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THE FOREIGN POLICIES OF AFRICAN STATES IN THE AGE OF DEMOCRACY AND HUMAN RIGHTS

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EXECUTIVE SUMMARY

The establishment of the AU in 2002 created opportunities for an ambitious democracy and human rights agenda in the foreign and continental policies of African states. The Constitutive Act of the AU sets the normative basis for integrating various global instruments and protocols, including the UN's Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The African Governance Architecture and the African Peace and Security Architecture were intended to provide a substantive institutional basis to advance human rights through good governance and democracy. While progress has been made to advance human rights, this has been far too modest when measured against the ambitions that African states and continental institutions put forth in 2002. This policy brief argues that this is the result of persistent and strong sovereignty norms, including an inability by African states to integrate diplomacies of human rights, democracy and good governance as pivotal identities in their foreign policies.

RECOMMENDATIONS

1 To retain credibility, the AU should embrace a global partnership with civil society and countries that have done well in protecting human rights. This is crucial for capacity building, information sharing and lesson drawing, while allowing for the coaching and mentoring of struggling states.

2 Africa's smaller states that have done well in protecting human rights should adopt diplomacies and external identities that diffuse democratic norms.

3 Pivotal states such as South Africa, even in times of domestic crisis, should continue to advocate an agenda of human rights and good governance. Peace diplomacy cannot be realised if it is not rooted in a sound conception of human rights as indispensable to a stable and prosperous Africa.

INTRODUCTION

On 21 May 1961 *The London Observer* published a piece by British lawyer Peter Benenson, titled 'The forgotten prisoners', in which he stated: 'Only when the last prisoner of conscience has been freed, when the last torture chamber has been closed, when the United Nations Universal Declaration of Human Rights is a reality for the world's people, will our work be done.'[2] The piece, which amplified the spirit of Article 12(3) in the Universal Declaration of Human Rights, resonated across the globe. At the time, the quest for justice, freedom and human rights was reaching a zenith in Africa, as many states became independent amid hopes for a new era of democracy and human rights. Yet decolonisation mostly failed to promote human rights, and emerging independent African states subverted the liberties that were at the core of their fight against colonial injustice. However, although human rights have not been sufficiently realised since Benenson penned that seminal piece, their portrait across the globe, and crucially in Africa, has evolved markedly. Still, Africa is worryingly lacking in human rights as an indicator of good governance and the consolidation of peace on the continent.

The AU is a year away from celebrating 15 years of existence. This milestone necessitates a broad conversation focusing on the state of human rights in member states. This is particularly urgent in light of Aspiration 3 of 'Agenda 2063: The Africa we want', the AU's 50-year development plan, which emphasises '[a]n Africa of good governance, democracy, respect for human rights, justice and the rule of law'.[3]

This policy brief argues that progress towards this aspiration has been scant and scattered as a consequence of the strong sovereignty norms in the foreign policies of member states. Unfortunately, these sovereignty norms have been replicated in the political and institutional dynamics of the AU. Yet the AU's Constitutive Act of 2000 and the plethora of governance instruments within both the African Governance Architecture and the African Peace and Security Architecture were meant to have the opposite outcome – a far stronger diffusion of the civilian norms of democracy and human rights. To avoid decline, the AU and member states that have done well in advancing democracy and human rights must push for a new dynamic that infuses diplomacies of human rights in the activities of the AU. This would imply member states' integrating diplomatic practices and engagements that view democracy, human rights and good governance as indispensable norms worth promoting in the external environment.

DEMOCRACY AND HUMAN RIGHTS DERAILED

It was hoped that the end of the Cold War would signal a virtuous path to democracy and the advancement of human rights across the globe. In Africa, positive national and continental discourses, including attempts to promote human rights and justice, started to emerge. The commitment to democracy was immediate – even if consolidation remained deficient. It is arguably the rightness of this cause (human rights as indivisible) that gave the AU the confidence to convene its activities in 2016 under the theme 'African year of human rights with a particular focus on the rights of women'. Elevating this question of rights to an AU summit theme demonstrates normative progress in Africa. However, the failure of the AU to invite international and local civil society to Addis Ababa to deliberate as partners on this important theme illustrates an unhelpful state-centric approach to dealing with issues of human rights and justice. It also demonstrates an inability to domesticate human rights in the foreign and African policies of individual member states. A hesitant approach to rights will not take the continent far in its efforts to address the obstacles it faces in reaching the ideals captured in the AU's Constitutive Act and the Universal Declaration of Human Rights. Through the Constitutive Act, the 53 heads of state and government who founded the AU committed themselves 'to promote and protect human and peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law'.[4] Moreover, both Articles 3 (Objectives) and 4 (Principles) of the Constitutive Act set out an explicit and ambitious agenda of human rights as pivotal to the advancement of the African people.[5] Respect for democratic principles, human rights, the rule of law and good governance, including institutions (parliaments and independent judiciaries) and processes (popular participation), are elevated to a raison d'être of a successful member state and a prosperous Africa.

Improvements over the past two decades deserve emphasis, with African countries holding regular elections – a crucial AU barometer in gauging the state of play on democratic legitimacy and human rights. African states have held regular elections over the past 15 years, and citizens' demands for public accountability

have been incremental. However, notwithstanding these elections, democracy in Africa remains stuck in a transitional phase, with a few exceptions such as South Africa and Senegal. Democratic transitions have not necessarily been consolidated, with unwelcome reversals for human rights, including civil and political rights, in countries such as Burundi, Egypt, Rwanda, Uganda and The Gambia.

Freedom House, in its 2015 Freedom in the World Report,[6] concludes that 'many of the largest gains and aggregate scores over the past five years were in Africa', but ratings in countries such as Burkina Faso, Uganda, The Gambia, Mali and the Central African Republic (CAR) have declined.[7] Freedom House's assessment, which is based on seven categories of democratic indicators, classifies 42 of the 55 African states as 'partly free' or 'not free'. More worryingly, the Freedom in the World 2016 Report emphasises the same concerns about the state of liberties in Africa, with six African countries (Sudan, the CAR, Western Sahara, Equatorial Guinea, Eritrea and Somalia) featuring in the top 10 'worst of the worst' category.[8] Only seven African countries – Namibia, South Africa, Tunisia, Cape Verde, Mauritius, São Tomé and Príncipe, and Senegal – are classified as 'free'.[9]

Incomplete democratic transitions partly explain the discomforting stasis on human rights in Africa. The inability of states in transition to create able and inclusive institutions has accelerated the use of different forms of conflict, including violent religious extremism and political violence, to settle grievances. The corrosive effect of instability has been an increase in autocratic rule and a decline in democratic governance, including sharp slides in the protection of human rights.

The picture is likely to worsen as Africa's economic performance continues to slide. According to the World Bank Africa Pulse Report of October 2105, economic growth in Africa contracted from 4.7% in 2014 to 3.7% in 2015, strengthening slightly to 4.4% in 2016.[10] Thus, with Africa's bleak economic outlook, at least in the short to medium term, prospects for the substantive domestication of democracy and human rights appear slim. With rising demands for more socio-economic rights, governments whose fiscal space is limited could be tempted to unleash repressive apparatus on protesting citizens. In 2016, where economic headwinds are intense, the temptation to tighten the space for democracy and human rights may be far greater. New

and innovative approaches will be needed to create enthusiasm for democratic governance.

PROMOTING DIPLOMACIES OF DEMOCRACY AND HUMAN RIGHTS

As set out in Agenda 2063, it is expected that 'Africa shall have a universal culture of good governance, democratic values, gender equality, respect for human rights, justice and the rule of law'.[11] But the AU's state-centric approach could postpone human rights and democracy for at least another generation. More should therefore be done to reverse the decline and accelerate the agenda of human rights in Africa. But new issues have emerged, including the increase in undemocratic initiatives that promote constitutional amendments allowing leaders to extend their stay in office. The AU and the regional economic communities (RECs), with the exception of ECOWAS, still have to reflect on this matter, which undermines the very values and aspirations that inform Agenda 2063. In many instances, when protests against term extensions occur they are met with state-sanctioned violence and imprisonment. The unrest in Burundi since April 2015, when President Pierre Nkurunziza decided to run for a third term, is a good example of this.

Member states have acceded to international instruments that seek to advance inclusive and tolerant societies, and to similar AU initiatives, including the African Charter on Human and People's Rights. In March 2015 The UN Human Rights Council adopted Resolution 28/14, which established a platform for dialogue and the promotion of human rights, the rule of law and democracy.[12] What is lacking is the ability of the AU and African states to follow through on these commitments.

Also worrying are developments in the international arena that do not reflect a commitment to implementing democracy and human rights instruments. The regime-change doctrine pursued by Western capitals, purportedly in favour of democracy and human rights, has not been helpful in Libya, Syria, Iraq or Afghanistan. Nor has the Arab Spring, with the encouraging Tunisian exception, been a boon for democracy and human rights. Africa's changing politics of crises (economic and political) have caused a shift in focus to regime stability as opposed to human security, which is centred on individual rights. In light of these developments there is an urgent need to refocus African states and the AU on a diplomacy of human rights as a precondition for a sustainable future.

But how can a diplomacy of human rights be effected? First, framing 2016 as the 'African Year of Human Rights' provides a crucial entry point for African states to address the plethora of issues that stunt the human rights agenda. AU and REC summits must serve as avenues for candid reflection on the challenges member states face in promoting and protecting human rights. This implies a coaching and mentoring role for struggling member states by the AU Commission, with the view to guide them to develop domestic democratic traditions and institutions; and to meet their commitments to continental and global instruments. The AU can lead, but it should be accompanied by a global partnership that involves the UN, non-governmental organisations (NGOs) and major Western democracies.

Second, the AU, notably through the AU Commission, can demonstrate its good intentions by inviting civil society to become a partner in these discussions. Without being overly prescriptive, national civil societies and international NGOs should for their part provide evidence-based solutions while engaging governments as partners rather than antagonists that should be named and shamed.

Some of Africa's smaller states have fared relatively better in the promotion of various freedoms. This makes for an excellent opportunity for demonstration and lesson-learning. To facilitate such a process, best cases such as Mauritius, Botswana and Namibia should adopt foreign policies that incorporate democracy and human rights as crucial pillars in their external engagements.

Fourth, pivotal states such as South Africa that have steadily reduced their emphasis on questions of human rights in foreign policy should recall and rejuvenate those ideals that had informed their international struggle for liberty. While South Africa struggles in some instances with the consolidation of a human rights culture, it should not shy away from its continental responsibility to promote these norms in its foreign policy. To be effective, South Africa should share its challenges with other countries, thereby creating opportunities for peer learning.

CONCLUSION

Africa still lags behind on questions of human rights. There is a yawning democratic and governance gap, and it is crucial that this be addressed if human rights are to flourish. The changing economic climate and continuing conflict in certain African states could postpone full democracy and legitimate aspirations for human rights. But with the AU having declared 2016 as the 'African Year of Human Rights', an opportunity exists for member states to rededicate themselves to implement fully the various international and continental human rights instruments they have ratified.

ENDNOTES

1   Dr Alfredo Tjiurimo Hengari is a senior fellow in SAIIA's Foreign Policy programme.

2   See BBC News, 'Obituary – Peter Benenson', 26 February 2005, http://news.bbc.co.uk/2/hi/uk_news/4301065.stm, accessed 27 January 2016.

3   See AU, *Agenda 2063: The future we want*, final edition, 2015, p. 5, http://www.un.org/en/africa/osaa/pdf/au/agenda2063.pdf, accessed 16 February 2016.

4   See AU, 'Constitutive Act of the African Union', 2000, Article 3.

5   *Ibid.*, Article 4.

6   Freedom House, *Freedom in the World 2015: Discarding Democracy: Return to the Iron Fist*.

7   *Ibid.*

8   See Freedom House, *Freedom in the World 2016: Anxious Dictators, Wavering Democracies: Global Freedom under Pressure*, p. 4.

9   *Ibid.*, p. 13.

10   See World Bank Group, Office of the Chief Economist, 'World Bank Africa Pulse Report – October 2015', p. 2.

11   See AU, 2015, *op. cit.*, p. 5.

12   See UN Human Rights Council, '28th Session of the United Nations Human Rights Council', 2–27 March 2015, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ResDecStat.aspx, accessed 14 February 2016.