FELA ANIKULAPO KUTI, AFROBEAT GENRE AND SOCIO-POLITICAL ACTIVISM IN NIGERIA

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Abstract

Historically, music has been a major means through which man expresses his intentions, emotions, feelings, reactions and sentiments. In Nigeria, the Afrobeat genre which developed in the 1960s and became ubiquitous in Africa and globally between the 1970s and 1990s was a laudable tool deployed by Fela Anikulapo Kuti against Nigerian authoritarian regimes and neoliberal institutions. The genre appealed to the minds of the Nigerian masses as well as many labour organisations in Africa and South America. This paper explores the contributions of Fela's Afrobeat genre on the social consciousness of the oppressed Nigerian masses in their fight against authoritarianism and neoliberal orthodoxy. Through the lived contributions of Fela Anikulapo Kuti and other Pan African intellectuals, the paper shows the ways in which the genre contributed to democracy, rule of law and socio-political activism in Nigeria. Scholarly works on Fela Anikulapo's contributions to African identity are legion, but

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this paper reflects essentially the impact of his Afrobeat genre on the quest for social justice in Nigeria.

Keywords: Fela Kuti, activism, political mobilization, democratic norms, and social consciousness

INTRODUCTION

Nigeria as a country is sliding towards barbarism. This is owing to the impunity, highhandedness and recklessness of the political gladiators and the ruling elites. The country is gradually gravitating towards a state of lawlessness. The situation has led many anti-imperialist and left-wing organizations and intellectuals to describe the polity as a 'Failed State'. There is indeed no doubt, that democracy in contemporary Nigerian polity is laughable. Recent maladies exemplified by some members of the political class, including faulty democratic processes has also compelled some radical critics to define the democratic system in no other way than 'oclocracy'…the noisy process of crowning clowns as leaders and eliocracy…the conscious stealing of the people's mandate through the electoral process. These assertions, stem from a combination of bad governance, neoliberal policies, undemocratic policies, corruption, power pursuit and zero statesmanship, as well as lack of patriotism of the thieving political elites. There are growing concerns across social, religious and political circles, about the increasing socio-economic crises, insecurity, electoral irregularities and bad governance in the state. Yet, there are no adequate mediums of expression and conscientisation for the masses in the contemporary Nigerian society. In fact, little or nothing has been heard from the Nigerian rural majority, including trade unions, peasants, the working masses, owing to the lack of appropriate mediums for political mobilization and ideological expressions.

This paper contends that the continuing lukewarm and passive nature of the Nigerian intellectuals, activists, trade unions, student associations and the working masses, is a fundamental cause of the degree of

political rascality and opacity of the ruling class. The paper demonstrates, how Fela Anikulapo Kuti, struggled to invent the Afrobeat genre, that ultimately served as a tool of socio-political activism against the Nigerian authoritarian government in the last three decades of the twentieth century. The genre provided ideological inspiration and vigor for the Nigerian working masses in their struggles with the authoritarian regimes throughout the 1980s and 1990s. Thus, the Afrobeat genre was a significant component of music which became the major medium of political and social expression. This unrivaled invention made Fela a unique hero in Africa during the twentieth century and beyond. As a revolutionary figure of the twentieth century, Fela was possessed by an apocalyptic vision, wherein he saw the height of the walls that had to be broken down. He was an astute fighter for the rights of the common man through his Afrobeat genre. (Moore, 2010).

Afrobeat has been defined in different ways and by different scholars and musical authorities all over the world. Ekpe (1986), defines Afrobeat as a fusion of conventional European dance band music, with a rhythmic beat that entirely reflects new echoes of the Cuban music beat. According to Obidike, (2001), Afrobeat is a fusion of soul music, with a blend of European rhythm and Indian reggae. Collins (2002) sees Afrobeat as a fusion of stylistic elements drawn both from Fela's popular and traditional music culture and from African-American music within a West African cultural context. Afrobeat became a global phenomenon which drew attention, not only to Fela Anikulapo Kuti, but also to the genre and its uniqueness. It appealed to both the young and old, as ordinary masses who were informed of the unscrupulous and exploitative dispositions of the ruling elites to the masses. This is also evident in the ways radically composed Afrobeat genre mobilized the Nigerian masses against oppressive political leaders in the last three decades of the twentieth century. This is the investigative focus of this paper.

Music as a Tool of Social Engineering

Music no doubt plays an important role in the socialisation of young people, particularly the young adults. Music originally is one of the nine arts over

which the daughters of Zeus over presided in classical Greek mythology. To Plato (400 B.C) music is the appropriate means of social and political education. Plotinus (270 A.D) also describes music as having mystic and occult power. Boethius (524 A.D) summarizes these various views by dividing music into three types; *musica mundane* or cosmic harmony first propounded by Pythagoras; *musica humana* which he described as the harmony of soul and body; and *musica instrumentalist* which he described as the harmony produced by musical instrument. Obidike (2001)

To the modern musicologist however, music is a play with sound, a paragon of the experiences and activities of man; a reflection of those experiences and activities as well as a model for both. It is properly interwoven into the culture of every society of the world. It is a way of living built up by a group of people. During the 1980s and 1990s, political activism, social campaigns and expressions, were demonstrated through several genres. Drawing largely from the works, life, and times of Lennon, who used music to fight unjust policies, strengthened opposition and resistance to the Vietnam war, as well as expressed his love for the human race, Fela was one of the few African artists who advanced the frontiers of revolutionary movement through his Afro-beat genre. To be sure, Fela's Afrobeat combined elements of West African musical forms such as Fuji music and highlife with American funk and jazz influences, with a focus on chanted vocals, complex intersecting rhythms, and percussion.

Musicians such as Bob Dylan, Billy Joel, Bruce Springsteen, Dixie Chicks, Elton John, Grateful Dead, Madonna, Ne-Yo, and The Goo-Goo Dolls, among a host of others have held concerts for Barack Obama, as a way of influencing voters in America. These icons of popular culture have a very strong influence on potential voters. Another example of this influence was the concert held in Philadelphia by Bruce Springsteen. The Bruce Springsteen's concert in Philadelphia was to act as "…a catalyst for the disengaged to register to vote". Several people heard the call and according to the Obama campaign, some 21,000 new voters were registered as a result of the event. This also contributed to Clinton's emergence as a result of the mobilization the young people. Likewise, in

2008, Rock Activists such as Billy Joel and Bruce Springsteen held concerts to support and gather votes for the candidates and they registered almost 2.3 million young people, who supported Obama and probably facilitated his victory over McCain. The election was heavily influenced by a process of political activism through several genres of music, which had a strong effect on the political climate of the United States. Although a number of contemporary Nigerian artistes had produced different kinds of genres with a meld of African traditional sound, otherwise known as 'Afro'', none had deployed the genre as a tool for social advocacy and political activism as Fela Anikulapo Kuti. In Africa, Fela's genre had profound impact on the political mobilisation during the 1980s and 1990s.

Moore (2010) explicitly captured the origin of Fela's Afrobeat and noted that Fela was a voice for his people, an advocate for true democracy and human dignity in Africa. Fela's music, holistically, reconfigured the minds of the oppressed Nigerian masses as they became rebellious against the military government during the 1980s and 1990s. Through the genre, the youths were able to see the government in a different light, perceiving them fundamentally illegitimate, selfish, tyrant and unpatriotic to the African cause (Olaniyan, 2004). Eesuola, also demonstrates the ways in which Fela's genre aided the development of democratic principles, and institution in Nigeria. He asserts that Fela's, "Country of Pain: (Akuna Kuna Senior Brother of perambulator) helped demonstrably in nullifying several draconian laws introduced by the Nigerian military regimes. Fela played a key role in combating these laws through his songs.

It was in this light, that the "Democratic Theory" popularized by Dahl, Rawls and Habernas (2016) depicts the nexus between music and politics. These theorists rediscovered their Aristotelian roots by returning to the question of how to achieve the good, just and stable political structure, through the instrumentality of music. Dahl (1971) specifically notes that cultural, social, institutional and political changes could be made in the society through the instrumentality of conscious music.

The Origin of Afro-beat

The earliest form of Western music introduced into Nigeria was choral chants and hymnals by Portuguese Missionaries in the 15th and 16th centuries. This was followed by more conventional choral music which was followed by the mid-19th century classical music. (Arugha, 2008) At the same time martial music, such as marching bands were introduced by the colonial state. (Keazor 2015) E.T Mensah launched his band in 1931 playing in the Accra Orchestra, starting with the piccolo and later playing the trumpet, piano, alto and tenor saxophone. He joined the Accra Rhythm Orchestra Band in 1946 playing Swing Jazz, alongside British, American and West Indian Soldiers. In 1946, Mensah, Guy Warren and others joined the Tempos Swing Orchestra and started experimenting with Afro-Cuban and Caribbean rhythms, Swing and African Rhythms- Highlife. In 1956, the Tempos released a hit single with the renowned Louis Armstrong during a visit to Ghana. (D'arcangelo, 2016). The Tempos subsequently became a model for big bands across West Africa, including Nigeria. This established the linkage between the Highlife and Swing Jazz. (Collins, 1989)

Fig 1.1: Louis Armstrong, his wife and Kwame Nkrumah in Accra in 1956

Source: Sam D'arcangelo, "60 Years Ago Today: Louis Armstrong Visits Ghana," *Off Beat*, May 23, 2016.

Nigeria's romance with jazz music probably began as far back as the 1940s, specifically after the Second World War (1939-1945) with the return of expatriate Nigerian stars like Bobby Benson, Tunde Amuwo, Bob Edwards, Willy Payne and Soji Lijadu, among others, from Europe. These pioneers started out mimicking the big band sounds of Glen Miller and Benny Goodman; the guitar style of Charlie Christian and the saxophone sounds of Coleman Hawkins and Earl Bostic. (Idonije, 2014) They played a mixture of calypso, Latin–American rhythm, jive, dance and ballroom styles such as waltz, quickstep, tango, foxtrot and even highlife. However, to underscore the fascination they had for jazz, almost all these early bands adopted jazz tunes for self-identification. The Bobby Benson Jam Session had Benny Goodman's standard 'Soft Winds' as its signature tune, while Tunde Amuwo adopted the Charlie Christian classic 'Seven Eleven'. Even E.T.Mensah's Tempos Band of Ghana, which was the model for many Nigerian jazz bands, adopted the Original Dixieland Jazz Band's 'Tiger Rag' as its signature tune.

Fig 1.2: Bobby Benson and his band in the 1950s

**Source:** Edmund John Collins, "Jazz Feedback to Africa," *American Music 5*, no. 2 (1987): 183.

In the 1950s, the Dance Orchestra, emerged as the leading big band orchestra. It was directed at various times by the legendary musicologists,

Fela Sowande and Steve Rhodes, till it became the rallying point for serious jazz musicians. (Keazor, 2015) Aside from jazz, the band played dance music of different types and featured such individualists and soloists as trumpeters Mike Falana and E.C. Arinze, upright bassist Ayo Vaughan, tenor saxophonist Chris Ajilo and guitarist Stan Plange, among others. An important factor that aided the growth of Jazz in Nigeria as from 1955 was the daily broadcast of the Voice of America Jazz Hour to a listening audience of 30 million people, including Nigerians. The programme was usually anchored by Willis Conover. The programme featured the music of Jazz masters as well as explained what Jazz music is. The VOA Jazz Hour consequently converted many Nigerians into Jazzlonars. At home and as from 1961/62, the ace music critic and historian, Benson Idonije started his weekly, Thursday radio jazz programme at the Nigerian Broadcasting Corporation (NBC) Jazz Club (Keazor 2015).

Fig 1.3: Willis Conover　　　　　**Fig 3: Benson Idonije**
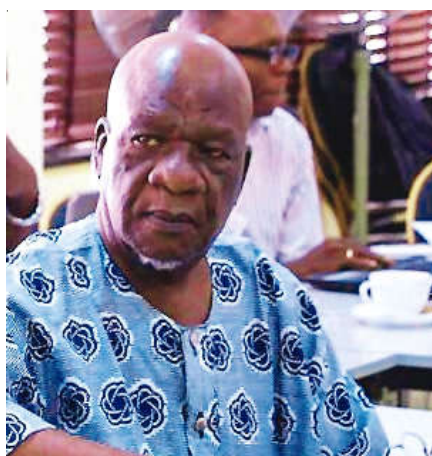
Source: "Jazz in Nigeria," *Masterpiece*, August 26, 2016. http://masterpiece-ng.com/jazz-in-nigeria/

Ajilo in particular was to record what became the first Afro-Beat Track – Ariwo. He also collaborated in a number of avant-garde compositions with Fela Anikulapo Kuti, notably "Ara Ijesha gbe nu iya." It was however in 1963 that jazz became established in Lagos – in its purity and total

essence - by the Fela Ransome-Kuti's (later Fela Anikulapo Kuti) led Quintet. Although he had recorded a jazz album in London by the time he came back to Nigeria in 1963, the impetus to form a jazz quintet arose from an interview in which he featured on the Radio Nigeria weekly jazz programme upon his arrival from the UK. In the quintet, Fela was doubling on trumpet and piano, with Don Amaechi on guitar, Emmanuel Ngomalio on bass, John Bull on drums and Sid Moss on piano (with Benson Idonije as manager). The band played regularly on Monday nights at the iconic Cool Cats Inn in Ebute Meta, Lagos, a magnet for jazz enthusiasts. The band attracted guest stars like trumpeter Zeal Onyia, saxophonist Taiwo Okupe, Steve Rhodes and pianist Art Alade, among others. (Moore, 2011 & (Keazor 2015) It consisted of covers of modern jazz standards, such as Charlie Parker's Billie's Bounce, Miles Davies Bags groove, Gershwin's But not for me and Errol Garner's Misty, which were identified with contemporary times. The Quintet, which also recorded and performed as the Highlife Rakers, later became the Koola Lobitoes in April 1965 and the Afrika 70 in 1970. (Moore, 2011)

Fig 1.4: Fela Kuti and his Koola Lobitos band in 1965

Sources: Kieron Tyler, "Fela Ransome-Kuti and His Koola Lobitos," *Art Desk*, 3 April 2016

Afrobeat relied significantly on a sophisticated compositional style combining foreign music with traditional African music. According to Okeilome, (2017), Afro-beat evolved through a combination of two words; Afro and beat. Afro is the acronym of African organized sound, while beat is a rhythmic counting pattern in relation to such music. (Ohikolome. 2017) The need for the study of a genre of music such as Afro-beat is imperative as Omibiyi-Obidike advocates that African popular music should attract to a very large extent scholarly enquiries on analysis of its forms and styles. Obidike (2001). Afro-beat, according to Moore, (2010) began in the 1970s. It originated from Nigerian Fuji and Ghanaian highlife genres. Moore (2010). affirms in his biographical work that Fela's father was a renowned music composer and he composed the Abeokuta-Egba anthem. According to Coker, (2004) It was under the tutelage of his musically inclined father, with the inspiration from his mother who was a well-known feminist and a fearless political activist that Fela took western music lessons, which made political activism the theme of his genre. Fela was also influenced by Sandra Izsadore, popularly known as the queen mother of Afrobeat. Sandra Izsadore, now Sandra Smith was his girlfriend during his time in London. Sandra shared her knowledge about the Black Movement, The Black Panther Movement and Malcolm X. (Laweekly, 2011) Fela began to write songs that touched the minds of many African patriots. It should be noted that in August 1958, Fela had traveled to England to attend the Trinity College of Music, London. He spent the next five years taking courses in music, theory, harmony, counterpoint, and trumpet.

While in London, Fela also immersed himself in the city's vibrant nightlife and forging musical affiliations especially on the jazz scene. It was during these years that Fela began his decade-long quest to forge a dis-

tinctive "global" sound.. Though his jazz career was dwindling initially, Fela continued to experiment, deriving ideas from current popular music trends and mixing those influences with indigenous African music. It was this creative mix of highlife, jazz and traditional African music that Fela named "Afro-beat" in 1968. The following year, he traveled to the United States, where he encountered Black Panther activism, an experience that ushered him into new ideological and creative directions. By the early 1970s, Fela and his Africa '70 band had taken the city of Lagos by storm with his peculiar genre. During the 1970s, Afro-beat evolved into a counter-culture.

This illiberal movement had drawn disciples from a cross-section of Nigerian society. Regular gatherings took place at Fela's communal residence, the *Afrika* Shrine, where he performed several times weekly. His unconventional or eccentric tunes such as, "Ikoyi Mentality Versus Mushin Mentality," "Question Jam Answer," "Shakara," "Jeun Koku," "Open and Close," "Shakara" (Oloje), "Lady," and "Gentleman" radicalized the thoughts of many Nigerians. Fela's genre dramatically transformed the Nigerian urban sound. Afro-beat was distinctive; sophisticated yet local, and symbolizing especially to the youth, all things progressive. (Oyebode, 2010) The development of Afro-beat can be classified into four periods. (Anderson, 1995) The first period is the "highlife experience period" back in the 1960s (1964-1969), while the second period was in the 1970s when his music was at its peak. At this time, his ideological stance had taken shape and become sufficiently concrete, to successfully fuse an equally new musical vision with political commitment. The third period was the post-1976 confrontation with the military regime which made military victimization the major theme of his music (1970-1976), while the fourth period was the re-ordering of his tunes into chants (1977-

1990). (Okeilome, 2017) Since Pidgin was the lingua franca of most of the working masses and those of the lower class in Nigeria, he adopted broken English (pidgin) as the language of his lyrics. Adopting pidgin as his lyrical language made his communication and criticism of the political elite very clear to his plebeian audience.

Afro-beat, Political Activism and Social Change

Afro-beat is rooted in African nationalism or the 'Black nationalism, that had been propagated by Pan African intellectuals and activists in nine-teenth and early twentieth centuries. The principles of Pan Africanism were central to the themes of Fela's Afro-beat. (Obidike, 2001). To be sure, African or Black Nationalism embraced a complex set of social, political and cultural ideas articulated by people of Africanist thinkers in their col-lective pursuits of human dignity, cultural identity, justice and freedom in the nineteenth and twentieth centuries. Although often used in the context of African-American discourse, the term "Black Nationalism," encom-passed the abolitionist activities of Paul Cuffee (1759-1817), Marcus Garvey, Benjamin "Pap" Singleton, Henry McNeal Turner, Martin Delany, Henry Highland Garnet, Edward Wilmot Blyden with W.E.B. DuBois (United States), Franz Fanon (Martinique), Walter Rodney (Guyana), Malcolm X (United States) and Kwame Nkrumah (Ghana) pioneered the discourse (Anderson, 1995). Fundamentally, Black Nationalism was a reaction against the experiences of dispossession, oppression and rejec-tion fostered by Euro-American enslavement and colonization of Afri-cans. (Appiah, 1992) Black Nationalist ideas, therefore, thrived on the basis of fraternal solidarity shared by Africanist thinkers. The ideas ex-pressed by these African patriots fundamentally shaped Fela's musical genre as evident in his songs, such as "Who no Know go Know" (1975),

"Why Blackman dey Suffer" (1971), and "Movement of the People" (1984).

Another strand of Black Nationalism into which Fela immersed himself was Afrocentrism. While Pan-Africanist ideas have tended to find expression through political action, Afrocentrism was a movement for the reformation of the consciousness of both blacks and whites, but particularly blacks who had been brainwashed and hypnotised by centuries of racism and Eurocentrism. Afrocentric thinkers called for an "Africa-centered" approach to knowledge and the restoration of a glorious African past through the valorization of Egypt, and other ancient African civilizations. Fela affirmed his indebtedness to Afrocentric literature when he instructed listeners in doubt of his words to consult *The Black Man of the Nile*. The Afrocentric movement was a series of activities by concerned African and African-American scholars and educators directed towards ensuring that the African heritage and culture, its history and contribution to world civilization and scholarship reflected in the curriculum at every level of academic instruction (Chukwuokolo, 2017). As such, Afrocentrism is primarily a cultural nationalist movement. Afrocentric authors that influenced Fela include George G.M. James (The Stolen Legacy, 1954), Y. Ben-Johchannan (The Black Man of the Nile, 1972), and Cheikh Anta Diop (Black Athena: The Afro-asiatic Roots of Classical Civilization, 1987). (Olaniyan, 2010) Afrocentric ideas can be heard in songs like "Africa Centre of the World" (1980) and "Don't Worry about my Mouth O" ("African Message"). Fela demonstrated his indebtedness to Afrocentric literature when he instructed listeners in doubt of his words to consult "The Black Man of the Nile". Having devoted most of the 1960s to the pursuit of what amounted to an elitist musical discourse, it was Fela's

populist aesthetic that enabled him to finally create a musical genre that became widely successful during the 1970s. (Okeilome, 2017)

Not only did Fela transform the structure of his music to meet the aesthetic and social needs of the masses, he also sang about the day to day experiences of the ordinary man on the street, echoing his pain, frustrations, aspirations and euphoria. Born into a prominent middle class family, Fela walked away from the comfort zone to live in the slums of Lagos to associate with the poor masses. Fela was a champion of the lower class whom he described, in his songs, as "my people," or "brothers and sisters." In 1972, Fela decided not to sing exclusively in Yoruba and English, languages which reflected ethnic and class barriers and therefore restricted communication. Instead, he made Pidgin English-language of Anglophone West Africa's lower class the official language of his Afrobeat music. Initially, he sang songs that were generally non-politically oriented in his native Yoruba tongue and English. This included "water e no get enemy" and "A Lu Jon Jon ki Jon" but then he started to sing anti-government and confrontational songs, which placed him at loggerheads and collision with both the imperialists and their Nigerian political surrogates in power. Clearly, the essence of his Afro-beat music was to represent the interest of the masses and the downtrodden in the society. In spite of threats, raids, harassment and intimidation, Fela continued to criticize military dictatorship and its imperialist collaborators – including the multinational companies like Shell, ITT, Mobil, among others.

The ruthless invasion of "Kalakuta Republic" in Ojuelegba, Lagos, in 1977 by some Nigerian soldiers', who maimed and raped its inhabitants, threw his mother three floors down, looted and raged the place was an indication of the impact of his music on the military regimes. The track

"Unknown Soldier" was an emotional narration of the event that took place during the brutal invasion of his estate by agents of the Obasanjo led soldiers. A government assigned panel, tasked with investigating the attack, later disowned the soldiers and labelled them unidentified seized the estate (Kalakuta), arrested the occupants (including Fela) and made over 2,000 people homeless. Continuing his criticism of the military order, the track "Zombie" was an attempt to explain the dictatorship of the military. It was a message to the young military officers to think about the Zombie-like order of "obeying before complaining". He asserted emphatically that the members of the society including himself would not be treated like sheep and will speak up for themselves whenever it became necessary.

What more, through his music Fela exposed the looting that was going on between the military officers and the thieving civilian ruling class. A notable example, was the narration in the album 'ITT' (translated as International Thief Thief), symbolic of the International Telegraph and Tele-communications. In this particular masterpiece, Fela showed how millions of dollars through exaggerated contract fees, were siphoned by the ITT. The album ITT is relevant to the past and present day Nigerian political and economic crisis. Furthermore, the album "Army Arrangement" released in 1985 revealed the mismanagement of the economy by the past regimes in Nigeria, military and civilian governments alike. It exposed the modus of misappropriation by government officials. Fela revealed that the Nigerian state could be transformed progressively since the ruling elites had mastered the art of reinvention. He showed that the "same old politicians who had ruled and ruined Nigeria continued to resurface through party metamorphosis e.g. (UPN, NPN, PRP & GNPP). The album exposed the similarities between the military Generals and the ruling capitalist class. "Original Suffer Head" was another hit album that was released

in 1981 (Erhabor 2012) Fela was able to capture the terrible living conditions of the working masses and peasants in the Nigerian society. (Erhabor 2012).

Fela described in the lyrics the ways in which people's livelihoods were disappearing with poor basic amenities in the rural areas. He further criticized the essence of the United Nations' cynical programs of "food-house-health etc., for all by the year 2000". He believed these programs were designed to cajole people living in the underdeveloped countries. Albums like "Overtake Don Overtake Overtake" (ODOO) and "Big Blind Country" (BBC) exposed how the various military take-over in Africa were fundamentally the same in their methods of dictatorship. However, in "Overtake Don Overtake (OODO)," he was able to expose the grand conspiracy involved in the killings of the young radical military leader of Burkina Faso, Captain Thomas Sankara. Fela was a fan of Thomas Sankara because he was an Nkrumaist and one of those who struggled for African identity (Erhabor 2012). Equally worth mentioning is the grand success of the album "Beast of No Nation". Here Fela revealed the insincerity and hypocrisy of the United Nations. He stated aptly, that "human rights na my property-animal cannot dash me human rights". Fela never failed to sensitize his fans about the repercussions of every government's policies. Fela wanted his audience to be aware of the antics of the government (Surelere, 2017).

Conclusion

Afro-beat is definitely a genre of music that has crossed international boundaries with the appeal of its sound and ideals. Through a study of Fela's music, this study explored the ways in which music generally could be used as a tool for social transformation and political activism. Fela Anikulapo

Kuti stands out in history as the inventor of Afro-beat, who used music as a form of activism against corrupt political elites as well as to clamour for social justice, human dignity and African cultural values. The study shows that Fela's encounter with Sandra Izsadore and other radical Pan Africanists radicalized his mind and shaped his musical career. In this way, music could also serve as a medium for socio-political mobilization agaist oppression, and mis-governance by the ruling elites. Fela Anikulapo Kuti's genre remains a critical creed used by contemporary activists in Nigeria. As a central indomitable figure, Fela refused to be intimidated by his numerous trips in and out of detention, and the tribulations he suffered when Kalakuta was attacked and consequently, the death of his mother. He did not relent on his efforts to uphold the truth even to his dying days. From Fela's lifestyle, it could be deduced that rescuing Nigeria from the fetters of imperialism, the parasitic comprador elite, dependent accumulation and uneven development, does not require missiles and atomic bomb, but a subtle ideological orientation and conscientisation of the masses through the conscious music.

REFERENCES

Akpabo, S. E. (1986). *The Foundation of Nigerian Traditional Music.* Ibadan: Spectrum Books.

Anderson, V. (1995). Beyond Ontological Blackness: An Essay on African American Religious and Cultural Criticism. New York: Continuum.

Appiah, K A. (1992) In My Father's House: Africa in the York and Oxford: xford University Press.

Collins, J. (2002). *Music Makers of West Africa.* Washington D.C: St Martin Press, 80-81.

Coker, N. (2004). A Study of the Music and Social Criticism of African Musician, Fela Anikulapo Kuti. New York: Edwin Meller Press, 6.

Chukwuokolo, J.C. (2009). Afrocentrism or Eurocentrism: The Dilemma of African Development, *African Journals Online,6*:32,http://dx.doi.org/10.4314/og.v6i1.52333, Accessed 25th August 2017.

Ackerman, J. W. (2011). Andrea Kalyvas; Popular Sovereignty, Democracy, and the Politics of the Extraordinary. In Max Weber, Carl Schmidt and Hannah Arendt, *The Germanic   Review: Literature, Culture, Theor*y, 320-324, accessed 8th December 2016, DOI: 10.1080/00168890.2011.618441

Arugha A.O. (2008). The Origin of Concert Music in Nigeria, 1850 – 1920, *Ekpoma Journal of Theatre and Media Arts 2*, 1 & 2: 133.

Keazor, E.E. (2015). A History of Jazz, (A presentation delivered at symposium on Jazz in Nigeria, hosted by the Satchmo Jazz Festival on May 1 2015)

D'arcangelo, S. (2016) Sixty Years Ago Today: Louis Armstrong Visits Ghana *Off Beat*, May   23, 2016, http://www.offbeat.com/news/60-years-ago-today-louis-armstrong-visits- Ghana/ (accessed 24 June 2018).

Collins, J. (1989). "The Early History of West African Highlife Music," *Popular Music 8*, 3 :226.

Idonije, B. (2014). Jazz in Nigeria: It's Evolutionhttps://allafrica.com/stories/201412011369.html (accessed 28 June 2018)

Interview with Segun Adefila at Faculty of Management Science, Unilag, June 22 2018.

Majemite, J. (2017). The Ikoyi Prison Narratives: The Spiritualism and Political Philosophy of   Fela Kuti, accessed 25th August 2017, Lulu edition http://www.lulu.com/shop/majemite-jaboro/the-ikoyi-prison-narratives-the-spiritualism-and-political-philosophy-of-fela-kuti/paperback/product-23298008.html

Moore, C. (2010). *Fela: This Bitch of A Life*, Nigeria: Cassava Republic Press, 54.

Okeilome, A. (2017). Stylistic Analysis of Afro-beat, Retrieved August 6, 201 http://www.jpanafrican.org/docs/vol3no4/3.4FelaHighlife.pdf

Omibiyi-Obidike, M. (1990). Nigerian Musicians and Composers. *The Nigerian Magazine,* 128-129

Olaniyan, T. (2004). Arrest The Music: Fela and His Rebel Art and Politics. Indiana: Indiana University Press, 17.

Oyebode, D. A. (2010) "Afrobeat,Fela and Beyond: Scenes, Styles and Ideology"(Ph.D Thesis University of Pittsburg.

Paulo, F. (1990) Pedagogy of . New York: The Free Press. Ramos

In Defense of Kwame Nkrumah's Political Freedom

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Abstract

In this paper, we set out to evaluate Kwame Nkrumah's theory of political freedom and his contribution to the struggle for political and economic independence of the colonial peoples of Africa and the Blacks in the Diaspora. Though we find that this theory and Nkrumah's idea of a united Africa have been critically challenged, this paper attempts to show that most of the attacks on his ideas are unwarranted. In this paper, we argue in defense of Nkrumah's theoretical and practical struggles for freedom of Africans from the forces of colonialism, imperialism, neo-colonialism.

Keywords: Freedom, Independence, Colonialism, Imperialism, Neo-colonialism, Development

Introduction

Francis Osagyefo Kwame Nkrumah of Ghana was an enigma. To some, he was a hero; while to others, he was a villain. However, one thing his worst enemy could not deny him is that he was in-

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spired by the ideals of freedom, equality and justice. This informed his theory of freedom. The main concerns of Nkrumah's political theory include; how to eradicate colonialism, imperialism, neo-colonialism and exploitation of the colonized peoples of Africa and peoples of African descent the world over, as well as how African states could attain a sustainable socio-political and economic development. Nkrumah was disenchanted with the way the colonized African peoples were put under the heavy yoke of foreign imperial powers at the time. He was conscious of the fact that the exploiters know no other law outside their interest which is captured in exploitation. He also realized that unless the exploiters were given the fiercest fight of their lives, they would not quit of their own volition. With rare temerity, political sagacity, exemplary diligence, coupled with high intellectual competence, Nkrumah saw Ghana through political independence within a short time and wished same for mother Africa as a political entity. These ideals informed this paper's interest in his theory of political freedom.

Nkrumah's Theory of Political Freedom

In order to better understand Nkrumah's notion of political freedom, let us find out what is meant by the term 'freedom'. There are two possible conceptions of freedom: Positive and negative freedom. By positive freedom, "a man is said to be free to the extent that he can choose his own goals or course of conduct" (Edward, 1967:221). That means one can choose between available alternatives, and one is not compelled to act nor is prevented from acting. By negative freedom, it means "the absence of coercion or constraints imposed by another person or authority" (Ibid. 222).

Nkrumah's notion of freedom encompasses both positive and negative aspects. He believes that a man should always be free from compulsion to decide his actions, and should not be constrained by a person or an authority to act contrary to his volition. His emphasis, however, is on free-

dom as it affects colonial Africans and the Blacks in the Diaspora. By colonialism, Nkrumah means "the policy by which the mother country, the colonial power, binds her colonies to herself by political ties with the primary objective of promoting her own economic advantages" (Nkrumah, 1962:2). His notion of colonial freedom debunks the claim that humanitarian aid is the primary motive underlying the quest for colonies, colonial administration and policies. Rather, he shows with abundant proofs that the primary motive is rooted in economic exploitation; and that beneath the 'humanitarian' cover-up of colonial governments, a proper scrutiny would lead one to discover nothing but deception, hypocrisy, oppression and exploitation.

Thus, Nkrumah points out that the Pacts of the Conference of Berlin (1890), the Treaty of Versailles (1919), the Covenant of the League of Nations (1920), and the Trusteeship System of the United Nations Organization (1945) were adopted to camouflage the economic philosophy of colonial powers so as to exploit the colonies with impunity. He further asserts that the material development - railways, roads, bridges, schools, hospitals, etc., which are noticeable in selective parts of the colonies, are merely accidental adjuncts to facilitate the economic exploitation of such colonies. He notes that the colonial powers built hospitals because if the health of the colonial subjects was not taken care of, it would not only jeopardize their own (colonialists') health, but diminish the productive power of the colonial labourers. According to him, the colonialists built schools in order to satisfy the demand for clerical activities and occupations for foreign commercial and mercantile concerns. Nkrumah observes that the roads the colonial masters built led only to the mining and plantation centres. He maintains finally, that any humanitarian act of any 'power' towards the 'ward' was merely to enhance the power's primary objective: economic exploitation (Ibid. 27).

From all indications, Nkrumah's devotion to the struggle for freedom was rooted in his agitation against colonial exploitation of Africa. In the foreword of his book, *Towards Colonial Freedom,* he states inter alia:

> In 1942, when I was a student in the United States of America, I was so revolted by the ruthless colonial exploitation of Africa that I knew no peace. The matter exercised my mind to such a degree that I decided to put my thoughts in writing and to dilate on the results of some of my researches concerning the subjects of colonialism and imperialism (Nkrumah, 1962:ix).

Through his meticulous study of colonialism, Nkrumah discovers that the evil of economic exploitation could only be destroyed when the colonies attain political freedom. According to him, "The basis of colonial territorial dependence is economic, but the basis of the solution of the problem is political" (Ibid. xv). In other words, political independence is an indispensable step towards economic emancipation. Hence, his clarion call when he stepped on the soil of Ghana after his long stay in America was: "Seek ye first the political kingdom and all other things shall be added unto thee" (Acquah, 1992:19).

In the "Declaration to the Colonial Peoples of the World" written by Nkrumah, approved and adopted by the Pan-African Congress held in Manchester, England, from October 15th – 21[st,] 1945, Nkrumah writes:

> The object of imperialist powers is to exploit. By granting the right to the colonial peoples to govern themselves, they are defeating that objective. Therefore, the struggle for political power by the colonial and subject peoples is the first step towards, and the necessary prerequisite to, complete social, economic and political emancipation (Nkrumah, 1962:44-45).

In Nkrumah's view, all peoples wish to be free, as the desire for freedom is rooted in the soul of every one of us. He believes, however, that a people long subjected to foreign domination do not always find it easy to translate that wish into action. Under arbitrary rule, he notes:

> People were apt to become lethargic; their senses were dulled, fears became the dominant force in their lives: fear of breaking the law, fear of punitive measures which might result from an unsuccessful attempt to break loose from their shackles (Nkrumah, 1963:50).

Nkrumah, however, advises that:

> Those who led the struggle for freedom must break through these apathy and fear. They must give active expression to the universal longing to be free. They must strengthen the people's faith in themselves, and encourage them to take part in the struggle for freedom, they must declare their aims openly and unmistakably, and organize the people towards the achievement of their goal for self-government (Ibid. 50).

Very importantly, Nkrumah demands for two elements in every movement for independence in a colonial situation: the demand for political freedom; and the revolt against poverty and exploitation. He further counsels that, "Resolute leadership is required to subordinate the understandable desire of the people for better living conditions to the achievement of the primary aim of the abolition of colonial rule" (Ibid.51). He is of the view that Africans must fight for their freedom. This is because according to him, freedom was not ordinarily won on the platter of gold. He notes that "Freedom is not a commodity which is 'given' to the enslaved upon demand; it is a precious reward, the shining trophy of struggle and sacrifice" (Ibid. xv).

Towards this end, he spells out the things needed for national liberation. Amongst these were the organization of labour and youths, and the abolition of political illiteracy. These, he maintains, should be accomplished through mass political education of the colonial peoples. There was the need, he emphasizes, to do away with the kind of intelligentsia which had become the very architects of colonial enslavement. He points out also that, the apostles of reaction should be swept away because their self-interest had made them enemies of progress.

Nkrumah believes that to succeed in the struggle for colonial freedom, there must be a revolution, and the essential forger of this change, he notes, is a strong, well-organized, broadly-based political party. Such a party should be knit together by a programme of action that is accepted by all the members, who also submit themselves to the party's discipline. He is of the opinion that the organization must be an agent of progress. It must find the ablest amongst its youth and train their special interest (technological, scientific and political) and establish an education fund to encourage students of the colonies to study at home and abroad, and must found schools of its own for the dissemination of political education (Nkrumah, 1962:41).

One other essential prerequisite for the success of the liberation movement, Nkrumah notes, is the ownership of the press. He observes that the issue of publicity, involving the spreading of information about the aims and achievements of any political party, are of supreme importance. In the struggle for Independence where the colonial government controlled the major avenues of information and gave its blessing to the reactionary press, the mechanics of propaganda employed by the freedom movement is very important.

Again, to ensure the success of the struggle for colonial freedom, Nkrumah insists that every segment of the colonial society must be involved in the struggle. This fact made him to declare that:

> If we are to banish colonialism utterly from our continent, every African must be made aware of his part in the struggle. Freedom involves the uniting efforts of everyone engaged in the struggle for it. The vast African majority must be accepted as the basis of government in Africa (Nkrumah, 1963:56).

Very importantly, also, Nkrumah recognized the potentials of the women folk in the struggle for political freedom. For instance, at the time of campaign for 'immediate self-government' in Ghana, Nkrumah made the Ghanaian women toured the length and breadth of the country, and the latter proved their liberating mettle. In this respect, Nkrumah attests:

> So fervent were these women, in fact, that while I was in goal and the party organization was at its most critical period, I learned that at a rally in Kumasi, a woman party member who adopted the name of Ama Nkrumah ('Ama' being the female equivalent of 'Kwame') got up on the platform and ended a fiery speech by getting hold of a blade and slashing her face. Then, smearing the blood over her body, she challenged the men present to do likewise in order to show that no sacrifice was too great in their united struggle for freedom and independence (Nkrumah, 1957:109).

Further still, Nkrumah is an incurable believer in a free and liberated Africa. Thus, when he was asked to come up with a quotation for a Calendar in 1948; his suggestion was exceptional. He was reported to have written thus: "Oh God, if I should die, let me die in a free and liberated Africa" (Acquah, 1992:131).

Nkrumah believes that it is only through the unity of the African peoples that their freedom could be speedily attained. Thus, Budu Acquah, an

intimate friend of Nkrumah, reported the visionary leader to have uttered these prophetic words in 1948:

> Let us unite our forces against the forces of tyranny, imperialism and colonialism. Youths of Africa, awake for redemption, so that when the gates of heaven are opened by Peter, we shall sit in heaven to see our children driving their own airplanes and commanding their own forces (Ibid.124).

Even when some African countries were politically free, Nkrumah maintains that they lacked genuine economic freedom. He believes that, "Only a united Africa can redeem its past glory as well as renew and reinforce its strength for the realization of its destiny. We are today the richest and yet the poorest of continents, but in unity our continent could smile in a new era of prosperity and power" (Nkrumah, 1967:17).

Finally, no doubt, Nkrumah was one of the few African leaders who fought foreign rule to a standstill without resort to racial discrimination. A good evidence for this is that, the next day he was released from prison, he met with the press and declared that: "I came out of gaol and into the Assembly without the feeling of bitterness to Britain. I stand for no racialism, no discrimination to any race or individual, but I am unalterably opposed to imperialism of any form" (Ibid.106).

Evaluation

Nkrumah has been criticized on many grounds concerning his views on colonial freedom. First and foremost, it has been argued, especially among his political opponents in the United Gold Coast Convention that the economic freedom of dependent territories should be allowed to precede their self-governments. This made his opponents to opt for 'self-government within the shortest possible time' against Nkrumah's 'self-government now'. By this, they hoped (naively though), that the colonial masters

would help them put their economies in proper shape before graciously thrusting political independence upon them on a platter of gold.

Nkrumah, however, provided credible anti-thesis to this criticism by arguing that "To imagine that the colonial powers will hand freedom and independence to their colonies on a silver platter without compulsion is the height of folly" (Nkrumah, 1962:xvi-xvii). He warns that:

> Those who formulate the colonial issue in accordance with the false point of view of colonial powers, who are deluded by the futile promises of 'preparing' colonial peoples for self-government, who feel that their imperialist oppressors are rational and moral and will relinquish their 'possessions' if only confronted with the truth of the injustice of colonialism are tragically mistaken. Imperialism knows no law beyond its own interests (Ibid. xiv).

Again, Nkrumah has been criticized for his notion of a united Africa. In this, his critics accuse him of nursing an inordinate ambition to rule Africa as a political entity; and that he (Nkrumah) was not mindful of the development of the continent, vis-à-vis the unevenness of available natural endowment. For instance, when Nkrumah put forward his idea of an African High Command at the 1964 OAU summit, he met a caustic rebuff from Julius Nyerere, who accused him of employing the notion of Union Government for Africa for propaganda purposes (Nyerere, 1967:301).

To this criticism, we believe that Nkrumah has been misunderstood. This contention is borne out of the available evidences which show that Nkrumah, indeed, placed the love of mother Africa above any personal aggrandizement. This paper notes that Nkrumah attempted ensuring that Africa could play the roles America and the defunct USSR were playing within the global system at the time. Thus, on his release from prison for declaring 'Positive Action', Nkrumah addressed the newly elected members of Ghana Assembly on the dangers that faced them in fraternizing with the

colonialists. By 'Positive Action', Nkrumah means peaceful and constitutional steps necessary by the colonial people to dislodge the colonialists. In concluding that address, he remarked:

> The die is cast; the exploited and oppressed people of colonial Africa and elsewhere are looking up to us for hope and inspiration. Progressive people in Britain and elsewhere are also solidly behind us. The torch of the liberation movement has been lifted up in Ghana for the whole of West Africa and it will blaze a trail of freedom for other oppressed territories (Acquah, 1992:133).

It could be seen from the afore-stated Nkrumah's view, that Ghana was at this time a source; and of course, a major source of inspiration for the oppressed Africans. This fact made Nkrumah to declare with great vehemence on the eve of Ghana's independence, as the Union Jack was lowered for the last time in the Gold Coast and the country assumed the new name, 'Ghana' that, "The independence of Ghana is meaningless unless it is linked up with the total liberation of Africa" (Acquah, 1992:132).

Adeleke Dapo is of this persuasion when he avers that, "Kwame Nkrumah believed in and worked for the unity of African countries. He saw Ghana as a small part of his dream of the union of African states. He was ready to give up the sovereignty of Ghana to the union" (Adeleke, 2009:79-80).

It is to be pointed out that, in advocating a united government in Africa, it could not have been the case that Nkrumah was not abreast with the unevenness of development in Africa, both politically and economically. This is because he noted that some of the African countries were poor in natural resources, while others are rich; some achieved independence comparatively easily and peacefully while others were still struggling. Inspite of all these, Nkrumah's resolution on African unity is overwhelming. According to him, development could be properly and cohesively planned only when African states are united.

Though some African leaders regarded Nkrumah's idea of a United States of Africa as unattainable in his lifetime, even after death, Nkrumah has kept the debate alive through his books. However, the most visible impact of his ideas on African unity has been the institutional transformation of the Organisation of African Unity (OAU) into the African Union (AU) in Durban, South Africa, in July 2002. At the sixth Pan-African Congress held in Tanzania in the early 1970s, President Julius Nyerere confessed that he regretted opposing Nkrumah's earlier idea of a united Africa (Chachage & Cassam, 2010:147), noting that the reason the project failed was because many of the leaders "had vested interest in keeping Africa divided" (Ama, 2008:147). Again, at the fifth Summit of the AU held in Libya in July 2005, the then Libyan leader, Muhammar Gaddafi seemed to have resurrected the ghost of Nkrumah when he criticized those who considered the idea of a united Africa impossible. According to him, "had we heeded Nkrumah's advice at that time, Africa would now be like the United States of America or at least close to it" (Ibid. 148).

Moreover, Nkrumah has been criticized for seeing the need for a strong, well-organized political party as a pre-condition for a successful struggle for freedom. His critics view this as the beginning of dictatorship, and they always see his Convention People's Party as representing this authoritarianism. As a matter of fact, on the basis of this, Tibor Szamuely, a Hungarian, who taught at Nkrumah's Ideological Institute in 1966, in his Introduction to A.A. Afrifa's *The Ghana Coup: 24th February 1966,* labelled Nkrumah "a fascist" (Afrifa, 1966:15). Henry L. Brettton, in another contemporary account, sees Nkrumah as "a vain, easily-led, venal dictator" (Bretton, 1966:xii). Also, Ali Mazrui paints a dismal picture of Nkrumah's leadership, accusing him of operating a single party state and an undemocratic government by introducing legislations to restrict various freedoms in Ghana in what he (Mazrui) terms 'Negative Nkrumahism' (Mazrui, 2005:22).

In this paper, we concede the fact that such terms as 'authoritarianism', 'totalitarianism', and 'dictatorship' which are anti-theses of the term 'freedom' championed by Nkrumah, sometimes feature in his works and utterances. For instance, in the preface to his *Autobiography*, Nkrumah declares that:

> Capitalism is too complicated a system for a newly independent nation; hence, the need for a socialistic society. But even a system and democratic constitution may need backing up, during the period following independence, by emergency measures of a totalitarian kind. Without discipline, true freedom cannot survive (Nkrumah, 1957:iv).

It is regrettable if in employing these anti-democratic terms as the ones above, Nkrumah allowed the meaning and essence of freedom to be lost in him. This is where the danger of introducing measures of a totalitarian regime lies. That is, one may not know when it begins to erode the liberty of the people the measure is set out to assist in the first place.

On a closer look, however, one would see that democracy cannot thrive under absolute freedom. As Nkrumah rightly observed, there is the need for a strong, well-organized political party or organization with high degree of discipline, if any reasonable level of development is to be achieved in a post-independence colonial territory. This way, sustainable development - both economic and political, would be ensured. This was the case with the post-independence CPP of Ghana under Nkrumah's leadership. To succeed in an argument against Nkrumah on this matter, there is the need for concrete evidence of Nkrumah's and the CPP's totalitarian actions devoid of all elements of utilitarianism for the society in the long run. In this respect, following multiple attempts on his life, Nkrumah seemed to have been justified in proposing a constitutional amendment to curtail some freedom so as not to allow Ghana to be plunged into chaos.

Furthermore, Mazrui also accuses Nkrumah of making conscious efforts at stamping his name in history by force. Mazrui opines:

> There is little doubt that quite consciously, Nkrumah saw himself as an African Lenin. He wanted to go down in history as a major political theorist – and he wanted a particular stream of thought to bear his own name. Hence, the term 'Nkrumahism' – a name for an ideology that he hoped would assume historic and revolutionary status as 'Leninism' (Mazrui, 2005:9).

Arguably, Mazrui's writing about Nkrumah above is guilty of the fallacy of *ad hominem,* for leaving important issues raised in Nkrumah's political theories only to attack his personality. There seems, in Mazrui's opinion, to be something wrong in one working hard to stamp his feet down in history as a major theorist as Nkrumah did. However, in what Mazrui terms 'Positive Nkrumahism', Nkrumah was vindicated when Mazrui was quoted to have noted that, Nkrumah's leadership "provides inspiration and motivation for a better future for Africa and African people" (Ama, 2008:130).

In confirming Nkrumah's enviable leadership quality and achievements, the former Ghanaian President was awarded the Lenin Peace Prize in 1961 by the defunct Soviet Union. Also, in 2000, he was voted Africa's Man of the Millennium by listeners of the BBC World Service. Adeleke Dapo again recalls Nkrumah's achievements in the following words:

> True to his words, Nkrumah started transforming the country. Ghana was the wealthiest and most social among other African countries. Nkrumah established schools, railways, hospitals, social security, and there were activities of buying and selling. He built roads and bridges to make travelling and business activities easy and safe for the people. He had tap water systems made in the villages. He also

> constructed concrete drains for latrines and did many other
> good things. He constructed Akosombo Dam on the Volta
> River in eastern Ghana. The Dam is the biggest in Africa,
> and from it electricity was, and is still being generated for
> the country (Adeleke, 2009:78).

Very importantly, Nkrumah has been harshly criticized for lacking the political and economic means to support the dependent territories and African freedom fighters as they rose against their colonial masters. In the same vein, he is criticized for encouraging African students to kick against imperial authorities only to abandon them in their hours of need, especially when the colonial administrations expelled such students from their schools (e.g. the students of Achimota College in Ghana).

As a counter critique, this paper observes that the above account is not the true reflection of Nkrumah's commitment to the cause of the liberation movements and distraught students in his time. Indeed, when in 1950, France wanted to bring Sekou Toure and the people of Guinea on their knees for preferring 'self-government with danger to servitude in tranquility', Nkrumah quickly came to their aid with a loan of Five Million Pounds Sterling (Acquah, 1992:136). Also, it is on record that in the course of the struggle for the liberation of other colonial territories, Nkrumah sent valuable materials to the African freedom fighters (Ibid. 137).

Moreover, Nkrumah has been criticized for being inconsistent in his methods of achieving freedom for the colonial peoples in Africa and the Blacks in the Diaspora. His critics specifically draw attention to the initial stage of Nkrumah's nationalism, when he preached demonstrations and actions against colonialism, imperialism, exploitation, racial segregation and discrimination, based on Mahatma Gandhi's principles of non-violence. He was to later embrace violence as the only means by which freedom could be achieved.

To understand Nkrumah's shifted position as pointed out above, we consider it imperative to revisit the situation reports on the activities of the liberation movements at Nkrumah's time. Unfolding events in the colonies then showed that the peaceful demonstrations of the liberation movements were more often times met with violence from colonial governments. Brutality from police was ferocious. Jail sentences and savage beatings were lodged on peaceful protesters. Ama Biney captures Nkrumah's mood when he notes:

> There is a discernible radicalization as Nkrumah's intellectual thought developed … He had clearly abandoned the constitutional path to independence and begun to adopt revolutionary armed struggle as the only solution to Africa's myriad problems of capitalism, neo-colonialism and imperialism. The unfolding social and political struggle in Vietnam and Latin America, and the unrest in America's black cities impacted profoundly on his thinking (Ama, 2009:82).

Thus, Nkrumah and his allies came to the bitter conclusion that unless force was used, the colonialists would not let go their 'preys'. This perhaps made Nkrumah to assert that, "In Africa, the nature of the freedom struggle has varied according to the background conditions against which it has to operate and the position of the international scene at a given time" (Nkrumah, 1963:53). Hence, Nkrumah's seeming inconsistency in the methods of achieving liberation is not without justification. A situation dictates corresponding appropriate reactions. If anything, it portrays him as a dynamic and pragmatic leader.

Also, by adopting armed struggle as the only viable means of winning freedom from the colonialists, Nkrumah has been accused of acting immorally, and contrary to the African nature of loathing to shed blood. To this charge, however, Nkrumah responds that if years of atrocities perpe-

trated in the West were not seen from the moral angle, the same should not be viewed in Africa from any ethical perspective. He writes:

> The moral argument is easily destroyed. Centuries of liberation wars, wars of conquest, revolution and counter-revolution in the West were not considered to be moral or immoral. They were simply part of Western historical development. Hence, our armed struggle for freedom is neither moral nor immoral; it is a scientific historically-determined necessity (Nkrumah, 1968:19).

From the foregoing, it should to be noted that the Western powers, in collaboration with some African leaders, merely carried out hostile propaganda against Nkrumah by claiming that he wanted to impose his freedom advocacy on the whole of Africa. Today, however, Africans know better. Many decades after the Addis Ababa meeting which gave birth to the Organisation of African Unity (OAU), Africans have come to realize more than ever, the urgent need for an African High Command, the need to break the artificial barriers created by the colonial powers and allow the free movement of people and goods within the African sub-regions. The metamorphosis of OAU into African Union (AU) is a reflection of some of the ideals Nkrumah used his entire life to pursue for mother Africa.

Conclusion

On the basis of the foregoing discussion, this paper agrees with Rosberg and Jackson's characterization of Nkrumah as a 'political prophet' (1981:199) because the classification is consistent with his inspirational leadership and elevation to the pantheon of Africa's martyrs and saints since his death. Consequently, this paper contends that despite the criticisms levelled against him, the memories of Nkrumah will linger on endearingly in the hearts of the oppressed people of the world, especially Africans, whose essence he successfully restored.

References

Acquah, B. (1992), *Kwame Nkrumah - The Visionary*, Accra: Service and Method Agency.

Adeleke, D. (2009), *The Legend: Kwame Nkrumah*, Lagos: Literamed Publications (Nig) Ltd.

Afrifa, A.A. (1966), *The Ghana Coup: 24th February 1966*, London: Cass.

Ama, B. (2008), "The Legacy of Nkrumah in Retrospect" in the *Journal of Pan- African Studies*, Vol. 2, No. 3, p. 148.

Ama, B. (2009), "The Development of Kwame Nkrumah's Political Thought in Exile, 1966-1972", *in the Journal of African History*, Vol. 50, No. 1, p. 82.

Bretton, H.L. (1966), *The Rise and Fall of Kwame Nkrumah: A Study of Personal Rule in Africa*, New York: Frederick A. Praeger.

Chachage & Cassam (2010), *Africa's Liberation: The Legacy of Nyerere,* Kampala: Pambazuka Press).

Edward, P. (ed) (1967), *Encyclopedia of Philosophy*, Vols 3 & 4, New York: Crowell Collier and Macmillan Inc.

Mazrui, A. (2005), *Nkrumah's Legacy and Africa's Triple Heritage Between Globalisation and Counter Terrorism*, Accra: Ghana University Press.

Nkrumah, K. (1957), *The Autobiography of Kwame Nkrumah*, New York: Thomas Nelson & Sons.

Nkrumah, K. (1960), *Speech in UN Assembly* in New York 0n 23 September.

Nkrumah. K. (1961), *I Speak of Freedom: A Statement of African Ideology*, New York: Frederick A.P.   Publishers Ltd.

Nkrumah, K. (1962), *Towards Colonial Freedom*, London: Heinemann Educational Books Ltd.

Nkrumah. K. (1963), *Africa Must Unite*, London: Panaf Books Ltd.

Nkrumah. K. (1967), *Axioms*, London: Thomas Nelson & Sons.

Nkrumah. K. (1968), *Handbook of Revolutionary Warfare*, New York: International Publishers Ltd.

Nkrumah. K. (1968), *The Spectre of Black Power*, London: Panaf Books Limited.

Nyerere, J. (1967), *Freedom and Unity: A Selection from Writings and Speeches (1952-1965),* London: Oxford University Press.

Robert, H. J. and Roseberg, C.G. (1981), *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant*, Berkeley: University of California Press

REVISITING THE LEGAL OBLIGATIONS IMPOSED ON COMMERCIAL VESSELS IN RESCUE OF INDIVIDUAL AT SEA UNDER THE NIGERIAN MERCHANT AND SHIPPING ACT OF 2007

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Abstract

*The obligation of rescuing individuals at sea, most especially those in peril or lost at sea, is one of the oldest and most deep-rooted maritime traditions. For centuries, seafarers have considered it their duty to assist individuals in peril on the high seas. Today, it is not just a moral obligation, it has now been codified in international treaty law and is considered part and parcel of the customary international law. Statistics have shown that between 1861 and 1870, 5,826 ships were wrecked off the British coast with the loss of 8,105 lives.It was against this background that the legal obligation of rendering assistance to people at sea was recognized in 1880 in the popular case of **Scaramanga v. Stamp.***

This basic rule of British common law as pronounced in the case cited above thus:

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To all who have to trust themselves to the sea it is of the utmost importance that the promptings of humanity in this respect should not be checked or interfered by the prudential considerations which may result to a ship or cargo from the rendering of the needed aid was subsequently codified in a number of international Conventions. The first to acknowledge the principle of rendering assistance at sea was the 1910 *Brussels Convention on Salvage.*

Research has also shown that every year, between 100,000 to 120,000 migrants attempt to illegitimately cross the Mediterranean Sea to reach European shores in hope of a better life. In 2008, more than 30,000 arrived the Italian island of Lampedusa alone. Illegal migrants from Nigeria account for 21 percent of the total 171,299 immigrants that braved the Mediterranean odds to arrive Italy in 2016. Many others never made it that far. Between 2006 and 2008, 4,677 migrants have been confirmed dead in an attempt to cross either the Mediterranean or the waters between West Africa and the Canary islands.

Because state resources dedicated to this issue have reduced, the burden of rescuing individuals has shifted to commercial vessels on the high sea. This situation puts all concerned in danger, as ships' masters and crews are ill-equipped even though they have a well-established obligation to intervene in such situations

The *Tampa* incident in 2001 is one of the major incidents that involved the rescue of individuals at sea. The *Tampa* a Norwegian Vessel responded to a call to conduct a rescue operation. However the vessel faced a number of challenges while engaging in the rescue operation most especially the challenge of disembarking the individuals.

This article aims to revisit the Legal obligation of rescuing individuals at sea as provided in various international instruments,. It investigates how the rescue operation is to be conducted with minimal risk to the rescuer and how the individuals are to be managed and taken care of on board the vessel. The paper also discussed the challenges faced in the rescue operation. The paper thereafter concludes by making some far reaching recommendations on how the challenges identified could be addressed.

1.0   INTRODUCTION

Under the International Law there is an obligation to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found (SOLAS Convention 5:33) The customary obligation to rescue is codified through a number of international convention, among which are:

- United Nations Convention on the Law of the Sea 1982.

- International Convention for the Safety of Life at Sea 1974

- International convention on maritime search and rescue 1979.

- International Convention on salvage 1989.

These conventions are regarded by most experts in the International law of the sea as an "Expression to the general tradition and practice of all seafarers and of maritime law regarding the rendering of assistance to persons or ships in distress at sea, and the elementary conditions of humanity"(Nordquist, 1985:193)

It is therefore firmly established in all the conventions above that shipmasters are bound "to render assistance to any person found at sea in danger of being lost; to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him." (Article 98 UNCLOS)

The question of whether persons are in danger at sea is phrased in a manner that leaves masters to make their own inference about whether persons are really in danger at sea.

THE LEGAL FRAMEWORK FOR THE RESCUING OF INDIVIDUALS AT SEA

The 1979 convention on the international search and rescue also states that there must be a reasonable certainty that people/persons to be rescued are threatened by grave and imminent danger (Human Right at Sea, Volunteer Maritime Rescuers' awareness report 2016)This obligation was also reiterated by the **International Maritime Rescue Federation**

(IMRF). The IMRF provides that assistance must be rendered irrespective of the territorial or international waters or the status of the persons involved (I M R F report, 2016).

The duty is imposed on the master who receives information that persons are in distress at sea and who is able to provide assistance, 'to proceed with all speed to their assistance'. This therefore requires the ship to proceed to the location of the distressed vessel, changing course if necessary in order to do so. The duty is a qualified duty in that it applies to the master of a ship at sea '*which is in a position* to be able to provide assistance(Goddard 2016:253). When ships are not in a position to render such assistance or it will be unreasonable to render such assistance, the master must make an entry in the log book explaining the reasons.

The International Convention for the safety of Life at sea (SOLAS convention 4:31) distinctively provides that the discretion to render assistance is on the master of the ship. It also states that the owner charterer or any company in control of the ship or any other person shall not restrict the duty of the master to render assistance at sea, (SOLAS Convention 4 :32)

Article 10 of the Salvage convention goes further to provide that the owner of the vessel will not incur any liability for breach of duty of the master during the rescue operation.

As seen from the various conventions above, the duty is a duty whereby the master is 'bound … to render assistance to any person in danger of being lost at sea'. This applies to refugees, migrants, asylum seekers and other persons who may be in such danger.

 It is the opinion of the writers that the Search and Rescue Convention is reactionary in nature. This is because it is designed to encourage cooperation between State Parties with the aim of optimizing search and rescue operations at sea. This is to ensure a speedy response after a maritime incident. SOLAS Convention on the other hand has a preventive approach with which it establishes minimum standards for the construction, equipment and operation of ships (so-called CDEM measures) (Bateman

2009). These international treaties create a number of rights and obligations, which are variously aimed at flag States, transit States and coastal States. In the following, three duties contained in these treaties are identified, namely the duty to provide assistance, to bring to a place of safety and to provide for disembarkation.

1.1 DUTY TO PROVIDE ASSISTANCE

From the Provision of **Article 98(1) of the UNCLOS** it is clear that this duty rests not on the individual mariner. Rather it requires the flag State of that mariner to ensure that an adequate law is enacted which imposes this obligation on the master of the ship. Thus, it is not a self-executing norm. (Proelss 2008) Nor can the duty to assist contained in the SOLAS Convention be said to be self-executing. This duty requires all ships at sea to attempt to rescue people in distress if it is reasonably safe for them to do so. They are not to discriminate due to legal status of the persons in distress and are only limited to the extent that offering assistance would be unreasonable.

The scope of the duty *ratione personae* is broadly formulated to the benefit of "any person" in UNCLOS and "regardless of [...] the circumstances in which that person is found" an important factor bearing in mind that many of the persons in need of assistance are so-called "economic refugees. (. O'Brien 2011)" For there to be a duty to provide assistance at sea, there must be a reasonable certainty that a vessel or persons is threatened by a grave or imminent danger and requires immediate assistance(SAR Convention, 1:13)." Despite the apparent clarity of the preceding provisions, the full extent of the duty to render assistance or, more precisely, the existence and scope of related duties such as bringing the rescued persons to a place of safety etc. remains unclear. (O'Brien 2011)

1.2 DUTY TO BRING TO A PLACE OF SAFETY

The vessel providing assistance has a duty to bring rescued individuals to a place of safety. A place of safety (as referred to in the Annex to the 1979 SAR Convention, paragraph 1.3.2) is a location where rescue operations are expected to terminate. It is also a place where the safety of the survivors' safety of life is no longer threatened and where their basic human

needs (such as food, shelter and medical needs) can be met. It also includes a place where transportation arrangements can be made for the survivors' next or final destination.

An issue for determination is whether an assisting ship should be considered as a place of safety. An assisting ship should not be considered as a place of safety just because the survivors are no longer in immediate danger. This is because the ship may not have the appropriate facilities and equipment to cater for the survivors. Also, the assisting ship may be unseaworthy. Even if the ship is capable of safely accommodating the survivors and may serve as a temporary place of safety, it should be relieved of this responsibility as soon as alternative arrangements are made.

The Search and Rescue Conventions, as amended, indicate that in deciding a place of safety, the particular circumstances of the case should be taken into consideration, such as the situation on board the assisting ship, on scene conditions, medical needs, and availability of transportation or other rescue units (O'Brien 2011)

The assisting ship or another ship may be able to transport the survivors to a place of safety as soon as possible for attention. However, if performing this function would be a hardship for the ship, it is the duty of the RCCs to arrange other reasonable alternatives for this purpose.

1.3 DUTY OF DISEMBARKATION

It is the duty of rescuing vessels to disembark rescued persons. However, this is not legally binding as it does not exist in the law of the sea. As a result, these persons can spend weeks on a ship at sea before a State allows them to go ashore *(*Coppens 2010:379).

The question of whether an obligation exists to allow for the disembarkation of rescued persons at a place of safety centres on the balancing act which must be effected between the interests of flag states on the one hand and coastal states on the other. However, given that disembarkation will involve entering the territorial or perhaps even internal waters of a state, there may be an issue of territorial sovereignty

Proelss correctly pointed out that:

> Any obligation of a flag State to disembark shipwrecked persons at the next port of call would turn out to be useless, were it not logically linked with a corresponding duty of the coastal State of the next port of call to temporarily accept the rescued persons on its Territory (Proelss A, 2008: 10).

One must first ascertain whether the flag State is under a duty to disembark rescued individuals. Sadly none of the relevant international Conventions contain such a duty.

Various arguments have however been made in support of this duty to disembark.

In the first place, given that there is a duty to provide assistance at sea, an absolute refusal to accept disembarkation limits the likelihood of a rescue taking place. Thus, it could be seen as undermining the execution of the rescue in the first place. Consequently, a right to the disembarkation of individuals must exist along with the corresponding duty on the flag state to carry out disembarkation and coastal state to accept disembarkation as well.

Secondly, it serves the humanitarian purpose and intention of Art. 98(1) UNCLOS, as well as the provisions of the SAR and SOLAS Conventions which is based on the understanding of the "place of safety" criterion. For this place of safety criterion to be met, the rescued persons cannot be maintained on board the vessel indefinitely. In other words, they need to be disembarked.

2.0 THE RESCUE OPERATION AND ROLE OF THE DISTRESSED SHIP IN THE RESCUE OPERATION

Commercial vessels engage in rescue operations either on their own or in conjunction with a specialized search and rescue unit. In the latter case commercial vessels may receive information additional to that obtainable from distress traffic or specific requests from land-based SAR authorities. However, in view of the general practice of co-operation by commercial

vessels, it must be emphasized that no order or advice received from these authorities can set aside the obligation or the rights of any master as set out in regulation V/10 of SOLAS 1974. In rescue of individuals at sea, both the distressed ship and the assisting ship have roles and obligations to play.

A ship in distress should transmit the distress call and message on any one or more of the following international maritime distress frequencies as may be available

·   500 kHz (radiotelegraphy);

·   2,182 kHz (radiotelephony); and

·   156.8 MHz (VHF channel 16) (radiotelephony).

When a ship is in distress there are some important component of the distress message to be sent. These messages include but are not limited to the identity of the ship, position and nature of the distress and kind of assistance needed for the rescue operation as well as any other information which might facilitate the rescue (e.g. course and speed if under way; the master's intention, including the number of persons, if any, leaving the ship; type of cargo, that is whether the cargo is a dangerous kind or not. It will also be important to give relevant information such as: whether in immediate vicinity, direction and force of wind, sea and swell, visibility, presence of navigational dangers (e.g. icebergs); time of abandoning ship; number of crew remaining on board; number of seriously injured persons; number and type of survival craft launched, emergency location aids in survival craft or in the sea.

It will normally be impracticable to include all information in the initial distress message. The timing of subsequent transmissions will be governed by circumstances. In general, if time allows, a series of short messages will be preferable to one or two long ones. Distress messages should always be cancelled as soon as saving of life is no longer required or search is terminated.

2.1   ROLE OF THE ASSISTING SHIP

It is the obligation of the assisting ship to acknowledge receipt of the distress message and, if appropriate, retransmit the distress message; and gather the following information from the ship in distress: identity of the distressed ship, position of the distress ship, speed and expected time of arrival (ETA). Also, when available, true bearing of the ship in distress, number of victims, type of vessel and the cargo carried as well as any other important information that may facilitate the rescue should be provided. It is also the duty of the assisting vessel to maintain a continuous watch on the international frequencies if equipped to do so in such a standard and appropriate manner (500 kHz), (2,182 kHz) or (156.8 MHz) (VHF channel 16).

2.2   PROCEEDING TO THE AREA OF DISTRESS

Ships proceeding to the area of distress are to plot the position, course, speed and estimated time of arrival of other assisting ships. Should the ship in distress fail to transmit this information, it is the duty of a ship proceeding to assist to request what information is needed. The assisting ship should maintain active radar plots on vessels in the general vicinity, estimate the ETA's to the distress site of other assisting vessels; assess the distress situation to prepare for operations on-scene as well as prepare adequate on-board preparation. Importantly the vessel en route to assist a distressed ship should have the following minimum equipment ready for possible rescue operation:

- Lifeboat

- Inflatable life raft • Lifejackets

- Survival suits for the crew

- Lifebuoys

- Breeches buoys

- Portable VHF radios for communication with the ship and boats deployed

- Line-throwing apparatus

- Buoyant lifelines

- Hauling lines

- Non-sparking boat hooks or grappling hooks

- Hatchets

- Rescue baskets

- Litters

- Pilot ladders

- Scrambling nets

- Supplies and survival equipment, as required

- Fire-fighting equipment

- Portable ejector pumps

- Binoculars

- Cameras

- Bailers and oars

Signalling equipment

- Signalling lamps
- Searchlights
- Torches

- Flare pistol with color-coded signal flares

- Buoyant VHF/UHF marker beacons

- Floating lights

- Smoke generators

- Flame and smoke floats

- Dye markers;

- Loud hailers

Equipment for medical assistance

- Stretchers   • Blankets

- Medical supplies and medicines

- Clothing   • Food   • Shelter.

2.3   EMBARKATION OF RESCUED INDIVIDUALS

Embarkation is often the most challenging phase of a rescue operation. Masters should use ship specific plans and procedures, adapted for the circumstances, to safely embark rescued people. Before the master decides to embark rescued individuals, he has to make an assessment of, the danger posed to the ship by the distressed craft; the type of ship and its freeboard; the presence of people in the water; weather set and drift conditions; availability of pilot and/or accommodation ladders; and the ability of the crew to manage an orderly embarkation. Also each person being rescued ought to be searched in order to know the type of items being brought on board the vessel such as smoking materials, phones and other sources of ignition. If any offensive material is found, such material should be confiscated and handed over to the authorities at the port of disembarkation.

Furthermore, the number of those embarked should be recorded; their gender should also be identified. Those who require immediate medical attention should also be identified. The individuals should also be divided into size and groups based on their medical condition, family or gender.

One may want to question why so much protocol should be involved in rescuing those that are in distress at sea considering the fact that they need

to be saved as soon as possible. The answer to this is simple. As stated earlier, when a rescue operation is going on, what is of paramount importance is the safety of the rescuing ship and the safety of its crewmembers. However a shipmaster is not allowed to engage in a rescue operation that will endanger his ship and crewmembers (Adeniran„2016:22).

2.4 MANAGEMENT OF RESCUED INDIVDUALS

It is the duty of the shipmaster to treat those rescued as humanely as the design and limitations of the ship and the capability of the crew allow. If they require medical treatment they should be given such treatment while taking into cognisance the past medical history of the victims. They should also be provided with suitable quantities of drinking water and food as they may be dehydrated and hungry. If the food is not sufficient or it finishes, the master of the vessel should request for more food and water from the Rescue Coordination centre (RCC). Survivors are to be questioned about the distressed vessel as soon as possible . This will enable further assistance in the search and rescue operation. However, care must be taken during the questioning to avoid worsening the survivors' condition by excessive interrogation. The main essence of the questioning is to attend to the physical welfare of the survivors and the information required is for the success of the SAR operation, which will likely be of great value for future SAR operation.

2.5 DISEMBARKATION OF RESCUED INDIVIDUALS

Disembarkation of the rescued individuals is another important aspect of the rescue operation as it is necessary to make the rescue operation effective. (Bailliet C. 2003:5) The shipmasters are obliged to bring rescued persons to a place of safety. Personal belongings and dangerous weapons, that have been confiscated for safety reasons should, be passed to the appropriate authority for onward returns to the owners during disembarkation. The ship is to be searched for stowaways immediately after the disembarkation; and be cleaned effectively.

2.6 LIABILITY FOR FAILURE TO RESCUE

Under International law there seems to be no clear provision as to how the obligations are to be operationalized. That is; whether states are required to enact and enforce legislation criminalizing shipmasters that fail to assist. However, a number of states have enacted laws imposing criminal liability on shipmasters for failing to render assistance to those who are in distress at sea. For instance, **Section 323c of the German Criminal Code** provides on omission to effect an easy rescue thus:

> Whosoever does not render assistance during accidents or a common danger or emergency although it is necessary and can be expected of him under the circumstances, particularly if it is possible without substantial danger to him and without violation of other important duties shall be liable to imprisonment not exceeding one year or a fine.

Similarly, **article 1158 of the Italian Code of navigation** Provides for the imprisonment of the master of a national or foreign ship who does not assist other ship or persons in distress.

Again in Nigeria, Section **274 of the merchant shipping Act 2007**, provides that the master of a Nigerian ship on receiving the signal of distress is obliged to respond. Failure to respond without any cogent reason means he has committed an offence and on conviction liable to a fine not less than five hundred thousand naira or to imprisonment for a term not exceeding two years or both.

It could be argued that such provision will help in ensuring an effective implementation of the obligation. However, despite the existence of these provisions, the likelihood of prosecution may be quite remote. This is so because witnesses who are willing and able to report the crime may be unavailable (Pugash 1977:18). Also, if a captain ignores the plea of those in distress, the victims may not survive to report the captain's offence. If they do survive, the expense involved and inconvenience will discourage them from prosecuting. Members of the ship's crew, too, are not likely to report the shipmaster's crime. Even if they do, they might not be able to

secure a conviction. The prosecution would have to prove the individual were actually ignored and that if they had rescued them, such rescue would not have endangered the ship or its crew.

3.0   PERILS AND CHALLENGES OF RESCUING INDIVIDUALS AT SEA

Despite the moral and legal obligations on shiponasters rescue individuals at sea, the rescue operation comes with its own perils and challenges. Rescuing those in distress at sea can have repercussions not only for the seafarers but also for the contracts of affreightment under which the vessel is sailing (Park, 2015). This part of the paper discusses some of the major challenges that commercial vessels face in rescuing individuals at sea. Some of these challenges are discussed below.

3.1   DEVIATION ON THE CHARTER PARTIES AGREEMENT

In English law, the doctrine of deviation is an important one in relation to contracts for the carriage of goods by sea. In the absence of a contractual provision giving liberty to deviate, the ship-owner gives an implied undertaking that the vessel will not deviate from the contractual voyage (Park, 2015:16). In other words, the master is to proceed on the agreed route, or if there is no agreed route, the direct geographical route or the customary route used in the trade. An unjustified deviation has traditionally been regarded as a fundamental breach of contract which carries serious consequences for the ship-owner.

When engaged in a rescue operation, a vessel will often have to deviate from its planned route. The charter party agreement or the international convention adopted into national law or voluntarily incorporated into the contract may define the limits of the ability of the vessel to deviate. Thus, for instance, the "Deviation Clause" (clause 3) of the GENCON 94 charter is widely drafted, giving the vessel *"liberty to call at any port or ports in any order, for any purpose, to sail without pilots, to tow and/ or assist vessels in all situations, and also to deviate for the purpose of saving life and/or property."* If a vessel is required to rescue distressed persons, it may need to make more than one deviation: first to

save them, then to take them to a port which may not be on the vessel's scheduled route. Then, in the worst case scenario, to a second port if the first one will not allow the rescued persons in, as has sometimes happened.

The time lost in deviating may lead to the deterioration of cargo or missing the cargo's intended market. And which is breaching the sale agreement of duty to deliver at a specific date. If the vessel spends more time deviating, there is a high risk that at least one of the deviations will not be covered by the requirement that deviation should be for the purpose of "saving life" per se.

3.2   DELAYS ON THE CHARTER PARTIES AGREEMENT

Another problem for commercial ships which rescue individuals is delay to the vessels. Delay inevitably causes financial loss to ship owners and charterers who have to bear the cost of the delays. When a ship picks up rescued individuals at sea it will have to divert to an unscheduled port of call. This will amount to delay and it will also require that the ship pays extra port charges. Secondly, and more significantly in commercial terms, there is the implicit cost of the lost time itself. The old cliché is very true in relation to ships: time is money (Davies 2003).

 The daily time charter hire for a large container ship such as the *Tampa* is about USD 20,000 per day, depending on market conditions. Someone must bear the loss for every day the ship is delayed. Most commercial ships are operated under time charter parties. In accordance with the commercial laws, consequences of delay are borne either by the ship-owner or charterer depending the terms of the charter party. Time charter parties contain a clause, known as the "off-hire clause," which identifies the circumstances in which the charterer's obligation to pay hire for use of the ship shall be suspended. If the ship goes off hire by operation of this clause, the commercial cost of the delay is borne by the ship-owner, who ceases to receive hire payments from the charterer. If the ship remains on hire, the cost of the delay is borne by the charterer, who must continue to pay hire despite the fact that the ship has been delayed.

3.3 SEAWORTHINESS OF THE VESSEL

If there is a lack of equipment or a failure to have the necessary documentation on board, this could give rise to issues concerning the seaworthiness of the ship. An untrained crew that puts the ship in danger when assisting in the rescue could make that the ship was unseaworthy. This is not to say that the lack of relevant documentation in itself may make the ship unseaworthy. However, if search and rescue procedures are not documented, then an owner could have difficulty in proving that he exercised due diligence in relation to training of the crew.(Miller 2015)

3.4 LACK OF REMUNERATION

Another challenge faced by Commercial ships in rescue activities is the fact that there is currently no mechanism in place to ensure rescuers are compensated. The shipowners are left to foot the cost of rescue operations. This has made commercial vessels to be reluctant in rescue operation.

3.5 RISK OF BEING IN BREACH OF SAFETY CERTIFICATES

Ships are also at risk of being in breach of their safety certificates by taking on board more passengers than have been legally agreed upon. According to Andrew Linington, a spokesman for Nautilus, a maritime trade union, was of the opinion that " a merchant ship operates with an average crew of 20." Sometimes, the number of people to be rescued may be as many as hundreds of them, *"So if you go to the rescue of sometimes several hundred people, it can compromise the safety of the entire ship. There may be no accommodation for them, the ships are sailing with a minimum amount of food and there are not enough life-saving appliances."* (Hughes 2015: 101*)*

3.6 LACK OF LEGAL FRAMEWORK FOR DISEMBARKATION

When the rescue duty was codified into various international treaties, corresponding duty of disembarkation was not codified in any instrument. (Sein and Cooper ,2006) According to **UNHCR** Report**,** the problem stems in part from the fact that disembarkation was "until recently" con-

sidered so obvious that it was not found necessary in any of the instruments pertaining to rescue at sea. (Miltner. 2006) The rescuing ship is not under any obligation to conduct them to their preferred destination but must offload them safely somewhere on dry land (Miller, 2015). Under international law, no state is obliged to allow ships carrying refugees or other passengers to disembark on its territory There have been well–known historical cases in which such ships have been forced to sail for thousands of miles in order to find a port willing to allow them to anchor and offload their occupants. The SS St Louis, a German ship which in 1939 carried over 900 refugees from Nazi journeyed across the Atlantic, only to be refused entry by Cuba, the United States and Canada in succession. Returning to Europe, it was finally able to dock at Antwerp, and the passengers were distributed between the UK and (less safely) France, Belgium and the Netherlands.

This places the captain of a rescuing ship in dilemma, as Pugash explains:

"If he refuses to take the refugee on board, he will be violating a law that is rarely, if ever enforced; but he will also be neglecting a duty owed by all mankind to those in need. On the other hand, if he rescues the refugee, he may not be able to find a country willing to grant asylum and the country of origin may be unwilling to take the refugee back" (Miller, 2015).

3.7   LACK OF COOPERATION

Lack of cooperation amongst the states is also one of the challenges of rescue at sea. Australian authorities refused to permit the Norwegian freighter, the MV Tampa, to enter Australian waters. The Australian government contacted some other countries like Norway, New Zealand and Papua New Guinea which agreed to receive a number of migrants. This took weeks for all the countries to resolve. Thereby demonstrating the insufficiency of the International legal framework (Derrington & White, 2002). The episode sparked a political controversy in Australia and a diplomatic spat between Australia and Norway (Thomas 2011).

3.8 RELUCTANCE OF INDIVIDUALS TO BE ASSISTED

Migrants sometimes are reluctant to be assisted unless they were to be taken to a particular port where they anticipated favourable treatment. For example the story of the bulk carrier *CS Caprice* which rescued 500 people who were drifting north of Libya without a skipper. The individuals refused to be assisted unless the rescuing vessel takes them to Italy even though Malta was considered a place of safety.

3.9 CRIMINALIZATION OF RESCUERS

Commercial vessels fear being criminalized by states for carrying or disembarking irregular migrants (Gallagher & David, 2014). A number of rescuers have faced such criminalisation. The crews of two Tunisian fishing boats who rescued 44 drowning asylum seekers in the Mediterranean Sea in August 2007 were subsequently charged with supporting illegal migration by Italian authorities. Even though they were eventually acquitted, they were not compensated for the losses resulting from the lengthy trial. In addition, penalties imposed on ship masters add to their burden and can discourage them from fulfilling their humanitarian duty. There have been incidents of captains who did not respond to distress calls or who threw people overboard. In June 2005, a group of 27 people rescued by another Maersk ship, the *Clementine Maersk*, after a failed engine left them drifting helplessly in the Mediterranean for about a week, said that several other boats either ignored them altogether or promised to summon help which never materialized.

The challenges above clearly demonstrate the practical challenges masters and owners can face, despite the existence of a comprehensive international legal framework setting out the duties of both the rescuing ship and the RCCs.

4.0 CONCLUSION AND RECOMMENDATION

From the foregoing, it has been seen that the duty of commercial vessels to rescue individuals in perils at sea has been a long standing humanitarian, legal and moral obligation. However the challenges and perils enumerated

earlier have been the major problems hindering masters of commercial vessels from rescue operation. The following recommendations are hereby suggested.

In one or more of the maritime instruments, a duty can be imposed on rescuing vessels to disembark at the next port of call in conjunction with a duty on the coastal states to allow disembarkation. (Barnes, 2000:52) The disembarkation of rescued persons at the next port of call has been consistently advocated by the UNHCR Executive Committee. Although such advocacy is not formally binding, it is a sound indication of how such policy is likely to develop and may be regarded as soft law. Such an approach has the advantage of setting out clear obligations that are readily recognisable and practicable. It would also appear favourable to the flag state in that they can relinquish responsibility as soon as possible.

Regimes of offering temporary protection for migrant should be improved and possibly formalized. Temporary protection regimes are increasingly used as a means of dealing with the mass influxes of refugees, especially during conflict situations. (Fitzpatrick 2000) It involves the temporary admission of a person into a state and the provision of food and shelter in accordance with basic human rights provisions for an indeterminate but limited period of time. It is not a full and permanent asylum. It offers migrants immediate protection from danger to life and liberty and it is less burdensome on the host state.

Masters that engage in rescue operation should be compensated in order for more commercial vessels to be willing to engage in the rescue operation. They should not be penalized in any manner whatsoever for disembarking or attempting to disembark the persons.[92] They should not be seen as part of the problem; rather, their actions in saving lives should be appreciated and supported by states.

When disembarkation proves difficult or when rescue persons claim international protection, shipping and/or insurance companies should promptly inform the International Maritime Organization (IMO), UNHCR and other relevant actors. This helps in finding an appropriate disembarkation solution.

Lastly, cases of refusal of disembarkation should be documented by shipping companies and statistics on incidents of stowaways and persons rescued should be reported to the IMO. This information can then be used by relevant intergovernmental organizations to better quantify the problem and devise solutions with the concerned States.

REFERENCES

SOLAS Convention Chapter 5 regulation 33

Myron Nordquist, (1985) '*The United Nations Convention on the law of the sea 1982: A commentary'* (MartinusNijhoff Publishers 1985) 193.

Article 98 UNCLOS

Human Right at Sea, Volunteer Maritime Rescuers, awareness of criminalization. Retrieved 25 June 2016 https://www.humanrightsatsea.org/wp-content/uploads/2015/05/HRAS-Voluntary-Maritime-Rescuers-Awareness-of-Criminalisation_2016-SP-LRSecured-.pdf

International Maritime Rescue Federation, January 28, 2016. Migrant Rescue at Sea, The Legal context. Retrieved June 25 2016 from http://international-maritime-rescue.org/10-news/1887-migrant-rescue-at-sea-the-legal-context

Goddard K. (2016) " Rescuing refugees and migrants at sea: some commercial shipping implications" *The Journal of International Maritime Law* 5.21:352, 354

SOLAS Convention Chapter 4 Regulations 32

Op. cit, note 6

Bateman, S,(2009)'Good Order at Sea in the South China Sea
', in Wu S and. Zou K (eds), *Maritime Security in the South China Sea* Ashgate Publishers.

Proelss A, (2008) "Rescue at Sea Revisited: What Obligations exist towards Refugees". Scandinavian Institute of Maritime Law Year-

book10. In Germany, for example, §2 of the Regulation concerning the Safety of Seafaring in conjunction with §323c of the Criminal Code, which foresees criminal sanctions for a failure to assist, are the relevant provisions transposing Art. 98 (1) UNCLOS.

SOLAS Convention, annex, chapter V, reg. 10 (a); SAR Convention, annex, chapter 2, para. 2.1.10: "Parties shall ensure that assistance be provided to any person in distress at sea"; see also: UNHCR, Background Note on the Protection of Asylum- Seekers and Refugees Rescued at Sea, 18 March 2002, 2, paras 5-6, http://www.unhcr.org/refworld/docid/3cd14bc24.html accessed 27 June 2016

Retrieved 28 June from www.humanrightatsea.org

SAR Convention, annex, chapter 2, para. 2.1.10.

Killian S. O 'Brien (2011) Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem *Goettingen Journal of International Law* 3: 715, 721 An *economic refugee*

 is a person whose economic prospects have been devastated and seeks to escape oppressive poverty across the globe.

Ibid. SAR Convention, annex, chapter 1, para. 1.3.11.

Op.Cit 14

Guidelines on the treatment of persons rescued at sea, Annex 34, Resolution MSC 78/26/Add.2 p.8 Retrieved June 20 2016 from, http://www.imo.org/en/OurWork/Facilitation/personsrescued/Documents/MSC.167(78).pdf

Ibid

Ibid

Ibid

Coppens J,Somers E. (2010), "Towards New Rules on Disembarkation of Persons Rescued at Sea"? *The International Journal of Marine and Costal Law* 377,379

Op.Cit 14, 723

Proelss A, (2008) " Rescue at Sea Revisited: What Obligations exist towards Refugees". Scandinavian Institute of Maritime Law Yearbook10

Op.cit .14, 723

UNHCR, Mar. 18, 2002. Background Note on the Protection of Asy-
lum-Seekers and Refugees Rescued at Sea para.9, Retrieved
30 June 2016, from http://www.unhcr.org/refworld/docid/
3cd14bc24.html.

Op.Cit. para.21

Merchant Ship Search and Rescue Manual Published by the International
Maritime Organization, 4 Albert Embankment, London SEI 7SR

Ibid

Ibid

Op.cit.27

International Aeronautical and Maritime and Search and Rescue Manual
Search Vol. III, Section 2

Ibid

Ibid

Op.cit. 31

Ibid

Ibid

International Chamber of Shipping, 2015.Large scale rescue operations
at sea guidance on ensuring the security and safety of seafarers
and rescued persons. Retrieved 20 June 2016 from http://www.ics-
shipping.org/docs/default-source/resources/safety-security-and-
operations/large-scale-rescue-at-sea.pdf?sfvrsn=28

Ibid

Ibid

Adeniran, H.A (2016.) Rescuing of individuals at sea: assess the roles
and legal obligations of commercial vessels. LLM
dissertation.Deprtment of Shipping and trade law. Swansea
University, United Kingdom.p.22

IAMSAR Manual Volume III care of survivors

Op.cit. 37

Op.cit.31 Debriefing of Survivors. Such questions include how many
persons were on board, how many persons were seen in the wa-
ter? Was there lifeboat? etc.

IAMSAR Manual Volume III care of survivors

Bailliet C. (2003). "The Tampa Case and the impact on burden sharing". *Human Rights Quartely.25* 741,755

Op.cit. 37

Ibid

Gallagher A.T, David F. (2014) The *International law on Migrant smuggling.* Cambridge:Cambridge University Press. P.449

Section 323c German Criminal Code

Article 1158 Italian Navigation Code.

Section 274(5) Merchant shipping Act 2007

Pugash J (1977)," Dilemma of the sea Refugee: Rescue without refuge" *Havard International Law Journal* 18: 577, 580

Ibid

Park E, (2015) 'Perils of Saving lives at sea ' reports from University of Southampton 's Institute of Maritime Law on the migrant crisis and its impact on the shipping industry.

Op.cit. 6, 356

Wilson J.F (2010), *Carriage of Goods by Sea* : 7th edn, Pearson 2010. P.16.

Ibid

Ibid

GENCON 94 Clause 3

Op.Cit.56

For example the Bulk carrier *CS Caprice* which rescued individuals was delayed and is still in talks with its insurers over reimbursement, and it has yet to agree costs with the charterers whose barley was delayed.

Op.cit. 55

Op.cit 6,357

Davies M. (2003) obligations and implications for ships encountering persons in need of assistance at sea *pacific Rim law and policy journal* 12 : p. 113

Atime charter party is a contract by which a ship-owner agrees to provide the services of its ship and crew to the time charterer, who directs where the ship will go, what cargoes it will carry, and who earns freight for carrying those cargoes. (Peonia) [1991] 1 Lloyd's Rep.100

Op.cit. 65

Miller T..(2015) Deviation to save life at sea Retrieved Aug.20 from http://ukdefence.com/images/assets/documents/UKDC-Sound-ings-June-2015-Deviation-save-life-vW.pdf

Hughes R (2015),Migrant Crisis: Should ships help those in need? Retrieved Aug.16 from http://www.bbc.co.uk/news/world-europe-32387439

Ibid

Ibid

Sein and Cooper B,(2006) The New 'Boat People'.- ensuring Safety and Determining Status *migration policy institute* , p.3

United Nation High Commissioner for refugees

Miltner B. (2006) "Irregular Maritime Migration: Refugee Protection Issues in Rescue and Interception" *Fordham International law Journal* 30 : 75,89

David Miller, (2015) 'duty to rescue boat people'. Paper presented to the panel on Justice and Immigrant Admission Policies, European Consortium for Political Research General Conference, Université de Montréal, August 26-29 2015, to the Centre for Ethics, University of Toronto, October 19 2015 and to the Colloquium in Legal and Political Philosophy, Queen's University, Canada, October 26 2015.)

Ibid.

Pugash, T (1977) The Dilemma of the Sea Refugee without refuge *Harvard. International law Journal* 18: 577,601

Derrington S & White,M (2002) 'Australian Maritime Law Update ' (2002) 33 JMLC 275

Thomas K. (2011). The risk of rescue at sea. Retrieved Aug.17 2016 from http://www.irinnews.org/report/94383/migration-risks-rescue-sea

Ibid

Op.Cit. 65

Gallagher A.T, David, F (2014) *The International law on Migrant smuggling* Cambridge University Press. P.443

Missbach A. (2016) Drowning not waving' Inside Indonesia Retrieved
        Aug. 28 2016 from, http://www.insideindonesia.org/drowning-not-
        waving accessed 28 August 2016

Kehayioylou K, ed. Rupert Colville. Sept 14, (2005) "UN and
        Maritime law experts draw up lifesaving recommendations for
        those in perils at sea. Retrieved Spt.9 2016, from http://
        www.unhcr.org/news/latest/2005/9/43283d744/un-maritime-
        experts-draw-life-saving-recommendations-peril-sea.html

Ibid

Barnes R. (2004) " Refugee law at sea" *International and compara-
        tive law Quarterly* 53 .72

Ibid

Ibid

Fitzpatrick J (2000) "Temporary protection of Refugees: Elements of a
        Formalized regime" *American Journal of International Law*
        94. 279,282

Ibid

Ibid. Background note The treatment of persons rescued at sea: conclu-
        sions and recommendations from recent meetings and expert
        roundtables convened by UNHCR Retrieved Aug.24 2016 from
http://www.unhcr.org/4d94865e9.pdf

Ibid

Ibid

Ibid