
THE ROLE OF GOVERNANCE IN THE PROTECTION OF HUMAN RIGHTS OF REFUGEES IN SOUTHERN AFRICA

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ABSTRACT

This ascertains the role of democracy plays a part in the protection of fundamental human rights of refugees, with Southern Africa as a focal point. The paper mainly covers three countries; Zambia, Angola and the Democratic Republic of Congo. The main area of focus is the rights of refugees in their country of origin and host countries. The paper shows that the absence of properly functioning democracy can lead to the violation of individuals' fundamental human rights. The paper highlights the concept of human rights in relation to democracy by emphasizing the United Nations constant and persistent promotion of democracy for the protection and consolidation of human rights, and the interdependence between democracy and human rights. The paper also analyses the situation of refugees in the host countries and whether their fundamental rights are being respected, and if democracy has played any role in upholding these rights.

Keywords: Democracy, Refugees, Human Rights, Regional and International Instruments.

INTRODUCTION

The problem of refugees has been an ongoing issue for centuries in Africa. From slavery, the slave trade, colonialism through to post-colonialism, the issues of violence, inhuman treatment, poverty, disease and political differences have consumed the continent. Initially and foreseeably, African countries were reluctant to accept democratic principles introduced to them by the Western world after independence. For many years the western man was perceived as sheep's disguise claiming to bring development and civilization into Africa but instead coerced, enslaved, killed, raped and oppressed the African people, violating many of their basic rights as humans. Therefore, it is not a shock that African leaders took with a grain of salt everything introduced to them by western institutions, that had once denied them their basic rights and freedoms.¹

The irony that has followed is that African leaders, after gaining independence, have followed the colonial system and adopted the authoritarian kind of leadership inherited from their former colonial rulers. Many of the African population's rights have been left exposed to the vicious cycle of human rights abuses, poverty, disease, conflict and economic suffering. The implementation of democratic institutions in their governments after independence, have remained heavily tainted with corruption, violence and oppression and this inevitably has laid the foundation of the emergence of unplanned human displacement creating a refugee crisis in Africa. This has remained an ongoing cause for concern in the continent.

The aim of this work is to evaluate and analyse whether democracy really does assist in the promotion of and the protection of human rights from the refugee's perspective. The paper looks the universal approach to the problem through the United Nations' Universal Declaration on Human Right and a more region based under the African Charter on Human and People's Rights from the African Union. It looks at democracy as a concept, the interdependence and linkages of democracy and development of human rights, the refugees problems in selected countries of focus before drawing the conclusion on whether or not democracy indeed assists in the promotion and protection of the rights of the refugees.

¹ Gibson Kamau Kuria, 'Human Rights and Democracy' (1991) Vol. 15(1) The Fletcher Forum of World Affairs 24.

LITERATURE REVIEW

Democracy has been a concept that has been promoted around the world by many and for decades as an essential tool that assists in the promotion and protection of human rights. Believing democracy to be its core value, the United Nations (UN) has been the world's biggest advocate for democracy. It has been recorded to have done more to support democracy around the world than any other global organization since the passing of the UN Charter in 1963.

The UN General Assembly has adopted numerous international instruments relating to democracy such as the International Convention on Civil and Political Rights 1966.² A number of Regulations have also been passed regarding democracy since 1988. Some of the regulations include Regulation 55/96 on Promoting and Consolidating Democracy³ and Regulation 1999/57 on the Promotion of the right to Democracy.⁴

Other organisations have followed suit and adopted measures to assist in the promotion and consolidation of democracy around the globe. The General Assembly of the Organisation of American States adopted their AG/RES 1080 (XXI-091) 1991 Resolution⁵ and the Moscow Document adopted in 1991 by the Conference on the Human Dimension of Conference Security and Cooperation in Europe, which commits its member states to taking steps towards stopping and avoiding any democratic government interruption.⁶ Other international documents such as the Vienna Declaration and Programme of Action recommends that priority should be given to national and international actions which promote and support the strengthening of democracy and human rights.⁷

The UN, in the last 70 years, has encouraged and supported nations to promote and consolidate democracy into their governing systems through the support of good governance, monitoring of elections, supporting civil societies to strengthen their democratic institutions, ensuring self-

² International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976 999 UNTS 171 Res 1966.

³ UNGA Res 55/96 (4 December 2000) UN Doc A/RES/55/96.

⁴ UNGA Res 1999/57 (27 April 1999) UN Doc A/RES/1999/57.

⁵ Organisation of American States, Representative Democracy, General Assembly Res AG/Res 1080n(XXXI-O91) (15 June 1991).

⁶ Organization for Security and Co-operation in Europe, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (3 October 1991).

⁷ United Nation High Commissioner, Vienna Declaration and Programme of Action, adopted by The World Conference on Human Rights (25 June 1993) UN Doc A/Conf.157/23, para 8.

determination for states in decolonized countries and assisting the drafting of constitutions.⁸ Additionally, round tables, panels, symposiums, forums are occasionally organised relating to the promotion and consolidation of democracy. For instance, International Conferences on New and Restored Democracies have been held over the years since 1988 in countries like Mania, Bucharest and many other countries.⁹ In 2011, the International Institution for Democratic Electoral Assistance (IDEA) and the Department of Political Affairs (DPA) hosted a two-day Round Table with the UN on Democracy and Human Rights.¹⁰

Democratic institutions are believed to be necessary for the full protection and promotion of human rights. The UN has, on numerous occasions, expressed this notion. For instance, the UN Secretary General issued a Guidance Note on Democracy in which he stated that “*genuinely democratic institutions and practices are essential for fostering and meeting basic human needs and promoting and protecting human rights.*”¹¹ The United States of America, Australia, Canada, New Zealand and European states, are often praised for their human rights records. What these countries have in common is that they are all democratic states.

In contrast, dictatorial regimes, commonly described as political regimes in which the legislature or executive are appointed by means other than through contested elections by individuals of the state, are notorious for human rights abuses.¹² In Africa countries like the Democratic Republic of Congo (DRC), Rwanda, South Sudan, Somalia, Angola and Central African Republic, have had or still have dictatorial regimes that have occasionally been accused of several human rights violations such as prisoner tortures, arbitrary arrests, forced disappearance, kidnappings, unlawful killings and the obvious political oppression. In a press release by the UN, on dictatorial regimes, it was said that dictatorial regimes remained a major source of human rights violations around the world.¹³ Such violations included the abuse of the

⁸ Democracy (United Nations), <Democracy | United Nations> accessed 1 June 2021.

⁹ International Conference of the New or Restored Democracy and Development (3rd 1997 Bucharest, Romania).

¹⁰ Report from the International Round Table on Democracy and Human Rights: ‘The Role of the United Nations’ co-organized by International IDEA, UN Department of Political Affairs and the UN Office of the High Commissioner for Human Rights (September 2013) <democracy-and-human-rights-the-role-of-the-united-nations.pdf (idea.int)> accessed 17th November 2020.

¹¹ UN Secretary General, Guidance Note on Democracy (11 September 2009) 3 para 2.

¹² Jose Antonio Cheibub and Jennifer Gandhi, ‘Classifying Political Regimes: A Six-Fold Classification of Democracies and Dictatorships’ September 2004 Paper presented at the 100th Annual Meeting of the American Political Science Association.

¹³ UNCHR, ‘Press Release Statement on Dictatorial Regimes, Intolerance Remain Major Sources of Rights Violations, Permanent Representative of us to UN tells Commission on Human Rights’ (20 March 1996) UN Doc HR/CN/709 <<https://www.un.org/press/en/1996/19960320.hrcn709.html>>

right to self-determination, right to equal protection of the law, respect to life, freedom from torture and degrading treatment and many others found in the Universal Declaration on Human Rights,¹⁴ the International Convention on Civil and Political Right (ICCPR)¹⁵ and the International Convention on Economic, Social and Cultural Rights.¹⁶ Therefore, it is easy to conclude that the realization of all human rights – civil, economic, cultural political and social – are integral to democratic societies.¹⁷

It should be noted, however, that not just any democracy is being referred to in these discussions but a ‘rights based democracy’ founded on the rule of law. This is because democracy and human rights are viewed as interdependent or mutually reinforcing.¹⁸ More recently, in a discussion paper in 2013, the UN still concluded that democracy and human rights were linked but most appropriately they were “mutually constitutive,” stating that democracy alone cannot be defined without human rights and human rights can be protected effectively only in a democratic state.¹⁹ The Commission for Human Rights in Resolution 1999/57 affirmed that the obligations of non-discrimination, equal protection of citizens’ rights, interests and personal integrity, the fairness in the administration of justice and independence of the judiciary, freedom of opinion and expression, freedom of thought, conscience and religion, right to peaceful association and assembly, universal right to equal suffrage, right to political participation and the right to choose the government are all rights necessary for the existence of a genuine democratic institution. Emphasizing that “*democracy fosters the full realization of all human rights*”²⁰

Therefore, it can only be a functioning democracy if it accommodates diversity, promotes equality and protects individual freedoms that makes it the best bet against the concentration of power in the hands of the few and abuse of human rights that inevitably results from it.²¹

Many scholars have attempted to define democracy but as democracy comes in various forms

accessed 07 July 2021.

¹⁴ UNGA, Universal Declaration on Human Rights (adopted 10 December 1948) Res 217 A(III).

¹⁵ International Convention on Civil and Political Rights (n2).

¹⁶ International Convention on Economic, Social and Cultural Rights (adopted 16 December 1966) Res 2200A (XXI).

¹⁷ UNGA Res 1999/57 (n4) 2.

¹⁸ Vienna Declaration (n7) para 8.

¹⁹ Report from the International Round Table on Democracy and Human Rights (n10) 24.

²⁰ UNGA Res 1999/57 (n4) 1.

²¹ Report from the International Round Table on Democracy and Human Rights (n10) 24.

it has proved challenging to find a single definition that fits all systems. Robert Dhal went so far as introducing a new concept of polyarchy that comes in two magnitudes of the right to participate and the right to public contestation.²² Nonetheless, democracy is a concept that does not belong to a single definition under one magnifying glass. The meaning of democracy has been attempted by many political scholars in an attempt to provide one definition that fits all. There are some scholars and theorists like O'Donnell who highlight that democracy has an existing clear and consistent meaning and the variations of democracy that exist are simply qualifiers added or subtracted to this clear and consistent core meaning of democracy.²³ Schumpeter on the other hand believes that democracy is a “political method” which is an institutional arrangement for arriving at “political, legislative and administrative decisions” which realizes the common good of making the people decide issues through the election of individuals who are to assemble in order to carry out its will.²⁴ Others, like Diamond, believe in a more liberal concept of democracy in which “*individual and group liberties are well protected and in which there exists autonomous spheres of civil society and private life, insulated from state control.*”²⁵ Lastly, Claude Ake believes, specifically for Africa, in positive economic and developmental outcomes as democracy.²⁶ Therefore, democracy can be classified into three separate categories; political, liberal and developmental.

However, if examined a little closer, the dividing lines between these three pillars of democracy are neither black nor white. The lines are blurry and no single definition provided above exists on its own. This is because, the liberal concept of democracy, although autonomous and allowing group and individual liberties that are isolated from state control, Diamond admits to the existence of a ‘state’. For a state to exist, the type that allows for “individual and group liberties, then some form of institutional arrangement exists in which political decisions are made for individuals make autonomous decisions through the election of individuals who carry out the will of the masses. Similarly, the ability to carry out the will of the masses results in development. Meaning development also requires the existence of such an organization. Conclusively, therefore, democracy is all inclusive of political, liberal and developmental

²² Robert Alan Dhal, *Polyarchy: Participation and Opposition* (5th impression, Yale University Press, 1971) Ch 1.

²³ Guillermo O'Donnell, ‘Democratic Theory and Comparative Politics’ (26 – 29 August 1999) Paper presented at the Annual Meeting of the American Political Science Association, Atlanta.

²⁴ Joseph A Schumpeter, *Capitalism, Socialism and Democracy* (Routledge, 1992) Ch XXI, 250.

²⁵ Larry Diamond, *Developing Democracy: Toward Consolidation* (Johns Hopkins University Press 1999) 3

²⁶ Claude Ake, *Democracy and Development in Africa* (Brookings Institution Press 1996)

spheres with one common feature that allows the existence of liberal, developmental and political democracies which is the holding of regular, transparent, free and fair elections.²⁷ It is because of this that the run-of-the-mill definition for democracy; “rule by the many” is adopted.

Democracy has, over the years, become a core principle in most governments around the world and has been implemented into the political, economic, social and cultural forums. Sadly, this has not been the case for African countries. Whilst most countries around the world have developed socially, economically and politically after democratization of their governments, war, famine, disease and oppression are still a stark reality for African countries. One may argue that this grim reality of the continent can be accredited to the historical burdens that the continent experienced through centuries of slavery and the slave trade followed by decades of colonialism.

It is not until the 1950's that African countries began their independence movement. This is thought to be the conception of the recognition of humanity in Africa and that the establishment of democratic institutions would further act as instruments for the protection and promotion of human rights in Africa. This has not materialize as swiftly as expected and consequently, Africa has fallen behind in the race for democratic development.

Democracy has historically been dominated by one party democratic systems in countries like Zaire under Mobutu Sese Seko between 1965 and 1997 and Zambia under the United National Independence Party (UNIP) from 1964 to 1991. These party systems prevented other political organisations from forming as a way to protect themselves from potential governmental oppositions. Some countries like Zambia had managed to free themselves from such regimes into multiparty systems whereas Zaire remained in the one party system for four decades after independence. Angola on the other hand only welcomed a new president of the State, João Manuel Gonçalves Lourenço in 2017 after a 37 year long rule by José Eduardo dos Santos through a one party regime,²⁸ despite the introduction of multi-party elections for a more democratic governance in 1992.²⁹ This is different from the de facto – one party systems that are the dominant political party in the state through legitimate constitutions such as the

²⁷ OAU, African Charter on Democracy, Elections and Governance (adopted on 30 January 2007).

²⁸ UN Permanent Mission of the Republic of Angola to the United Nations: Government Officials <Government officials | Angola (un.int)> Accessed 1 August 2021.

²⁹ Constitutional Revision Law of the Republic of Angola (adopted 16 September 1992) Law No. 23/92, art 60, 61 and 62.

Botswana Democratic Party that held office since independence in 1966 through multiparty democratic elections.

Kwesi Kwaa Prah has strongly expressed his views on the African multi-party systems of democracy describing it as “tortuous and checkered.”³⁰ Multi-party democratic systems are meant to promote the “*coexistence of contrastive views of how social life should be ordered without suffocating relatively inferior constituencies.*”³¹ Prah further highlights how “*Arbitrary incarceration, state-sponsored terror and assassinations have not been uncommon in the African Post-Colonial experience and public exchequer and corruption is rampant on the continent.*”³² This has been as a result of the close-mindedness of the political African rulers, that are not so fond of opposition or contrary opinion. This has further added to the forced migration of their people in an attempt to escape such brutal realities and increasing refugee population around the continent.

Lastly, The African Peer Review Mechanism (APRM) with the African Governance Architecture in their 2019 African Governance Report findings, highlight the urgent attention needed with regards to the significant challenges to the recognition of democratic reform targets in Africa.³³ Therefore Democratic reform still has a long way to fully maturing in Africa.

METHODOLOGY

This research adopts the legal doctrinal method by analysing the black letter law in form analysing the existing international convention on refugees by the United Nations and its definition of who a refugee is. It looks at the Organisation of African Unity’s Convention and how it extends the definition of refugee to accommodate the refugee problems in Africa. Using the definitions provided, the paper examines the conditions of the refugees in the Democratic Republic of Congo - as a major source of refugees in Southern Africa.

³⁰ Kwesi Kwaa Prah, ‘Multi-party Democracy and It's Relevance in Africa’ (2003 African Union) 1 para 3.

³¹ Ibid 2 para 2.

³² Ibid 3 para 2.

³³ African Union, The African Governance Report: Promoting African Union Shared Values by the African Peer Review Mechanism and African Governance Architecture (2019) 49 sub para 4.4.4.

FINDINGS

It has been established that a country's poor democratic situation has resulted in the persistent violation of individuals rights in the country with emphasis on Governments failure to hold accountable the perpetrators responsible for these violations. The paper confirms that only a democracy that fully upholds and respects human rights guarantee the protection and promotion the fundamental human rights of refugees.

DISCUSSION OF FINDINGS

It is evident from the foregoing that governance has a pivotal role to play in the recognition and promotion of human rights for refugees. As seen above, democracy is more likely to promote and enforce human rights for refugees unlike a dictatorship. Despite this recognition, it is vital that States should adopt and adhere to regional and international treaties or protocols in order to have a uniform standard. An example is Zambia which has ratified and domesticated a number of regional and international covenants.

CONCLUSION AND RECOMMENDATIONS

From a conspectus of a host of authorities, it is evident that reforms to address barriers created by states sovereignty and poor democratic regimes need to be undertaken. It is recommended that the recognition and enforcement of human rights for refugees should mirror and implement the regional and international standard. The importance of promotion of human rights for refugees cannot be overemphasized.

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