

## **GOOD GOVERNANCE AND PROTECTION OF HUMAN RIGHTS IN AFRICA: THE ROLE OF THE LEGISLATURE IN THE TWENTY-FIRST CENTURY<sup>†</sup>**

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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. Seksyen 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 seksyen 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 bahawa 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.”<sup>1</sup>

<sup>1</sup> 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<sup>2</sup>. 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,<sup>3</sup> most of them have not succeeded in this effort as so many people had hoped.<sup>4</sup> This failure along with many other reasons accounted for the increasing attention to

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Available at <<http://www.unsystem.org/ngls/documents/pdf/go.between/gb>> (Accessed on 22 March, 2010).

<sup>2</sup> Abdullah A. & Stephen, B.Y. (ed) *Guidance For Good Governance: Exploration in Qur'anic, Scientific and Cross-Culture Approaches* (Kuala Lumpur: IIUM Press and Caux Round Table, 2008), at 116-118.

<sup>3</sup> Namibia and Senegal seem to be relatively stable, politically, if compared with many other African countries.

<sup>4</sup> Wolfensohn, J. and F. Bourguignon, *Development and Poverty Reduction - Looking Back, Looking Ahead*, Paper Prepared for the 2004 Meetings of the World Bank and IMF, (Washington, DC: October 2004) They opined that the lacklustre performance of structural adjustment programs, the end of the Cold War and the funding of proxy states, political problems associated with reforming the economy of the former Soviet Union, and institutional weaknesses revealed during the East Asian financial crisis have also contributed to the new focus on governance.

governance and institutions by international development communities<sup>5</sup>. 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 bestowed are human rights.<sup>6</sup> 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.”<sup>7</sup> 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.<sup>8</sup> Thus, they are rights which all person, everywhere and at all times, equally have by virtue of being moral and natural creatures.<sup>9</sup> 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

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<sup>5</sup> 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](http://www.mca.gov/about_us/overview/index.shtml)> (Accessed on 22 November, 2009).

<sup>6</sup> Philips C. Aka, “Prospects for Igbo Human Rights in the New Century” 48, 165, *Howard Law Journal*, 2004, at 3.

<sup>7</sup> *Ibid.* See also Jack Donnelly, *Universal Human Rights: In Theory and Practice* (Cornell: Cornell University Press, 2003) at 1-19.

<sup>8</sup> Jack Donnelly, “Human Rights and Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights” in Philip Alston (ed) *Human Rights Law* (Aldershot England: Dartmouth Publishing Cop. Ltd, 1996) at 305.

<sup>9</sup> Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (Enugu: CIDJAP Press, 1999) at 2.

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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,<sup>13</sup> though contested by many other scholars.<sup>14</sup> Human rights are universal because, firstly, history had

<sup>10</sup> Sakah Saidu Mahmud, "The State of Human Rights in Africa in the 1990s: Perspectives and Prospects" *Human Rights Quarterly*, Vol. 15, No. 3, 1993 at 486.

<sup>11</sup> Steve Foster, *Human Rights and Civil Liberties*, (Great Britain: Pearson Education Ltd, 2008) at 4.

<sup>12</sup> See Freeman S., *Human Rights* (Cambridge: Polity, 2000) and Steiner P., *An Essay on Rights* (Oxford: Blackwell, 1994).

<sup>13</sup> See Jack Donnelly, "Human Rights and Dignity" (n. 8 above) at 303; Panikkar P., "Is the Notion of Human Rights A Western Concept?" in Philip Alston (ed) *Human Rights Law* (Aldershot England, Dartmouth Publishing Cop. Ltd, 1996) at 75; Jack Donnelly, *Universal Human Rights: In Theory and Practice* (London: Cornell University Press, 1989); Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (2nd ed) (London: West View, 1991); Jeromy J. Shetack, "The Jurisprudence of Human Rights" in *Human Rights in International Law: Legal and Policy Issues*, Theodor Meron (ed.) 2nd ed. (Oxford: Clarendon, 1985); and Bassam Tibi, "The European Tradition of Human Rights and Culture in Islam," in *Human Rights in Africa, United Nations, 1970-1990. Amnesty Reports* (London: Amnesty International Publications, 1990).

<sup>14</sup> See for example, Eric Engle, "Universal Human Rights: A Generational History" 12 *Annual Survey of International and Comparative Law*, 219, 2006, at 1; Paul Gordon Lauren, *The Evolution of International Human Rights: Vision Seen*, (Philadelphia: University of Pennsylvania

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.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> Its declaration of “The Rights of Man and the Citizen” stated

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Press, 2003) at 7-35; Said Mohamed El-Sayed, “Human Rights in the Third World: The Question of Priorities” in Adanabtua Pollis and Peter Schwah (ed.) *Human Rights: Culture and Ideological Perspectives* (New York: Praeger, 1979); Saad Eddin Ibrahim, “The Future of Human Rights in the Arab World” in Hisham Sharabi (ed.) *The Next Decade: Alternative Futures* (Colorado: Westview, 1988); Adib Al-Jadir, “Forward to the Special Edition on Human Rights in the Arab World,” *Journal of Arab Affairs*, Vol. 9 at 1-4; Majid Khaddouri, *The Islamic Concept of Justice* (Baltimore: Johns Hopkins University Press, 1984); Maqbul Ilahi Malik, “The Concept of Human Rights in Islamic Jurisprudence,” *Human Rights Quarterly*, Vol. 3, 1981 at 56-57; Abu al-Ala Mawdudi, “Human Rights in Islam,” *Al-Tawhid*, Vol. 4, 1987 at 456; Sayyed H. Nasr, *The Concept and Reality of Freedom in Islam and Islamic Civilization*, (Tehran: The Imperial Academy of Philosophy, 1978); Abdul Aziz Said, “Human Rights in Islamic Perspectives,” in Adanabtua Pollis and Peter Schwah (ed.) *Human Rights: Culture and Ideological Perspectives* (New York: Praeger, 1979); and Fouad Zakaria, “Human Rights in the Arab World: The Islamic Context,” in *Philosophical Foundations of Human Rights* (Geneva: UN, UNESCO, 1985).

<sup>15</sup> Universal Declaration of Human Rights, G. A. Res. 217(III), UN GAOR, Supp. No. 13, UN Doc. A/810 (1948).

<sup>16</sup> Paul Gordon Lauren, *The Evolution of International Human Rights: Vision Seen*, (Philadelphia: University of Pennsylvania Press, 2003) at 7-35.

<sup>17</sup> Sakah Saidu Mahmud, “The State of Human Rights in Africa in the

that “the aim of all political association is the conservation of the natural and inalienable rights of man.”<sup>18</sup> 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.<sup>19</sup> It starts from easily implemented individual negative claims, to freedom from state, to positive claims<sup>20</sup> 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.<sup>21</sup> However, the idea of a

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1990s: Perspectives and Prospects” *Human Rights Quarterly*, Vol. 15, No. 3, 1993, at 486.

<sup>18</sup> Alessandra Luini del Russo, *International Protection of Human Rights* (Washington DC: Lerner, 1971) at 12.

<sup>19</sup> Claire Moore Dickerson, “Human Rights: The Emerging Norm of Corporate Social Responsibility” *76 Tu. Law Review*, 2002, 1431, at 1441-1442 Claire describes and refines the three-generation theory of human rights. This is opposed to minority view of Otto who describes human rights as having developed in four generations. See Dianne Otto, “Rethinking the “Universality” of Human Rights Law” (1997) *29 Colombia Human Rights Law Review*, at 1.

<sup>20</sup> John King Gamble, Teresa A. Bailey, Jared S. Hawk, & Erin E. McCurdy, “Human Rights Treaties: A Suggested Typology, An Historical Perspective,” *Buffalo Human Rights Law Review*. Vol. 7, 2001 at 33. They explained what is referred to as positive collective human rights.

<sup>21</sup> 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.

triumvirate of rights is not ancient; it is rather a development one. This is because, according to Sohn,<sup>22</sup> the concept of three classifications of human rights is traceable to Karel Vasak<sup>23</sup> of UNESCO whose works recently featured in late twentieth century.

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.<sup>24</sup> 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 than “freedom to.”<sup>25</sup> 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

<sup>22</sup> Louis B. Sohn, “The New International Law: Protection Of The Rights Of Individuals Rather Than States,” *American University Law Review* Vol. 32, 1982, at 1.

<sup>23</sup> Karel Vasak, ‘A Thirty Year Struggle,’ *Unesco Courier*, 1977, at 30 According to his linkage, Liberty is first generation rights (Civil and Political rights). Equality is second generation rights (Economic, social and cultural rights). And Fraternity is third generation rights (solidarity for economic development, disaster relief assistance and good and peace environment rights for developing nations) Karel Vasak was a Legal Adviser to the United Nations Educational, Scientific, and Cultural Organisation (UNESCO) and former director of the UNESCO Division of Human Rights and Peace.

<sup>24</sup> R. Randall Kelso, “A Post-Conference Reflection On Federalism, Toleration, And Human Rights,” *40 South Texas Law Review*, 40, 1998, at 811.

<sup>25</sup> 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](http://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<sup>26</sup> under the International Covenant on Civil and Political Rights (ICCPR).<sup>27</sup>

The second generation of rights arose during the industrial and political revolutions of about 1848- 1870.<sup>28</sup> 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.<sup>29</sup> 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).<sup>30</sup> The third generation of human rights<sup>31</sup> 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.<sup>32</sup> Third-generation rights are

<sup>26</sup> Robertson, A.H., *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, (New York: St. Martin's Press, 1982) at 36.

<sup>27</sup> 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 17; it entered into force on 23 March, 1976 and provides for "first generation" civil and political rights.

<sup>28</sup> See Claire Moore Dickerson, n. 19 at 1 and Louis B. Sohn, n. 22 at 1.  
<sup>29</sup> *Ibid.*

<sup>30</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp (No. 16) at 49, UN Doc. A/63/6 (1966), 993 U.N.T.S. 3. It entered into force on 3 January 1976 and provided for "Second generation" rights.

<sup>31</sup> The idea of Third Generation right was first coined and articulated by Keba M'baye a Senegalese Jurist in Keba M'baye, "Les réalités du monde noir et les droits de l'homme" 1969, *Human Rights Journal* 382. But the credit for the coinage of Third generation rights goes to Karel Vasak. For this see See Karel Vasak, *For the Third Generation of Human Rights: The Rights of Solidarity*, Inaugural Lecture to the Tenth Session of the International Institute of Human Rights (Strasbourg, July 1979).

<sup>32</sup> Note that individuals have limited rights and duties under international human rights law. For this see Comment, "Developments In The Law - International Environmental Law: V. Institutional Arrangements" *Harvard Law Review* 104, 1991, 1580 at 1600.

seen as essentially collective just like second-generation rights.<sup>33</sup> 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.”<sup>34</sup>

Today, the reputation of human rights is high within national and international scene.<sup>35</sup> The discourse has been pervasive in law, politics, religion,<sup>36</sup> internet,<sup>37</sup> corporation,<sup>38</sup> environment, and even gender.<sup>39</sup> It is so pervasive that there is rarely any position, claim, criticism or aspirations relating to social and political life that is not expressed in the language of rights.<sup>40</sup> Their recognition, protection, promotion and enforcement have attracted the attention of individuals, groups, corporate entities, states and inter-governmental organisations. In fact, one of the striking developments in international law since the end of Second World War

<sup>33</sup> Claire describes third generation rights as collective solidarity rights. See Claire Moore Dickerson, n. 19 at 1445-1446.

<sup>34</sup> Sakah Saidu Mahmud, n. 17 at 487.

<sup>35</sup> This is confirmed by the insightful academic opinions and discourse witnessed in the last fifty years. See for example Bobbio N., *The Age of Rights* (Cambridge: Polity, 1996) and Charles Epp, *The Rights Revolution: Lawyers, Activist, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

<sup>36</sup> Dominic McGoldrick, *Human Rights and Religion: The Islamic Headscarf Debate in Europe*, (USA: Hart Publishing, 2006); Sifa Mtango, “A State of Oppression? Women’s Rights in Saudi Arabia,” *Asia-Pacific Journal on Human Rights and the Law*, Vol. 1, 2004, at 49-67.

<sup>37</sup> See Mike Godwin, *Cyber Rights: Defending Free Speech in the Digital Age*, (London: MIT Press, 2003).

<sup>38</sup> See Olivier De Schutter, (ed.) *Transnational Corporations and Human Rights*, (Oregon: Hart Publishing, 2006).

<sup>39</sup> Emerton R. “Finding a Voice, Fighting for Rights: The Emergence of the Transgender Movement in Hong Kong.” *Inter-Asia Cultural Studies* Vol. 7, No. 2, 2006 at 243-269.

<sup>40</sup> Peter A. Atudiwe, *Judicial Review and Enforcement of Human Rights: The Red Pencil and Blue Light of the Judiciary of Ghana* (LL.M. Thesis, Queen’s University, Ontario Canada, 2008) at 33.

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.<sup>41</sup>

## 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<sup>42</sup> 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.<sup>43</sup> The African traditional communal structure meant that a person’s dignity and honour flow from his transcendental role as a culture and social being.<sup>44</sup> 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.<sup>45</sup>

There are basically two fundamental arguments for the African concept of human rights. Firstly, it can be argued that traditional African

<sup>41</sup> A.H. Robertson & J. Merrill, *Human Rights in the World* (Manchester: Manchester University Press, 1989) at 1.

<sup>42</sup> Sakah Saidu Mahmud, n. 17 at 488.

<sup>43</sup> Sirkku K. Hellsten, “Human Rights in Africa: From Communitarian Values to Utilitarian Practice” *Human Rights Review*, Jan-March 2004, at 63.

<sup>44</sup> Shivji, I.G., *The Concept of Human Rights in Africa*, (London: Codesria Book Series, 1989) at 10.

<sup>45</sup> Cobbah, J., “African Values and the Human Rights Debate: An African Perspective,” *Human Rights Quarterly*, Vol. 9, N. 3 1987 at 309.

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.”<sup>46</sup> 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.<sup>47</sup> This African collectivism based on communalist tradition is now often called “communitarian” approach to human rights.<sup>48</sup> 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<sup>49</sup> 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.”<sup>50</sup> 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.”<sup>51</sup> Paragraph (b) of the same article provides that one of its purposes shall be “to co-ordinate and intensify their co-operation

<sup>46</sup> Rhoda Howard, “Is There an African Concept of Human Rights?” in *Foreign Policy and Human Rights: Issues and Responses*, R.J. Vincent (ed.) (Cambridge: Cambridge University Press, 1986) at 13.

<sup>47</sup> Bell, R. *Understanding African Philosophy: A Cross-Cultural Approach to Classical and Contemporary Issues* (London: Routledge, 2002) at 37.

<sup>48</sup> *Ibid* at 85.

<sup>49</sup> Charter of the Organisation of African Unity, adopted 23 may 1963; 479 U.N.T.S. 39 (1963); reprinted in *International Legal Materials* 2 (1963) at 766.

<sup>50</sup> *Ibid*, para 3 of the Preamble.

<sup>51</sup> See Article II, section 1, para (e) of OAU (now AU) Charter.

and efforts to achieve a better life for the peoples of Africa.”<sup>52</sup> The concept is also a reflective of many provisions of the Charter of Human and Peoples’ Rights.<sup>53</sup> 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.<sup>54</sup> But it is the least developed in term of land.<sup>55</sup> 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.”<sup>56</sup> Yet millions of Africans have no access to safe drinking water and are illiterate.<sup>57</sup> In pre-colonial

<sup>52</sup> For elucidation of the purposes of OAU see Obinna B. Okereke, “The Protection of Human Rights in Africa and the African Charter on Human and Peoples’ Rights: A Comparative Analysis with the European and American System,” *Human Rights Quarterly*, Vol. 6, No. 2, 1984.

<sup>53</sup> The Charter was adopted by OAU Summit at Nairobi, Kenya on 27 June 1981. OAU Doc. CAB/LEG/67/3 rev. 5; reprinted in *International Legal Materials* 21 (1982) at 58 See U.O. Umozurike, “The African Charter on Human and Peoples’ Rights,” *American Journal of International Law*, Vol. 77, Oct 1983, at 902.

<sup>54</sup> World Bank, *Accelerated Development in Sub-Sahara Africa: An Agenda for Action*, (Washington DC.: World Bank, 1981).

<sup>55</sup> Harry Stephan, Ryan Lobban & Jessica Benjamin, “Land Acquisition in Africa: A Return to Franz Fanon?” *International Journal for Historical Studies*, Vol. 2, No. 1, 2010 at 80.

<sup>56</sup> World Bank, *World Bank, Sub-Sahara Africa: From Crisis to Sustainable Growth*, (Washington DC.: World bank, 1989).

<sup>57</sup> Adebayo Adedeji, *The Leadership Challenge for Improving the Economic and Social Situation in Africa*, Paper Presented at the Africa Leadership Forum, 24 October – 1 November, 1988, Ota, Nigeria.

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.<sup>58</sup>

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.<sup>59</sup> 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.<sup>60</sup> 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,<sup>61</sup> Liberia,<sup>62</sup> and Uganda<sup>63</sup> engaged in internal armed conflict in the last decade of the twentieth century. Countries like

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<sup>58</sup> Karl Lavrencic, "Food for Africa," *New Africa* 137, 90, February 1999.

<sup>59</sup> United Nation Conference on Trade and Development, *Foreign Investment in Africa*, UNCTAD/DTCI/19, *Current Studies*, Series A, No. 28, 1995, at 5.

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

<sup>61</sup> For a vivid description of the kind of abuse that became the norm in Sierra Leone, see Abdul Tejan-Cole, "Human Rights Under the Armed Forces Revolutionary Council (AFRC) in Sierra Leone: A Catalogue of Abuse" *African Journal of International and Comparative Law*, 10, 1998, 481.

<sup>62</sup> For in-depth analysis of horrific war in Liberia and Sierra-Leone see R. K. Salman, "Sub-Regional Conflict Resolution Mechanism: ECOMOG in Liberia and Sierra-Leone Revisited" in *Trends in Nigerian Law Essays in Honour of Olowo of Owo*. Oluduro, Akinfemi, et al (eds.) (Ibadan: Constellation (Nig.) Publishers, 2007) at 308.

<sup>63</sup> Klaus Deininger, "Causes and Consequences of Civil Strife: Micro-Level Evidence from Uganda" *Oxford Economic Papers*, Vol. 55, No. 4, 2003 at 579.

Somali<sup>64</sup> and Sudan<sup>65</sup> 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.<sup>66</sup> International wars, such as those in the Democratic Republic of Congo (DRC) and the one between Eritrea and Ethiopia,<sup>67</sup> 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.<sup>68</sup> The true picture of African internal and regional conflict was graphically illustrated by Annan thus;

Since 1970, more than 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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<sup>64</sup> United States Institute of Peace, “International Engagement with Somalia” *Peace Brief 4*, (Washington DC, 14 January, 2010) at 5; Also available at [http://www.usip.org/files/resources/PB4%20International%20Engagement%20with%20Somalia\\_0.pdf](http://www.usip.org/files/resources/PB4%20International%20Engagement%20with%20Somalia_0.pdf) (Accessed on 14 December, 2010).

<sup>65</sup> Cara Morrissy, “Civil War in Southern Sudan: Plus Ça Change, Plus C’est la Meme Chose?” *Australian Journal of Peace Studies*, Vol. 4, 2009, at 44; see also K.O. Salih, “The Sudan, 1985-9: The Fading Democracy” *The Journal of Modern African Studies*, Vol. 28, No. 2, 1990, at 199.

<sup>66</sup> Oloka-Onyango, J. “Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons” *Buffalo Human Rights Law Review*, Vol. 6, No. 39, 2000, at 1.

<sup>67</sup> For the causes and consequences of conflict between Eritrea and Ethiopia see Leenco Lata (ed.) *The Search for Peace: The Conflict Between Ethiopia and Eritrea*, Proceedings of Scholarly Conference on the Ethiopia and Eritrea Conflict held in Oslo, Norway, 6-7 July, 2006.

<sup>68</sup> See Brain C. Schmidt, “Rwanda on My Mind” *International Journal of Human Rights*, Vol. 8, No. 4, 2004, at 491-501 for the kind of horror of inhumanity inflicted on human being during the Rwanda genocide.

undermined Africa's efforts to ensure long-term stability, prosperity and peace for its people.<sup>69</sup>

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 decline. 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.<sup>70</sup> 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

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<sup>69</sup> Kofi Annan, *The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa: Report of the Secretary-General*, U.N. SCOR 52<sup>nd</sup> Session. Agenda item 10, 1998, at 4.

<sup>70</sup> Terry McKinley, *Economic Alternative for Sub-Saharan Africa: Poverty Trap, MDG-Based Strategies and Accelerated Capital Accumulation*, Draft Paper for the G-24 Meeting, 15-16 September 2005 at 10.

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.<sup>71</sup>

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.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup> Certainly, Africa's political instability

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<sup>71</sup> World Bank, *World Development Report 1999/2000: Entering the Twenty-First Century*, World Bank, Washington DC, 2000.

<sup>72</sup> UNAIDS, *Global Report on the Aids Epidemic 2010*, (Geneva: WHO & UNAIDS, 2010) at 20.

<sup>73</sup> *Ibid.*

<sup>74</sup> United Nations Development Programme (UNDP) and United Nations Children Fund (UNICEF), *The Millennium Development Goals in Africa: Promises & Progress*, Report of UNDP and UNICEF at the request of the G-8 Personal Representative for Africa, (New York: June 2002) at 15.

<sup>75</sup> Yair Aharon, *Foreign Investment Decision Process*, (Cambridge, Harvard University Press, 1996) at 60.

has exacted a huge cost on its development efforts.<sup>76</sup> 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.<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup> Rampant electoral fraud becomes reason why democracy in most of the African countries continues to degenerate at an alarming rate.<sup>80</sup> 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

<sup>76</sup> John Hatchard, Muna Ndulo and Peter Slinn et al, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective* (Cambridge, Cambridge University Press, 2004), at 7.

<sup>77</sup> Musa Abutudu, "A Critical Assessment of the Constitutionalism Landscape in West Africa" *The Western Journal of Black Studies*, Vol. 33, No. 2, 2009 at 133.

<sup>78</sup> Saddiq Muhammed and Tony Edoh (ed), *Nigeria: A Republic in Ruins*, (Zaria, A.B.U., 1986) p. 32.

<sup>79</sup> Kwesi Botchwey, *Fighting Corruption, Promoting Good Governance: Expert Group Report*, (Commonwealth Secretariat, 2000), at 12.

<sup>80</sup> Stephen Akinyemi Lafenwa, "The Legislature and Challenges of Democratic Governance in Africa: The Nigerian case," A Paper presented at Conference on *Democratisation in Africa: Retrospective and Future Prospect*, held at Centre for African Studies, University of Leeds on 4-5 December, 2009, at 3.

democracy and those who had most to gain from continued economic liberalisation – the elites.”<sup>81</sup> “Crises of governance” has been identified as the heart of Africa’s problem.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

## 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,<sup>85</sup> the concept has its root in history. During the British colonial period, good governance was a

<sup>81</sup> Rita Abrahamsen, *Disciplining Democracy: Development Discourse and Good Governance in Africa* (London: Zed Books, 2000) at 109.

<sup>82</sup> George Buadi, *The Legislature and Good Governance from a Human Rights Perspective: A Comparative Study of Ghana and South Africa* (LL.M. Dissertation, University of Pretoria, South Africa, 2002), at 27.

<sup>83</sup> Stephen Akinyemi Lafenwa, n. 80, at 4.

<sup>84</sup> United Nations Development Programme, *Compendium of African Governance Performance: Good Governance and Conflict Management*, (New York: UNDP, 1999) at ii.

<sup>85</sup> 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.<sup>86</sup> 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.”<sup>87</sup> No doubt, good governance has acquired chequered interpretations as an abstract concept,<sup>88</sup> 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.<sup>89</sup> 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*<sup>90</sup> which explored the concept further and its application to the Bank’s activities.<sup>91</sup> Since then, good

<sup>86</sup> Deji Olowu, “Public Accountability, Good Governance and Constitutional Validation in Commonwealth Africa,” a Conference Paper presented at the 7th *World Congress of Constitutional Law*, held in Athens, Greece, 11-15 June, 2007 at 6.

<sup>87</sup> Mwalimu Julius Nyerere, *Good governance for Africa*, (Penang, Malaysia: Third World network, 1998) at 13; Also available at <http://www.hartford-hwp.com/archives/30/083.html> (Accessed on 14 October, 2010).

<sup>88</sup> Francis N. Botchway, “Good Governance: The Old, The New, The People and The Elements,” *Fla. Journal of International Law*, Vol. 13, 2001, at 159.

<sup>89</sup> World Bank, *World Bank, Sub-Sahara Africa: From Crisis to Sustainable Growth*, (Washington DC, World Bank, 1989).

<sup>90</sup> World Bank, *Governance and Development*, (Washington: World Bank, 1992) at 21.

<sup>91</sup> G. Hayden and M. Bratton, (ed) *Governance and Politics in Africa*, (Boulder: Lynne Rienner Publishers, 1993) at 7.

governance has become a “hot” topic as evidence mounts on the critical role it plays in determining societal well-being. The concept of good governance remains implicit in a political and institutional environment respecting human rights, democratic principles and the rule of law. But it takes specific account of the role of the authorities in managing resources, promoting a favourable climate for economic and social initiatives and deciding how to allocate resources.<sup>92</sup>

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*.<sup>93</sup> 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*.<sup>94</sup> 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<sup>95</sup> 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

<sup>92</sup> European Commission, ‘*Democratisation, the Rule of Law, Respect for Human Rights and Good Governance: The Challenges of the Partnership Between the European Union and the ACP States*’ Com (98) 146, A Commission Paper, 12 March, 1998 at 8.

<sup>93</sup> John Graham and Bruce Amos, ‘*Principles for Good Governance in the 21<sup>st</sup> Century*’ (Policy Brief No. 15, Institute On Governance, Canada), 2003, at 3.

<sup>94</sup> UNDP, ‘*Millennium Development Goals*’ G. A. Res. 552, UN Doc. A/55/2 (2000) Available at <<http://www.un.org/millennium/declaration/ares552e.pdf>> (Accessed on 22 November, 2008).

<sup>95</sup> N. Chowdhury and C.E. Skarstedt, *The Principle of Good Governance: A Legal Working Paper*, (Oxford, United Kingdom: Centre for International Sustainable Development Law (CISDL), 2005) at 13.

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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup> It could also be said, alternatively, that these experiences

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<sup>96</sup> UN Human Rights Commission, *Good Governance Practices for the Protection of Human Rights* (New York & Geneva: United Nations, 2007) at 2.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, at 4.

<sup>99</sup> 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.<sup>100</sup> The Millennium Declaration advocates many strategies to overcome the rather evasive world problems. The strategies range from removing financial barriers<sup>101</sup> to the rights-based approach.<sup>102</sup> The rights-based approach recognises four types of core obligations for duty-bearers.<sup>103</sup> In this respect, the UNDP<sup>104</sup> has, by its report, drawn attention to some sub-national trends, even among countries that are on track to achieve the MDGs by 2015.

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Covenant on Social, Economic and Cultural Rights, G.A. Res. 2200A (XXI), 21 UN GAOR Supp (No. 16) at 49, UN Doc. A/63/6 (1966), 993 U. N.T.S. 3. It entered into force on 3 January 1976 and provided for “Second generation” rights; and Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res 34/180 UN GAOR Supp (No. 46) at 193, UN Doc. A/34/46 (1979). It entered into force on 3 September 1982 and provides for enforcement of women’s rights. See other similar conventions.

<sup>100</sup> United Nations, *United Nations Millennium Declaration*, GA Res. 55/9, UN GAOR, 2000, ch. III [*Millennium Declaration*], online: OHCHR Available at <[www.ohchr.org/english/law/millennium.htm](http://www.ohchr.org/english/law/millennium.htm)> (Accessed on 22 November, 2008).

<sup>101</sup> 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.

<sup>102</sup> *Ibid*, see Article 2.

<sup>103</sup> 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.

<sup>104</sup> UNDP, *Human Development Report* (New York: UNDP, 2003).

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.”<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup> The theory of

<sup>105</sup> See Articles 25 (1) and (2), UDHR n. 15.

<sup>106</sup> 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).

<sup>107</sup> See, e.g., Richard W. Murphy, “Separation of Powers and the Horizontal Force of Precedent,” *Notre Dame Law Review*, Vol. 78, 2003, 1075 at 1114; Stanley H. Friedelbaum, “State Courts and the Separation of Powers: A Venerable Doctrine in Varied Contexts,” 61 *Albania Law Review* Vol. 61, 1988, 1417 at 1421-22; Rebecca L. Brown, “Separated Powers and Ordered Liberty”, Vol. 139 *U. Pa. L. Rev.*, Vol. 139, 1991, at 1513; Larry Kramer, “The Constitution as Architecture: A Charette,” *Industrial Law Journal*, Vol. 65, 1990, at 286.

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.<sup>108</sup> 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.<sup>109</sup> Since then, the separation of powers has become viewed as a fundamental feature of democracy;<sup>110</sup> some scholars even regard it as a necessary feature.<sup>111</sup> 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.

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<sup>108</sup> David Rudenstine, "Judicially Ordered Social Reform: Neofederalism and Neonationalism and the Debate Over Political Structure," *Southern California Law Review*, Vol. 59, 1986, at 142.

<sup>109</sup> A.E. Dick Howard, "The Bridge at Jamestown: The Virginia Charter of 1606 and Constitutionalism in the Modern World," *Rich. Law Review*, Vol. 42, No. 9, 2007, at 30.

<sup>110</sup> See, for example, Manuel Medina-Ortega, "Comment, A Constitution for an Enlarged Europe," *Ga. Journal of International & Comparative Law*, Vol. 32, 2004, at 400; Charles McDaniel, "Islam and the Global Society: A Religious Approach to Modernity," *B.Y.U.L. Rev.*, 2003, at 540; Douglas S. Reed, "Popular Constitutionalism: Toward a Theory of State Constitutional Meanings," *Rutgers Law Journal*, Vol. 30, 1999, at 927.

<sup>111</sup> See, for example, Emanuel Gross, "The Struggle of a Democracy Against the Terror of Suicide Bombers: Ideological and Legal Aspects," *Wis. International Law Journal*, Vol. 22, 2004, at 655; Susan S. Gibson, "International Economic Sanctions: The Importance of Government Structures," *Emory International Law Review*, Vol. 13, 1999, at 213; and Sammy Smooha, "The Implications of the Transition to Peace for Israeli Society," 555 *Annals* Vol. 26, 1998, at 33-34.

## 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.”<sup>112</sup> 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.”<sup>113</sup> It should be noted that two basic features distinguish legislature from other arms of government.<sup>114</sup> 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.”<sup>115</sup>

<sup>112</sup> Stephen Akinyemi Lafenwa, n. 80, at 5.

<sup>113</sup> Veenon Bogdanor, (ed.) *The Blackwell Encyclopaedia of Political Science*, (Oxford: Blackwell Publisher, 1991) at 329. See also Gerhard Loewengberh, “Legislatures and Parliaments” in *The Encyclopaedia of Democracy*, Vol. III, (9 Eds.) (London: Rutledge, 1995) at 736.

<sup>114</sup> Malcolm E. Jewell, (ed.) “Legislature” in *The Encyclopaedia Americana International*, Vol. 17 (Connecticut: Grolier Incorporated, 1997) at 172.

<sup>115</sup> Hout M. “Parliament, Politics, and Governance: African democracies in Comparative Perspective,” in *Between Governance and Government: African Parliament*, M.A. Mohammed Salih (ed.) (South Africa: HSRC Press, 2006) at 26; see also I.B. Bello-Imam, “The Legislature: Its Role, Performance, Problems and Prospect in Nigeria,” in *Democratic Governance and Development Management in Nigeria’s 4<sup>th</sup> Republic, 1999-2003*, I.B. Bello-Imam and Mike Obadan (ed.) (Ibadan: Centre for Local Government and Rural Development Studies) at 408 and Adigun Agbaje, “Politics in the Legislature” *Abuja Mirror*, May, 2000, at 2.

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.<sup>116</sup> 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.<sup>117</sup> 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,<sup>118</sup> 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.<sup>119</sup> 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

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<sup>116</sup> Claude Ake, *Democracy and Development in Africa* (Ibadan: Spectrum Books, 1996) at 132.

<sup>117</sup> Stephen Akinyemi Lafenwa, n. 80, at 9.

<sup>118</sup> John K. Johnson and Robert T. Nakamura, *Legislature and Good Governance*, (A Concept Paper presented to UNDP, 1999) at 1.

<sup>119</sup> 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.<sup>120</sup> 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.<sup>121</sup> These functions are indicative that the executive's right to govern derives from the legislature.<sup>122</sup> 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.<sup>123</sup>

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

<sup>120</sup> Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents*, Vol. 1, (New Delhi: Universal Law Publishing Co. PVT. Ltd, 2000), p. vi, p. 94.

<sup>121</sup> See John Hatchard and Peter Slinn (ed) *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach*, (London: Cavendish Publishing Ltd, 1999); Paul Silk and Rhodri Walters, *How Parliament Works*, (4<sup>th</sup> ed), (New York: Longman, 1999); J.A.G. Griffith and Michael Ryle, *Parliament: Functions, Practice and Procedures*, (London: Sweet & Maxwell, 1989).

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

<sup>123</sup> Fall, I. *Parliament: Guardian of Human Rights*, (Geneva: Inter-Parliamentary Union, 1993) at 12.

must be provided with technical assistance for the drafting of Private Members' Bills, in scrutinising proposed legislation, especially in relation to human rights.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup>

## 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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<sup>124</sup> 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.

<sup>125</sup> John Hatchard, "Reporting Under International Human Rights Instruments by African Countries" *Journal of African Law* Vol. 38, 1994, at 61.

<sup>126</sup> 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.