

# DEMOCRACY AS A GLOBAL DETERMINANT FACTOR TO LEGITIMATE GOVERNANCE AND SELF-DETERMINATION

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## **Abstract**

*In the world today, governments come to power, hoping to be embraced by the international community, so they can engage in the usual international intercourse, since no nation can be an island to itself. Sometimes however, some governments meet a cold shoulder from the comity of nations because the government is not legitimate. What then determines the legitimacy or otherwise of a government? This paper identifies democracy as the seemingly worldwide accepted means of legitimately assuming political power. It traces the origin of the acceptability of the concept to election monitors in colonial times in order to determine the legitimacy of the decolonisation process of colonies. It then examines how the UN, regional bodies, Western States, third world countries and even some former Communist States have all embraced democracy – the current democratic struggle in the Arab world inclusive; and concludes that what started as a Western concept or ideology is now the preferred means by which nations exercise the right to self-determination.*

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## **Keywords**

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## **Introduction**

A glimpse at almost, if not all the regional and international Charters, Instruments and Declarations regulating inter-State relationship, show an unequivocal call on member States to adopt democracy and democratic system of governance. Democracy has become regarded as the basis of a stable and peaceful inter-relationship among civilized nation-States; as well as the most popular means of exercising the right to internal self-determination. Perhaps, the following excerpt from a scholar says it all:

Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbours to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically "cleanse" their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honour international treaties since they value legal obligations and

because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights, and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.<sup>1</sup>

While the above assertions may not all be true, they however represent the ideals that have motivated many States and international organizations to adopt democracy as the standard form of governance and the centre upon which good governance revolves. We shall now take a look at how the UN and other world bodies have all embraced democracy as a legitimate form of ascending to power in sovereign states.

### **Democracy in International Human Rights Instruments**

Article 25 of the International Covenants on Civil and Political Rights 1966 provides:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives
- b) To vote and to be elected at genuine periodic elections,

1. Diamond, L., "Promoting Democracy in the 1990s: Actors and Instruments, Issues and Imperatives", a report to the Carnegie Commission on Preventing Deadly Conflict, Carnegie Corporation of New York, December 1995, quoted in Newman, E., UN Democracy Promotion: Comparative Advantages and Constraints, in Newman E., and Rich, R., ed., *UN Role in Promoting Democracy: Between Ideals and Reality*, Tokyo, United Nations University Press, 2004, p. 188 at 189-190

which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

- c) To have access, on general terms of equality, to public service in his country.

The summary of the above provision is the participation of citizens in the affairs of governance of their countries either directly or by representation. Representation involves electing the representatives in free and fair elections. The participation of citizens in the way they are governed is what democracy is all about. This is distinguishable from a totalitarian, absolutist ruler-ship by an absolutist sovereign.

Again, the Declaration on Friendly Relations, (GA Res 2625 (XXV)) in the section on self-determination provides:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign or independent states conducting themselves in compliance with the principle of equal rights and self determination of peoples described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.<sup>2</sup>

2. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, UNGA Res. 2625(XXV) 1970, para. 7 of Principle V on self-determination.

had thus, expanded the scope of discrimination. Any form of discrimination will now limit the sanctity of territorial integrity.

Further, the General Assembly in 1995, during the fiftieth anniversary of the United Nations,<sup>5</sup> adopted the "Declaration on the Occasion of the Fiftieth Anniversary of the United Nations". Operative Paragraph 1(3) provides that in meeting the challenges for securing global peace, security and stability, the United Nations will continue to reaffirm the right of self-determination of all peoples. But to forestall the turbulent trend of secessions that afflicted Europe and other secession bids elsewhere in the world, the paragraph reiterated earlier prohibitions thus:

This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

The United Nations from the above has been insistent on representative government - democracy, as the surest means of asserting the right to internal self-determination. It therefore, in

5. GA Res/50/6 of October 24, 1995

conjunction with individual States has been involved in several democracy promotion and assistance activities, especially in developing countries. These include sensitization, conduct and organisation of elections and election monitoring.

### **Election Monitoring**

Election monitoring can be traced to colonial times when international and regional organisations commissioned monitoring groups to observe and report back on the conduct of elections in soon-to-be-independent colonies, as a means of ensuring legitimacy of the decolonisation process.<sup>6</sup> The practice has now evolved into an internationally accepted means of ascertaining the legitimacy of any government emerging from an election in a sovereign State.

The reports of observer or monitoring groups play a very important role in the acceptability of election outcomes among sovereign States. For instance the April 2011 general elections in Nigeria that brought Goodluck Jonathan to power were widely acclaimed as free and fair by international monitors that included teams from the AU and EU. This crucial finding by foreign monitors proved decisive in the support given the government by the international community in spite of the gruesome violence that followed the election of the president in some Northern parts of the country.

The same monitors' reports were responsible for the international

6. Franck, T.M., "The Emerging Right to Democratic Governance", 86 *American Journal of International Law* (1992) 46 at 52

community's stance on Cote D'Ivoire when Laurent Gbagbo refused to cede power to the acclaimed winner of the November 2010 elections, Alassane Ouattara. The UN, ECOWAS and AU in collaboration with French troops helped to dislodge Gbagbo and installed Ouattara as president of Cote D'Ivoire. The UN has therefore become increasingly involved in election monitoring.

Recently, an UN-backed Electoral Complaints Commission in Afghanistan found that the 2009 Afghan presidential elections were marred by fraud,<sup>7</sup> thereby, necessitating a run-off election.<sup>8</sup> Such activities can however, only be undertaken by the UN either as a perceived need supported by member States; or upon invitation of a needy and desiring State. An example of such request by a needy State is the request by the Government and Communist Party of Nepal in a Comprehensive Peace Agreement, for UN assistance in implementing the peace agreement, especially in the area of election monitoring<sup>9</sup> among other things. The Security Council in Resolution 1740 (2007)<sup>10</sup> acceded to the request and established a United Nations Political Mission in Nepal (UNMIN), with the mandate to:

- (d) To provide technical support for the planning, preparation and conduct of the election of a Constituent Assembly in a free and fair atmosphere,

7. See "Afghanistan Elections: Results of the Investigation, Polling Station by Polling Station", *The Guardian* (UK), October 20, 2009, available at <http://www.guardian.co.uk/news/datablog/2009/oct/19/afghanistan-elections-results-investigation> last visited on October 20, 2009.

8. See "Karzai the Statesman Gives Way to Pressure Over Poll Runoff", *The Guardian* (UK), October 20, 2009, available at <http://www.guardian.co.uk/world/2009/oct/20/hamad-karzai-second-vote-poll-runoff> last visited on October 21, 2009. 9. Preamble paragraph 2, SC Res. 1740 (2007) 10. SC Res. 1740 (2007), 23 January, 2007, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/217/92/PDF/N0721792.pdf?OpenElement> last visited on 30 January, 2010.

in consultation with the parties;

(e) To provide a small team of electoral monitors to review all technical aspects of the electoral process, and report on the conduct of the election;<sup>11</sup>

The UN role in promoting democracy has however not been without criticisms. It has been argued that the United Nations depends on member States to engage in these activities if not personally requested by needy States and sometimes, it has been difficult getting the consent of States to engage in democracy promotion in other States due to non-intervention concerns under Article 2(7) of the UN Charter. Secondly, the UN does not have the expertise and experience needed to engage in successful democracy promotion.<sup>12</sup>

It must however be admitted in any case, that such activities undertaken by the UN are more credible and less suspicious than those undertaken by single nations, which may be playing out their own ideological scripts and programmes.<sup>13</sup>

Perhaps, another strong point against the United Nations zeal to export democracy to needy States may be in its own organisational structure. Apart from the General Assembly, where decisions are taken on a democratic basis, that is, by majority vote, which decisions

11. Ibid, paragraph 12. For a detailed discussion on the UN role in democracy promotion, see Newman, E., "UN Democracy Promotion: Comparative Advantages and Constraints", in Newman E., and Rich, R., (ed.), *UN Role in Promoting Democracy: Between Ideals and Reality*, Tokyo, United Nations University Press, 2004, p. 188; Ludwig, R., "The UN's Electoral Assistance: Challenges, Accomplishments, Prospects", in Newman, E., and Rich, R., ed., *UN Role in Promoting Democracy: Between Ideals and Reality*, ibid, p.169. 13. The USA's democracy promotion has been accused of having ideological commitments to its economic and strategic interests; and favouring only countries within US sphere of interest. Newman, E., op. cit., note 1 above, at p. 199.



in any case are merely advisory except when endorsed by the Security Council, decisions in the Security Council are not in any way democratic. This is because any of the permanent members can veto the decision of the 15-member body.

Besides, 15 members taking a binding decision on behalf of over 190 members, most of whom are not represented at the Council, does not appear democratic, to say the least. This view found a voice in the message by a radical African leader, Muammar Gaddafi of Libya, at the 64<sup>th</sup> Session of the General Assembly, where he called for decision of the General Assembly to become binding, being more democratic instead of those of the Security Council, which he referred to as the "Terror Council".<sup>14</sup> Thus, there is the question of the morality of the UN to encourage democracy among nations, when its most powerful organ, the Security Council is not itself democratic.

### **Regional Efforts at Democracy**

Efforts by the UN and individual States in democracy promotion and assistance may have been faulted as revealed above, but regional bodies are however unrelenting in their pursuit of democracy and democratic governance among their member States. The Harare Declaration of the Commonwealth, 1991,<sup>15</sup> in its paragraph 9 prescribed democracy and democratic processes of governance

14. See "Gaddafi Blasts Big Powers in Long UN Speech", UN (Al Arabiya Agencies), September 22, 2009, available at [http://www.al-aramiya.com/record/save\\_print.php?print=1&cont\\_id=85873&lang=en](http://www.al-aramiya.com/record/save_print.php?print=1&cont_id=85873&lang=en) last visited on September 24, 2009.

15. Harare Commonwealth Declaration, October 20, 1991, available at [http://www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=141095](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=141095) last visited on September 24, 2009.

protection and promotion of fundamental rights, equal rights for women, and democratic, non-racial government in South Africa among others, as means of commitment to the Singapore Declaration of 1971,<sup>16</sup> which upheld the principle of self-determination. The Millbrook Action Plan on the Harare Declaration of 1995<sup>17</sup> established the Commonwealth Ministerial Action Group, empowered to assess violation incidents and prescribe appropriate sanctions for erring members.

Countries that have fallen under the axe of the Commonwealth for violation of democracy principles at home are Nigeria, Pakistan, and Fiji Islands among others.<sup>18</sup> Sanctions have mainly been in the form of suspension of membership until democracy is restored, denial of participation in Commonwealth sponsored activities and technical and assistance programmes.

16. Singapore Declaration of Commonwealth Principles, January 22, 1971, available at [http://www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=141097](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=141097) last visited on September 24, 2009.

17. Millbrook Commonwealth Action Plan on the Harare Declaration, November 12, 1995, available at [http://www.thecommonwealth.org/shared\\_asp\\_files/GFSR.asp?NodeID=141096](http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=141096) last visited on September 24, 2009.

18. The suspension on Nigeria was lifted on April 29, 1999 following significant efforts to return to democratic government, after an election that voted Olusegun Obasanjo as president. See facts at <http://www.thecommonwealth.org/Templates/Internal.asp?NodeID=34782> last visited on September 24, 2009. Pakistan came under the axe of the Millbrook Action Plan in 1999 and Fiji Islands on September 1, 2009 after previous suspensions from the Commonwealth Council in 2000 and 2006 due to military coups. Zimbabwe withdrew its membership in 2003 following the presidential election in 2002 that was adjudged not to be free and fair by the Commonwealth.

The African Union<sup>19</sup> and the European Union<sup>20</sup> all have insisted on democracy and respect for human rights as the fundamental principle of inter-State relationship among members. The Federal Republic of Yugoslavia was excluded from the OSCE due to its poor democratic and human rights records in Kosovo.<sup>21</sup> Guinea, Mauritania and Madagascar have also been suspended after coup d'états and political crises that bordered on democratic breaches.

The African Union recently adopted the African Charter on Democracy, Elections and Governance.<sup>22</sup> Instructively, its Article 23 provides:

State Parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'Etat against a democratically elected government;

19. Constitutive Act of the African Union 2000, Articles 3 and 4, available at [http://www.iss.co.za/AF/RegOrg/unity\\_to\\_union/pdfs/oau/treaties/Constit\\_Act\\_of\\_AU\\_2000.pdf](http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/oau/treaties/Constit_Act_of_AU_2000.pdf) last visited on September 27, 2009.

20. See operative paragraph 1, Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, December 13, 2007, available at [http://bookshop.europa.eu/eubookshop/download.action?fileName=FXAC07306ENC\\_002.pdf&eubphfUId=534817&catalogNbr=FX-AC-07-306-EN-C](http://bookshop.europa.eu/eubookshop/download.action?fileName=FXAC07306ENC_002.pdf&eubphfUId=534817&catalogNbr=FX-AC-07-306-EN-C) last visited on October 3, 2009. The Lisbon Treaty came into force after The Czech Republic signed it on December 1, 2009. Ireland had voted "yes" to the Treaty in a referendum held on October 3, 2009, while Poland ratified it on October 10, 2009. The Treaty provided that it can only come into force upon the ratification of all 27 member States.

21. The decision to exclude the FRY was affirmed under paragraph 13 of the Warsaw Declaration of 8 July 1997, available at [http://www.osce.org/documents/pa/1997/07/169\\_en.pdf](http://www.osce.org/documents/pa/1997/07/169_en.pdf) last visited on 26 January, 2010.

22. African Charter on Democracy, Elections and Governance, January 30, 2007, available at [http://www.ipu.org/idd-E/af\\_r Charter.pdf](http://www.ipu.org/idd-E/af_r Charter.pdf) last visited on October 18, 2009

2. Any intervention by mercenaries to replace a democratically elected government;
3. Any replacement of a democratically elected government by armed dissidents or rebels;
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

The above issues are currently bedeviling the African political landscape. Refusal to relinquish power to the winner of free and fair elections was responsible for the violence that was witnessed in Nigeria after the June 12, 1993 elections, Kenya between 2007 and 2008; and the Zimbabwe crisis of 2008. Coup d'état is also prevalent in the continent as it was acknowledged in the African Charter on Democracy.<sup>23</sup> Guinea is currently suspended from the AU due to such a coup. The same thing is responsible for the suspension of Honduras from the membership of the Organisation of American States.<sup>24</sup> The suspension of Honduras was made under Article 21 of the Inter-American Democratic Charter;<sup>25</sup> similar to Article 25 of the African Charter on Democracy, Elections and Governance.

23. *Ibid.*, preamble paragraph 8 24. See OAS AG/RES. 2 (XXXVII-E/09), 4 July 2009, para. 1, available at <http://www.voltairenet.org/article161630.html> last visited October 18, 2009. Honduras has however been reinstated following a National Reconciliation Agreement signed between former President Zelaya and President Porfirio Lobo. See OAS AG/RES. 1 (XLI-E/11), June 1, 2011, available at [http://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-23](http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-23) visited on June 11, 2011.

25. Inter-American Democratic Charter, 11 September, 2001, available at [http://www.oas.org/charter/docs/resolution1\\_en\\_p4.htm](http://www.oas.org/charter/docs/resolution1_en_p4.htm) last visited on 24 September, 2009

Article 1 of the Inter-American Democratic Charter provides “The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it. Democracy is essential for the social, political, and economic development of the peoples of the Americas.” This is a novel provision and probably a precursor to an emerging trend of making democracy a legal right.

Article 3 enumerated the essentials of democracy thus:

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

The above essential elements of representative democracy were reaffirmed by the Organisation of American States through a Resolution by its Inter-American Juridical Committee, *The Essential and Fundamental Elements of Representative Democracy and their Relation to Collective Action within the Framework of the Inter-American Democratic Charter*.<sup>26</sup>

26. OAS CJI/Res.159(LXXV-0/09), adopted at the Committee's 75<sup>th</sup> Regular Session, in Rio de Janeiro, on August 12, 2009, para. 3, available at [http://issuu.com/i.i.l.m/docs/inter-american\\_juridical\\_committee\\_oas/3?mode=a-p](http://issuu.com/i.i.l.m/docs/inter-american_juridical_committee_oas/3?mode=a-p) last visited on September 11, 2009.

The Resolution specifically excludes failure to comply with democratic practices from the non-intervention principle.<sup>27</sup> In other words, no Member State can claim immunity from interference by other member States, when in breach of democratic principles contained in the Inter-American Democratic Charter. Thus, democratic principles under the Charter take precedence over the principle of non-interference among member nations of the OAS. The validity of this provision vis a vis Articles 2(7) and 103 of the UN Charter, will be put to test soon because, Honduras has filed an action against Brazil, before the ICJ, claiming that Brazil's accommodation of the Honduran dethroned president, Manuel Zelaya in its embassy in Honduras and allowing him to use the embassy as a base to engage in political activities against the Honduran government, amounted to interference by Brazil in Honduran internal affairs, contrary to the UN Charter provision under Article 2(7).<sup>28</sup>

The Juridical Committee Resolution also stressed the need for constitutional subordination of all governmental institutions to the legally constituted civilian authority;<sup>29</sup> and an independent, impartial judiciary for an efficient democratic culture.<sup>30</sup>

Similarly, Article 3 of the African Charter on Democracy, Elections and Governance provides:

State Parties shall implement this Charter in accordance with the

27. Paragraph 2, *ibid*

28. See "Application instituting proceedings by the Republic of Honduras against the Federative Republic of Brazil", ICJ Press Release N0. 2009/30, The Hague, October 29, 2009, available at <http://www.icj-cij.org/presscom/files/5/15585.pdf?PHPSSESSIONID=4b5d60e2fdac5d3bee3cf1f82ce6ef> last visited on November 1, 2009 29. Paragraph 2.2, *ibid* 30. Paragraph 6, *ibid*

following principles:

1. Respect for human rights and democratic principles;
2. Access to and exercise of state power in accordance with the Constitution of the State Party and the principle of the rule of law;
3. Promotion of a system of government that is representative;
4. Holding of regular, transparent, free and fair elections;
5. Separation of powers;
6. Promotion of gender equality in public and private institutions;
7. Effective participation of citizens in democratic and development processes and in governance of public affairs;
8. Transparency and fairness in the management of public affairs;
9. Condemnation and rejection of acts of corruption, related offenses and impunity;
10. Condemnation and total rejection of unconstitutional changes of government;
11. Strengthening political pluralism and recognising the role, rights and responsibilities of legally constituted political parties, including opposition political parties, which should be given a status under national law.

Additionally, Article 4(2) provides that State Parties shall recognize popular participation through universal suffrage as the inalienable right of the people. And to ensure the conduct

1990, adopted the Charter of Paris<sup>32</sup> in which member States declared a "new era of democracy, peace and unity"<sup>33</sup> for Europe and undertook to build, consolidate and strengthen democracy as the only system of government for member nations. In doing so, members agreed to abide by the following:

Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

Democracy, with its representative and pluralist character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially. No one will be above the law.<sup>34</sup>

From the Asian continent, there seems not to be any regional instrument on democracy but the ASEAN Charter<sup>35</sup> in its Article 2(h), pledges "adherence to the rule of law, good governance, the principles of democracy and constitutional government".<sup>36</sup> The democratic and human rights records of ASEAN member States are however not impressive to say the least. Myanmar, most notorious in this regard, is ruled by a military junta, which has kept a prominent political leader,

32. Charter of Paris for a new Europe, Paris, 21 November 1990, available at [http://www.osce.org/documents/mcs/1990/11/4045\\_en.pdf](http://www.osce.org/documents/mcs/1990/11/4045_en.pdf) last visited on September 19, 2009

33. *Ibid.*, preamble 34. *Ibid.*, paragraphs 1, 3 and 4 on Human Rights, Democracy and Rule of Law

35. Charter of the Association of South East Asian Nations, November 20, 2007, available at <http://www.aseansec.org/ASEAN-Charter.pdf> last visited on September 24, 2009

36. See also preamble paragraph 7, *ibid.*



hallowed principle of inter-state intercourse, albeit it is not so hallowed by some nations. Violation of human rights has been responsible for UN and regional enforcement actions in offending States. The NATO offensive against Serbia that preceded the Kosovo international administration and eventual declaration of independence was as a result of human rights violations and humanitarian concerns. The suspension of Nigeria by the Commonwealth and several other sanctions imposed by Western States against Nigeria were largely provoked by the poor human rights records that were peaked with the execution of environmental rights activist, Ken Saro Wiwa in 1995. The recent killing of over 150 protesters in Guinea<sup>38</sup> received world-wide condemnation and is currently the subject of consideration at the International Criminal Court. So, human rights and freedoms have become synonymous with democratic rule. This is understandably so because, where the fundamental rights of citizens are curtailed, then their right to internally exercise self-determination is also abridged if not denied. There must be available, human rights and freedoms like freedom of association, freedom of speech and right to life for citizens to be able to have a say in how their government is run.

Representative government and access to power in accordance with the rule law are germane conditions for obtaining the consent of the governed in any society. Since it is not possible for every citizen to be directly involved in governance, they must be able to have their say in government through accredited representatives. Otherwise, some

38. See "Military Kills 157 in Guinea Protests", CBS News, 29 September, 2009, available at <http://www.cbsnews.com/stories/2009/09/29/world/main5348634.shtml> last visited on 26 January, 2010.

but also extends to election candidates. Candidates in an election should not feel intimidated or feel placed in a situation of subjugation by way of media coverage and electoral expenses. In places where there are regular elections that are marred with intimidation, rigging and violence, the people cannot be said to have given their consent to be ruled by the winner of such elections. Extant examples are Nigeria, where the ruling Peoples' Democratic Party has perfected the act of rigging elections in order to perpetuate their stay in governance; and elections are held in situations of palpable fear of violence.

The same thing was observed in the June 12, 2009 elections in Iran that led to violent protests.<sup>40</sup> Incidentally, June 12, has become associated with vote rigging and electoral injustice; such electoral robbery having also taken place in Nigeria, on June 12, 1993, where the winner of a free and fair election, Moshood Abiola, was prevented from assuming office.<sup>41</sup> Election rigging and manipulation is a denial of the internal right to self-determination, as the choice of the people is sidelined for a cabal's choice. In order to have free and fair elections there must be an impartial and independent electoral body. Most electoral bodies are puppets of the ruling groups in most countries. The African Charter on Democracy, Elections and Governance recognises this as the bane of elections in the continent and has provided for the establishment of impartial and independent electoral bodies among member States.<sup>42</sup>

40. See "Both Sides Claim Victory in Presidential Election in Iran", *The New York Times*, 13 June, 2009, available at [http://www.nytimes.com/2009/06/13/world/middleeast/13iran.html?\\_r=1](http://www.nytimes.com/2009/06/13/world/middleeast/13iran.html?_r=1) last visited on 26 January, 2010; "Timeline: 2009 Iran presidential elections", CNN, 19 June, 2009, available <http://www.cnn.com/2009/WORLD/meast/06/16/iran.elections.timeline/index.html> last visited on 26 January, 2010.

41. See "Iran's Own June 12", Reuben Abati, *The Guardian* (Nigeria), June 19, 2009, available at [http://www.nguardiannews.com/editorial\\_opinion/article02//indexn2.html?pdate=190609&ptitle](http://www.nguardiannews.com/editorial_opinion/article02//indexn2.html?pdate=190609&ptitle) last visited on June 20, 2009.

How this will be achieved, is a different issue entirely as powerful African States have run afoul of these provisions without any sanctions from the regional body.

Perhaps, it would be pertinent to state here, that elections cannot be free and fair, where there is only one political party in the country. This does not offer a choice for citizens to make their preference; and therefore, a violation of internal self-determination of the people. However, it must also be emphasised that the mere presence of multi-party system does not ensure the free exercise of the popular will as there are cases of dominant ruling parties, emasculating opposition parties and making it impossible for opposition parties to win elections, like it has been stated earlier in the case of Nigeria and Iran.

Equally tied to free and fair elections is universal adult suffrage. All adults, irrespective of sex or gender, must be able to have a say on governance. So, in countries where women are denied suffrage, elections are far from free and fair; and that constitutes a denial of the internal right of self-determination of a group – women.<sup>43</sup> After all, most self-determination instruments provide for the right to self-determination without distinction as to colour, creed, sex or religion.<sup>44</sup> Perhaps, two Security Council Resolutions would lend credence to the argument for universal adult suffrage. Resolution 554 (1984)<sup>45</sup> condemned the 1983 South African Constitution and the proposed

42. Article 17(1) 43. For a detailed discussion on Women and Self-Determination, see Knop, K.C., *Diversity and Self-Determination in International Law*, Cambridge, Cambridge University Press, 2002, pp. 277-372 44. Declaration on Friendly Relations, UN GA Res. 2625(XXV) 1970, para. 7 of the section on self-determination; International Covenants on Civil and Political Rights 1966, Article 25(2).

45. UN Security Resolution 554 (1984), August 17, 1984.

elections for “coloured” people and people of Asian origin as “null and void” and being an act in furtherance of the apartheid regime.<sup>46</sup> It called on all Governments and Organisations not to recognise the Constitution or the proposed elections but to cooperate with the UN and OAU to assist the oppressed people of South Africa in their legitimate struggle for a non-racial and democratic society.<sup>47</sup>

Resolution 556 (1984)<sup>48</sup> in its preamble, reaffirmed “the legitimacy of the struggle of the oppressed people of South Africa for the full exercise of the right to self-determination and the establishment of a non-racial democratic society in an un-fragmented South Africa”;<sup>49</sup> and reaffirmed that “only the total eradication of apartheid and the establishment of a non-racial democratic society based on majority rule, through the full and free exercise of adult suffrage by all the people in a united and un-fragmented South Africa, can lead to a just, equitable and lasting solution of the situation in South Africa”.<sup>50</sup> Thus, the denial of electoral rights to any group of persons, albeit on the basis of sex, creed, race or any other distinction is undemocratic.

In all, free and fair elections would mean nothing if aggrieved candidates in an election cannot vent their grievances in a proper legal forum. Access to such legal forum would also not mean much if such forum is only an extension of the executive arm of government. For instance, the ruling PDP government in Nigeria has been accused of interfering with the judiciary and ensuring that judgment in election

46. Ibid, Paragraph 247. Ibid, Paragraph 5

48. UN Security Resolution 556 (1984), October 23, 1984

49. Ibid, Preambular Paragraph 7

50. Ibid, Paragraph 4

matters are delivered in its favour. In addition to this, the slow pace of the judicial process in Nigeria renders the desire for justice by aggrieved electoral candidates meaningless as some election cases would still be pending in court by the time the next elections are due. The candidate, who may have been wrongfully returned, would then have enjoyed a full tenure and the issue in court becomes moot, leaving the aggrieved candidate who approached the court for justice, frustrated.

This therefore, calls for a clear-cut separation of powers and independence of the arms of government. In situations where the President can easily order State troops to invade Parliament to prevent the latter from adopting resolutions that would impugn the executive; or sack presiding judges for delivering judgment against government;<sup>51</sup> or worst still, where government officials flagrantly disobey court orders as was prevalent during the military era in Nigeria, it cannot be said that democracy or democratic governance is in place.

Self-determination intertwines with development. So, good governance is a sine qua non for meaningful economic and social development.<sup>52</sup> This has been the basis on which US relationship or assistance to developing countries rests. Much about this was revealed

51. Paragraph 3, OAS CJI/Res. 159(LXXV-0/09), adopted at the OAS Inter-American Juridical Committee's 75<sup>th</sup> Regular Session, in Rio de Janeiro, on August 12, 2009, available at [http://issuu.com/i.l.m/docs/inter-american\\_juridical\\_committee\\_oas/3?mode=a-p](http://issuu.com/i.l.m/docs/inter-american_juridical_committee_oas/3?mode=a-p) last visited on September 11, 2009 . 52. United Nations, "The Realization of the Right to Development", Global Consultation on the Right to Development as a Human Right, HR/PUB/91/2, 1991, paras 80, 105, 151 and 161, cited in Thornberry, P., "The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism", in Tomuschat, C., (ed.), *Modern Law of Self-Determination*, Dordrecht, Martinus Nijhoff Publishers, 1993, p. 101 at 103, (footnote 6); OAS CJI/Res. 159(LXXV-0/09), supra, preamble para. 2.

in US President Obama's speech to the Ghanaian Parliament:

...development depends upon good governance. That is the ingredient which has been missing in far too many places, for far too long... First, we must support strong and sustainable democratic governments. But history offers a clear verdict: governments that respect the will of their own people are more prosperous, more stable and more successful than governments that do not.

This is about more than holding elections – it's also about what happens between them. No country is going to create wealth if its leaders exploit the economy to enrich themselves, or police can be bought off by drug traffickers. No business wants to invest in a place where the government skims 20 percent off the top, or the head of the port authority is corrupt. No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery. That is not democracy; that is tyranny, and now is the time for it to end.

In the 21st century, capable, reliable and transparent institutions are the key to success – strong parliaments and honest police forces; independent judges and journalists; a vibrant private sector and civil society. Those are the things that give life to democracy, because that is what matters in peoples' lives.<sup>53</sup>

53. "Text of Obama's Speech in Ghana", Associated Press, July 11, 2009, available at [http://news.yahoo.com/s/ap/20090711/ap\\_on\\_go\\_pr\\_wh/af\\_obama\\_text\\_1](http://news.yahoo.com/s/ap/20090711/ap_on_go_pr_wh/af_obama_text_1) last visited on July 12, 2009. It was believed that President Obama chose to visit Ghana and not Nigeria in spite of the latter's regional importance due to her leaders' corrupt attitudes.

The above was re-echoed a month later by Obama's Secretary of State, Hilary Clinton, when addressing an African Growth Opportunity Act Forum in Nairobi, Kenya. She said:

True economic progress depends not only on the hard work of millions of people who get up every day and do the best they can, often under overwhelming circumstances; it also depends on responsible governments that reject corruption, enforce the rule of law, and deliver results for their people. This is not just about good governance; this is about good business. Investors will be attracted to states that do this, and they will not be attracted to states with failed or weak leadership, or crime and civil unrest or corruption that taints every transaction and decision.<sup>54</sup>

Although US democracy promotion and assistance is viewed by some, as a veiled hegemony and Western Imperialism,<sup>55</sup> there is no gainsaying the fact that bad governance and corruption have been responsible for the needless suffering of people in many nations, where government officials loot dry, State treasuries for their own benefits; and to the peril of citizens. America's effort at establishing democracy in such nations has in no small way, contributed to peace and security, all over the world. For instance, the 2009 Presidential elections in Afghanistan would have been a hotspot for violence and civil strife but

54. "Secretary Clinton's Speech at The 8th Forum of the African Growth and Opportunity Act", Real Clear Politics, August 5, 2009, available at <http://www.realclearpolitics.com/printpage/?url=http://www.realclearpolitics.com/article-> last visited on August 6, 2009. 55. Newman, E., "UN Democracy Promotion: Comparative Advantages and Constraints", in Newman E., and Rich, R., ed., *UN Role in Promoting Democracy Between Ideals and Reality*, Tokyo, United Nations University Press. 2004, p. 188 at 191.

for the efforts of the US government that persuaded Hamid Kazir and Abdullah Abdullah, to accept re-run elections, which eventually saw the former emerge as President following the withdrawal of the latter from the re-run.

The United States itself, has reiterated that it will not impose the type of democracy that countries should practice but that countries should give life to democracy in their own way.<sup>56</sup> Similarly, the United Nations has also posited:

It is not for the United Nations to offer a model of democratization or democracy or to promote democracy in a specific case. Indeed, to do so could be counter-productive to the process of democratization that, in order to take root and flourish must derive from the society itself. Each society must be able to choose the form, pace and character of its democratization process.<sup>57</sup>

What the above means, is that in societies that have no historical democratic culture, they can evolve a democratic culture that best suits their heritage; and which reflects and respects the will of their people. It must not be democracy, in the Western style. After all, respected Western democracies like Britain, Spain, Sweden and The Netherlands still retain their monarchies, albeit in a constitutional form. The British upper House of Parliament, the House of Lords, is not elective but both hereditary and appointive. Succession to

56. See Text of Obama's Speech in Ghana, *supra*, note 52 above

57. Boutros-Ghali, Boutros, "An Agenda for Democratization", New York, United Nations, 1996, para. 10, available at [http://www.un.org/en/events/democracyday/pdf/An\\_agenda\\_for\\_democratization%5B1%5D.pdf](http://www.un.org/en/events/democracyday/pdf/An_agenda_for_democratization%5B1%5D.pdf) last visited on August 6, 2009.



monarchies is not by elections but by primogeniture. But the key question is whether it accords with the will or consent of the people. So, states should be free to adopt democratic processes that affirm the will of their people.

Democracy has its own down side, though. It is a concept that upholds majority rule. In multi-ethnic societies however, democracy based on majority rule may actually become the source of conflict because the rule of the majority may not be in the interest of, or the will of the minority groups in the given State; and unless minority concerns are well addressed, democratic governance may well become the source of agitation for separatism, an idea many sovereign States dread to tolerate. The current calls for separation by various regional groups in Nigeria on account of the perceived Northern domination in the polity attest to this.

Nevertheless, democracy and self-determination are intermingled, as one is a means of realising the other. There has to be self-determination in order to talk of democracy. Conversely, there has to be democracy in order to meaningfully exercise the right to self-determination. Democracy is being propagated as an inclusive policy that engenders participation of citizens in governance; thereby de-emphasizing the exclusive concept of separation by means of establishment of independent States. It is also being dangled in the form of autonomy to aggrieved separatist groups in order to persuade them to remain in the territorial entity. The Hong Kong Special Administrative Region (HKSAR) is a good example of such assurances, which helped in persuading Hong Kong to be part of China PRC after the United

Kingdom terminated its colonial administration in 1997.

The concept has even been expanded and included as a criterion for recognition of statehood in the EC Guidelines for Recognition of New States in Eastern Europe and the Soviet Union.<sup>58</sup> In fact, Kosovo, in the behind-the-scene events that led to its unilateral declaration of independence and subsequent support by EU States and the United States, undertook to respect minority rights and promote democracy as a system of government.<sup>59</sup> This was clearly stated in the Independence Declaration, thus:

We declare Kosovo to be a democratic, secular and multiethnic republic, guided by the principles of non-discrimination and equal protection under the law. We shall protect and promote the rights of all communities in Kosovo and create the conditions necessary for their effective participation in political and decision-making processes.<sup>60</sup>

With some Middle East countries previously monarchical; former Communist countries like Russia and Poland, now embracing democracy; and former third world military dictators being transformed into democratically elected presidents, call it Western Imperialism or hegemony or whatever, one truth is glaring -

58. EC Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, December 16, 1991, (1991) 62 *British Yearbook of International Law*, 559, reproduced in Harris, D.J., *Cases and Materials on International Law*, 6<sup>th</sup> ed., London, Sweet and Maxwell, 2004, pp.147-148.

59. Weller, M., *Escaping the Self-Determination Trap*, Leiden, Martinus Nijhoff Publishers, 2008, pp. 140-141. 60. See Text of the Kosovo Declaration of Independence, February 17, 2008, para. 2, available at <http://news.bbc.co.uk/2/hi/europe/7249677.stm> last visited on October 27, 2009; see also preamble paragraph 5 of the declaration which states, "Reaffirming our wish to become fully integrated into the Euro-Atlantic family of democracies..."

democracy is fast becoming a determinant factor in the international community for asserting and efficiently exercising the internal aspect of self-determination.

In the American context, democracy is fast becoming an emergent right. Importantly, democracy by way of elections into executive and legislative arms of government were some of the autonomy granted Hong Kong under the Special Administrative Region (HKSAR) status, as a means of dissuading Hong Kong residents from seeking independence from the Peoples' Republic of China, when Hong Kong was handed over to the latter by the United Kingdom on July 1, 1997.<sup>61</sup> This right and fundamental freedoms provided under the Basic Law<sup>62</sup> are not enjoyed in mainland China, although some of them are provided for under the 1982 Chinese Constitution.<sup>63</sup> Besides, the current unrest in the Arab world is all hinged on democracy struggles; as is overt from the crisis in Tunisia, Egypt, Libya and other Middle East countries.

## **Conclusion**

Throughout this paper, we have presented the emerging concept of democracy as embraced by nations. It has become the most acceptable means of legitimising power and ascertaining the wish of the people.

61. Basic Law of the Hong Kong Special Administrative Region of the Peoples' Republic of China, April 4, 1990, Articles 45 and 68, available at [http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw\\_full\\_text.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text.pdf) last visited April 2, 2011. 62. Ibid. 63. It must however be admitted that there have been some reforms in mainland China in terms of restricted religious freedom, economic and cultural reforms. Although human rights are now guaranteed in the Constitution, they are not enforced as intended and the right to vote is only available in the National Peoples' Congress and at some village levels. For a fuller account of reforms in mainland China, visit [http://en.wikipedia.org/wiki/People%27s\\_Republic\\_of\\_China](http://en.wikipedia.org/wiki/People%27s_Republic_of_China)

The UN, regional bodies and hitherto tyrannical regimes have all made efforts to adopt democracy as the only form of legitimate internal governance in sovereign States.

The challenges facing world bodies and States alike, in implementing democracy have been highlighted. The adoption of autochthonous democracy has been flaunted as a way out of cultural biases. On the whole, while the concept has its own shortcomings, its acceptance by almost all parts of the world, is a clear signal that it is no longer a Western concept or ideology. It is in fact the standard for international acceptability, in the desire to belong to the comity of civilized nations.