

APPLYING THE AFRICAN CHARTER ON DEMOCRACY, ELECTIONS AND GOVERNANCE TO DICTATORSHIPS: THE CAMEROONIAN EXPERIENCE

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1. Introduction

“This is a moment of hope for our continent and its peoples’ the time has come to end the marginalization of Africa through our actions, let us proclaim to the world that this is a continent of democracy, a continent of democratic institutions and culture. Indeed, a continent of good governance where the people participate and the rule of law is upheld.”³

Democracy, elections, and good governance stand very prominent amongst the numerous challenges facing Africa in the 21st century. Reading from the political geography of Africa, there is no doubt that democracy and good governance are vital prerequisites to stability, peace, and sustainable development.⁴ On this basis, the continent needs curative and progressive measures to move out of the current “ghetto” and be part of a community of industrialized and peace-loving nations. This essay argues that any constructive leadership should integrate democracy, political participation, and good governance into socio-economic and public policy planning. Though reference is made to several countries for comparative purposes, the bulk of the discussion is on the Cameroonian

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³ Thabo Mbeki, South African President, inaugural conference of the African Union (AU), July 2002, Durban.

⁴ On the interconnections between democracy and socio-economic development, see Anne-Marie Goetz and Rob Jenkins, *Reinventing Accountability: Making Democracy Work for Human Development*, (International Political Economy Palgrave Macmillan, 2005); Dhanjoo N. Ghista, *Socio-Economic Democracy and the World Government: Collective Capitalism, Depovertization, Human Rights, Template for Sustainable Peace*, (World Scientific Publishing Company, 2004); Robley E. George, *Socioeconomic Democracy: An Advanced Socioeconomic System* (Praeger Studies on the 21st Century, 2002).

unfinished path to participative and reconstructive democracy. In an attempt to solve this dilemma, the debate necessitates a lengthy discussion to summarize, in more traditional terms, the complex and controversial nature of the emerging African constitutional setting.

2. The African Charter on Democracy, Elections and Governance

The adoption of the African Charter on Democracy, Elections and Governance (CDEG) by the African Union (AU) in January 2007 was a sign of changing times.⁵ In undertaking such critical study, the first step is to acknowledge one primary fact which can never be blinked. Despite this statutory achievement, skepticism still loomed in the minds of several observers because of the continent's penchant for treaties rather than their effective implementation at national and subregional levels.⁶ This uncommitment to the international rule of law has been firmly established in the minds of corrupt and selfish leaders for decades. Therefore in spite of this positive step many still consider the adoption of this charter as another facade to amuse the gallery or please donor institutions. Everything being the same, there is room to believe that the ratification and effective implementation of the CDEG will yield enormous returns.

Article 3 of the CDEG deals with the implementation of the Charter by state parties. There ought to have been a strong proviso obliging state parties to establish electoral calendars well ahead of scheduled elections. The basic rationale is that all political parties should have adequate time for electoral preparations. In some countries, elections dates are a secret known only to the head of state, who in most cases is the leader of the ruling party. It follows that African leaders arbitrarily use their powers over the electoral calendar to hood

⁵ Eighth Ordinary Session of the Assembly, Addis Ababa, Ethiopia, January 30, 2007, <http://www.africa-union.org/root/AU/Documents/Treaties/text/Charter%20on%20Democracy.pdf>.

⁶ On recent CDGE scholarship, see Edward R McMahon, "The African Charter on Democracy, Elections, and Governance: A Positive Step on a Long Path," *Open Society Institute, AFRIMAP*, May 2007, http://www.afrimap.org/english/images/paper/ACDEG&IADC_McMahon.pdf; Alemu Tikikel, *The African Charter on Democracy, Elections and Governance: A Normative Framework for Analysing Electoral Democracy in Africa*, LLM Thesis, University of Pretoria, 2007.

wink opponents and rig elections. Whenever we raise the issue of electoral irregularities and the confiscation of political power in Africa, Cameroon should be mentioned as a case at point. In 2002, elections dates for Municipal and Legislative elections were announced barely a month earlier to the elections. This resulted in chaotic preparations that finally compelled the head of state to postpone the elections on the very morning of the polls, after many had already voted in some constituencies. Setting precise dates ahead of time and involving independent stakeholders would have avoided such incidents.⁷

Article 10(2) of the Charter stipulates that “State Parties shall ensure that the process of amendment or revision of their constitution reposes on national consensus, obtained if need be, through referendum.” The Charter should have recommended that referendum be used as a mandatory mechanism for constitutional amendment. The constitution is the most serious document of a country. The frivolous manipulations of the constitution to favor incumbents have led to devastating consequences in a number of countries. There are instances where leaders fiddle with their country constitutions at will or use legislatures with doubtful legitimacy to claim consensus. In April 2008, the Cameroon Parliament amended the country’s constitution to remove presidential term limit, giving the president the ability to stand for reelections indefinitely.

Article 14 encourages state parties to institutionalize constitutional civilian control over the armed and security forces to ensure the consolidation of democratic institutions. Needless to say, civilian control should not be interpreted as a blank check to turn the armed forces into agents of repression and intimidation of real and imagined enemies, “*apprentis sorciers*” and “*marchands d’illusions*,” to borrow from the notorious terminology of the Cameroon leader, Paul Biya. Likewise, article 17 requires state parties to hold regular transparent, free and fair

⁷ During the presidential polls of October 1992, elections were convened before the adoption of the electoral code by the National Assembly. The government, through Augustin Kontchou Kouomegni, its Minister of Communications and Spokesman, openly violated the terms of the governing laws on the grounds that “*La loi est faite par les hommes et les mêmes hommes peuvent la changer à tout moment.*”

elections. This includes *inter alia* the establishment of independent national electoral bodies, a mechanism to redress election disputes, and the provision of equitable media access by political parties contesting elections. Cameroon neither has an independent electoral body nor a fair dispute resolution system. In Cameroon, it is hard to distinguish between the state and the ruling party. As such, the agenda and resources of the state and the ruling party are mixed up, while, the opposition is progressively marginalized, starved of funds, and denied access to the public media. Providing funds for credible political parties will augur well for fairness, enhanced political participation, vibrant competition, and stronger democracies.

Article 23 of the Charter recognizes that one of the illegal means of acceding or maintaining power is the revision of constitutions to prolong tenure of office of incumbent presidents. Constitutional amendment is actually one of the means en vogue on the continent now to stay in power. This author believes that the non-inclusion of elections judged to be blatantly and grossly fraudulent on that list is a blank check for sit tight leaders who use the facade of flawed elections to eternalize their stay in power. The Charter fails to put enough safeguards to scenarios where state parties are excluded from the AU but member states maintain relations with them as if there was nothing wrong or at stake. Should this be the case then the sanctions will not have the required weight to cause the deviant or suspended member to put its act together. In a very subtle manner, article 25(3) makes mince meat of all what the Charter is out to promote. A state party either respects the provisions of the Charter and stays in or violates it with impunity and stays out. Any talk of maintaining diplomatic ties and other initiatives may just be encouragement for a deviant state to think it can play around the Charter on Democracy, Elections, and Governance.

3. Violations of the Charter Provisions in African Countries

Events following the adoption of the Charter have confirmed fears that it may have been nothing more than a mirage designed to deceive the international and

donor community. Less than two years after its adoption, African countries have begun desecrating the spirit of the Charter. A closer look at the Presidential elections of December 2007 in Kenya and the controversial amendment of the constitution in Cameroon in April 2008 lend credence to this contention. In Kenya, incumbent President, Mwai Kibaki rigged elections in violation of the Charter provisions with little reaction from his peers in the African Union. Allowing President Kibaki to attend the African Union Summit with a huge cloud of doubt over his legitimacy was a very ominous sign that African leaders may not be so committed after all to the challenge of democracy.

In February 2008, there was serious unrest in major towns in Cameroon.⁸ Although unbridled price hikes of basic commodities were advanced as reasons for the chaos, it was clear that Cameroonians were sending a strong message of disapproval to designs by President Paul Biya to do away with presidential term limits imposed by the Constitution of January 1996. Per that constitution, the term of office of the President of the Republic was seven years renewable once only. With the last of his second seven year term due to end in 2011, Cameroonians saw any constitutional amendment as a *de facto* life presidency for Paul Biya. The unrest had a heavy toll on human life, 40 dead according to government sources, and over 100 dead according to human right groups. By April 28, 729 were already charged, sentenced and jailed.⁹ According to Amadou Ali, Vice Prime Minister, Minister of Justice, Keeper of the Seals, 1671 youths were arrested.¹⁰ In addition, independent media houses like Equinox in Douala and Magic FM in Yaoundé were shot down by the government, all these in violation of the provisions of the Charter on Democracy, Elections, and Governance, but to

⁸ Orock Eta, "Cameroonians Go to the Streets," *The Post*, February 25, 2008.

⁹ Armand Essogo, "Emeutes de Février: 729 Personnes Déjà Condamnées," *Cameroon Tribune*, April 7, 2008; Nkendem Forbinake, "Over 1600 Arrests so Far," *Cameroon Tribune*, March 7, 2008.

¹⁰ Justin Blaise Akono, "Crise Sociale : La 'Vérité' Selon Amadou Ali," *Mutations*, March 7, 2008. Note that on May 20, Paul Biya signed a decree on the Remission of Sentences in the Framework of the February 2008 Uprisings, Decree N° 2008/174 of 20 May 2008, *Cameroon Tribune*, May 21, 2008.

the complete stillness of the African Union. Ignoring the voice of the people, the president, in April 2008 unscrupulously succeeded in amending the country's constitution to scrape presidential term limit in violation of the Charter provisions without any condemnation by the African Union.

4. The Concept of Democracy and its Practice in Africa

Far from the belief that democracy is alien to African culture, George Ngwane's in his book, *Settling Disputes in Africa*, showed that traditional societies in Africa had very democratic setups.¹¹ In the North West Province of Cameroon for example, traditional societies functioned in a three tier system, with the *Fon* or Ruler acting as the executive, the *Ngumba* acting as the Legislature, and the *Kwifon* acting as the Judiciary. Democracy therefore is not an alien concept that should be forced onto Africans. While Africa should not be coerced to adopt any wholesale models from other parts of the world, democracy certainly has minimum universal standards that still remain missing in many African countries.

Africa is making progress with countries like Ghana, Benin, Malawi, Mali, Mozambique, Namibia, South Africa, Senegal, and Zambia standing out as proud examples with giant strides in the right direction. Despite these good examples, most of the countries still lack behind and are indulged in practices that make the continent a terrain of barbarism. At the Organization of African Unity (OAU) Summits of Algiers in 1999 and Lomé (Togo) in 2000, resolutions were passed to condemn leaders who come to power through unconstitutional means. In the first major test, the continental body did not fare so well when the people of Madagascar rose up in unison to thwart the efforts of the incumbent leader, Didier Ratsiraka to rig himself into another mandate in 2002. Pressured by the grassroots, the High Constitutional Court endorsed Ravalomanana's victory on April 29. Ratsiraka fled the country and Marc Ravalomanana from the opposition

¹¹ George Ngwane, *Settling Disputes in Africa: Traditional Basis for Conflict Resolution*, (Yaoundé Buma Kor House Publishers Ltd., 1996).

was installed as the new president on May 6.¹² Rather than seizing the opportunity to consolidate the democratic process in that country, the new president was more or less considered persona non grata by most Africa countries and the AU. Paradoxically this position only shifted when powers like France and the United States showed their support to the new leader.¹³

The AU still has very visible relics of the OAU and has to do more to convince the people that it has ceased to be a club or fraternity of comrades with doubtful legitimacies out to protect their mutual interests. In fact, it is really hard to draw a line between leaders who use the fallacy of flawed elections to maintain a vicious grip on power and those who get to power through military coups. Both scenarios, which are still visible on the continent, undermine the will of the people. Military coups in Ivory Coast, Central African Republic, and Mauritania condemned by the AU have had a desired impact on the future of the electoral game in such countries. The undoing of the AU like the OAU may well be the absence of the political will with nothing binding or forcing countries to honor engagements, declarations, charters, and resolutions they sign.

Although there is a peer review mechanism within the AU treaty system, most countries are unwilling to open up to scrutiny. It is worth mentioning, that democracy still remains a very vital option in the transformation of Africa. Otherwise stated, democracy is the best guarantee for peaceful regime change as it offers better prospects for accountable leadership. Democracy also ensures that the people have the possibility of making use of the most potent weapon they have - the ability to vote and choose their leaders. Leaders like Cameroon's Paul Biya, Gabon's, Omar Bongo, Equatorial Guinea's Obiang Nguema Mbazogo, and Libya's Mohammed Gaddafi who have been in power for decades

¹² BBC, Profile: "Marc Ravalomanana," March 11, 2002, <http://news.bbc.co.uk/2/hi/africa/1866530.stm> accessed June 2008.

¹³ On Madagascar, see Richard R. Markus, "Political Change in Madagascar: Popular Democracy or Neopatrimonialism by Another Name," *South African Studies for Security*, Pretoria, ISS Paper 89, August 2004, <http://www.iss.co.za/pubs/papers/89/Paper89.htm>; Philipp M. Allen, *Madagascar: Conflicts of Authority in the Great Island*, (Westview, 1995).

take the people for granted because they know that elections are just a façade whose results have little or nothing to do with the will of their constituencies. Accordingly, their perpetual stay in power is indicative of the fact that they consider the AU as a forum to get approbation for their self-serving agenda.

The African Civil Society must get more proactive in issues regarding the continent.¹⁴ The civil society played a great role in pressuring General Robert Guei to flee after futile attempts to rig elections in Ivory Coast in 2000. Civil society organizations were also instrumental in preventing Ratsiraka from rigging elections in Madagascar in 2002; in thwarting attempts by Frederick Chiluba to extend his mandate in Zambia beyond constitutional terms; and in forcing Bakili Muluzi to drop his designs to extend term limit in Malawi. The highly respected Obasanjo of Nigeria tried to extend his mandate in Nigeria but the resistance of the people was so strong that even law makers who had swallowed his bait gave in for fear of reprisals from the people they represent.¹⁵ Unfortunately, the situation has not been the same in other countries such as Chad, Gabon, Uganda, and Cameroon. In Togo, the situation noticed a new twist. Not only did Eyadema change the constitution, upon his death all constitutional channels of succession were thrown to the wind and his son Faure Gnassingbé, installed as his “next of kin”. The reaction of the AU was not indicative a body decisive and totally committed to fighting undemocratic practices on the continent.

¹⁴ On the role of civil society as an agent of democratic governance in Africa, see Makau Mutua, *Human Rights NGOs in East Africa: Political and Normative Tensions* Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2008); Lennart Wohlgemuth, Samatha Gibson, Stephan Klasen, Emma Rothschild (eds.), *Common Security and Civil Society in Africa* (Nordic Africa Institute, 2007); Rachel Murray, *The Role of National Human Rights Institutions at the International and Regional Levels: The Experience of Africa Human Rights Law in Perspective* (Hart, 2007); Celestin Monga, *The Anthropology of Anger: Civil Society and Democracy* (Boulder: Lynne Rienner Publishers, 1996).

¹⁵ European Union, *Report of the EU Election Observation Mission Nigeria 2007*, http://ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/nigeria/index.htm. See also Jibrin Ibrahim, “Legislation and the Electoral Process: The Third Term Agenda and the Future of Nigerian Democracy,” Research Paper, Centre for Democracy and Development (CDD) Nigeria Roundtable, 2006, <http://www.cdd.org.uk/pdf/electionsandthirdterm.pdf> ; and “President of Nigeria loses bid for a 3rd term” *International Herald Tribune*, The Global Edition of the New York Times, May 16, 2006, <http://www.iht.com/articles/2006/05/16/news/lagos.php>

Recent events in Kenya and Cameroon show that it is the people who are going to make the difference and not governments. The heroic fight of Kenyans backed by strong support from the international community forced President Kibaki to agree to dialogue and some eventual power sharing agreement with the opposition. It is hoped that other leaders will reflect on the Kenya situation before embarking on the expensive antics of election rigging. In Cameroon, the uprising of February 2008 seems not to have achieved the desired results. However, it sent a strong message that taking the apathy of the people for weakness could be a costly mistake. It was a sign that the free ride President Biya has had over Cameroonians for more than two decades may be at its end stage.

5. Conclusion

Despite the numerous difficulties involved in the straddle for democracy in Africa, the trend shows a willingness of the people to stand up to the tyranny of their leader. These efforts by Africans need the committed support of the international community. It is only by continuing the struggle for democracy and human rights on the continent that the martyrs of the election saga in Kenya, the unrest in Cameroon, and others around the continent will know peace. Though democracy may not provide a magic wand to solve all of Africa's problems, it might nevertheless offer the people the best guarantee to put in place leaders who best represent their aspirations and who are answerable to their vote. It remains clear that the future is far brighter than most people may believe. Democracy, free and fair elections, good governance, and socio-economic reconstruction will augur such prospects. That the Charter was adopted is a sign that Africans are aware of the stakes. Scrupulous respect for its provisions will mean giant leaps in the right direction with opportunities for Africa to occupy its rightful place in the community of civilized nations.