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## Should Africa Redefine Democracy and Human Rights?

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### Abstract

When discussing governance in Africa, one must be circumspect when applying the term "democracy", because the term is imprecise. It can refer to political competition and, in particular, open competition among rival political parties. However, there has been ongoing discussions on whether democracy be redefined to fit the local realities in Africa. But, will it be a denial of understanding as understood by the globe community? This paper will venture on the same by focusing the Africa continent as to whether concept of democracy should be re-evaluated? This discussion will showcase on democracy and human rights as seen the continent's instruments. It will further address various principles as well as school of thoughts relating to democracy and human rights in the globe and Africa in particular.

**Keywords:** Democracy; human rights; universal human rights.

### 1. Introduction

The idea of the democracy has never been a new phenomenon[1]. Though the history proves the way it has passed into several passions to acquire full realization. The practices of ancient era highlight the crucial developments even before the UDHR were adopted. Etymologically the word democracy is of Greece origin though the word itself confronted with reality at that era[2]. Today, the democracy principles have been an international norm as it is enshrining in the Universal Declaration of Human Rights, 1948 were among the other things, the core principles of democracy and human rights are interdependent and no surgical treatment can be undergone to separate them successfully.

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By words of Dicke, when speaking on UDHR reiterated that, the Universal Declaration of Human Rights refers to the “recognition” of dignity as the foundation for freedom, justice and peace [3]. The same Declaration has become the cornerstone of the modern principles of democracy. Osai Ojigho contends that, the question of the human rights promotion in Africa continent has been a bumping road as it facing many problems [4]. The continents are facing many trauma like war [5] political instability in many of States among others [6]. When speaking of human rights principles, things like the rule of law and democracy cannot be left behind. The outbreak of all problems for my opinion does not emanates from legal perspectives from the first instance, rather it emanates from political aspects. This is because the regional instruments like the African Charter on Human and Peoples’ Rights and African Charter on Democracy, Elections and Governance, 2007 among other instruments has laid out the principles of democracy as they intertwined with human rights. Most of the time the problem arises when the democratic procedures is used in seeking power and the same being violated when one has already acquired the public office which he was dreaming to get—amending the domestic laws by virtual of democratic sanctity to stay longer in power.

## 2. The Concept of Democracy

It has been defined by different scholars, politicians etc. and finally found to be incorporated in different international, regional, sub-regional and national instruments. According to Abraham Lincoln, the former US President, democracy is the government of the people by the people for the people. This denotes that, people are the source of power. In the modern perspective, democracy includes the bundle of things such as, the general concept of human rights as enshrined in the Universal Declaration of Human Rights, 1945, ICCPR and other documents. The concept of democracy has been accepted as an international norm which is accepted by the majority of nations. The concept of democracy and human rights are intertwined. I find the Lincoln definition on democracy persuasive in the sense that, people are the source of power. Democracy therefore is the government of the people, for the people by the people. There’s no single definition of democracy. However, the general concept of democracy by many seems to have originated from Athens in the 5<sup>th</sup> Century BC [7]. The Webster New Encyclopedia Dictionary (1995) defines democracy as a government in which supreme power is vested in the people and exercised by them directly or indirectly through representation. According to Lindell, and Scott [8], the term democracy originates from the Greek word *demokratia* “rule of the people” which was coined from *demos* “people” and *Kratos* “power” or “rule” in the 5<sup>th</sup> Century B.C. Therefore, the word means “rule by the people”, sometimes called “popular sovereignty”, and can refer to direct, participatory, and representative forms of rule by the people [8]. Today the word has a positive meaning throughout most of the world—so that, to connect themselves with this positive image, even same political systems with little or no rule by the people are called democratic. And sometimes when tries to legalize evils they do raise the claims that democracy bares the western jurisprudence. In defining democracy, Larry Diamond has in opinion that, democracy is a system of government with four key elements.

- A system for choosing and replacing the government through free and fair elections;
- Active participation of the people, as citizens, in politics and civic life;
- Protection of human rights of all citizens; and
- A rule of law in which the laws and procedures apply equally to all citizens.

### **2.1. Democratic theory: whether universal?**

There have been different arguments by some of legal scholars declaring modality of the democracy. The claim that democracy is the western concept is most propounded by non-western states that claim that it suits the western world; and therefore, arise the claims that it has to be defined to suit the local circumstances. The question which seeks to be answered is what is the said local realities? Although democracy may have the Western political thought, yet it is a huge global concept which has been enriched by concepts found in other civilizations[9]. In fact, the mode of governance (people to enter into the public office) should be decided by people and the said decision should not be tempered with. The procedures should be transparent, equal and fair and affordable to enable the citizens to exercise their rights through an impartial electoral body. People, under the established time limit in the law have to free to grant the term to a leader once or twice according to accessibility which is made in the ballot box. Many non-western states do not like the current form of governance practiced in Western countries. However, the core values of democracy underpinned by human rights, the rule of law and the independence of the judiciary[9]are reflected various regional and national instruments. One the African scholars concede that, what produces development is not democracy; rather the democratic principles produce sustainable development[9]. Some Scholars in Africa hold different views when defining democracy and the key question is how should democracy in Africa be defined? However, the understanding echoed from outside the boundaries of western world is that, Democracy is defined based on Western realities. Thus, before further discussion, basing on that understanding, what aspects should be incorporated to suit the local realities in Africa? In one of the speeches, Professor Lumumba, PLO had said: Africa has to define herself to what democracy mean. He demonstrated that, the mode used to define democracy today is the western concept in which democracy is equalized to multiparty politics, periodic elections and limitation of term for the presidency in which he contends that, it was not right[10]. For my understanding, what he reiterated was mere opinion which is unfounded and it lacks legal justification. My understanding however is clear that, there is no development without taking into consideration Democratic Principles. This is built on the basis that; multiparty politics stands as an important pillar to a democratic society. Not only does it allow people to Compete for public offices but also, the process itself should be transparent, fair and just. Under multiparty each contestant should be given equal chances to explain (under his manifesto) what him or her pledge to do to the public if s/he elected to hold the public office. In most of the countries in Africa, the position looks different as the opposition parties seem to complain of the unfairness in the electoral procedures favoring the ruling parties. In as much as periodic elections are concerned, leaders should not become life presidents or permanent leaders. There is no doubt that, people need development, however, the exchange of power in governments should be just and fair. One should remain in power only within the prescribed period of time without extending the period while a president is presiding. One should not argue on the bases that where the definition of originates. Rather the focus should be on the principles embedded as enshrined in various international, regional and sub-regional instruments; which the same has imparted the effects on the domestic instruments. The Universal Declaration of Human Rights, 1945 is regarded to be an international norm. Though it is a declaration as its name suggests, it is a declaration made by the whole world and its principles are incorporated into various instruments as aforementioned. I'm arguing that, human rights principles and democracy are intertwined, in whatever the way; no surgical experiment can separate them. In that sense, the

African State should make the implementations of those principles by honour and make the protection to them accordingly. Mwashamba cited Manfred Nowak reiterating that, the liberal rights of non-interference and democratic participation rights inherent in the classical human rights concepts, are the only real human rights in the sense of individual rights enforceable by the law against the state[11]. In connoting on whether the issue of universality of the doctrine of democracy should remain on the juncture of the dilemma, I'm convinced with the OHCHR[12] when reiterated on the same. It is here stated that, the value of freedom, respect for human rights and the principle of holding periodic and genuine election 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[13] and further developed in the International Covenant on Civil and Political Rights[14] which enshrines a host of political rights and civil liberties underpinning meaningful democracies. From the jurisprudence of the UDHR as far as it is concerned, this document is a milestone document on the history of human rights protection in the world. For the first time in the world history, the document set-out the fundamental human rights to be universally protected. The declaration is generally agreed to be the foundation of international human rights law. The declaration has inspired many other international and regional instruments (more than 80 international human rights treaties and declarations) this is according to the United Nations[15]. The ICCPR on the other hand, concede with the UDHR as it recognises the inherent dignity of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. The declaration as well as the instrument have paved the way that when coming to the protection of the fundamental rights and freedom, then no State (actors) should draw back as we belong to human family and the same entitlement to the freedom. The link between democracy and human rights is captured in Article 21(3) of the Universal Declaration of Human Rights, which states inter alia that: [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. Human Rights fundamental principles as enshrined into various instruments have not separated themselves from principles of democracy. The Universal Declaration of Human Rights with 30 Articles has been a cornerstone of a modern democracy as it has incorporated those principle—as an international norm. In the preamble of UDHR, the Member States had put their recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family that is the foundation of freedom, justice and peace in the world. Thus, the violation of democratic principles stands as direct denial of human rights. This is because wherever there is violation of human rights one will not expect democracy and the vice versa is true. Take example, the States where there is outbreak of war like South Sudan and Ethiopia right now do not expect human rights flourish. Under the UDHR, the member states pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms. Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of the pledge made. The majority of nations, on showing response toward fulfillment of the pledge made, the norms in the declaration was incorporated in various instruments e.g. the twin conventions[16,14] where therein the principles of democracy has enshrined and proving that the concept is not a regional, sub-regional whatsoever, rather the universal idea as those principles have been enshrined into various regional instruments[17].

### **3. Human Rights and Democracy in Africa**

The Human rights principles and democracy are reflected in the International Bill of Rights[13,14,16]in their Preambular paragraphs alongside the articles of the same. It is clearly set that the concept of human rights has to be recognised, inherent dignity and inalienable rights as a member of the human family. All other human rights instruments have to comply with the Universal Declaration of Human Rights, 1948 in which the proclamation is not like a mere proclamation. Under Article 2 of the ICCPR undertakes to respect and ensure all individuals to be recognised. The African Charter on Human and Peoples' Rights, 1981 (Banjul Charter) is the regional human rights instrument. The Charter was adopted with intention to promote and protect Human Rights in the continent. The Charter recognises those rights which reflected in the Universal Declaration of Human Rights. The Charter recalls all State members to the African Union[18]when promoting the international cooperation has to regard the principles enshrined in the Universal Declaration of Human Rights[19].The Charter constitutes both the social, economic and political rights, something differentiating the Banjul Charter with rest of other regional instruments that is, Human and Peoples Rights specifically[19]. The concept of human rights and democracy in Africa, as evidenced into various instruments which State parties to the African Union has adopted—never been a new concept at all. Africa adopted the African Charter on Democracy, Elections and Governance, 2007 which from its entirety, it has reflected the principle of good governance, popular participation, the rule of law and human rights as intertwined features. The State members under this Charter committed themselves to promote the universal values and principles of democracy, good governance, human rights and the right to development[20]. those principles as enshrined into this instrument had existed in other international instrument quite a long, what was done by the State members to Africa Union was just to sanctify in a regional level. Chapter 2 of the Charter set out the objectives which have to be carried out by the State parties which among others are to ensure the adherence to the universal values and principles of democracy and respect for human rights by the State member. On the other hand, the State has to promote and enhance adherence to the principle of the rule of law; holding the regular free and fair elections to institutionalize legitimate authority of representative governments as well as democratic change of governments among many other issue[20]. The Charter has proved the inter-twined concept of Democracy, rule of law and human rights[20] as the commitment is given to the States to promote democracy, the principle of the rule of law and human rights. Also, the document compels the States to recognise a popular participation through universal right to vote in political election as the inalienable right of the people.

#### **3.1. The African Court on Human and Peoples' Rights[19]**

The international human rights instruments adopted by the African Union Assembly in their regular meetings, proves that the concepts of democracy and human rights were not the nightmare—it was real. In ensuring the promotion and protection of human rights in the continent, the African Union adopted the Protocol for establishment of the African Court[21]. The reasons behind the establishment of the Court are to complement the protective mandate of the African Commission of Human and Peoples' Rights. The Preambular paragraph three of the Protocol clarify that; the African Charter on Human and Peoples' Rights reaffirms adherence to the principles of Human and Peoples' Rights, freedoms and duties contained in the declarations, conventions and other instruments adopted by the Organization of African Unity, and other international organizations (including

the international Bill of Rights). However, the jurisdiction of the African Court is limited to the States that ratified it.

#### **4. The Human Rights and Democracy conception in Africa was a nightmare?**

Since the adoption of Universal Declaration of Human Rights, 1948 until the first African State acquired her independent (Ghana) it was almost 20 years passed. The UDHR acted as catalyst for African activists to fight against the Colonialism under the principle of 'equal dignity' as per UDHR's preamble. Finally lead the African Union to adopt its Charter which will define Human rights by focusing the continent—it is said to be best instrument among other regional instruments. The speech delivered by various States and continental leaders proved the principles of human rights and democracy in Africa was achieved as an accident. The States should live out of the notion that 'democracy and human rights' are the Western concepts because human dignity cannot vary from one jurisdiction to another or we are all the same; the same human rights which are inalienable, interdependent, universal, interrelated. The following speeches which were given in various occasions by African's leader cements on the universality of the human rights and Democratic concepts:

*Kofi Anan*[22] Speaking on human rights in Africa, Kofi said:

It is necessary even now that the protection of human life and full respect for human rights are the highest priority, and that the rule of law should quickly return to that vast and vibrant country...my friends, I speak to you as fellow African, and I speak to you from the heart: we will succeed to the extent that we embrace the primary of democratic rule, the inviolability of human rights, and the imperatives of sustainable development. If you properly follow this part of speech, he was making the awaking call to the States' leaders to promote and protect the democratic rule as well as embracing human rights.

*Kwame Nkrumah* Soon after the Universal Declaration of Human Rights being adopted by the United Nations General Assembly, 1948; the then Ghana's prime minister Kwame Nkrumah echoed the UDHR when celebrating the independence of his country[23]. He said:

African must be just as free as other citizens of the human family to enjoy the fundamental liberties set forth in this Declaration and the rights proclaimed in the United Charter[24]. Reading these words between the lines you would even get a mental picture of what the Pan-African leader considered the Human rights. They did acknowledge how worthy was the Universal Declaration of Human Rights as something of value, not only because they were striving to liberate their States from the colonial rules, but on the equal respect on dignity of the human family in the world.

*Nelson Mandela*

This man is said to be the icon and one of the fathers of democracy in Africa continent, his struggle for independence was not intended just give the government powers to indigenous Black in South Africa, rather was under the aspirations of the principles reflected in the Universal Declarations of Human Rights: he was championing the equality between all races, wiping away the discriminations rooted from the Apartheid regime.

In one of his speeches, he said; During my life time I have decided myself to this struggle of the African people. I have fought against white domination; I have fought against black domination. I have cherished the ideal of democracy and free society in which all persons live together in harmony and with equal opportunities[25]. The adoption of many human rights instruments by the African State's members proves that the African States forefathers had the positive understanding on the human rights concepts and democracy something triggered the adoption of those human rights instruments from time to time. Those instruments, if you read then attentively for realize that are very good if States would be willing to make the implementations. However, the misfortune has come when; taking an example when one has acquired the political office for democratic method, and then found that the law made him to get into power is bad. In defending that position he will be even willing to killing his citizen or to show mistreatments. I would like to submit that, the doctrine of human rights, the rule of law and democracy; is the global doctrine as it has to be respected and promoted in human family. I have noticed that, many times, the democratic ways have been used by politicians to enter into power; while in power political influence issued under the umbrella of democracy to legalize holding power under the claims that, majority of people has voted for extension of time for one to remain in the public office. The principles of democracy, as reflected in the international Bills of Rights among other international instruments should be adhered and respected in a good will.

## **5. The modern principles of democracy**

The term 'democracy', in its modern sense, came into use during the course of the 19<sup>th</sup> Century to describe a system of representative government in which the representative are chosen by free competitive elections and most male citizen are entitled to vote[2]. Democracy, when looking at it by its historical perspectives it is seen as passed into one stage where it was ought not to be called democracy. Taking example from the United States when the Independence Declaration of 1776 was made there were still the existence of classes between the Whites and Blacks, the state which declared herself as a democratic struggle yet with racism and discrimination. Cast eyes through the history on the Europe particularly France and Italy, regardless to existence of the leadership which seems to have legally set into power still prompted their communities to claim for democracy in their states. How the democracy can be defined in this era? If one has to take definition from the dictionary, then we would define it to mean the rule of the people. Then after we'll encounter another problem of making the clarification on who is 'the people and how to define the meaning of 'the rule.' It is when we say 'the people' meaning the whole of adult population, or only these who possess enough property? One may raise the argument on 'the rule' for instance—that would the law being on the control of the other classes. The example on Apartheid regime in South Africa will suffice, during that regime there had been the legal institutions worked under the ambit of law, if we have defined under the bases of rule of law as a pillar of any democratic society, asking rhetorical question, where was the position of such unjust law under that given example? In America, democracy has been defined in three ways: a populist way, in terms of the rule of the people; a pluralist way, in terms of competition between sections and pressure groups; and an institutional way, in terms of set of institutions and progresses[2]. All three versions had their origins in the thoughts and writings of the founding Fathers of the American republic. A belief in the principle of popular Sovereignty was common to all the Founding Fathers, whether they were relatively conservative or relatively radical. One of the latter, James Wilson of Pennsylvania, declared in 1787 that:

In our governments, the supreme, absolute, and uncontrollable power remains in the people. As our constitutions are superior to our legislature, so the people are superior to our constitutions... in giving a definition of what I meant by the democracy...I termed it, that government in which the people retain the supreme power[2]. In 2000, the Commission recommended as a series of important legislative, institutional and practical measures to consolidate democracy (resolution 2000/47); and in 2002, the commission declared the following as essential elements of democracy:[26] Respect for human rights and fundamental freedoms, freedom of association, freedom of expression and opinion, access to power and its exercise in accordance with the rule of law, the holding of periodic free and fair elections by universal suffrage and secret ballot as the expression of the will of the people, a pluralistic system of political parties and organizations, the separation of powers, the independent of the judiciary, transparency and accountability in public administration, freed independent and pluralistic media. However, the recommendations carries no legal bindingness, the one which were given by the by Commission was not the autonomous rather it was already reflected in the international instruments[13,14,16] and then being adopted in the regional instruments[19,20].

#### **6. Is Democracy to be redefined *to suite local realities*?**

If one would agree to say, democracy is the rule of the people then people themselves should ordain the procedure on which their interests will be protected[27]. When regional—sub-regional instruments find their consensus with the Universal Declaration of Human Rights, then principles of democracy found not to be separated from human rights *suo mottu* from the sense of its universality. In Africa continent, like other regions e.g. Europe, (as they have the European Convention on Human Rights, 1951 which embodied with the principles of democracy). Africa has the Charter (the African Charter on Human and Peoples' Rights, 1981) which is *sue generis* as it has incorporated all modern principles of democracy which sails together with the core principles of the modern principles of Human Rights as it has enshrined on the various instruments as afore mentioned. The arguments which raise on redefining the doctrine of democracy in order to suit the local realities is to whose interest the said protection through redefining the concept is sought? I think the answer is in affirmative. Anthony Birch[2]cites Alexander Hamilton who observed that 'men love power'. The same position supported by Thomas Mason who said that 'from the nature of man, we may be sure that those who have power in their hands...will always, when they can increase it[2]. When the fewer are struggling to increase their own power that where so called the call to redefine the concept of democracy raises at last ordain some infringements of public interest (majority interest) by doing so called the 'holy deprivation of the power' from the people. It has been experienced in the various countries in the continent when the presidential terms come near to an end, the call for constitutional change or amendment is sought particularly to add the presidential term while the president is still in power. The majority will be involved to 'ordain' the process to be fair and just. The definition of democracy to mean the 'rule by the people' is good though it leaves some punching holes as to what amount to 'rule by the people'? In the representative democracy, the citizens elect people through the fair procedure to present their interest in the house for s specific period of time (a term). That is where the meaning by the said defined derives the *locus stand*. The litmus test can prove difference when the same train can be used to amend the procedures so that remain longer in power. In my opinion, this goes against enshrined in the UDHR as per Article 23(3).



## 7. Conclusion

The concept of the democracy *strictu sensu* needs not to be redefined. The concept by its own nature has appeared to be an international norm by virtue of being provided in UDHR and other International instruments which has incorporated them ordains the same to be inseparable with the core principle of human rights on its universality. The resolution 46/2002 of the Office of High Commission of Human Rights has reiterated on the principles of democracy which is universally standard among others is the protection of the human rights. The bases of the doctrine of democracy are that the power is derived from the citizens and not the rulers. In this sense, the democracy is democracy in the sense that no one has to temper with it. In Africa as in other regions the democracy should not be as chameleons like in a sense of changing color depending to the environment so that to defend it from the enemies. The principles should be protected as well as being adhered. The human rights values are deeply entrenched in democracy and the states have to embrace it. Although there is no universal definition of democracy, in whatever the way it can be defined, the core values human rights, the rule of law, and the independence of the judiciary cannot be separated. Those mentioned principles attached to democracy are the intertwined core principles.

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