



## HUMAN RIGHTS IN AFRICA

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July 2007

The Charter of the United Nations makes reference to Human Rights and Fundamental Freedoms in a number of clauses. In the preamble, the people's of the United Nations express their determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations large and small.

The Universal Declaration of Human's Rights was proclaimed by the General Assembly on 10th December 1948. It was viewed as the first step in the formulation of an International bill of human rights 'that would have legal as well as moral force'.

The declaration has had a wide impact throughout the world inspiring national constitutions and laws as well as conventions on various specific rights. It did not have the force of law at the time of its adoption, but since then it has had a powerful influence on the development of contemporary International law.

In 1976 three important Instruments came into force:-

1. The international Covenant on Economic Social and Cultural Rights.
2. The International Covenant on Civil and Political Rights.
3. The Optional Protocol to the latter Covenant.

At the time of the proclamation of the United Nations declaration of human rights, several African countries were under colonial rule dominated and oppressed by some of the countries which signed the U N Charter.

We all know that Article 'I' of the United Nations Charter sets out that it's purpose is to develop friendly relations among Nations based the respect for the principles of equal rights and self determination of peoples.

We are all witnesses to how Article (1) has functioned in practice. The environmental, political and civil aspects of most of the rights contained in the charter manifest in an European character and type of society and development.

In this paper, I will attempt to show and analyse some of these elements and why these aspects in the Charter continue to show dark spots in respect of human rights in Africa both in

implementation and assessment, and further whether with the adoption Organisation of African Unity charter on human and peoples rights this trend could be reversed.

My views about Western and European approach to the Universal Declaration of Human Rights and other subsequent instruments are confirmed by the Final Act of the Conference on Security and Cooperation in Europe which was concluded in Helsinki on the 1st of August 1975 popularly referred to as the Helsinki accord and the Organisation of African Unity Charter on Human and Peoples Rights which was adopted by the O.A.U. Ministerial meeting in Banjul 7-19 th January 1981 and now in force.

It is unquestionably African in character and certain of its clauses recognised African cultures, values and traditions glossed over by previous instruments.

Articles. 27, 28 and 29 of the OAU Charter impose elaborate duties on citizens.

Article 29 says:-

The individual shall also have a duty:

- (1) To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times to maintain them in case of need;
- (2) To serve his national community by placing his physical and intellectual ability at its service;
- (3) Not to compromise the security of the state whose national or resident he is;
- (4) To preserve and strengthen the social and national solidarity particularly when the latter is threatened;
- (5) To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defence in accordance with law;
- (6) To work to the best of his abilities and competence, and to pay taxes imposed by law and in the interest of society;
- (7) To preserve and strengthen positive African Values in his relations with other members of society, in the spirit of tolerance, dialogue and consultation and in general to contribute to the moral well being of society;
- (8) To contribute to the best of his abilities, at all times and at all levels to the promotion and achievement of African Unity.

This charter fits more in an African character and traditions. In a nutshell it says he who goes to equity must go with clean hands, our societies are to strive and protect our rights but we must also fulfil our duties, pay our taxes, use our skills and abilities to develop our country and society, not to compromise or undermine national security, help to develop and operate positively African values.

Most of the criticism on the violation of human rights has been centered on alleged violations of civil and political rights, violations of the dignity of man, protection of rights by an impartial tribunal, rights to nationality, asylum, freedom of association, religion and right to conscience and universal equal suffrage by secret ballot.

But little or no criticism of alleged violations of Economic, Social and Cultural rights such as right to work and to equal pay for equal work, the right to form trade unions (only mentioned when it affects freedom of association) the right to rest and leisure, right to social security, the right to education and the right to participate in the cultural life of the community.

It is important to point out that the ability to assess and consider human rights in Africa in its right perspective, is when it is evaluated in terms of the African Social, Cultural, Historical, economic, political values and development. Any attempt to do an evaluation without using or considering the aforementioned factors only produces subjective, unfair analysis and conclusions.

Historically and politically the African colonial background created an elite in all the colonies who by their background and social connections stepped into the vacuum created by the departure of the colonial masters.

These groupings in Africa have since wielded both political and economic power to the detriment and against the interest of the majority of the people who through illiteracy and ignorance continue to be dominated and exploited by the elite in an unprecedented corrupt and insensitive manner. In order to reverse this trend, an oligarchy or what I call perpetual pyramid is only through a struggle sometimes unfortunately violent.

The sad aspect is that the various attempts at liberation to reverse this oppressive and exploitative order create conditions for more deprivation of civil and political rights, worsening already precarious and volatile economic conditions.

Thereby fomenting further instability social disorder, political opportunism and military adventurism. Modern African political structures are basically inherited left overs of colonial and foreign concepts which were either imposed or slightly modified to sustain political stability and development on a people very alien to those structures and who previously had their own ways of choosing their rulers before the imposition.

Even though I agree society is changing and dynamic and therefore should develop and reflect changes and development, this should be done only in a manner that will reflect the involvement of the majority of the people, their aspirations and also serve their collective will and interest. A system which had no roots or connection with the people, but rather just a manipulation of the electoral system by a few was bound to fail hence the turmoil's, conflicts and failed nation states.

Whereas in many western countries the established political parties by their tradition and development have a collective loyalty to their national institutions and systems, so that politically though they may be of different groupings and character, national goals and security are collectively safeguarded.

Most of the time their areas of dissent is not the national order but ways of implementing them. That cannot be said positively of various African countries which attempted pluralistic democracy. The opposition did not only undermine sometime fundamental national policies but even plotted to overthrow unconstitutionally the legally elected governments.

In the declaration of social progress and development proclaimed on 11th December 1969 by the General Assembly called for “the adoption of measures to ensure the effective participation as appropriate, of all elements of society in the preparation and execution of national plans and programmes of economic and social development”.

The Economic and Social Council in 1985 decided that” popular participation connoted the voluntary and democratic involvement of people in contributing to the development effort, sharing equitably in the benefit’s derived there from and decision making in respect of goals, formulating policies and planning and implementing economic and social development programmes”.

The Council noted that to be effective popular participation should be consciously promoted by governments. In 1982 the General Assembly requested the Commission on Human Rights to consider the question of popular participation in it’s various forms as an important factor in development and in the realisation of human rights taking into account the results of the deliberations of the International Seminar on Popular Participation which had been held in Ljubljana, Yugoslavia from 17-25th May 1982.

After considering the question at its 1983 session, the Commission on Human Rights concluded that the full exercise of the right to popular participation is an important factor not only in the development process but also in the realisation of the full range of human rights-civil and political as well as Economic, Social and Cultural Rights.

In this line all African governments creating or innovating political organs which support and hinge on popular participation should be encouraged.

Full grassroots participation is the true pillar of democracy and stability in Africa and no hindrance should be put in the way of African nations researching, experimenting or formulating political systems based on improved forms of their national heritage and popular participation.

## **ECONOMIC DEVELOPMENT AND HUMAN RIGHTS**

Even though most Africans countries are politically independent, they are not economically so. Their economies are either tied to their former colonial rulers or some western aid agencies by infrastructure, investment or otherwise.

In a resolution adopted by the International conference on Human rights, held at TEHRAN in 1968 it was pointed out that ” the enjoyment of economic and social rights is inherently, linked with any meaningful “enjoyment of civil and political rights and that there is profound interconnection between the realisation of human rights and economic development”

The conference noted “ that the vast majority of mankind continues to live in poverty, suffers from squalor, disease and illiteracy and thus leads a sub- human existence, constituting in itself a denial of human dignity”.

It recognised that there was an ever widening gap between the standards of living in the economically developed and developing countries and recognised;  
“that universal enjoyment of human rights and fundamental freedoms would remain a pious hope unless the international community succeeds in narrowing this gap”.

It further recognised “the collective responsibility of the international community to ensure the attainment of the minimum standard of living necessary for the enjoyment of the economic, social and cultural rights set forth in the Universal Declaration of Human Rights depends to a very large degree on the rapid economic and Social development of developing countries which are inhabited by more than one half of the world’s population whose lot continues to deteriorate as a result of tendencies which characterise International economic relations”.

At present several African governments are heavily indebted; the present unjust economic order is seriously undermining the Right to development which the commission on human Rights at the request of the U.N. general assembly have studied and agreed that matters related to the scope and content of the right to the development are human rights.

Yet none of the known or active human rights organisations have criticised or brought any pressure to bear on their governments to depart from this unjust economic path neither have they even accused African governments for not fulfilling this right to development.

We may pause to ask why this silence or inaction?

Perhaps some further analysis could come up with the answer. In a recent report by OXFAM a British Charity organization released in October 1986 it actually revealed that the battle against poverty was being lost, it said that policies of the industrialized countries and their multinational companies and banks are actually worsening the plight of the poor.

It was alarmingly concluded that “this year Africa is set to join Latin America in paying more interest charges and capital repayments than it received in aid and investment”. Britain was singled out as a contributor to this decline in the way its aid programmes was being cut back, misdirected and tied to domestic commercial interests.

The report examines five areas in which western governments can become part of the solution rather than part of the problem i.e. aid, trade, debt, northern agriculture and arms.

The report criticized aid programmes being too tied to the donor’s commercial interests, being too politically directed and for concentrating large urban projects at the expense of agriculture development for the poor which normally enabled the poor to decide priorities.

The report says that a remarkable 95% of all commodity trading is by speculators which does not involve the physical movement of goods and estimates that up to one half of all worlds trade is concerned with transfer pricing-inter company trade to move profits into tax havens.

The crisis of the third world debts is summed up in another equation for every pound put in a charity tin, the western financial institutions take out £9.

The economic recession the report argued has been exported from the West so that poor countries faced with falling commodity prices and less foreign exchange have had to borrow more at higher interest rates.

The report also emphasises that some Third World governments and their small middle class - the elite - in development jargon have to share the blame by ignoring the poor and lining their own pockets. This analysis by the report no doubt supports my observation about the role the 'elite'- plays in the political destabilisation by their established perpetual pyramids.

Swiss municipal laws give protection to tax havens, the Marcos affair have implicated some Swiss banks opening accounts in different names for Marcos including subventions coming from the United States and Japan to the Philippines.

The second aspect is that because most of the corrupt and authoritarian government officials managed to line their pockets through political positions and influence, they are protected by western municipal laws; extraditions are refused on the grounds that the offences committed are of a political nature and are therefore not expected to get fair trials.

Meanwhile the funds sometimes running into billions of dollars are kept in western banks, with some of the aggrieved countries going back under desperation to borrow their own stolen monies.

The sad aspect is that this scenario is a reflection of most of the debts being paid by third world countries. Millions of people suffering and using hard earned national resources over lengthy periods to pay illegal debts they never benefited from.

The insensitivity of the plight of developing countries is further highlighted by the OXFAM report that "fresh carnations grown by Brooks Bond for European button holes re- refrigerated and flown from Kenya which has one of the highest rates of malnutrition in the world and European taste from frog legs supported by the European Economic Community EEC aid is ruining crops in Bangladesh because frogs live on marauding insects, the more the frogs are taken away the more their crop production is affected.

Later Bangladesh will have to seek aid to eradicate the spread of those insects from either the EEC or other western aid agencies at the usual interest rates.

By this analysis even though we know the debt problem is causing very serious violations of human rights - i.e. less education, housing, medical care, curtailment of the right to development , we know why there is little or no criticism from active human rights organisations in this area.

## AFRICAN LEGAL SYSTEMS

The legal like the political structures in Africa are also inherited they have the flair of Roman Dutch law, English Common Law, French or Continental system by origin.

There have been attempts of a sort to superficially to incorporate customary or other African blends into the legal systems but it is basically foreign and colonially imposed. At a recent symposium held at the University of Ghana under the theme "SOCIAL ORDER AND THE COURTS" which I participated it was agreed that no matter how best laws were drafted and passed, an ineffective court structure could undermine the aims and objective of those laws.

In this wise the attitude of personnel operating the judicial system were quite important. The inherited and/or imposed legal system in Africa and many third world countries have failed to live up to the expectations. Legal costs, inherent delays and lack of assistance for indigent accused or potential litigants, have alienated many people including some middle classes.

Rules are interpreted to suit sectional or narrow interests' seriously eroding the confidence the society has in the legal system. The current spate of vigilantism and mob justice being experienced across the sub region is a reflection of the perception the populace have on the Justice system, a frustration that encourages people to take the law into their own hands. A radical appraisal and improvement in the Justice delivery system is needed to make society accept courts as the forum for the adjudication of disputes.

It is not my submission that human rights should be regionalised or sectorised with a devalued standard for some regions. What I am saying is that in our evaluation and in making our reports the context must be seen in an African context, taking into account the history, environmental peculiarities and the people's aspirations are all necessary.

Further the bias in favour of Civil and political rights should be equally extended to social, economic and cultural rights. And European values even though may be the best may not be the right yardstick and a universal criterion for African peoples who see them as alien and foreign in outlook.

We should all give support both morally and materially to enable the OAU charter on Human and Peoples rights take off to protect the rights of people in Africa and I hope it is the shape of more things to come on Human Rights in Africa.

The research topic Human Rights in Africa emanated from a series of lectures I presented in a colloquium then annually organised by the African Centre (SIVOS) in Cadier in Kerr and the Law Faculty of the University of Limburg, Maastricht in the Netherlands. There has been tremendous developments in this area, that there is a need to publish some of the work and follow up into the evolving developments in a later research course paper.

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