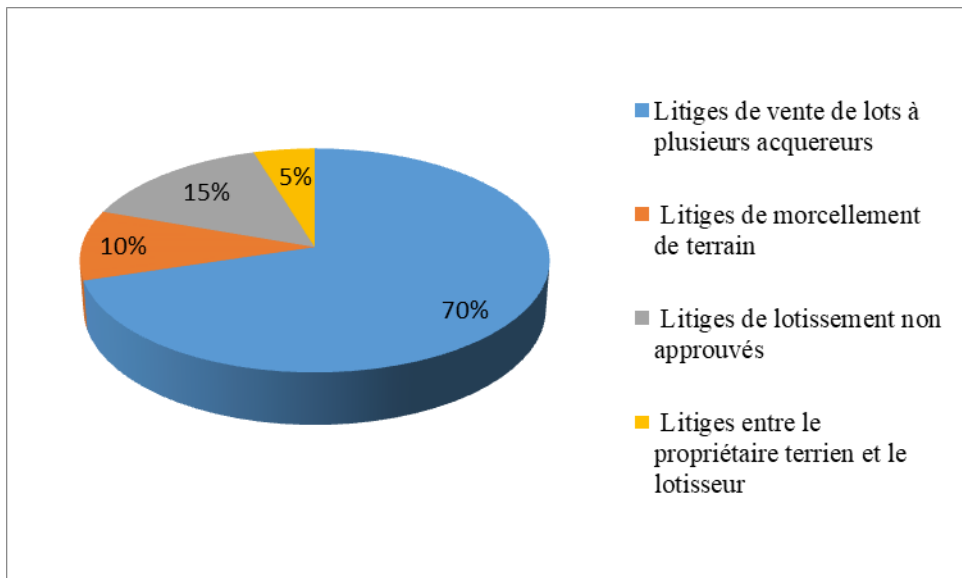


Figure 5 . La répartition des litiges fonciers urbains à Toumodi

Source : Nos enquêtes, 2022

L'analyse de la Figure 5 montre que les litiges naissant de la vente de lots à plusieurs personnes (double ou multiples attribution) sont prépondérants (70%). Ces litiges sont liés à la vente clandestine de propriétés foncières familiales par certains membres des dites familles. Ce problème est surtout régulier dans les lotissements villageois. Il y a aussi, la vente d'un même lot à plusieurs acquéreurs, avec délivrance d'une lettre d'attribution provisoire et une attestation de vente.

L'ordonnance n°2013-481 du 02 juillet 2013 fixant les règles d'acquisition de la propriété des terrains urbains dispose en son article 2 que « toute occupation d'un terrain urbain doit être justifiée par la possession d'un titre de concession définitive délivré par le Ministère chargé de la Construction et de l'Urbanisme ». Cette même Ordonnance stipule en son article 5 que « aucun terrain ne peut faire l'objet d'un Arrêté de Concession Définitive, s'il n'est issu d'un lotissement approuvé par le Ministère chargé de la Construction et de l'Urbanisme et dont le périmètre a été préalablement immatriculé ». Il ressort clairement de cette ordonnance que tout lotissement doit être approuvé avant la mise en valeur des lots. A Toumodi, 15% des lotissements n'ont pas été approuvés avant la délivrance de la lettre d'attribution ou attestation villageoise aux acquéreurs. C'est pourquoi, sur le même espace une lettre d'attribution ou une attestation villageoise est

attribuée à deux ou trois acquéreurs selon nos enquêtes. Dans ces conditions, les litiges sont inévitables. Ces litiges naissent d'abord entre les prétendus détenteurs de droits fonciers coutumiers qui ont mis les parcelles à la disposition des opérateurs pour les lotissements. Ensuite, les conflits existent également entre les opérateurs en charge des lotissements. Enfin, entre les acquéreurs des terrains et détenteurs des lettres d'attribution existent aussi des litiges.

Les litiges de morcellement ont un taux de 10%. Il s'agit ici d'un non-respect des conventions, du double morcellement et du chevauchement. Ces litiges entre le propriétaire terrien et le lotisseur sont perceptibles avec une proportion de 5%. D'abord, les litiges naissent des irrégularités qui constituent des freins à l'approbation du lotissement du site par le Ministère en charge de la construction. Ensuite, les propriétaires de ces parcelles de terrain sous-dimensionnées ne peuvent pas avoir accès aux documents administratifs. Ils ne peuvent donc pas consolider leurs droits sur ces parcelles et avoir accès au marché hypothécaire. Enfin, l'absence de documents fonciers administratifs sur la parcelle favorise la remise en cause de vente ou des doubles ventes.

2.3. Facteurs explicatifs des litiges fonciers

L'impact de la crise politico-militaire de 2002-2011 à l'origine de l'afflux des déplacés de guerre à Toumodi va connaître une hausse en besoin de logements entraînant des lotissements. En plus l'impact de l'autoroute, car aujourd'hui, les lotissements s'orientent vers l'autoroute et les lots vers cette direction sont les plus chers.

La gestion du foncier dans la commune de Toumodi est soumise à un double régime, le droit d'acquisition coutumier et le droit d'acquisition moderne.

En effet, le droit d'acquisition coutumier est géré par les propriétaires terriens Baoulé. Tous les domaines villageois relèvent de la gestion coutumière des chefferies. Mais, lorsque l'État s'acquitte de la purge des droits coutumiers sur une portion de terre bien délimitée et procède à son lotissement, celle-ci revêt le statut du droit d'acquisition moderne et est conséquemment administrée par le Ministère en charge de la construction ou les autorités municipales. Cette forme de gestion foncière, doublée du manque de transparence dans les transactions sont sources de conflits ouverts entre les propriétaires terriens Baoulé qui revendiquent des droits sur des terres relativement éloignées de leurs villages respectifs, les acquéreurs privés et l'Administration. Aussi, la méconnaissance de la législation foncière, la lenteur administrative dans l'obtention des titres de propriété pour faciliter les transactions et la pression foncière sont-elles les causes des litiges fonciers dans la ville de Toumodi.

3- Discussion

3.1. Toumodi confrontée à l'étalement urbain

La dynamique urbaine de Toumodi est caractérisée par une extension spatiale induite par une démographie galopante. Elle découle aussi de l'évolution des équipements et infrastructures au sein de la ville et à proximité. L'étude de Tuo et *al.* (2016) sur *Dynamique urbaine et assainissement à Dabou (Sud de la Côte d'Ivoire)* confirment cette idée. En effet, les éléments de la dynamique urbaine de la ville de Dabou s'observent à travers la croissance démographique, le développement économique et la croissance spatiale de la ville. En outre, les travaux de Kouakou (2017) montrent que la ville de Bouaké connaît une dynamique urbaine marquée par un poids démographique significatif et une croissance spatiale rapide. Ces résultats corroborent ceux soulignés dans la ville de Toumodi.

Les travaux de Doho et *al.* (2020) évoquent les facteurs de la dynamique urbaine. Ainsi, ils soulignent que l'étalement de la ville de Divo s'est fait sous l'effet de trois principaux facteurs. Ce sont notamment les facteurs géographiques, économiques et ceux en rapport avec la croissance démographique.

3.2. Dynamique urbaine à l'origine des litiges fonciers

L'étude a relevé que la dynamique urbaine a des impacts sur la gestion foncière. Cette situation entraîne les litiges fonciers dans la ville de Toumodi. Ces effets sont directement liés aux caractéristiques de la dynamique urbaine et aux litiges fonciers à Toumodi. Au delà des conflits fonciers, la dynamique urbaine est un facteur de développement les résultats liés aux effets de la dynamique urbaine soulignés par Nassori (2017) confirment ces faits. Les effets de la dynamique urbaine sont la croissance économique, le développement des infrastructures sanitaires et scolaires. Ces effets positifs soulignent l'importance dans ces types d'infrastructures comme indicateurs d'amélioration de la qualité de vie. Cependant, d'autres facteurs tels que la présence d'infrastructures routières et le nombre d'établissements industriels dans la région affectent négativement la croissance urbaine. Les infrastructures routières ont vocation de faciliter la mobilité de la population et des biens, en leur permettant de vivre dans des milieux moins urbains mais pouvant facilement accéder aux milieux urbains. De plus, l'étude de Diby (2013) sur *l'impact de la politique de développement urbain sur l'environnement à Abidjan*, indique que la démographie accélérée occasionne de nombreux problèmes de développement. La croissance démographique entraîne une gestion et un mode d'occupation de l'espace mal maîtrisé par les autorités locales. Les travaux de Oura (2019) attestent que l'étalement urbaine engendre les conflits fonciers. L'étude a montré que l'étalement urbain se

manifeste à travers le croît démographique rapide et l'étalement de l'espace urbain. Dans les villes, les lotissements sont effectués à des fins d'étalement urbain. Les désaccords autour de la gestion de ces lots provoquent les conflits fonciers.

3.3. Le développement des litiges fonciers

Les résultats de l'étude montrent qu'il existe les litiges fonciers entre la plupart des acquéreurs de lots et les propriétaires terrains, entre deux acquéreurs, et deux propriétaires terriens dans la ville de Toumodi. Ces résultats sont similaires à ceux de Di Roberto (2021) qui révèlent que le développement des achats comme dispositif d'accès à la terre est susceptible d'engendrer des tensions ou litiges. Cela sous-entend que les transactions foncières entraînent les litiges fonciers. Cette situation a été aussi observée à Divo où les conflits naissent entre village/village, propriétaires/acquéreurs, acquéreurs/acquéreurs et les conflits issus des lotissements familiaux (Doho et *al.*, 2020). Cela se perçoit dans tous les quartiers de la ville. Les résultats rejoignent ceux de Kouakou et *al.* (2015) qui soulignent que les conflits fonciers à Korhogo, sont de deux ordres majeurs conflits entre propriétaires terriens débouchant sur le non-respect des normes de lotissement, et conflits entre acquéreurs de terrains. Tous ces facteurs précités montrent que la croissance urbaine est source de conflits fonciers.

Conclusion

Au terme de cette étude, il ressort que la ville de Toumodi connaît une dynamique urbaine liée à plusieurs facteurs. Entre autres, les lotissements et les achats de lots. Cette dynamique urbaine est perceptible à travers les espaces périphériques de la ville. L'accélération des activités économiques de diverses natures sont d'autres facteurs de cette dynamique qui dans l'ensemble ont engendré la croissance démographique et l'extension spatiale. Elle a occasionné une pression foncière et la multiplication des litiges fonciers. Dans la ville de Toumodi, les espaces périphériques regorgent 15 lotissements non viabilisés. Ces espaces périphériques et péri-centraux sont sources de conflits. Ils enregistrent respectivement 70% et 25%. Au nombre des effets néfastes de la dynamique urbaine sur le risque du litige foncier, s'inscrit la fragilisation du tissu social avec pour corollaire un risque important d'exposition à l'appropriation du foncier. Il est donc important de trouver des solutions à cette situation et cela nécessite l'implication des institutions politiques qui doivent non seulement sécuriser, mais aussi rendre compatible les droits fonciers.

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Discourse Style of Nigerian Coup Plotters

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Abstract

This paper focuses on investigating selected speeches of Nigerian coup plotters, with a view to ascertaining their discourse styles. The paper speculates that the broadcast idiolect revolves around propaganda, polemics, and discursive styles, including the fox, Tartuffe or tortoise style, where they intimidate their opponents and the civilian populace into submission. This paper, by its nature, involves both qualitative and quantitative kind of research as it relies heavily on observation and library research. The military class succeeded in intervention mission but failed abysmally in the thrust of salvation. Their selfish quest made them neocolonialists in military garb. This paper, therefore, argues that their dismal failure in political governance of their Motherland ends up leaving the masses much poorer and more disillusioned than they had been under the corrupt civilian government. The unmitigated disaster the military precipitated in political governance constrained Nigerian literary patriots to publish social satires – in all genres - amidst propaganda. This implies that they reprehensively indict the military villains and continuously call for a revolution from the disconsolate Nigerians.

Keywords: Stylistic features, propaganda, military interregnum, social satire, breach of logical rules

Introduction

Nigeria won its Independence from Imperial Great Britain on a platter of gold on October 1, 1960 and on October 1, 1963 it became a Republic. Nigerians were full of hopes and optimism about the political goodies the fledging Republic would bring to them. However, shortly after Independence was heralded, expectations got soar as a result of mismanagement of the gains of democracy. This was due to the increasing incidence of nepotism, tribalism, election rigging, doctoring of election results, arson and looting, high profile corruption, and executive lawlessness among the political elite.

Consequently, for more than two decades, the military junta dominated the political landscape of Nigeria. During this time, they informed Nigerians of their sustained takeover of government from the discredited civilian or military predecessors. As they ruled through the barrel of the guns, they outsmarted the civilian politicians in corruption, executive lawlessness, culture of impunity, and reckless irresponsibility.

Being the giant of Africa in terms of population, galaxy of human talent, and fecundity of natural resources, Nigeria should be a great asset to its citizens. The sad political situation is rather a reflection of what is found in the continent. The evidence of this assertion can be confirmed in the corpora of literary works of many African literary writers cutting across Anglophone, Francophone, and Lusophone (Literature in Portuguese) literatures. For instance, Chinua Achebe's works of *A Man of the People*, *Anthills of the Savannah*, and *The Trouble with Nigeria*; Ayi Kwei Arma's *The Beautiful Ones Are Not Yet Born* (from the West African sub-region); and Ngugi wa Thiong O's *Petals of Blood* (from East Africa). The literatures of writers from South Africa centered on protest against Apartheid. On the other hand, Lusophone literatures from the five Portuguese-speaking nations of Africa (Angola, Mozambique, Carpe-Verde, Sao Tome, and Principe) as well as Guinea Bissau protested against the shackles of colonialism. Some of the Portuguese literary writers include Rui de Noronha and Joao Dia (Mozambicans), Sum Marky (Sao Tome), Fernando Castro Soromenho Agostiniho Neto, Aires de Almeida Santos, Alexandre Daskalos, etc.

At this point, a brief examination of some keywords of the paper is necessary as it provides better understanding of the broadcast language style of the coup plotters. The lexical and grammatical categories are stylistic features, those of propaganda, social satire, breach of logical rules, etc.

Stylistic Features

Style domiciles in the language. The uniqueness of style is in its idiosyncratic nature to an individual. Interestingly, no two persons, not even identical twins, have exactly the same style. Style, therefore, is a hallmark of man. Accordingly, Leech and Short (9) assert that 'STYLE'... refers to the

way in which language is used in a given context, by a given person, for a given purpose....” They welcome the distinction which Saussure (1959, p.9, 13) made between his lexical creations of *langue* and *parole*. However, *langue* is the code or system of rules common to speakers of a language, while *parole* is the particular use of this system or selections from this system which speakers or writers make on that occasion. Saussure’s lexical inventions are approximate to Chomsky’s (11) diction, which he prefaces as *competence and performance*. Subsequently, he summarizes same as indices of grammaticality.

When it comes to style and its features, Fowler’s (1966: 23) recipe of this term is extracted. According to him, the style of a literary text is the sum total of the features of the phenomenon which occurs as variables, not constants. He states that:

Convergence of stylistic features could of course be present in an utterance. It is, in itself, nothing special. At any point in a text, there is stratification of form and patterns at several levels working simultaneously. The style of a text is the totality of these patterns, especially patterns which are variables, not constants. We can compare styles as the sums of several stylistic features, taking each in turn as an individual feature for comparison.

According to Anyachonkeya (2005, p.17), the features of style include “the cinematic style, the discursive style, the legalese style, the mass communication style, the epistolary style, the military style, the pedagogic style, the polemic style, the propaganda style, the memoir style, the question style, socratic or jurisprudence style, and the reality style.”

In addition to these style features captured by Anyachonkeya, there is yet a unique and innovative style called the *fox, Tartuffe* or *tortoise* style. This was amply harnessed by the coup plotters in their broadcast speeches. The *Tartuffe* style domiciles in the ideation stage of communication. It is, indeed, a linguistic feature where language comprises of spoken, written, and paralanguage or nonverbal cue. The style encases such unwholesome psychological constructs as deceit, trickery, corruption, graft, selfishness, and Machiavellian pursuit. This implies that they are actually a bunch of negative values. The style is silent in all the agenda of the actors but is manifest everywhere through their programme implementation. Furthermore, the *Tartuffe* style is veiled since it situates in the milieu of ideation stage of communication. It manifests itself clearly when it is overt in the actions and thought processes of the character or person. In other words, the fox or

Tartuffe style is unveiled in the actions of the individual. Therefore, this paper focuses on how the Nigerian military coup plotters allowed the tortoise style to betray them in what they did and said or what other people said about them. Conversely, this is contrary to the context of their text broadcast and the execution of their policies or political agenda or even what other sources (nonparticipant observers) say about them. In effect, the Tartuffe style is a hidden agenda (more or less) of the gladiators.

This style is called feature fox, Tartuffe or tortoise, and it represents shades of motifs found in the oral literature of certain land and clime. Anyachonkeya (1999, p.25) captures these motifs in his poetics: “If a Ghanaian tricks you/Show him a spider/If a Senegalese tricks you/Show him a rabbit/ If a European tricks you/Show him a fox/If an Igbo tricks you/Show him a tortoise....”. This style feature and those cited in Anyachonkeya thus represent “the totality of patterns, which are variables, not constants”, as aptly described by Fowler.

Discourse Style of Propaganda

As shown above, propaganda is a discourse style. Propaganda had a pleasant history until it acquired a controversial meaning today. The word dates back to 1622, when Pope Gregory XV set up a committee for the propagation of Catholic faith. The Committee, *Congregatio de propaganda fidei*, now APF – Association for the Propagation of the Faith was charged with the responsibility of overseeing foreign missions and the dissemination of the faith.

Today, however, the word has acquired controversial connotation to mean an “organized circulation by a political group, etc., of doctrine, information, misinformation, rumour or opinion, intended to bring about reform, etc...” Robinson (2007, p.1110). To some, propaganda means indoctrination, promotion or inculcation (Geddes & Grosset, 2007, p.471).

Propaganda is amply used in politics among advertising agencies or organizations, religious bodies, and others. Information passed as propaganda may be true or false. When it is true, it is positive or beneficial to the society. Nonetheless, when it is false, it is negative or harmful to the populace. The military coup plotters used propaganda a great deal in a negative way to discredit their predecessors. This was done to justify their ascendancy in power through a putsch, in a seeming mission of salvation. In their harmful use of propaganda, they flagrantly violate logical principles and indulge in tremendous commission of logical fallacies. In this way, they negate with impunity fundamental rules or principles of logic, such as honesty, knowledge/awareness of the rules of logic, avoidance of emotional reaction and prejudice, avoidance of common errors in logic, and adequate consideration of problems.

At this point, some of the broadcast speeches of coup plotters in the history of military intervention in the Nigerian political governance are examined.

Broadcast Coup Plot Speech of Lt. Col. Yakubu Gowon, August 1, 1966

My Fellow Countrymen,

The year, 1966, has certainly been a fateful year for our beloved country,

Nigeria. I have been brought to the position today of having to shoulder the grave responsibilities of this country with the consent of the majority of the Armed Forces and members of the Supreme Military Council, as a result of the unfortunate incidents that occurred in the early morning of July 29, 1966.

However, before I dwell on the said issue of July 29, 1966, I would like to recall to you the sad and unfortunate incident of July 15, 1966, which bears relevance. According to certain well-known facts, which have so far not been disclosed to the nation and world, the country was plunged into a national disaster by the grave and unfortunate action taken by a section of the Army against the public. By this I mean that a group of officers in conjunction with certain civilians, decided to overthrow the legal government of the day, but their efforts were thwarted by the inscrutable discipline and loyalty of the great majority of the Army and the other members of the Armed Forces and the Police.

The Army was called upon to take up the reins of government until such a time that law and order had been restored. The attempt to overthrow the government of the day was done by eliminating political leaders and high-ranking Army officers, the majority of whom came from a particular section of the country.

...

There followed a period of determined effort of reconstruction ably shouldered by Major-General Johnson Aguiyi-Ironsi, but

unfortunately certain persons caused suspicion and gave doubts of the Government's sincerity in several quarters

The position on the early morning of July 29 was a report from Abeokuta Garrison that there was a mutiny and two senior and one junior army officers from a particular country were killed. This soon spread to Ibadan and Ikeja.

The Supreme Commander was by this time at Ibadan attending the natural rulers' conference and was due to return on the afternoon of July 29. The government lodge was reportedly attacked and the last report was that he and the West Military Governor were both kidnapped by some soldiers. Up till now, there is no confirmation of their whereabouts....

I promise you that I shall do all I can to return to civil rule as soon as it can be arranged... (Asomugha, 2004, p.21-27).

Analysis of Yakubu Gowon's Broadcast Speech

The greeting or complimentary style of coup plotters to their fellow nationals is often "Fellow Nigerians, citizens" or "countrymen". This is an idiolect meant to curry the cooperation of the citizenry so as to carry them along and make them believe that the reasons for intervening in the political governance of the nation were patriotic and in their best interest. Thus, they present themselves as the Messiah. General Gowon adopts this discourse style with a high degree of excellence. Through his speech style, he portrays himself in all saintliness, as most coup plotters do. He, for instance, faults his military predecessor as culpable of the crisis. In his broadcast, the General admits: "There followed a period of determined effort of reconstruction ably shouldered by Major-General Johnson Aguiyi-Ironsi, *but unfortunately certain persons caused suspicion and gave doubts of the Government's sincerity in several quarters*" Where does the General belong, the loyal Army to the slain Supreme Commander or the dissident group that decimated his mentor and benefactor? In this case, General Gowon adopts Machiavellian style. The failed bloody coup that claimed the life of General Murtala Mohammed, where he is implicated by Colonel Buka Suka Dimka (the exponent and leader of the February 1976 coup) is a shiny example of his Machiavelli temper. However, Ojukwu (1969, p.339) unveils the psychic milieu of the man Gowon when he declares:

- We accuse Gowon of murder, for plotting the death of his benefactor, Major-General J. T. U. Aguiyi-Ironsi, late Supreme Commander and Head of the Nigerian Military Government.
- We accuse Gowon of duplicity and bad faith for consistently failing to honor agreements mutually arrived at.
- We accuse Gowon of genocide for seeking to exterminate 14, 000, 000 Biafrans in a most gruesome manner.
- We accuse Gowon of aspiring to be Hitler of Africa.

Broadcast Coup Plot Speech of Col. Murtala Mohammed, July 29, 1975

Fellow Nigerians,

Events of the past years have indicated that despite our great human and material resources, the government has not been able to fulfill the legitimate expectations of our people. Nigeria has been left to drift.

This situation, if not arrested, would inevitably have resulted in chaos and even bloodshed. In the endeavour to build a strong and virile nation, Nigerians have shed much blood. The thought of further bloodshed, for whatever reasons, must be revolting to our people.

The Armed Forces, having examined the situation came to the conclusion that certain changes were inevitable.

After the civil war, the affairs of state, hitherto a collective responsibility became characterized by lack of consultation, indecision, indiscipline, and even neglect. Indeed, the public at large became disillusioned and disappointed by those developments. This trend was clearly incompatible with the philosophy and image of a corrective regime.

Unknown to the general public, the feeling of disillusionment was also evident among members of the Armed Forces, whose administration was neglected but out of sheer loyalty to the nation, and in the hope that there would be a change, continued to suffer in silence.

Things got to a stage where the head of the administration became virtually inaccessible even to official advisers; and when advised was often ignored. Responsible opinion, including advice by eminent Nigerians, traditional rulers, intellectuals, etc. was similarly discarded. The leadership either by design or default had become too insensitive to the true feelings and warnings of the people. The nation was thus being plunged inexorably into chaos.

It was obvious that matters could not be allowed to continue in this manner and in order to give the nation a new lease of life, and a sense of direction, the following decisions were taken.

- The removal of General Yakubu Gowon as Head of the Federal Military Government and Commander-in-Chief of the Armed Forces.
- The retirement of General Yakubu Gowon from the Armed Forces in his present rank of General with full benefits, in recognition of his past services to the nation.
- General Gowon will be free to return to the country as soon as conditions permit. He will be free to pursue any legitimate undertakings of his choice in any part of the country. His personal safety and freedom and those of his family will be guaranteed.... All civil commissioners in the Federal Executive Council are relieved of their appointment with immediate effect....
- I appeal to you all to cooperate with the Government in our endeavour to give this nation a new lease of life. This change in Government has been accomplished without shedding blood, and we intend to keep it so.

Long live the Federal Republic of Nigeria.

Good night (Asomugha, 2004, p.29-37)

Analysis of Murtala Mohammed's Broadcast Speech

As mentioned earlier, the broadcast opening speech style of coup plotters begins with "Fellow Nigerians". The no-nonsense General begins with a discursive style. This is his choice of a non-bloody change of government in order to reduce shedding of blood of fellow nationals. General Mohammed explains: "This situation, if not arrested, would inevitably have resulted in chaos and even bloodshed. In the endeavour to build a strong and virile nation, Nigerians have shed much blood. The thought of further bloodshed, for whatever reasons, must be revolting to our people."

He provides, through discursive style, reasons why the peaceful change of guard was inevitable. This is reiterated here again:

After the civil war, the affairs of state, hitherto a collective responsibility became characterized by lack of consultation, indecision, indiscipline, and even neglect. Indeed, the public at large became disillusioned and disappointed by those developments. This trend was clearly incompatible with the philosophy and image of a corrective regime.

Unknown to the general public, the feeling of disillusionment was also evident among members of the Armed Forces, whose administration was neglected but out of sheer loyalty to the nation, and in the hope that there would be a change, continued to suffer in silence.

Things got to a stage where the head of the administration became virtually inaccessible even to official advisers; and when advised was often ignored. Responsible opinion, including advice by eminent Nigerians, traditional rulers, intellectuals, etc. was similarly discarded (Asomugha, 2004, p.30).

Certainly, a patient and analytic populace would believe General Mohammed in the drifting ship as well as the uncaring government of General Yakubu Gowon, who promised to return the nation to civil rule as soon as it could be arranged. Gowon's assurance turned out to be the sound of bitter kola in the ear, which is antithetical to its taste in the mouth.

After his discursive speech, he announces a plan of action on the deposed and discredited General:

- The removal of General Yakubu Gowon as Head of the Federal Military Government and Commander-in-Chief of the Armed Forces.
- The retirement of General Yakubu Gowon from the Armed Forces in his present rank of General with full benefits, in recognition of his past services to the nation.
- General Gowon will be free to return to the country as soon as conditions permit. He will be free to pursue any legitimate undertakings of his choice in any part of the country. His personal safety and freedom and those of his family will be guaranteed....

General Mohammed ends his speech with a fervent wish for Nigeria and parting greeting: "Long live the Federal Republic of Nigeria. Good night." The broadcast speeches of Generals Obasanjo, Buhari and Babaginda are similar in terms of synonymous styles and logical presentation of their prose texts.

It is from the military that the linguistic style "with immediate effect" came into the register or idiolect of Nigerian English.

Broadcast Coup Plot Speech of Major-General Muhammadu Buhari, January 1, 1984

Fellow Nigerians,

You are aware of the change in the government of the Federal Republic of Nigeria, which was announced early this morning. In pursuance of the primary objectives of saving our great nation from total collapse, I, Major-General Muhammadu Buhari of the Nigerian Army, have, after due consultation amongst the service chiefs of the armed forces, been formally invested with the authority of the Head of the Federal Military Government, and the Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria.

It is with humility, and a sense of responsibility, that I accept this challenge and call to national duty. As you have heard in that announcement, the Constitution of the Federal Republic of Nigeria has been suspended, except those of it which are exempted in the Constitution (Suspension and Modification) Decree to be issued in due course.

This change became necessary in order to put an end to the serious economic predicament and the crisis of confidence now affecting our nation... (Asomugha, 2004, p.51-61).

Analysis of Major-General Muhammadu Buhari's Broadcast Speech

The formal style of opening speech broadcast by each coup plot leader is noted here. The coup plotter does not spare any indictment for the deposed civilian government of Alhaji Shehu Shagari. In the broadcast, General Buhari accuses Alhaji Shagari's government of mismanaging the following: the national economy, the do-or-die temper of politicians at the peril of the electorate, corruption, and indiscipline, among other things. However, findings elsewhere reveal that those accusations were neither here nor there, in terms of their real motive in their intervention in Nigerian politics, instead of confining themselves in the rule of engagement (RoE). Put differently, all of it amounts to blatant lies.

The retired Generals who recycled themselves into power did so with selfish motives. They did and still do so to protect their looted economic interests from being destroyed by the government policies of the civilian government. They also feel sidelined in policy-making matters. Therefore, out of greed and fear, they come together again in another palace coup to topple the civilian government of Shehu Shagari on the smokescreen of corruption and ineptitude. It is out of this selfish motive that the Tartuffe, fox or tortoise style manifests itself in the hidden agenda of the coup plotters.

Thus, the unpatriotic and selfish background under which the military juntamingle(d) themselves in or back to politics is examined, including the ‘civilian’ governments of Chief Olusegun Obasanjo and the eventual civilian President Muhammadu Buhari (PMB). Hence, the full source is quoted without dilution to showcase their employment of fox style. According to Braji (2010: p.172-174):

The battle for political power is unequivocally mired in conspiracies and intrigues. Hence, retired Generals with political ambitions do not have immunity against this malady. Thus, during the Second Republic (1979-1983), it was the retired Generals that schemed and supported the coup that toppled the civilian regime of President Shehu Shagari in 1983. These retired officers as indicated above represent big business and also wield significant influence in the military. Scared of losing political privileges and apprehensive of the collapse of their individual (and collective) investments in the various sectors, they moved (sometimes separately, at other times jointly) to defend their capitalist interest, which appeared threatened by the mismanagement of the civilian government of Shehu Shagari.

Braji names the retired military gladiators in these schemes. He reveals:

General Danjuma’s experience provides example that buttresses our argument. The General had considerable investments in Dantata jetty, Wimpey jetty, and Noli jetty, which almost collapsed a few years after he retired from service. These jetties had handled big ships and large barges. In fact, during the civilian government of President Shehu Shagari, a decision was made to close these jetties along with all others operating in the nation’s seaports as they were justifiably suspected of assisting or involved in smuggling. Feeling threatened by the move, General Danjuma came out clearly to oppose the Shagari Government. He was reported to have said in an interview that the civilian government of Shehu Shagari was a ‘cabinet of touts.’ He accused them of ‘touting contracts,’ as well as aggressively looting the treasury, thereby ‘killing the economy (p.173).’

The next dramatic actors, as it were, among the retired army Generals implicated in the overtures are General Olusegun Obasanjo and General ShehuYar’Adua. The informant, Braji, continues:

Retired General Obasanjo too had never hidden his disgust and hostility against the Shehu Shagari Government for failing to protect the poultry industry in which he had substantial investment. He was also irked

by the regime's failure to accord him the respect he deserved as a former head of government. Also, General ShehuYar'Adua, who was so unhappy with the Shagari economic policy, along with other civilians such as Dr. Mahmud Tukur formed a faction within the ruling NPN party which they christened 'Concerned Goup.' This faction was formed with the aim of forming an alliance with UPN to defeat the ruling party during the 1983 General Elections (p.173-174).

The desperate power brokers of the retired Generals collaborated with serving high-ranking military officers. Braji continues to let the cat out of the bag as he unveils the mask:

Turner and Badru in an exciting study have related the linkage between the retired Generals and serving officers within the Nigerian military formation. These scholars have claimed that retired Generals had, on realizing Shagari's moves to hand over power to his service chiefs, called a meeting under the instigation and leadership of General Obasanjo to forestall the move. In attendance were serving Generals Buhari and Babangida and retired Generals Goe Garba and Zamani Lekwot. The purpose of the meeting was to finalize the execution of a long-planned military coup to preempt the Shagari maneuver.

Retired Major Mustapha Jokolo relates that while the 1983 intervention was being planned, some serving military officers 'pleaded with General Obasanjo to publicly condemn Shagari's Government', because they 'believed that the weight of Obasanjo's criticism would help in justifying' the coup d'état. The General was an eager collaborator as he had his personal reason to discredit the regime for failing to approve enough import licences for his farm 'which were not given to him to his satisfaction.' ...The botched attempt to overthrow General Sani Abacha's military government was also linked to (the) two retired Generals, Obasanjo and Yar'Adua, who were consequently imprisoned. The latter died in detention while the former was fortunate enough to come out of the prison to contest the elections in 1999. With the support of retired army officers, he became President.

The skirmishes of retired army Generals are an eye opener under which they recycle themselves to power as patriots, who in actual fact are mercenaries. The situation is still the same with the APC-led Federal Government under the headship of PMB. They have concealed motive, which is selfishness. The fact that PMB appointed himself Minister of Petroleum and allotted ten key positions in his recent appointment to the Hausa-Fulani

oligarchy as the lion share, leaving out an ethnic stock and zone that did not give him winning votes, belie his claim that he is for everybody and belongs to nobody. This also contradicts his political philosophy claim of “change begins with me”. Therefore, the change mantra is sham and phoney.

Broadcast Coup Plot Speech of Major Gideon Orkar, April 22, 1990

Fellow Nigerian Citizens,

On behalf of the patriotic and well-meaning people of the Middle Belt and the Southern parts of this country, I, Major Gideon Orkar, wish to happily inform you of the successful ousting of the dictatorial, drug baronish, evil man, deceitful, homo-sexually-centered, prodigalistic, unpatriotic Babaginda. We have equally commenced their trials for unabated corruption, mismanagement of national economy, the murders of Dele Giwa, Major-General Mammam Vasta, with other officers as there was no attempted coup but mere intentions that were yet to materialize and other human rights violations.

...We wish to emphasize that it is not just another coup but a well-conceived, planned, and executed revolution for the marginalized, oppressed, and enslaved people of the Middle Belt and the South, with a view to freeing ourselves and children yet unborn from eternal slavery and colonization by a clique of this country.

Our history is replete with numerous and uncontrollable instances of callous and insensitive dominatory, repressive intrigues by those who think it is their birthright to dominate till eternity the political and economic privileges of this great country to the exclusion of the people of Middle Belt and the South. They have almost succeeded in subjugating the Middle Belt and making them voiceless and now extending same to the South... (Asomugha, 2004, p. 85-96).

Certainly, Major Orkar’s failed coup is heavily replete with the styles of polemics, discursive, propaganda, reality, and memoir. Interestingly, an inventory of the opulent discourse styles he used can be outlined. As a matter of fact, Major Orkar’s broadcast coup speech is a must read. At the end of the reading encounter, the reader will be constrained to think aloud with Sunny Okosun in his music entitled “*Which Way Nigeria?*” jurisprudence narrative style.

Implications of Findings

Language has been used in this paper to meet the two exigent needs of language in the exploration of discourse style of broadcast language of Nigerian coup plotters. According to Richards (1963, p.261-271), these two

exigent uses or needs are scientific and emotive. Language is employed to achieve emotive needs when poetry is written, be it lyrical or narrative poems. In like manner, when literary prose and non-literary prose is written, the scientific use of language is actively engaged. Even though Richards is silent on plays and criticism as part and parcel of literary ventures, they are included as features of genres of literary prose since they are all creative endeavours. In effect, the resources of language are harnessed to query the discourse style of broadcast speeches of Nigerian coup plotters as language exists basically in literature. This is an assertion Obobolo (2015, p.246) prefaces as language being the material of literature.

It is expedient therefore that the discourse styles of broadcast speeches of Nigerian military coup plotters against the backdrop of their claimed salvation missions be examined so as to ascertain their successes and failings. For one thing, the military junta ruled through the barrel of the gun. They used the gun to intimidate the citizenry. No one had the stamina and courage to query their pillaging and crippling of the national economy.

A high profile corruption characterized the military administration. Through the military suspension of relevant sections of the constitution, they embarked on unrestricted liberty to create more States. The provincial structure of State creation as well as delineation of geo-political zones was achieved by them. No Republic of Nigeria, from 1960 till the Eighth Republic, has been able to create more States other than those created by the military, irrespective of the fact that it is expedient to do so in the South East geopolitical zone, which has only five States. In spite of spirited efforts of various constitutional reforms and amendments, the various Republics after the civil war have not got the stamina to create further States.

The investigation shows that each coup plotter accuses the other of corruption, looting, ineptitude, and betrayal of the citizenry. General Muhammadu Buhari lays the charges of corruption and indiscipline, among others, on the civilian government of Alhaji Shehu Shagari. General Ibrahim Babaginda does not spare the deposed government of General Muhammadu of similar charges, including highhandedness and uncaring attitude to his military colleagues. General Babaginda berates Buhari: "Major-General Muhammadu Buhari was too rigid and uncompromising in his attitude to issues of national significance." Thus, it has been a case of kettle calling pot black. While castigating the military dictatorship in his critical essay on Achebe's *A Man of the People* and *Anthills of the Savannah*, Maduka (2007, p.65, 66) observes:

Achebe casts a look at the role of the military in Nigerian politics and provides an insight, which has a resonance for the whole of Africa. He feels disturbed that the soldiers who have routinely organized coups and taken over governments in various parts of Africa have become

worse than the civilians they have replaced. After years of being in power, they have *out-Nanganced Nanga* in greed, avarice, selfishness, corruption, purposeless leadership, and insensitivity to people's needs.

While ex-raying the role of the military in Nigerian political governance, Nwachukwu-Agbada (2007, p.81-107) describes their political adventurism as “intervention without salvation.”

Other literary critics do not spare the military and their adventurous incursion into Nigeria politics. Using Achebe's social satire *Anthills of the Savannah*, Inyama describes military dictatorships in political governance as “a panoramic examination of their absurd dilemma with leadership and power”. Gordimer (p.7-8), quoted in Inyama, describes their mission as a ‘tyranny of clowns.’ Awosika (1996, p.243) includes “corruption led by unlimited power wielded by military politicians and the tragedy of the future generation” among the certain evils that currently stifled the healthy growth of Nigeria. The ills precipitated by the military in national governance are borne out of selfishness as they recycle themselves back to the civil politics of the land. Chief Olusegun Obasanjo (retired Army General and former Head of State), recycled himself successfully. General Ibrahim Badamosi Babaginda, former Military President, tried and failed. General Muhammadu Buharri, also former Head of State, tried repeatedly and succeeded ultimately. General Abacha tried to commute himself as military Head of State to civilian President and died for it while in office. However, other retired military top notches are warming up on standby. While working on Achebe's *Anthills of Savannah*, Ngara (p.260) castigates the military in national governance. This is as a result of the multiplicity of ills they bequeathed to posterity. Ngara describes writers as metaphoric “gadflies that prick our consciousness” to the plethora of social evils the military and political elite entrench into our social psyche. Since the avid military power brokers tasted power, they recycled themselves to power in order to continue to amass wealth via corrupt means. It is the continued mess of corruption, executive lawlessness, and gross ills which persuade literary writers to publish satires to attack the ills the military made of the national economy. General Ibrahim Babaginda, for instance, as military President, appointed himself Minister of Defence and brought the State Security Service (SSS) directly under his purview. In like manner, President Muhammadu Buhari appointed himself Oil Minister and dissolved the Management positions of the NNPC. Out of the fifteen key positions of the management cadre, he gave ten slots to the Fulani mafia, three slots to the Yoruba nationality, and two slots to the South-South. The Igbo race of the South East got nothing of the slots, a zone with three oil-producing States (Abia, Anambra and Imo). This is among the legacies of military dictatorship

in political governance of Nigeria, which now spill over to the civilian government.

Given this anomaly, a child cannot be flogged and at the same time ordered not to cry. Today, Nigeria is bedeviled with revolutionary freedom fighting blocs of IPOB, MASSOB, NDA (Niger Delta Avengers), Boko Haram, Middle Belt agitations, the Oodua People's Movement as well as an avalanche of social ills of cattle rustlers, hate speeches, quit notices of entire races to leave certain sections of the country, masquerading Fulani herdsmen (who PMB calls criminals rather than terrorists organization of Boko Haram), baby factories, kidnap-for-ransom saga, armed robbery, agitations for the restructuring of the country, restructuring of tertiary education, true federalism, enduring leadership, etc.

For an enduring friendship to exist, deceit must be eschewed. Ogoni Land must be cleaned and the hiccups must be addressed. If they are not addressed, Operation Crocodile Smile, Operation Python Dance, Operation Dole, and declaration of IPOB as terrorist organization *cannot* be the panacea. What has been crying – which plugged the nation into thirty-month civil war – is still crying. The ominous bird that cries when a corpse (person) is about to die has begun to cry again. Therefore, it is paramount to deal with the problems at their very roots. Sadly, it is foreseen, pessimistically, that owing to greed, deceit, and ethnic or mafia selfishness, the imbroglio will not be addressed. The patient who is being treated of elephantiasis of the scrotum and at the same time is suffering from swelling of the stomach must fetch what he left at the Evil Forest (*Ajo Ofia*). The land is hereby aptly described in emotive language of Richards' categorization (1963, p.10): "A land of simmering contrasts/In conflicting diversities/Masquerading egalitarianism/Amidst Apartheid/A land where true Federalism/Is utopian and/A bunch of luxury." This has been *the trouble with Nigeria*, the sad *truth of fiction* (Achebe, 2007, p.1-68, 107-121). Subsequently, one is merely trading on a keg of gunpowder, oblivious of when it will explode. This implies that the political leaders of Nigeria venture where angels fear to tread.

Conclusion

This paper has attempted a discourse examination of broadcast style of Nigerian coup plotters. The paper investigated selected excerpts of broadcast language of Nigerian coup plotters, with a view to ascertaining the discourse styles they exploited. Generally, it speculates that the broadcast idiolect revolves around propaganda, polemic, and discursive styles. Through this means, they intimidate their opponents as well as the civilian populace into submission and resignation to fate. Facts of style reveal that the military exploit polemics, discursive, propaganda, and fox, among the salient discourse styles.

Thus, the military class succeeds in intervention mission but fails woefully in the thrust of salvation. Their selfish quest makes them, more or less, neocolonialists in military garb.

The paper argues that their dismal failure in political governance of their father land ends up making the masses much poorer than they had been under the corrupt civilian government. Therefore, the disconsolate people soliloquize and even think aloud of going back to Egypt. In effect, the dismal failure of the military in the political administration of Nigeria throughout the era of military interregnum not only leaves them corrupt but essentially selfish and callous. Sadly, they betray the confidence which the civil population reposes in them as credible alternative in finding lasting solution to the drifting of the ship of state in the hands of the civilian administration since Independence of 1960. The whole episode continually turns out as *political independence and social despair*, which is the corpus of Ghanaian-born novelist and literary patriot, Aye Kwei Armah, in his novel *The Beautiful Ones Are Not Yet Born*. Certainly, the sad and regrettable intervention of the military into the Nigerian politics finds meaning in the Igbo proverbial dictum of “what the bitter cola sounds in the ear is not after all what it tastes in the mouth”. To the civilian population, the uninvited intervention of the military amounts to unmitigated disaster. Therefore, they pray: *Ozoemena*, which (in the Igbo language habit and pattern of thought) means “May it not happen or occur again.”

The foregoing justifies the reasoning of the civil population, which opines that the worst civilian administration is better than the military in government. Also, the military should be confined to their barracks schedules, where they maintain rule of engagement (RoE) towards combating readiness in defence of territorial integrity of the Motherland. Furthermore, they are advised against venturing into politics as they have grossly abused political powers so far.

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The Impact of Cultural Intelligence of Tourist Guides on Tourist Satisfaction: A Study of Local Tourist Guides in Petra City, Jordan

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Abstract

This paper focuses on investigating the influence of tourist guides' Cultural Intelligence (CI) on their perceived performance and to examine the relationship between this performance and tourists' satisfaction. The study adopted the deductive approach by carrying out a survey using self-administrated questionnaires that were distributed to 382 inbound tourists in Petra city-Jordan, who were selected conveniently. 290 questionnaires were collected with an achieved response rate of 76.1%. Collected data were analyzed using statistical techniques including standard multiple regression and Pearson correlation. Findings showed that CI has a positive effect on local tourist guides' performance, which in turn has a significant positive correlation with the level of tourist satisfaction. Based on these findings, official training programs that include CI courses was recommended for local tourist guides in Petra city.

Keywords: Tourists guide, Cultural Intelligence, Petra, Jordan, Performance, Tourists satisfaction

Introduction

Culture is a key debatable concept and many scholars compete to define it. Examples include its definition as "a fuzzy set of basic assumptions, value, orientations to life, beliefs, polices, procedures, and behavioral conventions that are shared by a group of people, which influence each members' behaviors and his/her interpretations of the meaning of other people's behavior" (Spencer-Qatey, 2008, p.3). It is also defined as "the complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society" (Avruch 1998, p.6). Nevertheless, according to Liu and McClure (2001), most of the definitions of culture often colors all features of life, including individuals' activities, creativity, interactions, and relationship with the environment.

Culture usually influences individual patterns of communication, especially when communicating with people from different cultural backgrounds. Accordingly, cross-cultural communication creates complexity due to people's different cultural differences (Barker, 2016). In this sense, the ability to communicate effectively in cross-cultural situations is considered as a challenge, which needs an intercultural competence. Intercultural competence encompasses knowledge, personal motivation or drive, and skills to engage effectively with different cultures (Deardorff, 2011). Therefore, when individuals encounter different cultural backgrounds, they need to be skillful in adjusting their practices in a way that is consistent with the cultural difference of others by using a set of mental capabilities which represent their cultural intelligence (Van Dyne, Ang & Livermore, 2010; Macnab, Brislin & Worthley, 2012). "Cultural Intelligence" (CI) is defined as "a person's capacity to adapt to new cultural settings based on multiple facets, including cognitive, motivational, and behavioral features" (Earley, 2002, p.271).

Tourism industry is a rich environment for cross-cultural interaction among individuals from different cultures (Jamilena, Sabiote-Ortiz, Martín-Santana & Beerli-Palacio, 2018). Tourists from different nationalities have different cultures which clearly results in variation in their behaviors, expectations, and intentions (Atilgan, Akinci & Aksoy, 2003). According to Mariani, Borghi, and Okumus (2020), the cultural diversity of tourists and service providers affects service quality. Therefore, intercultural knowledge of service players attracts foreign tourists due to their ability to employ the verbal and/or the non-verbal communicative capabilities (Teimouri, Hoojaghan, Jenab & Khoury, 2015). Consequently, in international tourism marketing, tourists' cultural variations influence the way they evaluate services

and the way they express satisfaction or dissatisfaction (Dai, Hein & Zhang, 2019).

Tourist guiding is an intermediary system in tourism service supply (Hu, 2007). Therefore, tourist guides are considered as front-line service players that effectively impact tourists' perceptions (Sheehan, Ritchie & Hudson, 2007). Alrawadieh, Cetin, Dincer, and Istanbulu Dincerm (2020) pointed out that tourist guides can directly affect guests' experience by reflecting on the destination's cultural aspects, history, and civilization. Tourist guides often create many benefits for tourism supply party, such as serving foreign visitors by taking care of all aspects of their tour and solving all problems and obstacles throughout the journey (Ozdemir & Yolal, 2017). Furthermore, tourist guides help in promoting tourism destinations by playing the role of public relations agents (Holloway & Taylor, 2006). Tourist guides are armed with communication skills, knowledge, and ability to interpret site attractions and culture (Erawati & Budarma, 2020).

Tourism industry is a key sector which boosts national economy. In Jordan, tourism industry is a growing sector that supports the domestic economy. Interestingly, Jordan occupies a vital position in international tourism market (Al-Makhadmah, 2020). In addition, Jordan tourism key performance indicators (KPI) reveal a clear increase in tourism revenues recently, which in turn enhances gross national product (GNP) (Al-Hallaq, Athamneh & Suleiman, 2020). Based on the crucial role of tourists' guides in tourism industry, as front-line service players who engage directly with foreign visitors in cross-cultural interaction, there is a need for more research to investigate tourist guides' performance and factors affecting their performance, including their cultural intelligence (CI) level in Petra City-Jordan which is one of the famous global heritage destinations.

Background

Earely (2002, p.271) was the first scholar who introduced the concept of CI as "a person's capacity to adapt to new cultural settings based on multiple facets, including cognitive, motivational, and behavioral features". Subsequently, another definition identified the concept of CI as "the capacity for successful adaption to new cultural settings, that is, for unfamiliar settings attributable to cultural context " (Earely & Ang, 2003, p.9). CI was also defined as "the individuals' ability for personal growth through permanent learning of cultural background and understanding of differences" (Teimouri et al., 2015, p.13). These definitions imply that individuals who are culturally intelligent have the ability to modify their behaviors based on their interpretation of new cultures' values and norms. In this sense, Ersoy (2014) claimed that CI reflects a person's ability to interpret gestures and unfamiliarity of foreign people.

CI enables people to digest norms and values of encountered cultures effectively (Van Dyne, Ang & Livermore, 2010). According to Teimouri et al. (2015), individuals who have good level of CI can effectively create an intellectual framework of suitable behaviors and norms. CI includes knowledge about different cultures and the impact of their elements on communication among people in cross-cultural interactions (Deng & Gibson, 2008). It also helps individuals to be involved in various cultural environments. Furthermore, CI gives individuals more energy and confidence when facing intercultural differences (Bandura, 2002). According to Thomas and Inkson (2004), individuals who have high level of CI are more capable to respond and interact in cross-cultural situations effectively. Accordingly, CI offers capabilities that improve mutual respect and dignity among people. In addition, it enhances individuals' communication effectiveness in the global context (Van Dyne et al., 2010).

The structure of CI is rooted in four components framework which includes metacognitive, cognitive, motivational, and behavioral dimensions (Van Dyne et al., 2010). On the other hand, Ang and Van Dyne (2008) argued that the four dimensions of CI are different, depending on the personality traits of individuals. However, according to Setiawan, Hasibuan, Siahaan, Indrawan, Rusiadi, Wakhunyi, and Rahayu (2018), a person who has a good level of CI needs to master the four dimensions. This is because an incomplete CI may result in cultural ignorance. Chen, Wu, and Bian (2014) found that each of these four dimensions has a distinctive contribution in understanding and adjusting individuals' behaviors to interact with people from other cultures. Furthermore, the significance of each dimension varies across different cultural backgrounds (Furrer, Liu & Sudharshan, 2000). On this basis, Van Dyne et al. (2010) developed sub-divisions for CI components, as shown in Figure 1.

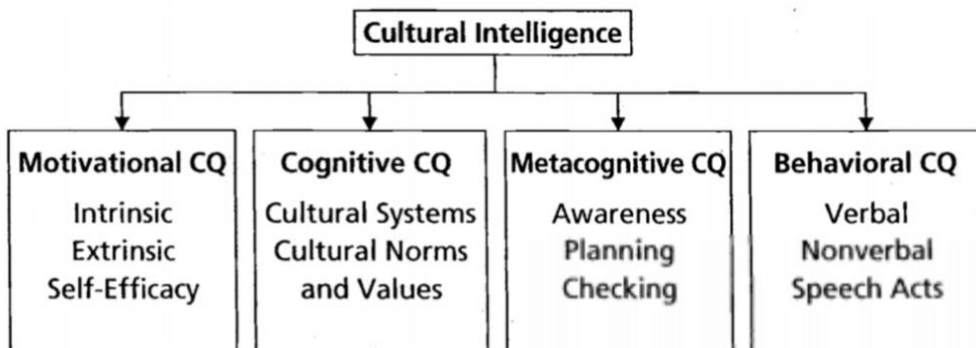


Figure 1. The Model of Four Dimensions of Cultural Intelligence
Source: Van Dyne et al. (2010, p.134)

The motivational dimension of CI refers to individual's interest and energy to interact in different cultural situations (Chen & Fu, 2018), including personal confidence and drive to encounter conflicts and challenges in cross-cultural contexts (Charoensukmongkol & Pandey, 2020). In this context, Ang and Van Dyne (2008) stated that the motivational aspect of CI relates to a person's capacity to direct his/her concern of learning so as to adjust towards proper practices when interacting with foreign cultures. In this sense, the authors listed three subdivisions for the CI's motivational construct:

- The intrinsic drive: This indicates the degree to which a person creates enjoyment in intercultural experiences.
- The extrinsic drive: This indicates the tangible benefits that a person gains from cross-cultural encounter (Van Dyne et al., 2010).
- The self-efficacy of motivation: This indicates a person's confidence in terms of efficiency and skills when engaging with cultural diversity situations.

The second component of CI is the cognitive CI, which is defined as a person's knowledge acquired from education or personal experience about social, economic, and legal features of different cultures (Chen & Fu, 2018). It focuses on cultural systems for foreign societies, including people's norms, traditions, habits, and values (Ang & Van Dyne, 2008). These cultural systems involve processes where nations organize themselves to face human basic needs (e.g., education, politics, legislations, religion, economics, etc.) (Van Dyne et al., 2010). Individuals with good cognitive CI are more able to realize similarities and differences among cultures to interact effectively (Templar, Tay & Chandrasekar, 2006). Accordingly, the cognitive feature of CI plays a significant role in different fields, particularly in human resource management.

The third component of CI is the metacognitive dimension, which means the ability of employing a cultural knowledge to interpret cross-cultural situations and to respond to cues in these situations (Triandis, 2006). In this regard, Chen and Fu (2018) described the metacognitive feature of CI as individuals' understanding of other cultures. According to Van Dyne et al. (2010), the metacognitive CI consists of three divisions:

- Awareness: This refers to the degree of harmony and correspondence between the person and others.
- Planning: This indicates anticipatory preparation to connect individuals, topics, and situations in an intercultural environment.
- Monitoring: This indicates observation to see whether the plans and preparations are appropriate in cross-cultural situations.

The fourth component of CI is the behavioral feature, which refers to a person's capability to present appropriate verbal and non-verbal actions when interacting with people from different cultures (Teimouri et al., 2015). Furthermore, the behavioral aspect of CI includes a person's ability to interact and communicate within cultural diversities in a proper way (Chen & Fu, 2018). It stands for the flexible conveyance of messages across cultures (Zhao, Deng & Kemp, 2013).

Tourist guiding profession is a vital mainstay in tourism industry where individuals are involved heavily in cultural interactions. In this regard, tourist guide was defined as "one with a broad-based knowledge of a particular area whose primary duty is to inform" (Pond, 1993, p.17). This is in addition to the core duty of taking visitors on a sightseeing attraction (Mancini, 2000). Tourist guides often play the role of "a performer and an interpreter at the center of the experience" (Overend, 2012, p.53). They also link visitors with the visited destination, particularly in intercultural settings, and act as cultural mediators (Wirawan, Kurniasari & Merati, 2020). Weiler and Ham (2002) pointed out that tourist guides are the cultural brokers between tourists and the visited site. According to Baum, Hearn, and Devine (2007), many organizations and stakeholders utilize tourist guides' capabilities to represent the destination's cultural aspects, history, and civilization in front of foreign guests. Consequently, it is important for tourist guides to employ communication skills, their knowledge, and interpretation of foreign cultures (Ap & Wong, 2001).

The review of previous literature in the topic area reveals that there is a paucity of research on CI, particularly in the Middle East. Some of them investigated the impact of CI on service providers, while others discussed CI's influence on individuals' communication skills. However, there is no study found that examines the impact of CI on tourist guides' performance. Accordingly, the current study aimed to fill a research gap of CI in the field of tourist guides literature by investigating the relationships between CI, tourist guides' performance, and inbound tourists' satisfaction. Therefore, this study intends to accomplish the following objectives:

- To assess the level of CI for local tourist guides.
- To evaluate the perceived performance of local tourist guides.
- To assess inbound tourists' satisfaction during their guided tours in Petra, Jordan.
- To examine the impact of tourist guides' CI on their perceived performance.
- To examine the correlation between tourist guides' performance and tourists satisfaction.

Study's Model

To achieve the previously mentioned objectives, a model was developed with three variables: CI, tourist guide performance, and tourists' satisfaction (Figure 2).

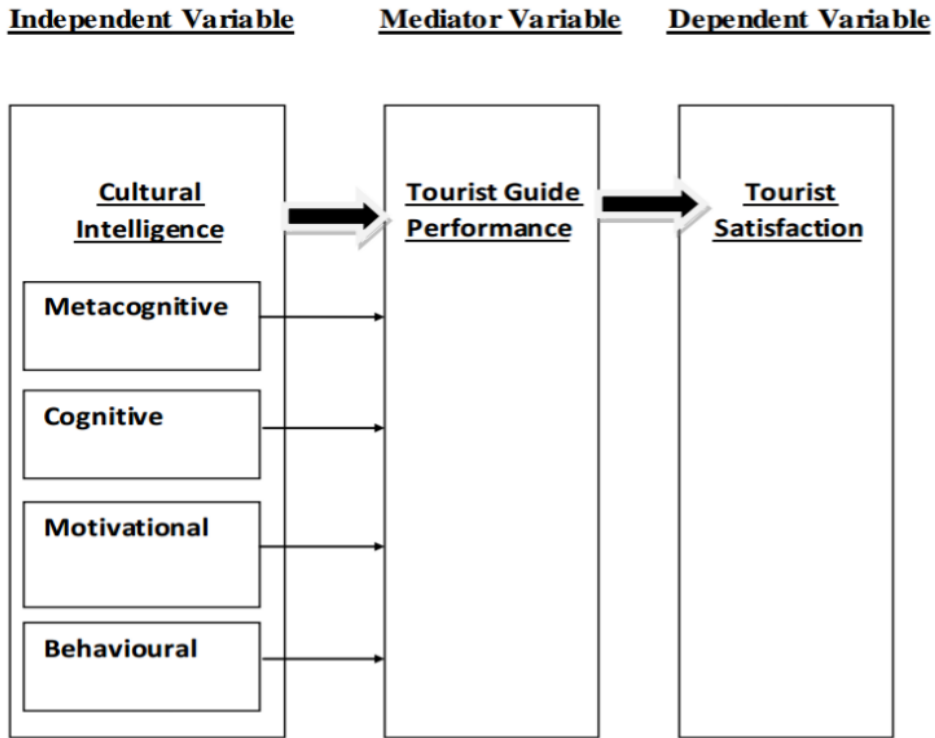


Figure 2. The Impact of Tourist Guides' Cultural Intelligence on Tourist Satisfaction
Source: developed by the researchers

These variables were interrelated through the following hypotheses:

Hypothesis 1:

H0: the tourist guides' CI cannot predict the variance in their performance.

H1: the tourist guides' CI can predict the variance in their performance.

Besides examining the impact of tourist guides' CI on their performance, all elements of the CI model were tested using the following sub-hypotheses:

Hypothesis 1.a:

H0: the metacognition construct of tourist guides' CI cannot predict the variance in their performance.

H1: the metacognition construct of tourist guides' CI can predict the variance in their performance.

Hypothesis 1.b:

H0: the cognitive construct of tourist guides' CI cannot predict the variance in their performance.

H1: the cognitive construct of tourist guides' CI can predict the variance in their performance.

Hypothesis 1.c:

H0: the motivational construct of tourist guides' CI cannot predict the variance in their performance.

H1: the motivational construct of tourist guides' CI can predict the variance in their performance.

Hypothesis 1.d:

H0: the behavioral construct of tourist guides' CI cannot predict the variance in their performance.

H1: the behavioral construct of tourist guides' CI can predict the variance in their performance.

Hypothesis 2:

H0: there is no relationship between tourist guides' performance and their tourists' satisfaction.

H1: there is a relationship between tourist guides' performance and their tourists' satisfaction.

Methodology

The current study adopted the deductive approach of research to measure and explain the causal relationships between CI, tour guides' performance, and their tourists' satisfaction based on established theories. It was designed quantitatively and a survey strategy was adopted to collect data. This adoption of survey strategy is considered practicable because it was used for tourists who were in a hurry to move between various archeological sites. The study's population consisted of inbound tourists who visited Petra city during January 2020. According to the official tourism statistics of Petra Archaeological Park (PAP) (in a personal contact with Dr. Moayad Alrwajfah, the research associate at PAP), the study's population was 75248. Among this population, 382 tourists were sampled based on the statistical table of Krejcie and Morgan (1970). Since there was no population frame available, subjects of the study's sample were accessed conveniently according to the predetermined criteria of being an inbound tourist with a guided tour, accompanied by a local tourist guide. In addition, the respondent must have a good level of English language skill.

A self-completed questionnaire was used to collect data. Questionnaires are the most efficient data collection tool that can be used to cover a large sample of tourists distributed in many archeological sites in Petra city. The study's questionnaire was structured into four parts and covered with a letter, describing the purpose of the study and confirming research ethics

(such as anonymity and confidentiality). The first part of the questionnaire was designed to collect data about respondents' demographic characteristics (including gender, age, education & nationality) in order to describe the target sample.

The second, third, and fourth parts of the questionnaire were structured using a 6 point likert scale, where “1” equals “fully disagree”, “2” equals “disagree”, “3” equals “slightly disagree”, “4” equals “agree”, “5” equals “slightly agree”, and “6” equals “fully agree”. This was used to measure the current study's variables, such as the constructs of local tour guides' CI, including the metacognitive, the cognitive, the motivational and the behavioral dimensions (part II: 14 statements), tour guides' performance (part III: 15 statements), and tourists satisfaction (part IV: 8 statements). Measures were established for these three variables based on the previous studies of several authors as shown below:

1. CI (Van Dyne's et al., 2010; Ang's et al., 2008).
2. Tourist guides performance (Nguyen, 2015; Huang, Hsu & Chan, 2010).
3. Tourists' satisfaction (Chan, Hsu & Baum, 2014; Chang, 2014).

After developing the first draft of the study's questionnaire, its content validity was evaluated through two stages of assessments. Firstly, it was exposed to a panel of three experts who were lecturers at Petra College for tourism and Archaeology in Al-Hussein Bin Talal University, Jordan. They were professionals in tourism and hospitality, with more than ten years of field experience. Secondly, a small pilot test of fifteen participants was undertaken. Based on these two stages of assessments, some improvements were made to the questionnaire. Although some questions were theoretical and within an academic level, they were not easily understood. Subsequently, they had to be simplified. Also, the names of the dimensions of CI were removed because they may show a sense of complexity to respondents.

After amending the study's questionnaire, 382 questionnaires were distributed to inbound tourists who visited Petra city, Jordan during August 2019. Questionnaires were handed and collected from participants in a face-to-face form to maintain a control over data collection process (Saunders, Lewis & Thornhill, 2003). At the end of data collection process, 291 questionnaires were collected with a response rate of 76.1%. However, the data collection process encountered some challenges, such as the busy itinerary of participating tourists and the limited level of English language of some participants.

The research data was analyzed through three stages. Firstly, the collected questionnaires' suitability for analysis was checked, and 20 of the questionnaires were excluded because they were not completed properly.

Secondly, raw data were coded and entered into SPSS software. Thirdly, they were subjected to a series of statistical analyses including descriptive statistics, Cronbach's alpha test of reliability, standard multiple regression, and Pearson correlation.

Results

Sample Profile

This section describes the profile of the current study's respondents. In building sample profile, several descriptive frequency and percentage analyses were applied based on the respondents' demographics (gender, age, nationality and education). Based on the results of the current study's analyses, the sample indicates that 54.4% of participants were females and 45.6% were males. The majority of respondents (76.5%) were less than 54 years. Most of the study's participants were highly educated as 63.8% had a postgraduate education. In terms of nationality, the study's sample includes diversified nationalities. However, respondents mainly came from three continents: Europe (42%), North America (24.3%), and Asia (18.5%). Nevertheless, these statistics are close to those published by the PAP-PDTRA (2020). Thus, it is evident that the study's sample is representative to its population.

Reliability

To assess the reliability of the current study's questionnaire, a Cronbach's alpha test was applied to its scales. As shown in Table 1 below, most of the scales have a good level of reliability. However, the metacognitive dimension was not good in comparison with other dimensions scales at Cronbach's coefficient (0.639). According to Sekaran (2000), this is still an acceptable level of reliability because the lowest accepted percentage is $\text{Alpha} \geq 0.60$.

Table 1. Reliability of Questionnaire's Scales

No	Name	Cronbach's alpha value
1.	Metacognitive dimension	0.639
2.	Cognitive dimension	0.766
3.	Motivational dimension	0.707
4.	Behavioural dimension	0.806
5.	Tour guide's performance	0.879
6.	Tourists' satisfaction	0.770

Descriptive Analysis of Research Variables

The 2nd, 3rd and 4th sections of the questionnaire were designed to collect data about the study's variables using likert scales of 6 points, where 1=fully disagree, 2=disagree, 3=slightly disagree, 4=agree, 5=slightly agree, and 6=fully agree. The collected data was analyzed by descriptive statistics that were suitable for continuous variables, including the mean and the

standard deviation. Results of these analyses are shown in Tables 2, 3, and 4 below.

(1) Tourist Guides' CI

Results shown in the table below revealed that tourists reported an overall strong tendency, which means that the local tourist guides in Petra city have a high level of CI (). This indicates that the local tourist guides at Petra city have the necessary cultural knowledge and skills, which enabled them to interact effectively with tourists from different cultural backgrounds.

Table 2. Descriptive Statistics of CI Scales

No.	Item	Mean	SD	Median
Metacognitive dimension				
5.	The tourist guide has a sufficient cultural knowledge enabling him/her to interact effectively with tourists from different cultures.	4.93	1.173	5
6.	The tourist guide has adapted his/her behaviour in a way that is consistent with my culture.	4.61	1.435	5
7.	Based on his/her knowledge of my culture, the tourist guide was able to manage the trip in a way that satisfied my expectations.	4.58	1.285	5
Overall mean		4.70		
Cognitive dimension				
8.	The tourist guide respects the values and norms of my culture.	4.54	1.423	5
9.	The tourist guide knows the religious rituals and practices of my culture.	4.54	1.354	5
10.	The tourist guide speaks my language properly.	4.54	1.510	5
11.	The tourist guide is aware of the political sensitivity that affects tourism and tourists.	4.34	1.604	5
Overall mean		4.49		
Motivational dimension				
12.	I believe that the tourist guide has been able to coordinate effectively between tourists of various cultures and the local community's culture.	4.42	1.587	5
13.	The tourist guide has been able to socialize with tourists from different cultures.	4.51	1.468	5
14.	I believe that the tourist guide is confident to adapt to different cultures.	4.46	1.507	5
15.	I think the tourist guide has enjoyed interacting with tourists from different cultures.	4.36	1.578	5
Overall mean		4.43		
Behavioural dimension				
16.	The tourist guide can speak in an accent and tone that fits my mother language.	4.41	1.534	5
17.	The tourist guide uses appropriate phrases and words that suit my culture.	4.48	1.447	5
18.	The tourist guide's body language, gestures and facial expressions are consistent with my culture.	4.60	1.431	5
Overall mean		4.496n		
The overall mean of CI dimensions		4.53		

Table 2 showed that all facets measuring tourist guides' CI were agreed upon strongly by the participants. Subsequently, the range lies between 4.93 - 4.34. Among these dimensions, the metacognitive dimension mean score was the highest ($M=4.93$), whereas the cognitive dimension ($M=4.34$) and the motivational dimension ($M=4.36$) had the lowest mean. These differences in mean scores imply that although local tourist guides in Petra have the essential knowledge about other cultures, their CI level needs more improvement in two key areas.

Firstly, they need to accept the cultural differences of others (in terms of values, norms & rituals). This is especially important whenever these differences relate to political sensitivity (item 11:). In this context, Alhasanat (2016) pointed out that the knowledge of political sensitivity in service provision is essential due to its direct effect on tourist satisfaction. Secondly, local tourist guides need to put in more efforts towards social activities during their tours. Also, they need to express more enjoyment when interacting with tourists from different cultures (item 15:). In this regard, Tu, Guo, Xiao, and Yan (2020) asserted that an effective tourist guide always shows a sense of humor throughout the tour to achieve a successful tour experience.

(2) Tourist Guides' Perceived Performance

According to Table 3, results indicated that participants in this study strongly agreed that their tourist guides' performance was at a satisfactory level ($M=4.60$). The results also revealed that some aspects of tourist guides' performance were differentiated, such as being friendly and creating memorable tour experience (item 26: $M=5.02$, $SD=1.234$). This finding agrees with that of Chandralal, Rindfleish, and Valenzuela (2015), who connected the link between the tourist guide's ability to create memorable tour experiences and tourist satisfaction.

- Providing a delighting level of information about the history of Petra city as a global heritage site (Item 19: $M=4.85$, $SD=1.178$). According to Whittlesey (2007), tourist guides should have the ability to explain history, landmarks, facts, figures, etc., to keep the tour members well-informed about the attraction.
- Organizing tours activities effectively (Item 30: $M=4.76$, $SD=1.307$). Alazaizeh, Jamaliah, Mgonja, and Ababneh (2019) stated that the effective organization for tourism tour activities is important to achieve its objectives and enhance the positive reputation of the visited destination.
- Acting as a road explorer throughout the trips (Item 28: $M=4.74$, $SD=1.123$). Hu (2007) affirmed that professional tourist guides are expected to have a complete knowledge about the visited sites environment, including their routes' information and their geographic details to ensure a unique experience for the tourists.

Table 3. Descriptive Statistics of Tourist Guides' Performance Scale

No.	Item	Mean	SD	Median
19.	The tourist guide is well informed about Petra city's history.	4.85	1.178	5
20.	Tourist guide has been able to handle tourist's complaints.	4.20	1.531	4
21.	The tourist guide is punctual in following the itinerary and schedule of our trip.	4.72	1.323	5
22.	The tourist guide is a good facilitator of the natural environment.	4.72	1.311	5
23.	The tourist guide has shown a good responsibility for safety and security throughout the journey.	4.41	1.584	5
24.	The tourist guide is a good interpreter.	4.61	1.346	5
25.	The tourist guide has exerted his/her best efforts to assure a good provision of services.	4.55	1.387	5
26.	The tourist guide was friendly & sympathetic with us.	5.02	1.234	5
27.	The tourist guide has been able to solve conflicts that occurred among tourists and tries to always keep a good relationship between them.	4.46	1.472	5
28.	The tourist guide is a good road explorer of the trip.	4.74	1.123	5
29.	The tourist guide has a sense of humor and ability to create an entertaining atmosphere.	4.50	1.493	5
30.	The tourist guide has organized the activities in our trip effectively.	4.76	1.307	5
31.	The tourist guide has been able to meet the psychological needs of the tourists, such as a desire to gain knowledge or exploring sightseeing.	4.44	1.587	5
32.	The tourist guide has been able to manage the unexpected accidents.	4.52	1.417	5
33.	The tourist guide is open-minded towards any historical arguments about the site.	4.49	1.490	5
Overall mean		4.60		

Although Table 3 confirmed the satisfactory level of local tourists' guides' performance, the results further reveal that there was a key weakness in the behavior of these guides. This weakness is observed in tourists' guides' ability to endure and handle tourists' complaints (item 20: $M=4.20$, $SD=1.531$). Handling customers complaints is believed to play a significant role in gaining tourists' loyalty (Liu & Li, 2019).

(3) Tourists Satisfaction

Results presented in Table 4 showed that tourists who participated in this research were strongly satisfied during their guided tour experiences ($M=4.72$). Tourists had a strong tendency to agree on most items measuring their satisfaction on their tour experiences. However, one item (39) scored the

weakest mean ($M=4.35$, $SD=1.544$) in comparison to other items of the same scale. This indicates that participants' intention to revisit Petra was at a level that is not consistent with their satisfaction on other aspects of their tour experience. Nevertheless, since participants confirmed their satisfaction about local tourists' guides' performance, their intention to revisit Petra may be affected with other reasons that require more research in the future.

Table 4. Descriptive Statistics of Tourists' Satisfaction Scale

No.	Item	Mean	SD	Median
34.	The tour in Petra has enriched my tourism experience.	5.00	1.175	5
35.	The tour in Petra helped me to escape from the lifetime routine.	4.77	1.158	5
36.	I have enjoyed the activities during the tour.	4.77	1.178	5
37.	I am satisfied with the tour services in Petra.	4.74	1.317	5
38.	The tour in Petra has increased my knowledge.	4.82	1.163	5
39.	I intend to revisit Petra again.	4.35	1.544	4
40.	I am going to encourage others to join a tour in Petra.	4.64	1.250	5
41.	The tour experience has improved my impression about the local residents of Petra.	4.70	1.334	5
Overall mean		4.72		

Study's Hypotheses Testing

(1) The Impact of CI on Tourist Guides' Perceived Performance

In the current study, the first hypothesis and its sub-hypotheses (sub-hypotheses 1.a-1.d) were developed to examine the impact of CI on tourist guides' perceived performance from tourists' perception. A multiple regression analysis was applied to test the previously mentioned hypothesis and its sub-hypotheses. Results of the multiple regression are shown in Table 5 below.

Table 5. Multiple Regression for the CI Influence on Tourist Guides'

Variable	Standardized coefficient "Beta"	Sig.
Metacognitive dimension	0.114	0.039
Cognitive dimension	0.174	0.002
Motivational dimension	0.442	0.000
Behavioural dimension	0.192	0.001
R square	58.4%	
Sig.	0.000	

Results of the multiple regression analysis in Table 5 revealed that the model of tourist guides' CI developed in this study was able to explain 58.4% ($p \leq 0.001$) of variance in tourist guides' perceived performance. Furthermore, the results indicated that all of the tourist guides' CI dimensions, including the metacognitive dimension, the cognitive dimension, the motivational dimension and the behavioral dimension, contribute significantly in

explaining the variance of tourist guides' perceived performance. Accordingly, the alternative parts of hypothesis 1 and its sub-hypotheses were accepted, indicating that there is a positive impact of CI on tourist guides' performance. This finding agrees with the study by Alshaibani and Bakir (2017), who found a positive relationship between CI and employees' performance in multicultural service encounter.

Another finding shown in the table above reveals that among different CI constructs, the motivational dimension has the largest contribution ($\beta=0.442$, $p\leq0.001$) in explaining the variance in tourist guides' perceived performance. Conversely, the metacognitive construct has the smallest contribution ($\beta=0.114$, $p\leq0.05$). This implies that tourists' guides' knowledge about the cultures of others has more effect on their performance than their skills in socializing and coordinating between different cultures.

(2) The Relationship between Perceived Performance of Tourist Guides and Tourists' Satisfaction

The second hypothesis of this study examined the relationship between tourist guides' perceived performance and tourist' satisfaction on their tour experience. To test this hypothesis, a Pearson coefficient correlation was conducted. The result of this analysis is shown in Table 6 below.

Table 6. Pearson Correlation for the Relationship between Tourist Guides'

Variable(s)	Tourist guides' performance
Tourists' satisfaction	0.507***

The result shown in the table above revealed that there is a significant strong positive correlation (where $r =0.507$, $n=271$, and $p<0.001$) between tourist guides' performance and tourists' satisfaction. As a result, the alternative part of hypothesis 2 was accepted, thus confirming the positive role of the tourist guides' performance in influencing tourists' satisfaction of the entire tour experience. This finding agrees with the study by Kuo, Cheng, Chang, and Chuang (2018), who asserted that there was a positive relationship between tourist guide's performance and satisfaction of foreign visitors in Taiwan.

Discussion

To accomplish the current study's aims, five objectives were developed and achieved through the study's results. These include:

The assessment of CI level for tourist guides working in Petra, Jordan The study's findings revealed that the local tourist guides at Petra city-Jordan had a high level of CI (). This indicates that the local tourist guides had a high level of metacognitive CI, which provides them with the ability to use the cultural knowledge to strategize and interpret cross-cultural situations (Van

Dyne's et al., 2010). According to Chen and Fu (2018), the metacognitive construct of CI is an individual's intellectual process which enables him/her to acquire and interpret knowledge about other cultures. Such cultural knowledge provides a better understanding of tourists' needs and perceptions easily (Triandis, 2006; You, Chen & Su, 2019).

However, among different aspects of the metacognitive CI, local tourist guides varied in having a sufficient cultural knowledge to interact effectively with tourists from different cultures (4.93 1.173). They were also differentiated by their ability to adapt their behaviors in a way that is consistent with tourists' cultures (4.61 1.435).

By contrast, findings revealed that among different dimensions of CI, the lowest scores for local tourist guides were recorded. This is due to their awareness and sensitivity for political issues among different cultures () and their intrinsic motivation, which affects their ability to create an enjoyable interaction in any cross-cultural experience ().

The evaluation of perceived performance for local tourist guides at Petra city, Jordan

Based on the study's results, it was found that the performance of local tourist guides at Petra city was perceived by tourists to be at a satisfactory level (Mean=4.60). The study's participants indicated five characteristics that were distinguishable in tourist guides' performance. These characteristics include tourist guides' friendliness and sympathy with their group members (M=5.02, SD=1.234), their level of knowledge about the history of visited site (s) (M=4.85, SD=1.178), the effective organization of their tour activities (M=4.76, SD=1.307), their capability of path-finding throughout tour roads (M=4.74, SD=1.123), their accurate commitment to the tour schedule (M=4.72, SD=1.323), and their ability to facilitate tourist experience within different natural environments (M=4.72, SD=1.311). These characteristics were considered by many scholars as the keys guiding tourist guides' professionalism (Weiler's & Ham, 2002; Chang, 2014).

The assessment of inbound tourists' satisfaction at Petra city, Jordan

Respondents of the current study demonstrated a strong satisfaction about their tour experience in Petra city (M= 4.72). They also expressed their willingness to revisit Petra again (M=4.35, SD=1.544). Many scholars argue that tourist guides' performance has a positive impact in enriching tourists experience and in achieving high level of satisfaction for the entire tour experience (Chan et al., 2015; Cetinkaya & Oter, 2016; Bahang, Wello & Akil, 2018)

The examination of the relationship between tourist guides' CI and their perceived performance

To examine the relationship between local tourist guides' CI and their performance, a multiple regression test was applied. Results of the multiple regression revealed that the tourist guides' CI was able to predict 58.4% of variance in their performance. The results also indicated that all of the CI dimensions contributed positively in affecting tourist guides performance. This result revealed that there was a direct positive influence of CI on the performance of local tourist guides. Accordingly, this is consistent with the study of Mattila (2000), which affirms the significance of CI for hospitality employees in creating an effective interaction with customers from different cultures. Crowne (2008) further stated that CI was found to positively influence employees' competence when interacting with foreign customers. The examination of correlation between tourist guides' performance and tourists' satisfaction

Based on Pearson coefficient correlation analysis, a significant positive relationship exists between the performance of tourist guides and tourists' satisfaction (where $r= 0.507$, $p<0.001$). This result confirmed similar relationships that were found by previous studies (Cetinkaya & Oter, 2016; Alshaibani & Bakir, 2017). Beerli and Martin (2004) claimed that tourist guides' performance can strongly influence tourist's experience. Therefore, good guiding service will result in more economic benefits for the local community (Dahles, 2002).

Conclusion

The review of literature suggests that cross-cultural knowledge shaped the attitudes and behaviours of front-line employees in tourism, which, in turn, affects tourists' perceptions and satisfaction. Such notion prompted the researchers to test the interplay between tourist guides' CI and tourists' satisfaction via tourist guides' performance. Tourist guides are the most front-line players within the tourism industry since they interact with foreign guests from different cultures. Consequently, a proposed model was developed for this study which linked CI to tourist satisfaction via tourist guides' performance. The model was reliable and applicable within the Jordanian tourism industry.

The study findings showed that tourist guides' performance mediated the relationship between tourist guides' CI and tourist satisfaction. This leads to a conclusion that the local tourist guides in Petra city were well-educated about intercultural knowledge and were able to adjust this knowledge when interacting with foreign visitors from different cultures. Therefore, the quality of tourist guiding service is delivered via the display of tourist guides'

sufficient cross-cultural knowledge and their professional presentation when interacting with tourists from different cultures.

Recommendations

The current study has provided a number of significant contributions. It has added to knowledge, particularly to tourism literature by explaining the relationship between tourist guides' CI and tourist satisfaction, which has not been investigated before. The study also developed a measuring scale that can be used in evaluating tourist guides' performance. Based on the study's findings, the research proposed a set of recommendations to help in improving local tourist guiding service so as to enhance tourist satisfaction.

The study emphasized the significance of improving the level of cultural intelligence of local tourist guides in Petra city, as a global heritage site destination, to enhance the quality of tourist guiding service. Furthermore, the study's findings confirmed the relationship between tourist guides' performance and tourists' satisfaction. Accordingly, dynamic monitoring of local tourist guides' performances should be conducted periodically by official tourism institutions, such as PDTRA, JTGA, and PTGA.

The research also stresses the importance of political sensitivity for local tourist guides, which creates more political awareness regarding regional and international circumstances in order to understand visitors' political perceptions. Subsequently, this can be achieved by launching periodic awareness sessions to enhance their respect and understanding about foreign guests' political tendency, political sensitivity, and political intolerance. On the other hand, the study recommends periodic training programs by tourism official institutions at Petra city for local tourist guides to improve their awareness towards tourists' multicultural differences. This will prevent any potential cultural prejudices and negative stereotyping when serving visitors from various cultures.

In addition, lack of events and entertaining activities during guided tours was observed during the survey. Therefore, it is recommended to invest in recreation facilities, events, and entertaining programs to enhance visitors' perceived image.

Suggestions for Further Research

In relevance to the study's limitations, certain suggestions are provided for future research.

The measurement of tourist guides' CI was based on international guests' point of view only. However, to gain better understanding of tourist guides' CI, future studies are suggested to measure the level of CI using qualitative techniques, such as interviews and observations.

Furthermore, the study encourages the need for systematic assessment of tourist guides' performance through developed satisfaction surveys. This will help future researchers to get over the limited resources and barriers that the current researchers have encountered.

Also, due to the limited resources available in the field of this research, only one tourism destination (Petra city-Jordan) was assessed. Future researches can extend their context to include more destinations and larger population so as to enhance the generalization of the study's model. Future researches should also employ the study's model in different service industries where cross-cultural interaction is essential in service provision (e.g., hotel industry, food and beverage services). This will further enhance the validation of the study's model and establish comparative conclusions.

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