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# LESOTHO SOCIAL SCIENCE REVIEW

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# Consolidating Human Rights and Democracy in Africa: Regional Lessons for South Africa

**Jonathan N. Moyo**[*]

*Both popular and academic discourse on democratization and human rights in Africa are beginning to acquire an aura of pessimism. The optimistic fascination with democracy and human rights which has gripped Africa over the last five or so years is steadily petering away. Three reasons explain the creeping loss of faith in democracy and human rights in Africa. The first has to do with shortcomings of civil and political rights as applied to the African context, the second with donor emphasis on a misplaced definition of governance and the third has to do with the mixed results of multiparty elections.*

## The failure of Multiparty Elections in Africa

The resurgence of multiparty in Africa over the last five or so years has put elections on top of the agenda of everyday politics. Indeed, it would appear that multiparty elections have been the single most important issue in Africa's supposed transitions to democracy. In this regard, some 30 African countries adopted multiparty elections between 1987 and 1994. Ruling old-guard nationalists steeped in the seemingly ineluctable tradition of authoritarian politics in Africa are no longer able to legitimize their positions in power through cognatic descent and charismatic claims or through claims of heroic participation in the anti-colonial struggles for independence. They must now concede, with or without conviction, the importance of free and fair multiparty elections as a prerequisite for political legitimacy.

As the popularity of multiparty elections in the wake of the demise of one party rule grows, scholars, activists and politicians are becoming skeptical about the

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political significance of such elections in Africa. This is partly because the link between the outcomes of multiparty elections in Africa and the determination of who governs has remained tenuous. Historic multiparty elections in Africa have resulted neither in new leadership nor new power relations. A telling example is the 1992 general election in Kenya in which both the incumbent president and the ruling party won despite, if not because of, their controversial reign during the much discredited one party state system. At best, African elections like that in Kenya in 1992 have tended to shift governance from *de jure* to *de facto* one party rule. But even more serious, these elections have without exception done nothing to determine who governs not least because they have not changed the social and economic relations of power. Indeed, it is curious that, despite their presumed objective of institutionalizing accountability and transparency in governance, multiparty elections in Africa thus far appear to be severing the connection between the governors and the governed by opening the door for unbridled intervention by international financial institutions such as the World Bank and the International Monetary Fund who have become the real governors in Africa.

Consequently, there is now a prevalent perception that multiparty elections in Africa are being used, some say abused, by the continent's dictators and some major donors to forestall genuine democracy. According to this view, dictators across Africa now claim to be democrats simply on account of being willing to hold multiparty elections. This, some critics argue, has led to a political discourse which makes a caricature of democracy in Africa not least because there is no substantive difference between the values of incumbents and their opposition counterparts.

But there is another view which holds that, even though they have not yet led to new power relations, multiparty elections in Africa have at least provided a fulcrum for prying open and widening political space by demonstrating the illegitimacy of incumbent regimes and creating political opportunities for new individual and institutional actors who espouse democratic values. However, if multiparty elections in Zambia in 1991 and Malawi in 1994 are anything to go by, the evidence of this argument is rather thin.

The critical question, however, is whether this opening and widening of political space has provided an opportunity for genuinely new individuals and groups to enter into politics, if not now at least in the not too distant future.

Some observers have argued that the expanded political space merely provides the means by which a previously marginalized faction within the incumbent regime can gain control. Witness how the strongest political opposition in Africa is found within the ruling parties. In this regard, multiparty elections in Africa can be said to be Janus-faced: they are potentially liberating or actually entrapping depending on the circumstances. So far, the evidence suggests that multiparty elections in Africa have been entrapping. This is why the public in Africa is increasingly becoming cynical not only about multiparty elections and the prospects of consolidating democracy in general but also about the relevance and importance of the governance debate which has dominated political discourse in Africa over the last five or so years.

## Misplaced definition of Governance

While governance has become the clarion call of opposition parties, NGOs, human rights activists and donor organizations demanding free and fair multiparty elections in Africa, the utility of the concept of governance as an analytical tool for describing the actual conduct of politics in Africa still leaves a great deal to be desired. While governance has become the word of choice in the donor community, there is still a lot of confusion in the donor community and among human rights activists and opposition politicians as to its meaning and how best to support it.

Ordinary people, especially among NGOs, often speak of governance as if it means the same thing as government. Hence, it is common to encounter references to modern governance in contradistinction to traditional governance where the intended meaning is the difference modern and traditional systems of government such as monarchism versus republicanism.

Among donors, some use "governance" to describe the nature and style of a political system including the type of political regime; lines of political authority; institutional and structural arrangements; decision making processes; the flow of information; and the nature of the relationship between the state and society.

Other donors employ the concept of governance normatively (meaning good governance) to link it with human rights and democracy. In this case, "good governance" is used to refer to the legitimacy of governments; the

accountability of elected and appointed leaders; the 'transparency' of decision-making; the freedom of the mass media; the right to free association and freedom of speech and the general respect for human rights and the rule of law.

Yet other donors define governance as the organization and management of the state characterized by:

- Accountability of government and its institutions and officials for their decisions and actions;

- The existence of institutions and mechanisms to enforce government accountability to redress transgressions;

- Transparency in government decision making;

- Openness and availability of information about government decisions and actions, and public access to such information;

- The existence of the rule of law for the conduct of government business such that government actions are based on predetermined rules under the presumption of government limited by law and based on a separation of powers to ensure that those who make the law are not the same who interpret or enforce it.

This donor driven view of governance dates back to 1989 when the World Bank published a widely cited long-term perspective study which identified 'the crisis in Africa' as a crisis of governance.[1] The report argued that the Africa crisis was a result of the personalization of power, excessive centralization of state authority, lack of oversight and countervailing public institutions, excessive dependence on the state because of the absence of a viable private sector, the denial of fundamental human rights, widespread corruption and the prevalence of unelected and unaccountable leaders or governments. The Bank's report defined governance in formalistic and legalistic terms, presupposing the existence of a market centered economy supported by a supposedly universal liberal political system rooted in a separation of powers between the executive, legislature and judiciary for the enforcement of contractual and other business purposes.

While the Bank's view of governance has gained wide currency in the donor community and even in some academic circles, its conceptual premise is nevertheless problematic. A major weakness with the Bank's view of governance is its failure to address questions of power and relations thereof. As a result of this omission, the Bank's view spuriously assumes that political control rests with political leaders and formal institutions of the state. Powerful actors outside the state, some national and others multinational, are ignored. This has led to ill-defined forms of political conditionality not only in World Bank and IMF circles but also among bilateral donors and others involved in development aid. The new conditionality is based not only on control of external aid but also on control of information relating to 'transitions to democracy' and "capacity building" under the title banner of good governance. Some of the expert opinions of donors are, to say the least, dangerous to prospects of good governance in Africa. They undermine national efforts in the struggle for democracy largely because the opinions are invariably superficial and not sensitive to local conditions. The opinions treat governance as a commodity which can be packaged and sold from country to another. The governance packages which are promised by multilateral donor agencies like the World Bank and the International Monetary Fund, and which have also become instruments of foreign policy of some bilateral donor countries, typically emphasize accountability, responsibility and transparency in public policy, as formal and functional issues, without examining their proper substantive or genetic local bases in terms of centers of real economic and political power.

That Africa is a region beset by all kinds of problems related to democracy and human rights brooks no denial. But this observation is often made out of context, usually in economistic or legalistic terms which uncritically presuppose the desirability if not the inevitability of a market centered society. A distinction needs to be made between *genetic* and *functional* problems if the full import of the observation is to be appreciated in its proper political and historical context. Some countries face genetic problems while others face functional problems.

Genetic problems are about how to construct viable republics: that is, crafting new societies on the basis of fundamentally new values. A country under the grip of genetic problems is primarily concerned with discovering value principles and practical ways to enable it to move from an old to a new

society. A country facing functional problems is primarily concerned with stabilization policies to maintain an existing social order borne of generally shared values. The former is about "roots" and the latter "branches". It is a truism that African countries are facing genetic problems. They are societies in the making. Nobody really knows what these societies are going to look like at the end of their processes of transition. What is clear is that there is a movement from the roots of one form of political order to the roots of another: from authoritarian rule to something else. The preferred political and economic outcome is democracy but that is not assured. The donor community can play a pivotal and positive role in facilitating the transition toward a democratic outcome. But to do that and do it well, the donor community should not make a false start by supporting formalistic or legalistic processes alone. One way of seeing a possible comprehensive starting point is via the lenses of a critical analysis of governance as an expression of civil society which balances political and economic needs. In this sense, governance is first and foremost about the nature and structure of power relations in society and about legal formalism only in a secondary sense.

## The Limits of Civil and Political Rights in Africa

Up to now, the governance discourse in Africa has primarily if not only focused on supporting civil and political rights. There are understandable historic reasons for this emphasis. The major political weakness of the national project following the process of decolonization throughout Africa was the ill-advised closure of the social space for freedom of individual expression and collective dissent. Thus, the one-party state in Africa was attacked and ultimately discredited not so much because of its economic failure but because of its political shortcomings mainly with respect to freedom of association and freedom of expression.

For this reason, democracy and human rights work in Africa has reached a critical stage. Prior to the demise of one-party rule across the continent, the traditional distinction between political and human rights criticism was either non-existent or blurred. As a result, many would-be human rights activists in Africa have come to be seen as leading personalities in the new political elite. In other words, there is now hardly any difference between those who claim to be human rights activists and those who are in opposition politics. Many of these activists are increasingly being linked to political parties or to some

leading individuals in opposition politics. This development is creating confusion as to whether human rights activists are in fact non-partisan. Viewed positively, the development shows that there is an inextricable connection between human rights work and governance. The development also shows that there is now a new requirement for guaranteeing the impartiality of human rights activists in Africa.

This need is particularly urgent in the light of economic structural adjustment measures being imposed by the international financial institutions on African economies. These measures are exacting enormous social costs on the poorest communities in Africa. The costs have triggered serious issues of social, economic and cultural rights that human rights groups in Africa seem unable to effectively articulate not least because of the disputable linkage between democracy and the market economy being made by the donor community. This linkage, at least as shown by the case of the World Bank and the International Monetary Fund, has led to the delegation of fiscal authority, the real hear of governance, to outside lenders who are not accountable to the local population thereby rendering multiparty elections in Africa hardly meaningful because they have served to prove that there is no electoral connection between the rulers and the ruled: those who actually rule (shape and make fiscal policies are in fact not elected by the local populations). This development has raised new challenges for the democracy and human rights movement in Africa.

Three conclusions follow from the foregoing:

1.      The policies and programs of authoritarian regimes under both colonialism and one-party rule in Africa worked to dismantle or restructure the informal networks and formal institutions of political representation (civil society). In this regard, authoritarian rule in Africa during and after colonialism destroyed the societal bases for political association and participation, the relationship of political parties to their constituents, the network of mediation through which states organize the consent of their societies, the institutional framework for political competition and the capacity of knowledge-generating institutions to research political, economic, social and cultural issues and to disseminate competing findings. All these things became a product of authoritarian thinking and behaviour sanctioned

by a lopsided international economy dominated by the international financial institutions.

2.      Through no fault of their own as products of history and dominant social structures in society, the current influential leaders in politics, law, business, industry and scholarship in Africa are at worst authoritarian and at best ambivalent toward democracy and human rights.    Their mindset is genuinely steeped in the authoritarian traditions of the past.

3.      Partly because of (1) and (2) above and partly because of the lopsided nature of the international knowledge industry and information dissemination, the current intellectual debate on democracy and human rights in Africa is being led by outsiders.  As a result, Africans calling for democracy and human rights are being seen by ruling authorities and some civil society groups as agents of foreign interests because of the perceived and, indeed often, real external source of their ideas.

Meanwhile, Africans, especially the urban and rural poor among whom women and children are the majority, continue to live in conditions of economic squalor despite the enchantment with civil and political rights displayed by elite groups.  The experience of democracy and human rights in Africa over the last five or so years seems to indicate that the critical issues have to do less with civil and political rights and more with economic, social and cultural rights. This is not to suggest that human rights are divisible.  Rather it is to emphasize the point that human rights do not and cannot exist in a social and historical vacuum.[2]   This is because they are norms, standards, values and principles used by social groups to justify their existence.  For this reason, there is a necessary diversity on the nature, content and historical priority of human rights and democracy.   Thus, and notwithstanding the commendable spirit of the Universal Declaration of Human Rights, the unavoidable fact is that a universal conception of human rights and democracy is yet to develop if it ever will.  In Africa, the inescapable fact is that the universal paradigm of human rights, with its ubiquitous emphasis on civil and political rights, will have little if any meaning to the majority of Africans without an explicit political and legal incorporation of fundamental economic, social and cultural rights.

Thus, the time has come and conditions are propitious for a paradigmatic shift in focus and emphasis. Building on existing work on civil and political rights, more systematic attention needs to be given to support the realization of economic, social and cultural rights in Africa.[3] This is not to negate the importance of civil and political rights. Rather, the shift is the only available avenue for consolidating democracy in Africa not least because the enjoyment of economic, social and cultural rights presupposes the existence of a public realm where civil and political rights are observed and respected. But the mere enjoyment and respect of civil and political rights does not in any way presuppose the enjoyment and respect of economic, social and cultural rights. Matters relating to the rights to education, housing, food, land, collective dissent and self-determination are at the core of governance squabbles in Africa. These rights also touch on the heart of poverty alleviation in Africa, yet they cannot be resolved within the purview of civil and political rights. Indeed, one reason why most people in Africa, especially among the poor, seem to care little about civic and political rights is that the debate on these rights does not and cannot address the reality of their everyday life. The proposed shift in rights work would hopefully make it possible for some of the key economic, social and cultural rights to be justiciable[4] thereby giving thee majority the reason to have a stake in the judiciary system. The paradigmatic shift from civil and political rights to economic, social and cultural rights would on the one hand give the much needed human-rights dimension to much of development assistance, while on the other, it would give development substance to the work of human rights activists who have hitherto concentrated, sometimes as if exclusively, on civil and political rights without making much progress within civil society beyond helping particular individuals or groups. The shift would also open new avenues for dealing with the problem created by elite individuals and groups who have used the cover of civic and political rights in pursuit of unjust forms of possessive individualism with respect to property ownership, especially land rights. More specifically, the shift would address the all too important issue of how to assist the disenfranchised, displaced, dispossessed and disillusioned and other poor groups to empower themselves. These groups would simply be unable to empower themselves unless they are able to claim and exercise their economic, social and cultural rights.

**Lessons for South Africa**

It is propitious that the new South Africa is coming into existence at a time when the rest of Africa, especially the Southern Africa region, has made significant progress toward substantive state formation. Without denying the self-evident infrastructural development in South Africa with respect to certain economic and information aspects, the point needs to be made in the strongest possible terms that some parts of Africa, and certainly many in eastern and southern Africa, are much more politically advanced than South Africa. A good example is Tanzania which made untold sacrifices to the making of a new South Africa.

What lesson from the foregoing is there for South Africa? While there is a lot to show about the advent of civil and political rights in the making of the new South Africa, there is little to show the prospects of economic, social and cultural rights. The much touted Reconstruction and Development Programme (RDP) is firmly rooted in civil and political rights within the confines and mindest of a market-centered society which is consistent with the worldview of the dominant international financial institutions. It is debatable whether that worldview is consistent with the economic, social and cultural aspirations of the majority of South Africans who, from the limited perspective of an outsider, seem to be growing impatient with both the pace and content of the official agenda to promote social change in South Africa.

Indeed, there appears to be a rather exaggerated self-evaluation of the success of current events in South Africa. There are other international interests which echo this self-evaluation. A curious observer is left wondering whether a new Africa is here and now or is in the making. The former seems to be the intended message of the optimists, notwithstanding the fact that their optimism rather flies in the face of history and seems to be in conflict with empirical developments on the ground. Even more worrying from a regional perspective is the fact that there is a growing anti-African attitude in South Africa.

In many ways in South Africa is presenting and styling itself in the mode of American popular culture. Just listen to the radio, watch television, read the newspapers and the billboards to appreciate the point. It therefore comes as little surprise, at least to me, that there is some kind of a neo-xenophobic ideology against Africans developing in South Africa. For example, few South

Africans would acknowledge that public education in Kenya and Zimbabwe is far better than what obtains in their country. Others would dispute the fact that university education in South Africa, certainly for the majority of blacks now crowded at formerly Bantustan universities, is far below the standards at Makerere University in Uganda, the University of Dar es Salaam which has the best political science in eastern and southern Africa and the University of Zimbabwe which is arguably the best undergraduate university in the region. Indeed, many South Africans would find it hard to believe that some of the best research in the world on tropical diseases is being done by Kenyans. What is worse, in my view, is that South Africa is not extending its gains of political and civil rights to African immigrants and refugees. It is a fact that immigrants and refugees from neighbouring countries are facing all kinds of abuses in South Africa. This is rather unfortunate considering that it is happening at a time not only when South Africa is searching for a new constitutional order but also at time when the very respected and admired President Nelson Mandela is seeking to assume the role of a Big Brother in countries which are abusing human rights like Nigeria. Charity must begin at home and there is little if any evidence that this is happening in South Africa with respects to the rights of vulnerable groups like refugees from neighbouring countries.

In conclusion, I would say that if South Africa is to play a positive and pivotal role in consolidating democracy and human rights in Africa, then it has to learn from the sacrifices made by countries like Angola, Mozambique, Tanzania and Zambia in aid of the making of a new South Africa.

## Notes

1.      See <u>Sub Saharan Africa: From Crisis to Sustainable Growth</u> (World Bank, Washington D.C., 1989).

2.      For an instructive discussion of this point, see Lawrence Tshuma's, "The Impact of IMF/World Bank Dictated Economic Structural Adjustment Programmes on Human Rights: Erosion of Empowerment Rights" in <u>The Institutionalization of Human Rights in Southern Africa</u>, Pearson Nherere and Marina d'Engelbronner-Koff, eds. (Nordic Human Rights Publications: Oslo, 1993, pp. 219-233).

3.      Human rights as internationally recognized through conventions and protocols enacted via the United Nations encompass three "generations". The first generation is the traditional civil and political rights sought during the liberal or "enlightenment" revolutions of 18th and 19th century Europe. The second generation consists of economic rights (to food, shelter, education, work and health care, etc.), and social and cultural rights (such as self-determination and language) as articulated by both socialist and social democratic critics of liberal capitalism. The third generation consists of recently articulated collective rights such as the right to peace, to a healthy and balanced environment, to the enjoyment of the common heritage of mankind and to humanitarian disaster relief. Third generation rights also include the right to development and to self-determination. See <u>Human Rights: A Compilation of International Instruments</u> (The United Nations: New York, 1988). It is notable that the second and third generation rights are prominent in the African Charter of Human and People's Rights (also known as the Banjul Charter) adopted by the Organization of African Unity in 1981). It should be observed that, despite making social, economic and cultural rights prominent, the African Charter has many problems when it comes to enforcement of its provisions. The absence of enforcement mechanisms in the Charter has given nondemocratic regimes ways to avoid implementing social, economic and cultural rights, let alone civil and political rights.

4.      Tshuma, op. cit. (p. 224) quotes the respected Tanzania constitutional scholar Issa Shivji as having argued that "Even if rights are not directly justiciable, they can still be normative and binding on government organs. The value of non-justiciable norms is largely political. They act as standards against which they can become the basis of, and legitimize political debate, discussion, criticism and protest by civil organizations and citizens".

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