



## **Human Rights and the Democracy Project in Africa: Moving the Continent Forward in the 21st Century\***

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My hypothesis in this paper is based on the premise that if rights infractions are not mitigated in Africa, they could hamper the democracy project; the democracy project is analogous to consolidation of democracy in my theoretical thought; and democratic consolidation implies, among other factors, to, a long process that continues after countries have made transition to democracy. It involves behavioral, attitudinal, and institutional changes. Behaviorally, a democratic regime is consolidated when there is no significant effort to change the government by force [as in military coups]. Attitudinally, a democratic regime is consolidated when a strong majority of the population believes that democratic institutions and procedures are most appropriate for their society. Institutionally, a democratic regime is consolidated when society as a whole, including the government [as represented by political actors], believes that there are certain laws, procedures, and institutions that must be used to govern society.<sup>1</sup>

Issuing from the preceding excerpt, I further posit that observance of human rights dogmas can advance the democracy project and that the consolidation of democracy could promote human rights practices (as in the US, Britain and Canada, for example). Further, I postulate that citizens whose rights are abridged may be less inclined to transfer their allegiance to a polity that oppresses them. In other words, when the rights of compatriots are consistently curtailed, as in many African countries, the problem of national legitimacy and advancement of the democracy project becomes wobbly. It is in the context of the preceding suppositions that this essay may be visualized. Writing and debating on the evils in human rights curtailments in the region at national and international forums alone will not solve the problem; it would, in fact, require civil



society groups, human rights NGOs—and even the international community—bringing pressure to bear on lawmakers to live up to the spirit of their national constitution on rights issues; moreover, policymakers are enjoined to respect international human rights instruments that their countries were signatory to in order to further human rights practice and the promotion of peaceful coexistence. Although at the heart of this paper is an analysis on the extent to which rights observance is complimentary to the advancement of democracy, my purview is not to delve into the nitty-gritty of what democracy is or is not. So, my intention in the following brief dialogue on democracy is to shine a little spotlight on some fundamental aspects of democracy.

Conceptually, democracy, as a political genus for governing a polity, is a highly cherished but intricate system in the governance of a society.<sup>2</sup> Arguably, because of unique cultural, social, economic and religious characteristics in different polities, it might be tough to achieve a universal genre of democracy. Accordingly, the nature of democracy could take on special forms in divergent states and regions of the world. Little wonder, then, that students of democracy speak and write about varied forms of democracy—e.g. liberal, social and consociational democracies to list a few.<sup>3</sup>

Nevertheless, democracy has been defined as a special form of governance regime whose major characteristics are subsumed in a set of constitutional rules that accentuate the following qualities: (a) access to public offices in which effective governmental power is vested must be determined by contestation at regular interval; (b) the outcome of this contestation (as to who will occupy public offices and the policies they would formulate and implement) must be determined by the free broad participation of all eligible citizens and some form of majority rule; and (c) the civil and political liberties of citizens must be guaranteed against government infringement to ensure that they can freely join and establish civil associations and political groups, express and debate a diversity of ideas, and choose public officials.<sup>4</sup>

Even though these doctrinal attributes of democracy are splendid in theory, the actual enforcement of the foregoing qualities, are generally conflictive in many polities in the developing world—not least in Africa in part because of the clashing interests of political entrepreneurs.



The theoretical analyses of scholars on democracy are overwhelming and it is not my objective to rehash the numerous notional constructs on democracy in the literature. My aim in the succeeding dialogues is to highlight the linkage between democracy and human rights and show how the practice of these values could advance progress in Africa. In this task, I shall draw upon an invaluable UN human rights normative template.

#### UNITED NATIONS AND DEMOCRACY

Given Africa's membership and presence in the United Nations, the continent plays a vital role on global policy matters in this body. Collectively, they tend to act in unison within the context of their powerful regional organization—the African Union (AU)—on major issues that impact on Africa. Although the AU has crafted an impressive Charter on Democracy, Elections and Governance<sup>5</sup> given the triumphalism of the democratic system world-wide, I have drawn in part my analytic strength in the proceeding dialogue from information culled from a framework suggested by the UN in a document titled “Democracy and Human rights.”<sup>6</sup> I shall flavor the content of this text with the work of a former Commission on human rights. As I dissect and examine these frameworks, I made reference, where relevant, to human rights principles contained in three international human rights instruments viz.: Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights, and International Covenant on Civil and Political Rights mainly.

The preamble of this manuscript, Democracy and Human Rights, reads:

The values of freedom, respect for human rights and the principle of holding periodic and genuine elections by universal suffrage are essential elements of democracy. In turn, democracy provides the natural environment for the protection and effective realization of human rights. These values are embodied in the Universal Declaration of Human Rights and further developed in the International Covenant on Civil and Political Rights which enshrines a host of political rights and civil liberties underpinning meaningful democracies.<sup>7</sup>

Besides the relevance of the foregoing declaration to my subject matter, the interlacement between human rights and democracy is splendidly spotlighted in, among



other documents, the Universal Declaration of Human Rights in Article 21 (3) thus: “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”<sup>8</sup> It is around the foregoing supposition that I shall first enumerate and then discuss a number of important points provided in a report by a former Commission on Human Rights (in Resolution 2000/47 ), intended to promote human rights and the democracy project if they are successfully executed. These are:

Respect for human rights and fundamental freedoms...

Freedom of Expression and opinion...

The holding of free and periodic free and fair elections by universal suffrage and by secret ballot as the expression of the will of the people

Independence of the Judiciary...

The separation of powers

Transparency and accountability in public administration

Free, independent and pluralistic media.<sup>9</sup>

My brief analyses that follow on the topics of the preceding bullets will draw upon, and make reference to, pertinent tenets contained in international human rights documents, for example, the Universal Declaration of Human Rights, African Charter on Human and Peoples’ Rights and International Covenant on Civil and Political Rights. I have, however, where applicable augmented my theoretical and contextual critique with precepts drawn from other human rights texts.

## RESPECT FOR HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

In the African Charter on Human and Peoples’ Rights (ACHPR), the following articles underscore the importance of respect for human rights and fundamental freedoms in furthering the democratic enterprise in Africa by stating in:

Article 2: Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such



as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3 (1&2): Every individual shall be equal before the law. 2. Every individual shall be entitled to equal protection of the law. Additionally, Articles 4, 5, 6, 8, 11, 12 and 22 emphasize the foregoing respect for human rights and fundamental freedoms in complementary ways.<sup>10</sup>

In the Universal Declaration of Human Rights (UDHR), the following provisions (identical to Article 2 of the (ACHPR) support the observance of the respect for human rights and fundamental freedoms as measures to promote the democratic project in:

Article 2. Other Articles in the UDHR that hold up respect for human rights and basic freedoms are Articles 3, 5, 9, 13, 16, 18 and 23.<sup>11</sup>

The following tenets in the International Covenant on Civil and Political Rights (ICCPR) are in sync with the notion that the democracy project or consolidation could be furthered if the rights and freedoms of individuals are respected in:

Article 1: All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Further, Articles 6, 7, 12, and 18 in this instrument strengthen the importance of respecting human rights and fundamental freedoms as elements crucial for promoting democratic consolidation.<sup>12</sup>

Nevertheless, in Africa the poor and minority ethnic groupings are often marginalized in their societies. And because they are denied opportunity to participate effectively in the system, they tend to withhold their support for it. Accordingly, encouraging a majority of citizens to be full participants in the political system could further democratic consolidation.

#### FREEDOM OF EXPRESSION AND OPINION

ACHPR avows in Article 9 (1&2): Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his [or her] opinions within the law.<sup>13</sup> The UDHR asserts in Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>14</sup> ICCPR affirms in Article 19 (2): Everyone shall



have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice.<sup>15</sup>

The criticality of the foregoing human rights precepts for promoting democratic consolidation in Africa rests on the assumption that freedom of expression and opinion could help to de-legitimize authoritarian and autocratic leaders for inadequate or poor governance. It suggests that bad and ineffective government regimes and actions could be constructively criticized by individuals and civil society groups with a view to pressing for efficacious policies for a polity. In the end, the execution of good and effective policies could lead to the advance-ment of “the good political life” for all that will enhance prospects for progress in the region.

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ACHPR does not provide a platform for promoting democracy. Even so, African states do superbly affirm their views on this matter in African Charter on Democracy, Elections and Governance in Article 2 (3) because its practice could advance the prospects for freedom and growth in Africa. In fact, this tenet states that one of the objectives of the charter is to “promote the holding of regular free and fair elections to institutionalize legitimate authority or representative government as well as democratic change of government.”<sup>16</sup>

The UDHR proclaims in Article 21 (3): The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>17</sup> ICCPR declares in Article 25: Every citizen shall have the right and the opportunity ... without unreasonable restrictions... to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.<sup>18</sup>



This declaration in Article 2 (3) of the African Charter on Democracy, Elections and Governance is particularly instructive with respect to advancing the democracy project in Africa. However, the problem of enforcement has always been an issue in systems in which some leaders through hook or crook control power for life; frequently, they are able to stay in power for as long as they do through intimidation, rigging of elections, incorporating members of the opposition parties—especially political heavyweights who are often enticed with cash, plum posts in government or state-run corporations and contracts.<sup>19</sup> This sort of politics is frequently inimical to national progress because it corrupts the system.

#### THE INDEPENDENCE OF THE JUDICIARY

ACHPR in its reference to the independence of the judiciary declares in Article 26: States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.<sup>20</sup>

The UDHR asserts in Articles 7, 10 and 11 the need for the court to remain impartial in its judgments. This means that the court must not discriminate in its hearings and therefore all citizens should be entitled to equal protection and full equality to a fair and public hearing.<sup>21</sup>

ICCPR out-lines in Articles 9, 14, and 26 measures to be taken to ensure the independence of the judiciary. Particularly germane to these provisions are emphasis on the equality of persons brought before the courts and the avoidance of any indication of discrimination in the delivery of justice.<sup>22</sup>

The perception of the judiciary in much of Africa is that it is corrupt and works against the interests of the poor. In other words, the wealthy have the resources with which to “buy” favor from members of the judiciary. Moreover, politicians appoint members to the bench who are friends and may be partial in their adjudication of laws brought by the government to the court. The need for the judiciary in Africa to be independent is imperative because it could promote the legitimacy of the political system and a priori the democracy project.

#### THE SEPARATION OF POWERS



ACHPR, UDHR and ICCPR do not allude to the issue of separation of powers per se. All the same, a practice of this significant philosophy or value as an effective measure for promoting human rights, democratic consolidation and good governance imperative for political solidity and progress in the continent will be attempted below.

Informed by the notion that individuals in most settings tend to act on the basis of their self-interest—and not automatically on the interest of the nation-state—Montesquieu, among others, formulated the theory of separation of powers in the governance of a polity. Germane to Montesquieu's conjecture is the belief that: The functions of the government are vast and varied. It is necessary to entrust these functions to specific organs, so that the responsibility for performing these functions may be effectively fixed. The division of governmental power under any constitutions may be of two kinds; the functional division such as legislative, executive and judicial and the territorial division of federalism. Thus structurally considered government consists of three branches having for their functions (i) legislation or law [making] (ii) their execution or administration and (iii) interpretation of these laws. The three branches to which these functions belong are known as the Legislature, the Executive and the Judiciary respectively.<sup>23</sup>

Basic to the foregoing structure and entreaty is that political freedom in a nation-state is furthered when appropriate restrictions are enforced on those who exercise power in the governance of a society. In order to promote such a doctrine, it would be essential for the functions of the government to be differentiated and assigned to separate organs; in this way, the system limits each segment to its own sphere of action and competence. This view is supported by the adage that “political actors are not angels;” politicians very often operate the instruments, agents and agencies of the government to suit their parochial interests. In fact, to paraphrase Thomas Jefferson: “Self-interest is the engine of government.”

#### TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC ADMINISTRATION

ACHPR, UDHR and ICCPR do not make reference in any direct way to the relevance of the dogmas of transparency and accountability for the successful governance of a society. Never-theless, a brief analysis on the importance of implementing these twin





factors for promoting human rights, the democracy project and prospects for moving Africa forward is useful.

In general, the notion of transparency and accountability is subsumed in a dialogue on the rule of law.<sup>24</sup> Put in another way, a compelling hypothesis could be stated thus: if individuals and the state, as represented by its political and administrative actors, functioned within the rule of law and national constitution the human rights record in Africa would be exemplary and the democracy project could be advanced.<sup>25</sup> Ordinarily, the rule of law entails a legal framework that accentuates the primacy of law, and restricts discretionary or extra-constitutional power of public officials.

Strikingly, the debate on the need for devotion to the rule of law is a hegemonic issue within civil society and human rights practitioners mainly. Even so, the result of the pressure that is brought to bear on leaders and agents of national government to acquiesce to constitutional stipulations on human rights questions have had limited success.<sup>26</sup> But respect for human rights advances the allure of democracy and by extension the good governance scheme.

#### FREE, INDEPENDENT AND PLURALISTIC MEDIA

Human Development Report 2000, inter alia, noted that in a democracy permitting and tolerating free and independent media contributes to fulfillment of the right to freedom of expression, thought and conscience.<sup>27</sup> This axiom is not only vital for propping up human rights practice but also democratic consolidation; nonetheless, its efficacy depends on the determination of leaders in Africa enforcing these measures in their various polities. A positive dimension in the clarion call to uphold free, independent and pluralistic media has shown itself to be useful in the governance of a society in a number of conducted studies.

Research and survey of governments in all regions of the world suggest, for example, that the most democratic regimes have the freest media; conversely, the least democratic polities have the least free media. This fact was supported in a Freedom House Survey of January/February 1989 report on Freedom at Issue. In fact, as R. J. Rummel has noted with lucidity, in *Freedom of the Press: A Way to Global Peace*, “it is inconceivable that it could be otherwise.”<sup>28</sup>

#### CONCLUSION



The post-Cold War era with its relative peace has ushered in an appropriate condition for the conduct and promotion of global human rights. This new epoch marked a calming termination to the so-called East-West ideological clash that impeded and slowed down human rights enforcement throughout the period of the Cold War; this post-Cold War era and the globalism of the 21st century hold out the promise of a consent on universal human rights that up till now was imaginary; democratic triumphalism in the last half of the 20th century and its renaissance worldwide in part bring to the fore a splendid and rising hope of human rights observance. These are very useful openings for growth that Africa needs to convert into tangible human rights gains. A significant contraption for achieving the democracy project is increased education about these rights.<sup>29</sup>

\*For an in depth variation of this paper, see E. Ike Udogu, *Examining Human Rights Issues and the Democracy Project in Sub-Saharan Africa: A Theoretical Critique and Prospect for Progress in the Millennium* (Lanham, MD: Lexington Books, 2014)

## Notes

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<sup>1</sup> Richard J. Payne and Jamal R. Nassar, *Politics and Culture in the Developing World 5ed.* (New York: Longman Press, 2012), p. 176.

<sup>2</sup> E. Ike Udogu, "Incomplete Metamorphic Democracy as a Conceptual Framework in the Analysis of African Politics: An Exploratory Investigation," in E. Ike Udogu (ed.), *Democracy and Democratization in Africa: Toward the 21<sup>st</sup> Century* (Leiden, The Netherlands: E. J. Brill Publishers, 1997), p. 2.

<sup>3</sup> Jeffrey Herbst, "Political Liberalization in Africa after Ten Years," *Comparative Politics*, Vol. 33 (April 2001), pp. 357-376.

<sup>4</sup> James Scaritt and Shaheen Mozafar, "Toward Sustainable Democracy in Africa: Can US Policy Make a Difference?" (Boston: MA: Boston University African Studies Center Working Papers, No. 17), p. 3. See also, Udogu "Human Rights, Political Ethnicity and the Issue of Democracy in 21<sup>st</sup> Century Africa: A Concise Overview," in E. Ike Udogu and A. B. Zack-Williams (eds.), *African Mosaic: Political, Social, Economic and Technological Development in the New Millennium*, p. 62.

<sup>5</sup> African Charter on Democracy, Elections and Governance, Appendix E

<sup>6</sup>Global Issue: Democracy and Human Rights:  
[http://www.un.org/en/globalstudies/democracy/human\\_rights.shtml](http://www.un.org/en/globalstudies/democracy/human_rights.shtml) (Retrieved 5/2/12)

<sup>7</sup>Global Issue: Democracy and Human Rights:  
[http://www.un.org/en/globalstudies/democracy/human\\_rights.shtml](http://www.un.org/en/globalstudies/democracy/human_rights.shtml) (Retrieved 5/2/12)



<sup>8</sup> The Universal Declaration of Human Rights in E. Ike Udogu, *Examining Human Rights Issues and the Democracy Project in Sub-Saharan Africa: A Theoretical Critique and Prospects for Progress in the Millennium* (forthcoming) Appendix A

<sup>9</sup>Global Issue: Democracy and Human Rights: [http://www.un.org/en/globalstudies/democracy/human\\_rights.shtml](http://www.un.org/en/globalstudies/democracy/human_rights.shtml) (Retrieved 5/2/12). Other measures discussed in this document for the purpose of advancing human rights and the democracy project globally are the following: Freedom of association; access to power and its exercise in accordance with the rule of law; and pluralistic system of political parties and organizations.

<sup>10</sup> See “African Charter on Human and Peoples’ Rights,” in E. Ike Udogu, *Examining Human Rights Issues and the Democracy Project in Sub-Saharan Africa: A Theoretical Critique and Prospects for Progress in the Millennium* (Lanham, MD: Lexington Books, 2014), Appendix B

<sup>11</sup> The Universal Declaration of Human Rights in Udogu, *Examining Human Rights Issues and the Democracy Project in Sub-Saharan Africa: A Theoretical Critique and Prospects for Progress in the Millennium* (forthcoming), Appendix A

<sup>12</sup> See International Covenant on Civil and Political Rights in Udogu, *Examining Human Rights Issues and the Democracy Project in Sub-Saharan Africa: A Theoretical Critique and Prospects for Progress in the Millennium* (forthcoming) Appendix C

<sup>13</sup>African Charter on Human and Peoples’ Rights, [www.hrcr.org/docs/Banjul/afhr.html](http://www.hrcr.org/docs/Banjul/afhr.html) (retrieved 3/2/12)

<sup>14</sup>Universal Declaration of Human Rights, [www.un.org/en/documents/udhr](http://www.un.org/en/documents/udhr) (retrieved 3/1/12)

<sup>15</sup>International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm> (retrieved 3/2/12)

<sup>16</sup> See African Charter on Democracy, Elections and Governance, [www.africa-union.org/root/au/.../charter%20on%20Democracy.pdf](http://www.africa-union.org/root/au/.../charter%20on%20Democracy.pdf)

<sup>17</sup>Universal Declaration of Human Rights

<sup>18</sup>International Covenant on Civil and Political Rights

<sup>19</sup>E. Ike Udogu, *Confronting the Challenges and Prospects in the Creation of a Union of African States in the 21<sup>st</sup> Century* (Newcastle upon Tyne, UK: Cambridge Scholars Publishing 2010), pp. 5-13; see, “Elections: 2003 Political Contest and Lessons for the Future,” in E. Ike Udogu (ed.), *Nigeria in the Twenty-First Century: Strategies for Political Stability and Peaceful Coexistence* (Trenton, NJ: Africa World Press 2005), pp. 229-243

<sup>20</sup> African Charter on Human and Peoples’ Rights

<sup>21</sup> Universal Declaration of Human Rights

<sup>22</sup> International Covenant on Civil and Political Rights

<sup>23</sup> Charles-Louis de Secondat Montesquieu, “The Theory of Separation of Powers.” <http://www.preservearticles.com/201104235909/notes-on-the-montesquieu-theory-of-separation-of-powers.html> (Retrieved 5/6/12)

<sup>24</sup> See Chapter four, African Charter on Democracy, Elections and Governance

<sup>25</sup> See Ada O. Okoye, “The Rule of Law and Sociopolitical Dynamics in Africa,” in Paul T. Zeleza and Philip J. McConaughay (eds.), *Human Rights, The Rule of Law, and Development in Africa* (Philadelphia, PA: University of Pennsylvania Press 2004), pp. 71-80; Luitfried Mbunda, “Securing Human Rights Through the Rule of Law in Tanzania,” in Paul T. Zeleza and Philip J. McConaughay (eds.), *Human Rights, The Rule of Law, and Development in Africa* (Philadelphia, PA: University of Pennsylvania Press 2004), pp. 144-156

<sup>26</sup> Udogu, *Confronting the Challenges and Prospects in the Creation of a Union of African States in the 21<sup>st</sup> Century*, pp. 121-122

<sup>27</sup> *Human Development Report 2000*, p. 56



<sup>28</sup>R. J. Rummel, “Freedom of the Press: A way to global peace.”  
<http://hawaii.edu/powerkills/FREEPRESS.HTM> (Retrieved 6/5/12)

<sup>29</sup> Philip C. Aka and Gloria J. Browne, “Education, Human Rights, and the Post-Cold War Era,” *New York Law School Journal of Human Rights*, Vol. XV, Part Three (Spring 1999), p. 421