GOOD GOVERNANCE AND PROTECTION OF HUMAN RIGHTS IN AFRICA: THE ROLE OF THE LEGISLATURE IN THE TWENTY-FIRST CENTURY†

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ABSTRACT

This article is intended to detail the extent of human rights abuse in Africa and broad conceptual issues of good governance and why it is needed in Africa. It commences with a belief that many African countries have been mis-ruled and as such needs good governance. It assumes that good governance on a continuing basis requires an effective institutional infrastructure and that functioning legislatures can help in that respect. It also contends that good governance and to a large extent some level of functioning democracy is related. The paper shows that effective legislature helps to sustain democracy where it exists and elsewhere help to democratize by fulfilling the promise inherent in the public’s right to be represented. If given necessary opportunity,

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representative institutions can connect people to their government by giving them a forum where their needs can be articulated. But to achieve this, cooperation of other institutional bodies are inevitable.

Therefore, section I of the paper examines the African concept of human rights and chronicles the problems of Africa which is tagged violation of human rights and bad leadership. Sections II explores the concept of good governance, its genesis and what it entails. The section links human rights to good governance and states why it is needed in Africa. While section III explains the modern concept of legislature, what legislatures do, and how they do it. The section advocates for some mechanisms which will enhance effective performance of legislature. The paper concludes with a strong hope that the legislature can significantly impact on good governance and human rights if given cooperation by media, human rights bodies and other arms of government.

**Key Words:** Human Rights; Good governance; Legislature; and Sub-Saharan Africa.

**ABSTRAK**

Makalah ini bertujuan untuk memperincikan takat pelanggaran hak asasi manusia di Afrika, isu konseptual tadbir urus baik dan perlaksanaannya di Afrika. Makalah ini bermula dengan satu kepercayaan bahawa banyak negara Afrika yang ditadbir secara teruk dan oleh yang demikian mereka amat memerlukan tadbir urus baik. Ia berdasarkan anggapan bahawa tadbir urus baik yang berterusan memerlukan infrastruktur berinstitusi yang berkesan dan bahawa badan perundangan yang berfungsi boleh membantu dalam hal tersebut. Ia menegaskan bahawa tadbir urus baik dan, ke takat yang besar, demokrasi yang berfungsi ke sebahagian peringkat
 adalah berkaitan. Makalah ini menunjukkan bahawa dewan perundangan yang berkesan boleh membantu untuk mengekalkan demokrasi di negara ia wujud dan membantu pendemokrasian di negara-negara lain dengan menunaikan janji yang sedia ada dalam hak awam untuk diwakili. Sekiranya diberikan peluang yang diperlukan, institusi perwakilan boleh menghubungkan rakyat kepada kerajaan dengan memberikan mereka forum untuk menyuarakan keperluan mereka. Bagi mencapai matlamat ini, kerjasama badan berinstitusi lain tidak dapat dielakkan. Seksiyen I makalah ini meneliti konsep Afrika tentang hak asasi manusia dan menyusun mengikut kronologi masalah pelanggaran hak asasi manusia dan kepimpinan teruk di Afrika. Seksyen II menjelajah konsep tadbir urus baik, asal usulnya dan apa ia perlukan manakala seksiyen III menjelaskan konsep moden, fungsi dan operasi dewan perundangan, sambil mengesyorkan sebahagian mekanisme yang akan meningkatkan pencapaian berkesan dewan perundangan. Makalah ini menyimpulkan dengan harapan yang kuat bahwa dewan perundangan boleh memberi kesan yang bermakna pada tadbir urus baik dan hak asasi manusia jika diberikan kerjasama oleh media, badan hak asasi manusia dan badan kerajaan yang lain.

Kata kunci: hak asasi manusia, tadbir urus baik, dewan perundangan, sub-Sahara Afrika.

INTRODUCTION

“Good governance is perhaps the single most important factor in eradicating poverty and promoting development.”

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1 Kofi Annan, Secretary General of the United Nations. 1998 Annual Report to the General Assembly on the work of the organization.
What have been at the centre of human society at all levels from family and tribe to cities and countries and even internationally and globally are the system and principles of governance. The wars that featured prominently in twentieth century were the two world wars; two of the major factors behind these wars were flawed systems of governance in a number of states and lack of a system of global governance capable of resolving conflicts among nations peacefully\(^2\). Many of the European nations were at one another’s throats in the first half of the twentieth Century. But these nations after the World War II developed and adopted systems of good governance. These systems have enabled them to earn and maintain the trust not only of their citizens but also of the other European nations. The mutual trust among the Western European nations has reached such a high level that they have established the European Union (EU), under which the members have abolished the national currencies and borders that used to separate them from one another.

In the post World War II and post colonial periods, the newly independent countries in the developing world were to take their own destiny and adopt good governance to achieve the wellbeing of their masses. However, barring a few exceptions,\(^3\) most of them have not succeeded in this effort as so many people had hoped.\(^4\) This failure along with many other reasons accounted for the increasing attention to


\(^3\) Namibia and Senegal seem to be relatively stable, politically, if compared with many other African countries.

governance and institutions by international development communities. One of the regions mostly affected by this failure of good governance is Africa.

HUMAN RIGHTS

Human Rights: History and Practice

Freedoms such as subsistence, security, liberty, life, and other guarantees to which people are bestow are human rights. According to Aka, “they are generally understood as entitlements or claims against the society held equally by all persons simply because they are human beings.” In this sense human rights are conceived as naturally inherent in the human person. They are neither granted by the state nor are they the result of one’s action. Thus, they are rights which all person, everywhere and at all times, equally have by virtue of being moral and natural creatures.

The concept of human rights addresses a fundamental human need of people regardless of race, sex, or culture, as the “inalienable rights” of every human being. By nature, each person has same and equal rights in

For example, the World Bank allocates grants of the International Development Association (IDA) according to a Country Policy and Institutional Assessment (CPIA), which includes indicators such as transparency, accountability, and corruption in the public sector. The US Millennium Challenge Account also distributes assistance to countries based on “performance in governing justly, investing in their citizens, and encouraging economic freedom.” Available at <http://www.mca.gov/about_us/overview/index.shtml> (Accessed on 22 November, 2009).


a given society or community. Due to the fact that human rights are innate and not dependent upon others for their legitimacy, these rights can be demanded where and when they are denied.10 From narrow context, human rights are claims or entitlements which people can demand from their state. They are claims or entitlements due to people, which the court shall enforce when they are asserted by individual.11 In this sense, the states are expected to protect, promote and enforce them because the legitimate Groundnorm (the Constitution) or other legal instruments have provided for their enforcement.12

It is possible to analyse the concept of human rights as universal although many scholars have regarded it as having Western European conception because of its origin from that geographical area. According to these scholars, human rights concept, as a matter of historical fact, is an artefact of modern Western civilisation,13 though contested by many other scholars.14 Human rights are universal because, firstly, history had

it that various religions like Christianity, Islam, Hinduism, Confucianism and Buddhism have preached peace, justice, charity, freedom of religion, harmony, sacred of life, freedom, compassion and respect for all human being. It is submitted that all these concepts are key elements of human rights. Thus, this effort to preach peace, justice and freedom is a clear indication that human rights have existed long before UDHR in 1948.  

Secondly, the traditional society of India, China and Africa, in their cultures, have practised human rights in varying degrees based on their understanding and circumstances long before the concept of Western universal human rights.  

It needs be pointed out, however, that the first concrete political statement on human rights occurred as a result of the French Revolution of 1789. Its declaration of “The Rights of Man and the Citizen” stated
that “the aim of all political association is the conservation of the natural and inalienable rights of man.”18 This of course prompts many scholars to regard human rights concept as “Western” which spanned over a period of different generations. Generally, the generational theory has categorised rights into three. The growth of human rights, which has paralleled economic development, is usually described as having evolved over time in three successive waves.19 It starts from easily implemented individual negative claims, to freedom from state, to positive claims20 and to entitlement to state resources. From this, a historical but philosophical parallel is drawn between first-generation rights, second-generation rights and third-generation rights.21 However, the idea of a


21 Jennifer A. Downs, “A Healthy And Ecologically Balanced Environment: An Argument For A Third Generation Right,” Duke Journal of Comparative International Law Vol. 3, 1993, at 351 Jennifer classifies thus “The first generation of political and civil rights, embodied in the Universal Declaration and the Covenant on Civil and Political Rights, are freedoms from state intrusion: liberte. The second generation furthers realization of the first generation by guaranteeing minimum standards, demandable upon the state, of education and health, a liveable wage, decent working conditions, and social insurance for all persons: egalite. Finally, the third generation consists of rights which may be invoked against and demanded of the state. These rights require all the organs of society-individual, state, regional, and international-to cooperate in order for the rights to be realised: fraternite.” at 364.
The first wave of human rights in modernity is identified with the period of Scottish enlightenment and the age of reason expressed in the liberal revolutions of America, France and Latin America. Rights asserted in these revolutions were essentially claims of the individual against state interference and self-government. The first-generation rights tend to be procedural rights, that is, rules which determine the creation or application of substantive claims to material goods. The common feature of first-generation rights is that they tend to see property rights as fundamental, individual and even absolute. And it can be summarised as negative civil and political rights – “freedom from” rather that “freedom to.” Of the civil and political rights, the most prominent rights include the rights to life, freedom from torture and inhuman treatment, rights to liberty and security, equality before the law, and freedom of thought. All in all, there are twenty-seven rights guaranteed while only nineteen of


25 Eric Engle, n. 14 at 17; See the United States Constitution, Amendment I (freedom of speech, worship), IV (no unlawful search or seizure), Available at www.law.cornell.edu/constitution/constitution.billofrights (Accessed on 10 February 2010) See also Sections 35 and 39 of the Nigerian 1999 Constitution.
the same rights are protected under the International Covenant on Civil and Political Rights (ICCPR). The second generation of rights arose during the industrial and political revolutions of about 1848-1870. During this period, human rights were then seen, increasingly, as no longer mere negative rights to freedom from state interference, but rather as affirmative, substantive and social claims to state resources. Second generation rights were seen as the consequence of class struggle and thus as collective rights. Prominent among the rights of this generation are rights to work, rights to favourable conditions of work, right to social security, rights to education, and right to health. These rights culminated into what is branded as social and economic rights and documented as International Covenant on Economic, Social and Cultural Rights (ICESCR). The third generation of human rights arose in the post Second World War. The recognition of third-generation rights is sometimes linked to the recognition of the limited international legal personality. Third-generation rights are


28 See Claire Moore Dickerson, n. 19 at 1 and Louis B. Sohn, n. 22 at 1.

29 Ibid.


seen as essentially collective just like second-generation rights.\footnote{33 Claire describes third generation rights as collective solidarity rights. See Claire Moore Dickerson, n. 19 at 1445-1446.} They seek to dynamically complement the rights of the first and second generation. It is a generational rights clamoured for by the newly developing nations and nations (Third World) which have recently stepped out of bondage of their colonial masters. These three set of rights are presented in the Universal Declaration as “a common standard of achievement for all peoples and all nations.”\footnote{34 Sakah Saidu Mahmud, n. 17 at 487.} 

has been a concern with the protection of human rights. This development is the reflection of a wider phenomenon which is the increased concern of people all over the world with the treatment meted out to their fellow human being in other countries, particularly when that treatment fails to come up to minimum standards of civilised behaviour.\footnote{A.H. Robertson & J. Merrill, \textit{Human Rights in the World} (Manchester: Manchester University Press, 1989) at 1.} 

\section*{Human Rights: The African Conception}

The African concept of human rights is slightly different from the “Western.” Africans conceive human rights as collective rights rather than individualist concept of the rights in the West. The individual concept of human rights, according to Africans, addresses the cultural and ideological perspectives of both the East and Western Europe\footnote{Sakah Saidu Mahmud, n. 17 at 488.} and as such should be jettisoned. The African concept thus posits that if human rights are based on the equal value of human being, then similar moral philosophies can be found in the African notion of human dignity. The human dignity, it goes further to say, may not be considered in terms of individual rights, but rather as individuals’ role in a society.\footnote{Sirkku K. Hellsten, “Human Rights in Africa: From Communitarian Values to Utilitarian Practice” \textit{Human Rights Review}, Jan-March 2004, at 63.} The African traditional communal structure meant that a person’s dignity and honour flow from his transcendental role as a culture and social being.\footnote{Shivji, I.G., \textit{The Concept of Human Rights in Africa}, (London: Codesria Book Series, 1989) at 10.} The traditional African concept of the worth of human beings is based on the communal values of social harmony and solidarity that also emphasize individuals’ obligations and duties to their community. Thus, rights are understood rather in collectivist than individual terms.\footnote{Cobbah, J., “African Values and the Human Rights Debate: An African Perspective,” \textit{Human Rights Quarterly}, Vol. 9, N. 3 1987 at 309.} 

There are basically two fundamental arguments for the African concept of human rights. Firstly, it can be argued that traditional African
societies have what can be equated to, or claimed, as human rights. The claimed is based on the African communitarian ideal within which the group “is more important than the individual, decisions are made by consensus rather than by competition, and economic surpluses are generated and disposed of on a redistributive rather than a profit-oriented basis.”

Secondly, there is a general belief that human rights can be granted to individuals only through national economic development. It is noted that the African opposition to the Western concept of human rights sprang into a particular cultural approach to human rights in Africa that is based on African humanism and communalism that defend the collectivist traditional values of solidarity and egalitarianism. This African collectivism based on communalist tradition is now often called “communitarian” approach to human rights. Africa’s demand for collective rights include the rights to self-determination, liberation, the rights to international peace and security, rights to use one’s resources, rights to development, right of national minorities and rights to satisfactory environment.

The preference for African concept of human right reflects in the Organisation of African Unity (OAU now AU) Charter where third paragraph of the preamble declares the “responsibility to harness the natural and human resources” of the continent “for the total advancement of our peoples in all sphere of human endeavours.” Again, one of the objectives of the then OAU shall be “to promote international cooperation, having due regard to Charter of United nation and Universal Declaration of Human Rights.” Paragraph (b) of the same article provides that one of its purposes shall be “to co-ordinate and intensify their co-operation

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48 *Ibid* at 85.
50 *Ibid*, para 3 of the Preamble.
51 See Article II, section 1, para (e) of OAU (now AU) Charter.
and efforts to achieve a better life for the peoples of Africa.” The concept is also a reflective of many provisions of the Charter of Human and Peoples’ Rights. If the two Charters are reflection of and are based on the realities of the African situations and experiences as espouse in the African concept of human rights, the question then is to what extent have the African leaders religiously followed and practised these rights?

**Violation of Human Rights: The African Experience**

Africa, with a land area three times the size of United States and a population in excess of 600 million people, is the most endowed continent in the world in term of natural resources. But it is the least developed in term of land. With its vast mineral, oil, water, land and human resources, the continent has the ability to attain sustainable development, that is to say “increasingly productive employment opportunities and steadily improving quality of live for all its citizens.” Yet millions of Africans have no access to safe drinking water and are illiterate. In pre-colonial

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times, the continent was self-sufficient in this area. Now, however, many African countries are dependent upon external food supplies. On the face of it, the inability of the African continent to feed itself is paradoxical, since one of its chief assets is its huge agricultural potential.\(^58\)

Unfortunately, Africa lacks the domestic capital necessary to translate its enormous wealth into realisable benefits for its people and it has failed to attract sizable foreign investment to fill the gap. While, for example, African countries have put in place a myriad of investment codes in an effort to attract foreign capital, they receive only some 5 per cent of all direct foreign investment flowing to developing countries.\(^59\) Furthermore, about half of this investment goes to oil and mining production and most of it to a few countries such as South Africa, Nigeria, Angola and Botswana; this is in spite of the fact that investment made in Africa consistently generate high rate of return.\(^60\) Again, the turmoil and tragedy of the past cannot be left behind without necessary reference. This is because internal and regional conflicts appear to grow not simply in frequency and magnitude, but also in intensity, viciousness and complexity. For example, Sierra Leone,\(^61\) Liberia,\(^62\) and Uganda\(^63\) engaged in internal armed conflict in the last decade of the twentieth century. Countries like

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\(^60\) For example, See USA, United States Direct Investment in Africa, South African Development Community (USA, Washington DC: Trade and Investment Publication, 1998) at 4.


Somali\(^{64}\) and Sudan\(^{65}\) have continued to engage in unending internal conflicts in the last ten years. The position is not quite different even in countries such as Namibia and Senegal that have been relatively stable and sanguine.\(^{66}\) International wars, such as those in the Democratic Republic of Congo (DRC) and the one between Eritrea and Ethiopia,\(^{67}\) do not bode well for the observation of human rights. The 1994 genocide in Rwanda stands as a vivid testimony of the horrid evils of which human kind is capable of inflicting on its own kith and kin.\(^{68}\) The true picture of African internal and regional conflict was graphically illustrated by Annan thus:

Since 1970, more that 30 wars have been fought in Africa, the vast majority of them intra-state in origin. In 1996 alone, 14 of the 52 countries of Africa were afflicted by armed conflict, accounting for more than half of all war related deaths worldwide and resulting in more than 8 million refugees, returnees and displaced persons. The consequences of those conflicts have seriously

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undermined Africa’s efforts to ensure long-term stability, prosperity and peace for its people.\textsuperscript{69}

In the same token, Africa remains a continent marginalised from the tremendous technological, economical, and developmental achievement that the world has made over the last few decades. Rigorous measures of economic and social reform have resulted in marginal improvement over what conditions were before the measures were applied. Moreover, this is true for many countries on the continent. For ten years that the Human Development Report has been produced, African countries have dominated the lower quartile of the United Nations Development Programme (UNDP)’s index. Part of the problem is that developmental discussion and strategies are still dominated by the World Bank and the IMF to the neglect of alternative prescription that place emphasis elsewhere than on production for the external market. Therefore, it goes without saying that Africa’s human development situation is in dire need of attention.

Mention should also be made of the mortality rate in Africa. The under-5 mortality rate increased in Kenya, Malawi and Zambia - an unprecedented trend after decades of steady declined. The primary school enrolment ratio dropped in Cameroon, Lesotho, Mozambique and Tanzania. The gender gap in primary school widened in Eritrea, Ethiopia and Namibia. Sub-Saharan Africa has the highest proportion of people living in abject poverty, with nearly half of its population below the international poverty line of $1 a day. This means that some 300 million people face the daily struggle of survival on less than that income.\textsuperscript{70} Poverty reduction is hindered by the region’s weak economic performance during 1990s. Diets fall significantly short of what a person needs to undertake normal activities. In 18 out of 40 Sub-Saharan countries, the proportion of under-nourished was very high, affecting


one-third or more of the population. The number of undernourished people has increased steadily over the past decades to reach 200 million people at present.\textsuperscript{71}

Complications during pregnancy and childbirth cause the death of over 250,000 women each year in Sub-Saharan Africa. The maternal mortality ratio for the world is estimated at 400 per 100,000 live births but, at 1,000 maternal deaths per 100,000 live births, Africa has the highest ratio. The countries with the highest maternal mortality ratio are all in Africa. The continent is also home to seven of the twelve countries with highest number of maternal deaths. These seven countries account for one-third of all maternal deaths in the world. Adding to an already heavy disease burden in poor countries, the HIV/AIDS epidemic is deepening and spreading poverty, worsening gender inequalities, reversing human development and eroding the capacity of governments to provide essential services. The broader and deeper development implications of the pandemic are nowhere more vividly underscored than Africa.\textsuperscript{72} Over three-quarters of all AIDS deaths occurred in Sub-Saharan Africa. Worldwide, some 40 million people are currently infected with the HIV virus; over 25 million of them are in Africa.\textsuperscript{73} More than 10 million children in the region have been orphaned by AIDS. While the global HIV/AIDS prevalence rate is estimated at 1 per cent, the average for Sub-Saharan Africa is over 9 per cent.\textsuperscript{74} Thus, while HIV/AIDS is a global crisis, the African continent has the highest incidence of the disease.

At the root of the problem is the worldwide perception of Africa as an unstable and poorly governed continent. In fact, Yair posits that the decision of investors not to invest in some countries in the continent was as a result of political instability.\textsuperscript{75} Certainly, Africa’s political instability

\textsuperscript{73} \textit{Ibid}.
\textsuperscript{75} Yair Aharon, \textit{Foreign Investment Decision Process}, (Cambridge, Harvard University Press, 1996) at 60.
has exacted a huge cost on its development efforts.\textsuperscript{76} Authoritarian leaders and incessant military coup featured worrisomely in the Sub-Saharan African. Beginning with Togo in 1963, a rash of military takeovers spread to Ghana, Mali, Burkina Faso, Benin Republic, Nigeria, and many countries of the region. This trend became serialised as coup and counter coup became the mode of political succession. Off course, military incursion meant suspension of constitutions and prevalence of authoritarian rules.\textsuperscript{77} For example, Nigeria, like many other African countries, was under sustained military-cum-authoritarian rule for 33 years. The inheritance of authoritarianism and arbitrariness in governance from an earlier 33 years of military rule featured worrisomely in the form of executive dominance of statecraft, administrative excesses by the executive branch, breach of law, political repression, weakness of the legislature generally and legislative lawlessness in some States’ Houses of Assembly.\textsuperscript{78} This absence of good governance has been interpreted variously as the lack of competitive democratic practices, rule of law, efficient bureaucracy, accountability, participation, transparency and crises of governance.\textsuperscript{79} Rampant electoral fraud becomes reason why democracy in most of the African countries continues to degenerate at an alarming rate.\textsuperscript{80} Abrahamsen’s description of political situation in Africa is that “democracy in Africa has largely failed to deliver on its promise of greater welfare and justice for all...” he continues “in many African countries democratisation was a victory for the liberal conventionalisation of


democracy and those who had most to gain from continued economic liberalisation – the elites.”81 “Crises of governance” has been identified as the heart of Africa’s problem.82 Thus, democracy characterised by an ability to respond to popular demands for socio-economic reforms and an ability to incorporate popular sectors into the political process in any meaningful way was and is still absent.83 The central theme of the 2002 Human Development Report is that effective governance is central to human development and that good governance is the missing link to successful economic growth in Africa.84

GOOD GOVERNANCE

The Concept of Good Governance and its Emergence

Although plethora of literature on “good governance” links the concept to the language of development as coined by foreign donors, development agencies and international institutions from 1990s,85 the concept has its root in history. During the British colonial period, good governance was a

83 Stephen Akinyemi Lafenwa, n. 80, at 4.
85 See for example, I’ Futa Helu, Tradition and Governance, State, Society and Governance in Melanesia Discussion Papere 97/3, (Research School of Pacific and Asian Studies, The Australian National University, 1997), at 2-3; Binayak Ray, Good Governance, Administrative Reform and Socioeconomic Realities: A South Pacific Perspective, State, Society and Governance in Melanesia Discussion Papere 98/2, (Research School of Pacific and Asian Studies, The Australian National University, 1997) at 2-3; and Peter Larmour, Making Sense of Good Governance, State, Society and Governance in Melanesia Discussion Papere 98/5, (Research School of Pacific and Asian Studies, The Australian National University, 1997), at 1-3.
slogan in the colonial administrations because it implied that “self government” meant incompetent administration. In contemporary times, and in the vast majority of African countries, the idea of good governance has re-emerged as a defining theme on their agenda. No wonder, then, why Nyerere observed that “This continent is not distinguished for its good governance of the peoples of Africa. But without good governance, we cannot eradicate poverty, for no corrupt government is interested in the eradication of poverty.” He observed further that “on the contrary, and as we have seen in many part of Africa and elsewhere, widespread corruption in high places breeds poverty.” No doubt, good governance has acquired chequered interpretations as an abstract concept, yet it can also be summarily interpreted as the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation. It simply, refers to the transparent and accountable management of all a country’s resources for its equitable and sustainable economic and social developments.

The use of the term “good governance” within the international discourse was first initially articulated in the 1989 World Bank publication. Therein, the concept of good governance was first identified as a structural necessity for market reform. In 1992, the Bank published another report entitled Governance and Development which explored the concept further and its application to the Bank’s activities. Since then, good

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Good governance, therefore, implies the existence of competent and effective institutions respecting democratic principles. The concept extends the aims of democratisation into the sphere of resource management. The European Union identifies five principles underpinning good governance. These principles are *legitimacy and voice, direction, performance, accountability and fairness*. 93 This is slightly different from the UNDP guiding principles of good governance; although the two invariably come to the same conclusion. According to the UNDP, the following principles form part of good governance: *participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability and strategic vision*. 94 These UNDP-based principles have a claim to universal recognition as they reflect the values that need to be implemented in order to justify the governance framework 95. The values range from the eradication of corruption to the recognition of fundamental human rights or even conducting a free and fair election thereby circumventing a legitimate crisis which may arise from rigging and other election fraud. The concept

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of good governance needs to be practised, nurtured and sustained by the people in the position of authorities- the leaders.

**Human Rights and Good Governance: The Linkage**

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of Governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population. Thus, when led by human rights values, good governance reforms of democratic institutions create avenues for the public to participate in policy making either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes, especially at the local level. Finally, they encourage civil society and local communities to formulate and express their positions on issues of importance to them.

Therefore, a critical examination of the experiences of Africa as discussed earlier is an illustration of the absence of good governance and indeed violation of the human rights as contained in most International Conventions. It could also be said, alternatively, that these experiences

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97 *Ibid*.


99 See for example International Covenant on Civil and Political Rights, G. A. Res. 2200A (XXI), 21 UN GAOR Supp (No. 16) at 52, UN Doc.A/63/6 (1966), 999 U. N. S. At 171. it entered into force on 23 March, 1976 and provides for “first generation” civil and political rights; International
are the failure of the countries concerned to uphold the tenets of these international Instruments. This is a problem that requires urgent solution. This magnitude of problems became a source of serious concern to major players of politics and economy in the world particularly the International Organisations, Regional Organisations, International Institutions and Non-Governmental Organisations. A bold step was taken by some of these world players to solve what is regarded as world problem. Thus, the UN in its Millennium Declaration 2000, resolved to spare no effort to free all people from dehumanising conditions of poverty. The Millennium Declaration advocates many strategies to overcome the rather evasive world problems. The strategies range from removing financial barriers to the rights-based approach. The rights-based approach recognises four types of core obligations for duty-bearers. In this respect, the UNDP has, by its report, drawn attention to some sub-national trends, even among countries that are on track to achieve the MDGs by 2015.


See Universal Declaration of Human Rights, n. 15. It contains extensive provisions within which are grounded essential two sets of human rights, i.e civil and political rights on one hand and social, economic and political rights on the other hand. For example, access to social, economic and cultural rights are spelt out in Article 22 to 28 thereof. 

Ibid, see Article 2.

They are respecting the rights, protecting the rights from abuse, non-interference with the rights and creating supportive environment. See Theis, J., Promoting Rights-based Approaches: Experiences and Ideas from Asia and Pacific, (Bangkok, Save the Children Sweden, 2004), at 5.

The rights approach is in line with Universal Declaration of Human Rights which states that “Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services.” It goes further to state that everyone is entitled to all rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Subsequent declarations and conventions have established primary education, health care and access to water as human rights. Clearly in line with the rights-based approach, the UNDP report further urges countries to take a bottom-up approach and focus on people most in need of support to achieve sustainable and inclusive progress. The guiding paradigm in this respect is good governance. In the recent past, most of the International Institutions have made a paradigm shift in their formula employed to grant finance assistance and aids. The new criterion now is ‘good governance.’

PARADIGM SHIFT TO LEGISLATURE

Separation of Powers

According to constitutional scholars, the separation of powers serves the important purpose of thwarting the rise of tyranny. The theory of

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105 See Articles 25 (1) and (2), UDHR n. 15.
106 See Kerry L. Hotheimer, ‘The Good Governance Agenda of International Development Institutions’ (Ph.D. Dissertation, Old Dominion University, 2006) (Hotheimer examines the formulary approach of World Bank, IMF and USAID. In his examination, he discovers that they emphasise good governance as a requirement for aids and grants).
the separation of governmental powers insists that each branch of government must not exceed its pre-determined institutional boundaries and must respect the jurisdiction of other branches.\textsuperscript{108} Apparently many nations, drawing on the insights of Montesquieu, have designed their governing charters consistent with this theory. For instance, the United States and France both separated government powers in their respective constitutions.\textsuperscript{109} Since then, the separation of powers has become viewed as a fundamental feature of democracy;\textsuperscript{110} some scholars even regard it as a necessary feature.\textsuperscript{111} In tandem with this development, most African nations have adopted the principle of separation of powers (in one form or other) whereby three arms of government (executive, judiciary and legislature) are present. These arms of government are those at the cutting edge of good governance issues, although the legislature is the least expected in this regard because attention is usually focused on the executive in the process of governance. However, since the executive seems to have failed in this regard, attention needs to be shifted to the legislature.


Legislature and Good Governance

Although, there is no legal or political contentions about its definition, the term ‘Legislature’ bears variety of names like ‘Parliament,’ ‘Congress’ and ‘National Assembly.’ It is commonly referred to “as an official body, usually chosen by election, with powers to make, change, and repeal laws; as well as powers to represent the constituent units and control government.”\textsuperscript{112} It is a political institution whose members are “formally equal to one another, whose authority derives from a claim that the members are representatives of the political community, and whose decisions are collectively made according to complex procedure.”\textsuperscript{113} It should be noted that two basic features distinguish legislature from other arms of government.\textsuperscript{114} Firstly, it has formal authority to make laws which are implemented by another arm of government. Secondly, its members are formally elected to represent various elements in the population. However, it should be re-iterated that legislatures vary in terms of composition, structure and role from one democracy to the other.

Scholarly literatures are settled that legislature has important role to play in a democracy. The first argument canvassed in this regard is that legislature occupies a central position in comparative understanding of democratic experiences. According to Hout, “it is clearly the key institution in minimal and liberal democracies around the world.”\textsuperscript{115}

\textsuperscript{112} Stephen Akinyemi Lafenwa, n. 80, at 5.
Secondly, it has been canvassed that for people to have some real decision making power over and above the formal consent of electoral choice and to effectively engender democracy, a powerful legislature is needed.\textsuperscript{116} Traditionally, the functions and roles of legislature include expressing the will of the people, passing laws and making the executive accountable. In other words, legislative institutions play the role of making law, representational and oversight functions which have serious implications for national development.\textsuperscript{117} These are regarded as fundamental responsibilities needed to be carried out in order to tackle challenges that normally face democratisation. Therefore, effective legislatures contribute to effective governance by performing important functions necessary to sustain democracy in complex and diverse societies. While all these are true and indeed far-reaching, it is contended that there is a great lacuna within the abundant literature on good government and legislature to directly link the two concepts. The available literature has failed to identify the strength of the legislature as a mechanism or viable tools of achieving good governance. It is admitted that there are no fail-safe mechanisms towards achieving good governance, yet the institutional framework of legislature should be explored.

The reason for this contention is that democratic societies need the arena for the airing of societal differences provided by representative assemblies with vital ties to the populace. They need institutions, as asserted by Johnson and Nakamura,\textsuperscript{118} which are capable of writing good laws in both the political sense of getting agreement from participants, and in the technical sense of achieving the intended purposes. In other words, legislative roles are identified as ways to strengthen democratic systems of government.\textsuperscript{119} Thus, legislature today has become more and more a multi-functional institution performing a variety of roles -many of these being inter-related and often meshing into one another. Over the


\textsuperscript{117} Stephen Akinyemi Lafenwa, n. 80, at 9.


\textsuperscript{119} Gordon Barnhart, *Parliamentary Committees: Enhancing Democratic Governance* (United Kingdom, the Commonwealth Parliamentary Association (CPA) 1999), p. V.
years, the functions of the legislature have no longer remained restricted merely to legislating. Legislature has, in fact emerged as a multi-functional institution encompassing in its ambit various roles viz. developmental, social engineering and legitimisation, representational, informational, financial and administrative surveillance, grievance ventilation and redressal, national integrational, conflict resolution, leadership recruitment and training, educational and so on. These and many other roles of legislature in enhancing good governance are discussed and alluded to by many scholarly studies on the theme of legislature.121 These functions are indicative that the executive’s right to govern derives from the legislature.122 Thus, it can be concluded that legislature is one of the crucial elements in a democratic society and essential in ensuring the rule of law and protection of human rights –good governance.123

To ensure effective performance of these constitutional and social functions, the legislature must be fully equipped. And as such, firstly, the legislators must be provided with appropriate training both home and abroad. This is because it is unrealistic to expect a newly elected legislator to acquire the range and depth of experience in legal, financial, political and human rights matters necessary to carry out his duties effectively. Such member requires training on the complexities of legislative procedures and the likes. The Commonwealth Parliamentary Association (CPA) and other similar bodies could be helpful in this direction. Second, all legislators need to be provided with all necessary and adequate research facilities and access to information, including the internet. Coupled with this is the provision of well-stocked library with both foreign and local materials for adequate comparative materials and ideals. Third, legislators


122 John Hatchard, Muna Ndulo and Peter Slinn et al, n. 121, at 123.

must be provided with technical assistance for the drafting of Private Members’ Bills, in scrutinising proposed legislation, especially in relation to human rights. Fourth, as almost all African countries are signatories to many international human rights instruments, legislatures should be given powers to oversee the implementation of their respective countries’ international human rights instruments obligations. The power may include compelling the state to comply with these instruments and regular periodic reports on the measure taken where and when violation is recorded. And finally, legislative study tour must be encouraged to expose the legislatures to outside world with a view to gathering experience from developed nations. Meeting with counterparts responsible for legislative modernization in other nations can help legislatures develop a vision for their own institution. It should be noted that when conducting legislative study tours, it is important to design them to accomplish specific development objectives, and to make sure that it is a all-political-parties affair.

CONCLUSION

The gross violation of human rights in Africa in the last three decades by successive administrations is enormous. The inability of the executive to adequately address the appalling situation indicates that the executive has lost the wherewithal to operate and apply principles of good governance. Invariably, the attention shifts to the next arm of the government - Legislature. This poses a great challenge to the legislature, the challenge of adopting, implementing and enforcing good governance. The legislatures can do this if necessary machineries are put in place. However, it can only be done with cooperation of other arms of government, the executive and the judiciary. Cooperation of other bodies

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124 In fact some countries in Africa have started work in this direction. See for example, Constitution of Uganda Article 94 (4) (c) (d), for provision of “reasonable assistance” to the legislature in the drafting of Bills.


126 Johnson and Nakamura, n. 118, at 25.
like Human Rights Commissions and Ombudsman is necessary. Appropriate media support could be helpful if there is effective working relationship. With all these in place, virile and vibrant legislature that will uphold the tenets of good governance is foreseeable in Africa.