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## THE CHALLENGES FOR THE ADVANCEMENT OF HUMAN RIGHTS AND DEMOCRACY IN AFRICA IN THE 21<sup>ST</sup> CENTURY

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### ABSTRACT

Appropriate application of democratic principles brings about good governance practices. This is particularly evident in societies where democratic culture is becoming the daily experience of citizens. With regard to the advancement of human rights, the incidence is that, wherever these two factors (democratic culture and good governance) are well entrenched, rules and procedures – under the purview of which operates the society – safeguard human rights by significantly minimizing any possible margin to the infringements. This is unfortunately far from being the case at present in many African countries, where the establishment of the said factors still remains a challenge – one with considerable repercussions on the human rights front. To improve the situation, African rulers need to effectively implement a leadership model that caters to the aspirations of their peoples, while the peoples need to be empowered to make use of democratic principles and good governance institutions in place to secure their human rights.

*Keywords:* Democracy, Democratic culture, Good governance, Human Rights

### 1. INTRODUCTION

Nowadays, all African countries adhere to the view that respect for human rights within their societies is compulsory. Not only at the universal level, but also at the regional level they have all, one way or another manifested their support for the Universal Declaration of Human Rights (UNDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESR). They are now all parties to the African system of human rights which is built on the African Charter on Human and Peoples' Rights (ACHPR). In addition to this, numerous pieces of human rights legislation have been passed into municipal law in all African countries. These legal instruments contain provisions that recognise and protect diverse fundamental human rights that continuously nourish and offer the hope that one day the people living on the African continent will experience a society in which their rights are fully respected and realised. On a rhetorical note,

inasmuch as these legal provisions, coupled with the discourse of African government officials, reflect the profound aspirations of the African peoples, it is clear that respect for human rights constitutes one of the key values shared throughout the continent. For instance, in the ACHPR which is the main instrument of human rights in the region, one can find the following statement "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples"(ACHPR 1981, preamble., para. 3). The particular emphasis of the ACHPR on these four values that are the foundation of any system of human rights reveals that this latter category of rights represents the platform on which African poor and disadvantaged people intend to strive towards the achievement of their dream of a better and developed society. However, to provide for human rights is one thing, to observe and implement them is another one. One does not need much effort to notice that the situation of human rights in Africa is yet critical, with millions of people living in deplorable conditions as a result of the violation of some of their fundamental human rights. Lives, freedom, ability to feed one's self and have a shelter are yet under threat in many African countries.

It has become clear that beyond the recognition and inclusion of human rights into a legal system, human rights will remain meaningless for African citizens if they are not translated into a living and tangible reality. As Maina rightly says, the promotion of human rights of the universal, regional and municipal levels has been taken up with ease, but their enforcement remains the hardest part of the puzzle to fix in place (Maina 2009: 351). What matters is whether strong institutions and suitable conditions exist to support the normative approach in the enforcement process.

In this respect, it has been contended that democratic regimes are more likely than authoritarian regimes to protect human rights, and that for this reason they contribute to the advancement of human rights (Erman 2005: 1-18; Bentham 1999: 89-148; Art 1991, 3-11; Howard and Donnelly 1986, 8: 803-816). In fact, when one considers the topic addressed in this paper, it is clearly suggesting the idea that there is a relationship between democracy and human rights. For, how would something advance another one if there is no relationship between them? This is why as a point of departure for the discussion; it seems useful to point out the two assumptions upon which the research is based and which are going to be tested throughout the study.

The first assumption asserts that democratic culture and good governance, as derivations of democracy, are essential factors for the creation of conditions that advance human rights. In order to test the accuracy of this assumption, this study needs firstly to establish what the relationship between democracy and human rights is, secondly, explain how democratic culture and good governance result from democracy and thirdly, how they create necessary conditions for advancement of human rights.

The second assumption is that though undeniable progress has been made towards respect for human rights, democratic culture and good governance are yet in an embryonic stage in many African countries with the consequence that the current situation of human rights on the continent remains critical. As to this second assumption, the study sets out to demonstrate that there is much to achieve and that African governments, together with all their partners, must foster a culture of democracy and the practice of good governance within their societies. Since these are essential requirements for the long-term enjoyment of human rights, more efforts and commitment must be devoted in the coming decades of the 21st century in order to respond efficiently to the challenges of the present.

To establish the accuracy or inaccuracy of assumptions contended here, it is the empirical method that will be systematically used in this paper. It will serve to identify facts that have to be confronted to confirm or deny assumptions advocated in this paper. But, in order to set the theoretical foundation of this study and before discussing challenges and perspectives addressed in this paper, it will be helpful to undertake some conceptual clarifications. On the

one hand, it is relevant to have a clear idea on what is understood by “democracy”, “democratic culture”, “good governance” and “human rights” in order to establish their interactions. Although these concepts lack universally accepted definitions, those that are provided in this paper will emphasise the relevant characteristics of each concept. This is with a view to setting up standards that would help to establish scales on which both notions (democratic culture and good governance) interact with human rights and so facilitate capturing the extent to which they are likely to influence the advancement of human rights.

## 1.1 CONCEPTUAL FRAMEWORK

### (a) DEMOCRACY

Naturally, several definitions of democracy exist, but one of the most famous is that of the former President of the United States, Abraham Lincoln (1809-1865). According to Lincoln, democracy is the “government of the people, by the people and for the people”. This definition is made of three dimensions. In its first dimension (the government of the people), the definition puts an emphasis on the people’s ownership of power and authority. This simply means that in a democracy, the power to decide belongs to the people, with the consequence that wherever they are not able to exercise it directly, those who qualify to exercise it on their behalf have to be mandated or delegated by the people themselves. This latter requirement is based on a legitimate concern which itself forms the philosophical foundation of elections and other popular choices in a system of representation. Because decisions related to the formulation and implementation of public policies are to be made by those who have been democratically elected, officials who run the country must be individuals that were chosen during a fair and transparent ballot (Marquez 1998: 115). But it remains an open question whether this principle or requirement must be contemplated as absolute. Views that tend to support an absolute approach are generally found among those who criticise and reject judicial review by the courts when it comes at decisions made by the two other branches, contending that it would be undemocratic to have judges who are not elected to question decisions of representatives who have been democratically elected (For more insights on differing views, once can read Zurn 2007: 132-134). Though such an approach appears to be grounded on a rational argument, the truth is that in any genuine democratic system, the judiciary plays a vital role as courts are made with the aim to *inter alias* protect the human rights of people; add to this the fact that every member of the executive as well is not necessarily picked up and appointed from the list of those who are elected.

The second dimension in Lincoln’s definition (government by the people) is linked to the first one in that, because the power belongs to the people, it should be actually exercised by the people themselves. This hypothesis is generally fulfilled in a system of direct democracy like the one in old Greece (Athens) where people themselves were directly partakers of the decision-making process. But because in modern states, such a direct involvement of the people is not always possible, this second dimension would imply not only that the representatives of the people emanate from elections, but also that decisions and actions they take should definitely reflect the will of the people. In other words, when participating in the governance of the country directly or indirectly through representatives, the people must be able to enjoy the same result, namely to have what they want respected and implemented. The challenge in this respect is that in a representative system, it is not always obvious to assert unequivocally what the will of the people is. This is because once elected, representatives tend often to make decisions and act according to what they believe themselves corresponds to the desire of the people. There is therefore a permanent risk of rupture in any representative system when individuals chosen to act and decide in the interest of the people fail to do so. Such a rupture is

actually what caused the early crisis of legitimacy between African leaders and their people few years only after the 1960 round of independence and thereafter (Mangu 2007: 2). Though many African leaders who fought for decolonisation of Africa during the 1950s and 1960s were not elected, they were trusted by their own people because they identified themselves in the fight for independence. Nonetheless, the risk of rupture is often attenuated in a representative system through the institution of exceptional mechanisms such as referendum (Lane and Ersson 2003: 6), petitions or even the possibility to have access to judicial remedies that can provide redress wherever a member of the government has taken a decision that is contrary to the good interests of the people.

Moreover, it is difficult to take “government by the people” as an absolute principle because there are matters that are of high technicality that they require to recourse to expertise. Noveck notes that “there is the belief that the public does not possess as much as expertise as people in the government” (Noveck 2011: 92). However, even in this case, what is relevant for the people is to get the proper explanation of what needs to be done, wherever necessary or requested. What is important above all is to ensure that people participate (directly where possible) in the decision-making process of public matters and that their profound aspirations be realised. This is the main dimension that is lacking at present in many African countries. Either participation is inconsistent or it is so insignificant and powerless that it hardly leads to the fulfillment of peoples' aspirations. In this regard, African intellectuals and political leaders must carefully take into consideration Knight, Chigudu and Tandon's warning that democracy loses its voters and citizens' disinterest in democratic procedures grows anytime the social agreement under which they are supposed to contribute their thinking to governmental decisions and assume responsibility for their choices is jeopardised (Knight, Chigudu and Tandon 2002: 1). This means that if the implementation of democratic principles is not done in an appropriate manner to such extent that people failed to find themselves at the heart of governmental actions and decisions, it is likely that they will progressively demonstrate few interests in participating in democratic procedures. A good and recent example may be drawn from Ivory Coast and Gabon 2011 legislative elections where the participation of people in the vote has been rated respectively at 35% and 34, 28% (AFP 2011: internet; Houenoussi 2011: internet).

The third dimension (government for the people) defines the highest objective towards which all governmental decisions and actions must be directed. “Government for the people” implies that all that is decided and done within a democratic system must aim to realise the general interest of the people, to meet their needs and expectations. As pointed out by Knight, Chigudu and Tandon, in the view of citizens, one component of a good society relates to the fulfilment of their basic needs (Knight, Chigudu and Tandon 2002: 63). In every democratic system, members of the government have the duty to serve the people's interests, rather than their own selfish-interests (Marquez 1998: 115). This third dimension is so relevant because it suggests that any decision or action that threatens or violates the interest of the people must be struck down. Unfortunately, as will be demonstrated later in this study, this dimension is also absent in the current functioning of many African countries political system.

To sum up, the three above dimensions found in Lincoln's definition are the crossroad where different conceptions of democracy overlapped. Depending on perspectives from which the concept is approached, there are several forms of democracy. If one considers the form of participation of the people in the decision-making process, a distinction is generally made between direct (participative) democracy and indirect (representative) democracy (See Schumpeter's view as explained by Lane and Ersson 2003: 5). There are several other forms of democracy, but currently, the model that is widespread is what is called the constitutional democracy (Lane and Ersson 2003: 6; Kis 2003: 53). This is a model that combines both respect for the rule of law and the active participation of people in the decision-making process according to principles established by the constitution. Here, democratic rules are defined in the

constitution which is the supreme law of the country and whose provisions bind and limit everyone, from the highest authorities of the country to citizens. What is particular to constitutional democracy is that the human rights of citizens are given such high consideration that they are entrenched in the constitution. The main advantage that this model of democracy offers to the protection of these rights comes from the fact that the infringement of any human right in the constitution automatically amounts to a violation of the constitution. In this system, human rights are protected and offered guarantees at the highest level of the national law. Most of African countries have in their constitutions (either in the form of a Bill of rights or any other formats), provisions that include a list of human rights to respect and enforce (See by way of illustration, the Bills of Rights in Botswana Constitution (1966); Namibia Constitution (1990), Uganda Constitution (1995), South Africa Constitution (1996), Ghana Constitution (1992)), but in practice most of these rights are hardly given respect.

#### (b) DEMOCRATIC CULTURE

Democratic culture is part of the larger topic of culture. This means that in order to define democratic culture, besides understanding the concept of democracy, one needs understanding also of what culture is. Unfortunately, no universally accepted definition of culture exists thus far because, depending on the context, a number of different meanings are attached to the concept of culture.

In the midst of this diversity of approaches, one may find interesting the definition offered by Peterson as it fits well within the context of this study (Peterson 2004). This scholar defines culture as “the relatively stable set of inner values and belief generally held by groups of people in countries or regions and the noticeable impact that those values and beliefs have on peoples’ outward behaviors and environment” (Peterson 2004: 17). If one adapts democratic culture to this definition, democratic culture would imply that democracy:

- Is regarded as “a value shared by citizens” of the country;
- Is a “relatively stable value” in that country; and,
- Has a “noticeable impact on the functioning of governmental institutions”.

In the light of these three elements, democratic culture may be defined as a range of democratic principles that are regarded as inner values held by people living in a country and whose practice is maintained at length with considerable impact on the functioning of governmental institutions.

#### (c) GOOD GOVERNANCE

The concept of governance has enjoyed multiple approaches, generally influenced by the different perspectives under which it has been analysed. If one goes through literature, several definitions have been attempted. But what appears relevant to this study is the observation made by Börzel and Risse (Börzel and Risse 2010: 114). Reflecting on governance, they explain that the concept refers to both structure and process (Börzel and Risse 2010: 114). In terms of structure, governance relates to the range of institutions and actors within the state that exercise the power to decide (Börzel and Risse 2010: 114). As a process, the notion refers to all steps taken and how they are coordinated to produce decisions on matters of public interest (Börzel and Risse 2010: 114). It is in this context that an attempt to understand good governance is made, mixing both aspects. There is no universally accepted definition, for the purposes of this paper, good governance may be defined as the ability of rulers sitting in governmental institutions to make, implement, and enforce appropriate and efficient state’s decisions, and the existence of a well-functioning system of checks and balances.

#### (d) HUMAN RIGHTS

Human rights are generally perceived as rights that derive from the inherent dignity attached to every human being (ICCPR 1966, preamb., para. 1; Azinge 1992, 12: 197). However, to determine what constitutes their component remains a continual polemic. The unanimity between states clearly disappears when one seeks to define, clarify and prioritise specific human rights (Crumper 1999: 1). In fact, it is not the existence of human rights that matters, but rather an agreement concerning what is their content.

The divergence clearly broke out at the time, following to the UDHR, an international covenant on human rights had to be adopted. While Western countries prioritised what have been called “first generation rights”, namely civil and political rights, communist states and their allies stressed the importance of “second generation rights”, also known as socio-economic rights (Crumper 1999: 6-7). As a result, both camps could not agree upon a single document that would have entrenched all of these rights, and two covenants were thus adopted, namely the ICCPR and the ICESCR. Nowadays, there is also another category of rights known as the “third generation rights”, but that do not find unanimity as well. These rights are generally described as solidarity rights that take the form of people’s rights or communal rights (Algan 2004, 1: 124; Académie de droit international 1998: 115). They have been born out of the works of Keba Mbaye who made a significant contribution for the establishment of the people’s right to development at the international level and Karel Vasak who is actually the proponent of the dividing theory of human rights into generations (Mbaye 1992: 29; Vasak 1977, 30: 11).

The idea behind all these differing approaches suggests that when analysing the extent to which human rights have been advanced in a particular society, one must always take account of the approach promoted in that particular society in respect of what constitute human rights.

## 2. DISCUSSIONS

### 2.1 HUMAN RIGHTS AND DEMOCRACY

Although many scholars have asserted that a democratic regime is likely to advance human rights, the question remains open as to which of the two comes first, democracy or human rights. For the claim that “democracy furthers human rights to carry weight” means that democracy stands as a pre-condition for the advancement of human rights and should therefore occur first. Does democracy come before human rights?

In attempting to answer this question, one might be surprised to find that both affirmative and negative answers coexist. On the one hand, adhering to the view that democracy must occur first has its difficulties because the essence of the concept rests on a system of governance built at least upon a modicum of some fundamental human rights. For instance, the idea of democracy can never be separated from freedom of expression and the right to vote. This latter two are among human rights that lay at the foundation of any democratic system. On the other hand, the fulfilment of some human rights requires a people-centred system of governance, a government that is committed to work for the achievement of people’s interests. Since democratic regimes are viewed in a better position than authoritarian regimes to generate good governance practices, they appear more appropriate for the fulfilment of some human rights, especially the positive ones. This is the case precisely for socio-economic rights whose realisation depends on availability of resources which naturally result from good governance practices. In fact there is a congenital interdependence between democracy and human rights to such extent that one cannot survive without the other.

Nonetheless, despite such a link, a possible clash between them has also been envisaged in Gould's writings. Reflecting on the American model of liberal democracy, this scholar asserts that it is possible that one may perceive incompatibility between democracy and human rights in the fact that the capital punishment is still applied in the United States, which constitutes a blatant human rights violation (Gould 2004: 185).

The argument here is that the principle of freedom and the rule of majority upon which are built democratic systems may lead to the infringement of human rights as long as the infringing institution blends with popular will. Though the remark is relevant, it is not enough to establish an incompatibility between both concepts. Experience demonstrates that, in comparison to previous authoritarian regimes, democratic reforms have globally foster the decline of the death penalty (Johnson and Zimring 2009: 354). In fact, certain values are so fundamental (like for instance the right to life which is the root of every human right) that they must not simply be left to the majority rulership within a country, but must be approached as universal values shared by all human societies.

Democracy in its essence does not limit human rights. One must be careful not to confuse the theoretical standards of democracy and what is done practically within a particular country (See examples provided by Art 1991: 2). Just to take the American case above mentioned by Gould, it would be irreconcilable to contend that the death penalty is at the philosophical foundation of democracy, while it is well established that the essence of democracy rests upon people's freedom. It is clear that beneficiaries of this freedom must be alive beforehand in order to enjoy their freedom. Actually, the appropriation of democratic principles by each society is often undertaken in a manner that leads somehow to a wrong or deformed application of these principles (liberty being sometimes associated with libertarianism), with the consequence that some human rights suffer unjustified limitations. This is why there is not yet a democratic regime all over the world that may contend to be perfect. Even western countries that possess centuries of democratic practices are not yet in a position to make such a claim. Therefore, the debate must remain open in every society to find out and agree on what are the best ways to implement democratic principles with due regard to fundamental values attached to human beings like for instance life, freedom, equality, justice and human dignity.

## 2.2 DEMOCRACY AND DEMOCRATIC CULTURE

The long and stable practice of democracy within a society is basically what generates a democratic culture. In order to properly understand the interaction between both concepts, it is important to consider the three above-mentioned elements that stand as the criteria to identify whether a democratic culture exist within a particular society. These are the contemplation of democracy as a value shared by citizens", "enjoying relatively a certain degree of stability" with a "noticeable impact on the functioning of governmental institutions".

For a democratic culture to be established, members of a particular society must first agree with the view that democracy is the fundamental value upon which the system of governance must be built. It does not need take much effort to conclude that this condition has been fulfilled on the African continent. Evidence exists not only in terms of legal provisions, but also in terms of sociological facts. In 2007, for instance, at the regional level, the African Union adopted the African Charter on Democracy, Elections and Governance (ACDEG) that has among its main objectives to "promote adherence by each state party to the universal values and principles of democracy and respect for human rights" (ACDEG 2007, preamb., para 1.). At the level of domestic law, the preliminary sections of most African constitutions state their adherence to the democratic form of government (See by way of illustration, Constitution of the Republic of South Africa 1996, s.1; Constitution of the Democratic Republic of the Cong 2006,



s.1; Constitution of the Federal Republic of Nigeria 1999, ss. 6-7). With regard to sociological facts, one can take as an illustration the recent crisis that struck the North African Maghreb in early 2011 when the Tunisian, Egyptian and Libyan peoples respectively called on their rulers to step down and allow the establishment of truly democratic government (Badock 2011: internet). Therefore, there is no doubt that the majority of people on the African continent look to democracy as a fundamental value upon which their governments should function.

One element of Peterson's definition of culture that is particularly relevant is its emphasis on values which are "relatively stable". This means that for a culture to be established there must be a certain period of time within which a given value is promoted and constantly practiced by members of a society. As a consequence, democratic culture can exist only where democracy is acknowledged as a fundamental value at the genesis of any system of government and where it is put into practice throughout a considerable period of time to the extent that it becomes a permanent and stable institution within the society.

This means that democracy becomes a culture only when its principles are repeatedly put into practice. For instance, fair and peaceful elections must be organized on a regular basis; the judiciary must continuously function as an independent body that guarantees respect for the rule of law and the protection of human rights. A study made on this subject in Latin America found that the democratic regimes that enjoyed considerable stability were those built on "pacts" among several elite groups that set up a system of governance that guarantees the vital interests of all those involved (Art 1991: 2). This suggests that despite the popular dimension of democracy, the establishment of any democratic system is often coordinated and achieved by a group of leaders within that particular society (One can take as well the example of the founding fathers of the United States who signed the Declaration of Independence (1776) and the Articles of Confederation as a historic illustration (1777).

For democracy to generate a culture, it must go beyond the mere assertion of its principles in official documents and be further concretized in the functioning of governmental institutions. Otherwise, democracy becomes wishful thinking. It is useless to assert that democracy does not exist where government representatives are not elected through fair and regular elections, where mechanisms to hold representatives accountable to the people are paralyzed, where constitutionally guaranteed human rights are infringed with impunity by government officials (which is often the case when justice is corrupted). Though no institution can function at the level of perfection, a democratic regime will always remain characterized by a high commitment to principles that constitute the essence of democracy.

Magstadt aptly points out that a true democratic system rests on constitutional foundations which possess the following characteristics: regular elections, representative assemblies (legislature), an independent judiciary and National Human Rights Commission, a free press and various others institutions that place constraints on the power of the executive (Magstadt 2011: 80). Therefore a society where a democratic culture exists will be characterised by a certain degree of constancy in: the designation of representatives through fair and peaceful elections, the protection of human rights by an independent judiciary; respect for freedom of expression; the participation of the people in the decision-making process in matters of public interest and many other elements that consolidate the position of the people at the heart of governmental decisions and actions.

Democratic regimes are presupposed to generate good governance practices through appropriate arrangement of institutions, appropriate choice of rulers and accountability. In this regard, it is interesting to notice the view held at the UN Conference held in Janeiro in 1992, where the participation in decision-making of those affected by decisions involving environmental and other social concerns was said to be a fundamental precondition for the achievement of sustainable development (Agenda 21 1992, chap. 23, s.2). Since people's participation in decision-making is part of democracy, this statement would imply that a

democratic model of governance is presumed to lead to the development. But this view is far from finding unanimity among scholars. There is this school of thought based on what is qualified as the “modernisation theory” that rejects this view and considers that development is rather a precondition for establishing a true democracy in any society (For precisions on the proponents of this school, see Art. 1998: 21-36). Without extending the debate, the simple question that may be naturally asked for supporters of this school is what would be then the type of governance under which development should be achieved nowadays if democracy is to come after.

If one agrees together with this study, with the view that democratic regimes are likely to bring positive insights in the development process, this should be for the main reason that the principles and practices advocated in such a regime are directed towards the achievement of good governance which includes necessary aspects of human rights protection.

In 2001, African countries had made an important step by adopting the declaration on the New Partnership for Africa’s Development (NEPAD) which identifies the challenges to sustainable development specific to the African context and which establishes the principles that governments should follow in order to reduce and eradicate poverty.

In this respect, the NEPAD standard of good governance requests that African countries that are partakers to its process of governance assessment (African Peer Review/APRM) must “enforce the rule of law; the equality of all citizens before the law and the liberty of the individual; individual and collective freedoms, including the right to form and join political parties and trade unions, in conformity with the constitution; equality of opportunity for all; the inalienable right of the individual to participate by means of free, credible; and democratic political processes in periodically electing their leaders for a fixed term of office; and adherence to the separation of powers, including the protection of the independence of the judiciary and of effective parliaments” (NEPAD 2003: internet).

Undeniably, all these requirements may be fulfilled only in a system of governance where human rights and interests of people are at the centre. It is only through institutions and procedures found in democracy that these conditions may be easily established. Contrarily to authoritarian regimes, governance in democratic regimes rests on constitutional foundations which possess characteristics above mentioned by Magstadt and which stand as stimulators of good governance practices. But democratic institutions and procedures require as well political will. A look at APRM country reports reveals that the level of good governance remains continuously challenged by the fact that in many African countries, democratic principles and procedures do not function properly as they are supposed. For instance, in some countries it takes too long before a number of treaties and legislation relevant to the interest and well being of people are adopted by representatives and come to force (See by way of illustration, Mozambique APRM Country Report 2010, 91-95; Nigeria APRM Country Report 2008, 3-7; Kenya APRM Country Report 2005, 54).

### 2.3 DEMOCRATIC CULTURE, GOOD GOVERNANCE AND HUMAN RIGHTS

It has been assumed that democratic culture and good governance create necessary conditions for the advancement of human rights. This is accurate in as much as wherever these two factors are well established, rules and procedures that regulate the society offer much security to human rights by significantly reducing opportunities for their infringements. Contrarily to authoritarian regimes where it is a common and accepted situation to have human rights of peoples violated by illegitimate representatives, democratic culture and good governance impose that important decisions and actions affecting the people must result from representatives who have been chosen through fair and peaceful elections. This is somehow a

guarantee because it would be irreconcilable to have authorities that have been chosen by the people who will then persecute them through human rights abuses.

Normally, in such a context representatives are not supposed to behave or act careless of human rights of those from whom they have received their mandate through elections; they must double check their decisions and actions. Though this is not an absolute principle, in regimes where both elements are existent, the representatives are always in a position to exercise at least control over un-elected rulers. Legitimate authorities coupled with good leadership and appropriate institutional arrangements would facilitate the adoption of relevant legislation and the implementation of decisions that serve the human rights advancement. This is particularly true for socio-economic rights which, in their positive dimension, require that the government adopts concrete measures for their fulfillment. Moreover, possibilities to review public decisions and make rulers accountable through an independent judicial or quasi-judicial body constitute as well relevant guarantees encountered in regime built on democratic culture and good governance practices.

As mentioned previously, an independent judiciary backs up human rights by watching over their respect and protection. Judges are called upon to see that any human rights infringement is repaired. The freedom of expression found in democratic culture offers more opportunities for the courts to remedy human rights violations because it is the ingredient that stimulates individuals and civil society organizations (CSOs) to denounce any government act or decision infringing human rights (See for instance the Endoris and Ogonis' cases brought before the African Commission on Human and Peoples' Rights where CSOs have played a fundamental role (Centre for Minority Rights Development (Kenya) and Minority Rights Groups International on behalf of Endoris Welfare Council v Kenya 2003; Social and Economic Rights Action Centre SERAC and Centre for Economic and Social Rights v Nigeria 1996).

## 2.4 THE IMPLICATIONS TO THE AFRICAN CONTINENT

It would be inaccurate to support the view that no advancement has been made in terms of human rights on the African continent. Though the study focuses more on the 21<sup>st</sup> century period, one should have in mind that Africa has already two decades of democracy or, for pessimists, democratization. The 1990s were significant as the decade when the discourse on democracy came to the fore all over Africa. Taking advantage of the shift in the international arena at the end of the Cold War in the late 1980s, African countries embarked on a new movement advocating democracy as the appropriate model of governance across the continent. Authoritarian regimes were rejected and a period of transition to democracy was launched in many African countries during the 1990s (Levitsky and Way 2010: 3). Because most of authoritarian regimes were characterised by human rights violations, especially by government officials, democracy came with the adoption of legal provisions protecting these rights. For this purpose, many African countries entrenched a Bill of Rights within their constitutions. This is the most significant advancement at least at a rhetorical level, reinforced especially by the existence of the ACHPR and its enforcement machineries, the African Commission and the African Court. But the real question is: beyond this formal entrenchment, what has been done practically in the 21<sup>st</sup> century?

The 21<sup>st</sup> century started on the 1 January 2000. In the twelve years since then, one easily observes that the situation of human rights in Africa remains critical. This is true for civil and political rights as well as socio-economic rights. From the rhetorical point of view, African countries have at present no shortage of legal provisions to protect human rights, but the real problem lies in the gap between what the law prescribes and what is done in practice.

Even if it is true that some countries perform relatively better than others (If one has to compare for instance freedom of expression between South Africa and Congo, it is clear that this right has enjoyed more guarantees in practice in the former than in the latter where assassinations and threats against journalists are still the order of the day (Journalist en danger 2011: internet)), the prevailing situation on a continental scale is nonetheless precarious. During the first decade of the 21<sup>st</sup> century, ongoing abuses of human rights have been reported all over Africa and, most of the time, these violations have taken place within the context of corruption, armed conflict and political instability. Within such a negative environment, the factors identified earlier as the components of democratic culture and good governance are malfunctioning and ineffective. The organisation of fair and peaceful elections on a regular basis has remained a challenge for many African countries, while the judiciary and other institutions relevant to the protection of human rights have been corrupted and are under the self-interested influence of the executive. Violations of human rights by members of the government during this first decade is demonstrated by the number of arrests of many former African rulers and their trials before the International Criminal Court (ICC), such as the former Vice-President of the DRC, Jean-Pierre Bemba, the former President of the Ivory Coast, Laurent Gbagbo, and the arrest warrant delivered for President Omar al-Bashir of Sudan in March 2009.

In its 2010 report, Amnesty International noted that: “members of armed opposition groups and government security forces in Central African Republic, Chad, DRC, Somalia and Sudan continued to commit human rights abuses with impunity in those parts of the countries affected by armed conflict or insecurity” (Amnesty International 2010: 4).

Unfortunately, there are numerous examples of the lack of political will in Africa to sue and make accountable perpetrators of severe infringements of human rights. Among the best known examples is the long refusal of the DRC government to arrest former rebel, Ntaganda, and surrender him to the ICC and Senegal’s long postponement of the trial of the former President of Chad, Hissène Habré. The results of this political instability accompanied by human rights violations are great uncertainty now as to whether a genuine culture of democracy can truthfully be said to exist on the continent and the failure of good governance practices in many African countries.

In many African countries, the advancements made in terms of human rights are certainly perceptible at the rhetorical level. In practice, however, the difficulty of establishing and maintaining a truly democratic government has been attested to by the human rights abuses experienced in many of these countries during the first decade of the 21<sup>st</sup> century. Although democracy is contemplated today by all African countries as the appropriate model of governance, most of these countries, with few exceptions (for instance, South African and Botswana), have failed to implement its principles fully. As a consequence, it is not yet possible to generalize the statement that “there exists a democratic culture in Africa”. A case by case approach would demonstrate that few African countries can claim to have a democratic culture. For the great majority of countries on the continent, the existence of such a culture is still uncertain. Looking at the elements that characterize a culture of democracy, one easily observes that they have been a failure in many African countries, with direct repercussions on human rights. Because all the fifty four African countries cannot be reviewed in such a study of limited scope, to illustrate the above remarks, the paper will consider only the experience of some countries.

In its 2012 report, the non-governmental organization, Human Rights Watch, observed that politically motivated human rights violations escalated as elections approached in the DRC (Human Rights Watch 2012: internet). The United Nations recorded 188 such cases before the official campaign was launched. With the announcement of the presidential election result, the same NGO reported that 24 people were killed (Human Rights Watch 2011: internet). The Catholic Church and international observers from the European Union and the Jimmy Carter

Center have all concluded that the election results consequently lack credibility (Kossi 2011: internet; Mission d'observation électorale de l'Union européenne 2011: internet; Kara and Hakes 2011: internet).

In such conditions, it is clear that the 2011 elections in the DRC were far from fair and peaceful. Since the same type of violence occurred during the first general elections in 2006, one can easily confirm that the element of free and fair elections is missing from attempts to establish a democratic culture in the DRC. But this country is just one example among many. Other well-known examples of troubled and doubtful election outcomes are the Ivory Coast (2011), Zimbabwe (2008) and Kenya (2007). In Kenya, the ICC Prosecutor had to investigate crimes against humanity perpetrated during the elections. In all these countries, people have lost their lives and many of their basic rights have been violated.

The consequence of these intensely violent elections is that the newly configured political arena in many African countries does not 100% surely reflect the choice of the people. This state of affairs explains what is meant by the general assertion often made that "in Africa, people elect their rulers, but fail to choose them."

#### 2.4.1 THE RULE OF LAW AND SEPARATION OF POWER IN AFRICA

The principle of an independent judiciary originates in the theory of the separation of powers, whereby the executive, legislature and judiciary constitute three separate branches, with a system of mutual checks and balances aimed at preventing abuses of power to the detriment of citizens (United Nations 2002: 115). Only an independent judiciary is able to render justice impartially on the basis of the law, and thereby protect the human rights and fundamental freedoms of the individual. This is why, even though the fact that judges are not elected is seen as undemocratic by some scholars (Zurn 2007: 132-134), the judiciary represents a vital factor that supports a true democratic system of government. In modern democracies, courts are made *inter alia* to protect human rights.

Therefore, the malfunctioning of the judiciary due to corruption is one of the negative factors that slows down or hinders the establishment of a democratic culture in many African countries. In a corrupted judicial system, African judges are often put under pressure from the executive and compelled to render justice contrary to what the law prescribes. This is why the courts are often powerless and ineffective to protect human rights. Many reports demonstrate that this is a serious issue faced by many African countries (United States General Accounting Office 2004: 10-14). If the judiciary that is called to judge corrupted people is itself corrupt, it is obvious that there cannot be justice in such a society and, therefore, fundamental human rights are easily threatened and infringed. Just to mention the example of DRC again, during the first legislature (2006-2011), several times the Senior Prosecutor refrained to request from the parliament that immunities be banished to sue representatives who were involved in practices of human rights infringement and other criminal actions.

Even where democratic elections have been constitutionally set up as the appropriate way to reach to the head of the country, the ruling political class has often demonstrated unwillingness to fairly apply democratic principles as the country gets closer to the electoral process. Because they want to remain in power despite requirements imposed by democratic principles, they often take decisions whose legality remains obscure and which are the antithesis of popular legitimacy. For instance, a controversial revision of the constitution was successfully undertaken by the parliament majority held by presidential parties, in the same year DRC 2011 elections had to be organized. This revision was one of the speediest that ever existed with both the national assembly and the senate having approved changes in less than a week. The major controversial aspect was the new procedure for presidential election which shifted from a two-round election to a one round election. This change was strongly contested by the people as well

as members of opposition since it appeared as a strategy to favor the incumbent. Such illegitimate changes to the constitution are common in many African countries and impact negatively on the establishment and consolidation of a democratic culture. In Senegal, though the defeat of Wade was applauded all over the world as a victory of a Senegalese democratic culture, it is hard to accept that what happened there was a good illustration of what should be a democratic election. This is particularly because the constitutional council failed to invalidate the candidature of the incumbent whom (after having initiated seventeen revisions of the constitution in ten years) tried to hold a third term, challenging the constitution provisions that limits the terms to a maximum of two. The validation of Wade's candidature led to violence as people went out on the street between 27<sup>th</sup> and 28<sup>th</sup> of January 2012 to protest against the constitutional council's decision. This situation resulted naturally in human rights being infringed.

As stated earlier, good governance requires a good and competent leadership which makes and implements appropriate decisions. This supposes rulers that are motivated by service to the public interest and are ready to devote themselves to achieving positive targets in their society. Unfortunately, this is far from being the case in Africa where rulers tend, most of them, to be dedicated to working for their own interests. As Handson says, "many public officials in Africa seek (re)election because holding office gives them access to the state's coffers as well as immunity from prosecution" (Hanson 2012: internet). This leads to the conclusion that the form of democracy most prevalent in Africa is the elitist one in its pejorative dimension, where a group of elites acquire the power to decide by means of a competitive struggle for the people's vote, but who once elected, become unfortunately reluctant to relinquish office and behave as if they are no longer accountable to their voters.

The absence of good governance is particularly manifest in the mismanagement of public funds. A recent illustration can be taken from Tunisia, where after the fall of former President Ben Ali, it has been reported that his fortune reached an average of five billion Euros, accumulated mostly from corrupt governance practices (McElroy 2011: internet). Mismanagement of funds in Africa is particularly detrimental to the realisation of socio-economic rights such as the right to housing, the right to education, the right the health, the right to food, etc. African governments often argue that there are insufficient resources to realise socio-economic rights (*Socio-Economic Rights and Accountability Project v Nigeria* 2009; *Soobramoney v Minister of Health Kwazulu-Natal* 1998), while behind the scenes, they tolerate the theft of public funds by officials (Human Rights Watch 2007: 1). Therefore, one can conclude that good governance remains part of the rhetorical discourse in many African countries and has not made much progress.

### 3. CONCLUSION

Democratic culture and good governance are two essential factors in the advancement of human rights in any society. Unfortunately, they remain insufficiently realised within African countries up to this first decade of the 21<sup>st</sup> century. Many African rulers pay lip service to the discourse that promotes these two values, but still continue to behave like despots, careless of human rights.

If African leaders want to develop respect for and realise the fulfillment of human rights all over the continent, they must show long-term commitment to the principles, structures and behaviour that constitute the essence of a democratic culture as well as of good governance. As to people, they need to internalize the principles and procedures attached to the exercise of democracy and good governance and be aware of what constitutes their human rights and how they should efficiently claim them in case of violation or non-fulfillment. To sum up, for Africa to acquire a democratic culture, consolidate good governance practices and thus, foster human

rights advancements, leaders as well as people must develop a close and permanent relationship between them, based on the values that underpin each of these three concepts. The positive aspect is that the legal framework already exists in most African countries, what matters now is more the sea change in the attitudes. If a full attention can be given to different points raised in this paper in the daily governance of African countries, the situation of human rights in the continent will quickly improve and cease to be critical.

#### 4. THE WAY FORWARD

Democratic culture and good governance are still ongoing challenges for many African countries. Therefore, perspectives need to be brought forward for the next decades of the 21<sup>st</sup> century in order to improve the situation and make a significant advancement in the realisation of human rights. In this respect, it is clear that much of the work rests on the will of those who are called to act as leaders within the society. They should take steps to implement principles of democracy and good governance and make positive change happen. This is unfortunately far from being the case at present as many good initiatives are often delayed by African leaders. An illustration can be taken from the African Charter on Democracy, Elections and Good Governance which took five years (2007-2012) for the fifteen required signatures to be collected and for the Charter to come into force (Guinea-Bissau, Nigeria and Cameroon are the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> countries to ratify the Charter).

Africa needs an effective leadership, characterized by rulers who know how to interact with their people and to work sincerely for their good instead of their own selfish interests, rulers who fully implement democratic principles, promote good governance practices and are committed to the respect of human rights. This leadership perspective is so sensitive that Skinner asserts that “African countries will continue to be racked by conflicts unless leaders agree about how to govern their multi-faceted nation-states and how to distribute their economic resources equitably” (Skinner 1998: 17-25). This implies, for instance, accepting to step down when the people did not re-elect you as a President, leaving the judiciary free to render equitable judgments, respecting human rights for everyone without discrimination. The young generation of Africans who are going to lead the continent in the coming decades must be trained to internalize the core values attached to good and effective leadership.

People at the grassroots level need to be empowered to claim their human rights. They must first get the knowledge of what are these rights. Then they must know how to claim them whenever they are infringed or not fulfilled. At the continental scale, the African Commission on Human and Peoples’ Rights has a promotional mandate to inform African peoples of rights included in the ACHPR and to make them aware of what are enforcement procedures at their disposal (ACHPR, Article 30). In this regard, CSOs that have helped this institution thus far must continue to deploy as much effort because empowerment is a continual process. African governments must also cooperate by organising necessary arrangements to make justice accessible to all, especially to disadvantaged people for whom such access is often costly.

To successfully achieve the empowerment of people at the grassroots level, organisations that work close to local communities (for instance, political parties, CSOs, international donor agencies) must train people to the exercise of democratic principles and procedure and to the use of mechanisms to make their rulers accountable. In the African context, this supposes that these organisations must be able to raise the people above the fray with regard to issues that often hinder the proper functioning of democracy in Africa.

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