

# Human Rights and The African Renaissance

---

Kenneth Asamoah Acheampong\*

---

## Abstract

*This article examines the idea of African renaissance in relation to the teaching of human rights in African schools. It explores the connection between the African Renaissance and human rights, and whether there is a specific African concept of human rights. In the light of these discussions, the article sketches a perspective that should underpin the teaching of human rights a task that the African Charter on Human and Peoples' Rights, 1981 obligates its States Parties to undertake.*

## Introduction

The 50th anniversary of the Universal Declaration of Human Rights, 1948 presents Africa with the opportunity to soberly reflect on the concept of human rights as it relates to national development and the protection of the basic rights of citizens either as individuals, or as members of a social group. Article 2(1)(e) of the Charter of the Organization of African Unity, 1963 imposes on its members the need "to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights." This provision was reiterated in the preamble of the African Charter on Human and Peoples' Rights, 1981. Article 45 of the African Charter, which spells out the mandate of the African Commission on Human and Peoples' Rights, obliges the Commission to, *inter alia*:

collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the

case arise, give its views or make recommendations to Governments (1981: article 4.5.1.a).

It is in this context that the Commission has recommended to States Parties to the African Charter that they should integrate human rights into the teaching curriculum of schools at all levels. This paper is about the need to teach human rights in schools. The subject is examined in the context of current debates on the African Renaissance, and in the framework of the following questions: (i) What is African Renaissance? (ii) Is there any connection between African Renaissance and human rights? (iii) Is there a specific African concept of human rights? (iv) In the light of discussions regarding issues (i), (ii), and (iii) above, what should be the content of the teaching curriculum on human rights in Africa? I consider this approach to be germane not only to the teaching of human rights in Africa but also to the realisation of the duty assumed by African States, in the last paragraph of the African Charter on Human & Peoples' Rights, "to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa."

## **The African Renaissance**

The following discussion is based on the assumption that *human rights* can be taught in the context of the African Renaissance. The notion of African Renaissance has become extremely controversial. Some analysts regard it as a fanciful idea while conceding that it is quite popular, comparing it rather satirically to the story of the Emperor's New Clothes. According to Ronge, for example,

We South Africans have seen many a version of the Emperor's New Clothes pass along the ramps of political fashion. They have had a variety of names and huge crowds have admired them but, as in the famous story, they have all turned out to be illusions of one kind or another.

The latest of these invisible suits, one being worn with increasing frequency by politicians and media gurus, is the so-called "African Renaissance" and I have learned that it is a risky thing to admit that you can't see it. That's one of the reasons it has become so very chic. If you can see it, it makes you part of a visionary African inner circle those who have been blessed with an almost mystic perception of a new dawning of Africanness. Not to see it makes you an outsider ... when I ask people about it, they say: "If you can't see it, then you are not a real African and probably don't really belong here" (Ronge, 1997: 8).

Clearly exasperated by the efforts in some circles to link the African Renais-

sance with the future of Africa, Jonathan Moyo contends that "Stripped of the feel-good pretences about the destiny of Africans beyond their ill-fated past, prevailing notions of the *African Renaissance* are no more than [a] little political nonsense" (1998: 9). To him, "One of the major reasons why this alleged *renaissance* has acquired the status of political nonsense is that, it is now a catchall phrase full of promise without signifying anything important or new" (1998: 9). Though Moyo characterizes as "manifestly vacuous and misleading" pronouncements about the African Renaissance, which are rooted in South Africa's experience, he nevertheless concedes "the possibility of an African renaissance" which contains some potential as a prospective political device for positive social mobilization and cultural revival in the new Africa" (1998: 11).

Whether or not one agrees with Moyo that "South Africa is not Africa and Africa is not South Africa" and that "the new South Africa is a result of the *African renaissance* and not a prime mover" (1998: 10),<sup>1</sup> it is true that the current debate about African Renaissance has been initiated in South Africa with the principal exponent being its President Thabo Mbeki. It is equally true that the discourse on African Renaissance has so far lacked specificity. There has been deliberate attempts "to conflate South African interests with the African agenda" and, in the process, distort the debate on the new Africa (Moyo, 1998: 10).<sup>2</sup> It has even been argued that South Africa cannot claim to "lead an African Renaissance, it cannot: indeed, it dare not" (Vale and Maseko, 1998: 283).

There is also the politically sensitive issue of who is an African. Consider Thabo Mbeki's unequivocal assertion "I am an African", made in South Africa's Constitutional Assembly as that country sought to find a proper constitutional grounding for the new political dispensation.<sup>3</sup> And relate it to the retort by F.W. de Klerk (former President of South Africa), soon after Mbeki's speech, that "I am also an African", as well as the claim by the Freedom Front's Constand Viljoen<sup>4</sup> who, in the same context, also claimed to be an African. From a legal perspective, an African is any person deemed as such by the citizenship laws of an African country. For our purposes, however, we go beyond this legalistic perception of an African. We would also regard as Africans all peoples of African descent who, for one reason or another, find themselves in the African Diaspora and who may be emotionally and culturally attuned to the hopes and aspirations of Africa as outlined in, for example, such documents as the Charter of the Organization of African Unity, 1963, and the African Charter on Human and Peoples' Rights, 1981. An inclusive definition of the African identity is important because an African "... identity is still in the making. There isn't a final identity that is African. But, at the same time, there is an identity coming into existence. And it has a certain context and a certain meaning" (Appiah 1992: 117).

In spite of his profound scepticism about this notion, Ronge still contends that

“One definition which seems workable is that it (African Renaissance) is the rediscovery of Africanness at a moment when, for the first time, Africa is free from domination by alien cultures” (1997: 8). Moyo for his part provides the following six defining characteristics of the African Renaissance:

- That Pan-African political independence has now been achieved.
- That the majority of African governments are now democratic.
- That African governments are now running liberalized market driven economies.
- That many African governments now enjoy considerable autonomy in the formulation of their foreign policy.
- That there is now a new breed of African leaders in countries like Democratic Republic of Congo, Eritrea, Ghana, South Africa and Uganda.
- That the end of the Cold War has made globalization possible with the result of new trade and investment opportunities for Africa (1998: 11).

Peter Vale and Siphos Maseko, on the other hand, posit an Africanist interpretation that “uses the African Renaissance to unlock a series of complex social constructions around African identity” (Vale and Maseko, 1998: 278). They imply that the African Renaissance must be nurtured in an African environment and not in an externally engineered environment propelled by a globalisation which has room for Africa only as long as Africa provides a ready market for all kinds of foreign goods, services, ideas and expertise. The argument here is not that Africa, like the proverbial ostrich, can avoid the negative aspects of globalization. Rather, it is that Africa should nudge itself out of its political, economic, social and cultural slumber and engage globalization in such a manner as to secure the best interest of the overwhelming majority of Africans. This, in their view, must be distinguished from the call for Africa’s rebirth in the classical meaning of renaissance (Kirkpatrick, 1983: 1095). It is a spirit of awakening. According to them,

In drawing upon the distinctive image of Renaissance, the intention seems not to pronounce or deliberately proclaim a renewal; to do this would be plainly absurd. The resonance of the term ‘Renaissance,’ however, is patent: an ‘outburst of mental energy’ (Rowland, 1997: 30) to promote a spirit of awakening in Africa in the late twentieth century (Vale and Maseko, 1998: 278).

It is this spirit of awakening in Africa which undergirds the issues discussed here.

## **The African Renaissance and Human Rights**

On 10 December 1998, the 50th anniversary of the Universal Declaration of Human Rights, 1948, the United Nations Secretary-General, Kofi Annan, stated:

Today, we honor the highest of human aspirations and renew our promise to conquer the worst of human cruelty. We pay tribute to the minds of those who conceived of these human rights, and to the memory of those who died for them.<sup>5</sup>

He was paying tribute to the statesmen whose endeavours gave dynamism to the freedoms that formed the spirit and letter of the United Nations Charter in 1945. The preamble to this historic document states: "... THE PEOPLES OF THE UNITED NATIONS, DETERMINED ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ..." The horrors committed by the Axis Powers, against human kind had made this commitment a historic responsibility. Hence the United Nations Charter makes reference to "human rights" and "fundamental rights".<sup>6</sup>

The United Nations defines human rights, as follows: "Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings" (UN1987: 4). Shridath Ramphal, a former Secretary-General of the Commonwealth, gives an expanded description of human rights in the following terms:

Human rights are as old as human society itself, for they derive from every person's need to realise his essential humanity. They are not ephemeral, not alterable with time and place and circumstance. They are not the product of philosophical whim or political fashion. They have their origin in the fact of the human condition; and because they have, they are fundamental and inalienable. More specifically, they are not conferred by constitutions, conventions or governments. These are the instruments, the testaments, of their recognition; they are important, sometimes essential, elements of the machinery for their protection and enforcement; but they do not give rise to them. They were born not of man, but with man (1981: 10).

Such definitions of human rights, though useful, have not ended the controversy over the term, which has centred mainly on the content and prioritization of rights.<sup>7</sup> The confrontation between the West and the East, during the Cold War era, exacerbated this controversy over human rights issues, which ultimately

produced two UN covenants, *viz.*, the International Covenant on Economic, Social and Cultural Rights, 1966, and the International Covenant on Civil and Political Rights, 1966.

The controversy notwithstanding, the Member States of the United Nations have pledged themselves, in accordance with articles 55 and 56 of the United Nations Charter, to take joint and separate action in co-operation with the United Nations for the achievement of "Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." The International Bill of Human Rights constitutes the foundation of the norms which are internationally accepted as the bedrock of the protection of human rights. This Bill comprises: (i) the Universal Declaration of Human Rights, 1948; (ii) the International Covenant on Economic, Social and Cultural Rights, 1966; (iii) the International Covenant on Civil and Political Rights, 1966; (iv) Optional Protocol to the International Covenant on Civil and Political Rights, 1966; and (v) the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty, 1989. All other human rights instruments of the United Nations take their roots from these documents. The rights embodied in them are enjoyed on the basis of equality and non-discrimination and not on the accident of birth or life's circumstances.<sup>8</sup> They enure to human beings both in their individual capacities and as members of social groups or collectivities.

Furthermore, there is consensus at the international level concerning the expectations aroused, and the demands made in the name of human rights (Wilson, Jr., 1978: 61 and McKay, 1978: 70). For example, on the basis of the principles of the universality of human rights, interdependence of human rights and interrelatedness of human rights, norms of human rights are deemed to be composite and mutually reinforcing. Mainly because of philosophical and ideological differences, however, human rights have been and remain categorized as (i) civil and political rights, (ii) economic, social and cultural rights, and (iii) solidarity rights. Civil and political rights include the right to freedom of speech or expression, the right to freedom of movement, the right to peaceful assembly and association and the right to a fair trial. Included in economic, social and cultural rights (the so-called second generation human rights in contrast to the civil and political rights which are labelled first generation human rights) are the right to work, the right to a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing, housing and medical care, the right to education, and the right to participate freely in the cultural life of one's community. The solidarity rights (which are known as third generation human rights) include the right to peace, the right to a healthy environment, the right to the common heritage of mankind and the right to development.

It has been contended that from South Africa's standpoint:

... the visionary language of the African Renaissance was underscored by five suggested areas of engagement: the encouragement of cultural exchange; the emancipation of the African woman from patriarchy; the mobilization of youth; the broadening, deepening and sustenance of democracy; and the initiation of sustainable economic development (Vale and Maseko, 1998: 274).

These issues, coupled with Moyo's six defining characteristics of the African Renaissance outlined above, provide a strong nexus between African Renaissance and human rights. If nothing at all, the emphasis on democracy or democratic governance necessarily invokes, *in tandem*, the idea of human rights. Even though democracy is as popular as human rights, it has not always been welcome; in the past, it had been actively resisted by classes that felt threatened by it. Among such classes were feudal orders, rule-by-divine-right advocates, as well as aristocratic and absolutist monarchies. In recent history, Nazi and other fascist regimes have derided and denounced democracy as nothing short of "anarchy", "democracy" or "massocracy" (Gitonga, 1988: 5). Today, African countries, like their counterparts in other parts of the south are experiencing the third wave of democratic rebirth.

The current popularity of democracy does not in any way translate into a universal agreement as to what democracy means. There is, however, a general perception that democracy is rooted in the principle of popular sovereignty by which the citizenry is the ultimate repository of all state authority. Hence, the exercise of any such authority, whether executive, legislative or judicial, is considered to be democratic only if it is derived from the free will of the citizenry. The human rights dimension of democracy emanates from article 21(3) of the Universal Declaration of Human Rights, 1948, which stipulates:

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Clearly, elections constitute a major mechanism by which popular sovereignty is secured. But elections are meaningful only if certain basic human rights are guaranteed. These include the right to vote; the right to take part in the government of one's country directly or through freely chosen representatives; the right to freedom of opinion and expression; the right to freedom of peaceful assembly and association; the right to freedom of thought and

conscience; the right to freedom of movement; and the right to liberty and security of person.

Another aspect of democracy which underscores the link between human rights and democracy is developmental democracy which embodies participatory democracy. The latter is underpinned by popular participation. Developmental democracy posits that citizens should be allowed to formulate their own developmental goals and adopt plans by which they can realize such goals with the co-operation, but not the overwhelming and oppressive control, of the state. In 1990, the Secretary-General of the United Nations emphasized the mutually inclusive nature of developmental democracy and human rights when he stated:

The concept of people's participation in their own development is enshrined in the principal documents of the United Nations. The Charter itself not only begins with the words "We the people of the United Nations", but also declares that they, the people, are determined among other things, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ..." and "to promote social progress and better standards of life in larger freedom" (United Nations Economic Commission for Africa, 1990: 6).

The human rights instrument which stresses most the linkage between human rights, democracy and development is the Declaration on the Right to Development adopted by the United Nations' General Assembly in 1986. In article 1(1), this Declaration states the essence of the right to development as follows:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

Article 2(1) provides justification for this; namely, that "the human person is the central subject of development and should be the active participant and beneficiary of the right to development." The adverse effects of *developmental dictatorship*, which is the antithesis of developmental democracy, also bear out, though from a negative point of view, the symbiotic relationship between human rights and democracy. As noted by Gregor (1979: 96), "The hardships of developmental dictatorship are well known: liberty is suppressed; labour is regimented and exploited; freedom of movement is curtailed; personal choice is severely restricted".

In his address to the World Conference on Human Rights held in Vienna, Austria, in June 1993, Boutros-Boutros Ghali, then Secretary-General of the



United Nations, opined that “the imperative of democracy” was what was truly at stake as the world neared the end of the century. After emphasizing that individual rights and collective rights could be reconciled only through democracy, he expatiated on “the imperative of democratization” as follows:

The imperative of democratization is the last- and surely the most important – rule of conduct which should guide our work. There is a growing awareness of this imperative within the international community. The process of democratization cannot be separated, in my view, from the protection of human rights. More precisely, democracy is the political framework in which human rights can best be safeguarded.

This is not merely a statement of principle, far less a concession to a fashion of the moment, but the realization that democracy is the political system which best allows for the free exercise of individual rights. It is not possible to separate the United Nations promotion of human rights from the establishment of democratic systems within the international community (United Nations, 1995: 446).

A democratic system is an imperative also for the emancipation of the African woman from patriarchy, which we consider as an aspect of the African Renaissance. Generally, patriarchy in Africa is inimical to women’s enjoyment of the benefits of the principles of human rights. It encourages the unfettered display of male chauvinism under the guise of customary protection. Consider, for example, the fact that a woman, subject to customary law in Lesotho’s patriarchal society (and the overwhelming majority of women are) is a legal minor with no *locus standi in judicio*. She, therefore, has to be under the guardianship of one male or another in her life. As observed by an International Labour Organization’s multidisciplinary mission to Lesotho:

Under customary law, a woman is a perpetual minor usually under the guardianship of her father or oldest member of her family, her husband upon marriage and under her eldest son or a male customary heir upon the death of her husband ... The status of a single woman above twenty-one years may be redeemed if she can satisfy the “life-style test,” indicating that she has adopted a modern way of life and is therefore emancipated. For the majority of women, however, particularly those in the rural areas, they are usually not emancipated and are therefore perpetual minors (International Labour Organization, 1994:45, 46).

Women under such patriarchal system, virtually cease to be bearers of

human rights. They have no legal capacity to contract unless assisted by a husband or guardian. This becomes evident when the customary law woman needs bank credit, or wants to acquire property.<sup>9</sup> Male protection or guardianship is also a *sine qua non* when this woman wants to enter into employment contracts. The 1993 Constitution of Lesotho, underpins this state of affairs by stipulating, in section 18(4)(c), that no law is discriminatory either of itself or in its effect if it makes provision for the application of customary law with respect to any matter in the case of persons who, under law, are subject to that law. This constitutional provision offends both the letter and spirit of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, which Lesotho ratified on 22 August 1995 (Acheampong, 1993: 79-105). The Convention mandates, in article 15(1), that "States Parties shall accord to women equality before the law". It stipulates further, in article 15(2), that "States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to to exercise that capacity". In the latter Article the Convention enjoins States Parties to "give women equal rights to conclude contracts and to administer property". This injunction is undergirded by the provision in Article 15(3) of the Convention that "... all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void".

The African Renaissance is yoked to respect for human rights. No awakening of the African spirit can dispense with the demands it makes. It affirms the need to uphold democracy and respect for the fundamental rights of the citizen. Vale and Maseko sum it up as the

... more creative ideas that have also filled, as it were, the empty policy vessel represented by the African Renaissance. South Africa's government is committed to the development of democracy in Africa; indeed, Mbeki's statements on the "African Renaissance" have insisted that "the people must govern" and Mandela has been vocal on the need to protect human rights on the continent (Vale and Maseko, 1998: 277).

### **An African Concept of Human Rights**

Philosophical discourse on human rights is dominated by Western conceptions of human rights. This, more than anything else, makes the analyses of the concept of human rights in the African context imperative and such analysis should take account of western philosophy.

Natural law and natural rights theories and legal positivism have had a lot to do with western discourses on human rights. To the natural law school of thought, human rights emanate from natural law, or the laws of nature, which spring from divine will or metaphysical absolutes and confer certain rights upon

individual human beings by virtue of their nature as humans. According to this school, any positive law, whether municipal or international, must be subordinated to natural law, which is characterised as everlasting, universal in its application and constant or unchanging.<sup>10</sup> Legal positivism has nothing complimentary to say about this conception of law and rights. To positivists, the discourse on rights is meaningful only if what is deemed to be a right is positivised, i.e., set down or enshrined in a legal system, and is enforceable. Thus, the only rights one can talk of are positive rights and not natural rights which, the positivists contend, exist only in positive morality. The most derisive description of natural law and natural rights is generally ascribed to the staunch legal positivist Jeremy Bentham. After decrying as “terrorist language” the natural law school’s characterisation of natural rights as imprescriptible or inalienable, he disparaged natural law and natural rights as follows:

Right is the child of law; from real laws come real rights, but from imaginary laws, from ‘laws of nature’ come imaginary rights... Natural rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense (Bentham 1970: 32).

Marxist-Leninist conceptions of human rights have, likewise, not been kind to natural law and natural rights. According to Kartashkin:

The Marxist-Leninist theory deduces human rights not from the ‘nature’ of man but from the position of an individual in the society and, above all, in the process of public production (Kartashkin 1982: 631).

Proceeding from its firm belief that rights are not inherent in the nature of man and do not constitute some sort of natural attributes, Marxism-Leninism argues that human rights, like all other rights of human beings, emanate from the material conditions of life, and not from any universal and metaphysical law.

In spite of such persuasive criticisms, natural law theory has continued to enjoy some appeal in human rights discourse. This is principally the result of the deficiencies of positivism and Marxism, the two main detractors of the natural law theory and the natural rights doctrine. As Shaw contends,

Positivism as a theory emphasized the authority of the State and as such left little place for rights in the legal system other than specific rights emanating from the constitutional structure of that system, while the Marxist doctrine, although based upon the existence of certain immutable historical laws governing the development of society, nevertheless denied the existence of rights outside the framework of the legal order (1986: 172-173).

What this means in human rights terms is that formal rules of a legal system do not, necessarily guarantee human dignity as was the case in apartheid South Africa and Nazi Germany. Equally relevant, in this context, is the infamous American case *Dred Scott v Sanford*<sup>11</sup> in which the American Supreme Court upheld the traditional legal concepts which did not recognize Americans of African origin as bearers of rights, and determined that such a view "was fixed and universal".<sup>12</sup> The same Court in its so called *separate-but-equal* doctrine in the case of *Plessy v Ferguson*,<sup>13</sup>

also sanctified racial segregation and Jim Crow laws which did not treat African-Americans with the same concern and respect as white Americans. After this judgment, it took African-Americans almost seventy years of struggle for civil rights before the *Civil Rights Act*, 1964, which recognised their civil rights, was passed by the American Congress and signed into law by President Lyndon B. Johnson.

This analysis dovetails into what we consider to be the major context of human rights discourse in Africa, i.e., the historical context which bears out the struggles of Africans to be free from the tentacles of colonialism, imperialism, apartheid and dictatorship. The right to self-determination, by virtue of which all peoples freely determine their political status and freely pursue their economic, social and cultural development is crucial in this regard. This is what Shivji (1989: 58) calls "the central right" for Africans. But when European powers met at the Berlin Conference of 1884/5 to partition the African continent among themselves, they obviously did not, consider Africans as deserving of such a right. Nonetheless, the right to self-determination has been the primary force driving the struggles to emancipate the continent from colonialism, imperialism, apartheid and dictatorship. The right to self-determination is central to human rights struggles in Africa and therefore requires elaboration. Boutros-Boutros Ghali, the former Secretary-General of the United Nations, stressed this historical context of human rights when, at the opening of the World Conference on Human Rights held in Vienna in 1993, he declared:

Human rights should be viewed not only as the absolute yardstick which they are, but also as a synthesis resulting from a long historical process. As an absolute yardstick, human rights constitute the common language of humanity. Adopting this language allows all peoples to understand others and to be the authors of their own history. Human rights, by definition, are the ultimate norms of all politics.

As an historical synthesis, human rights are, in their essence, in constant

movement. By that I mean that human rights have a dual nature. They should express absolute, timeless injunctions, yet simultaneously reflect a moment in the development of history. Human rights are both absolute and historically defined (United Nations, 1995: 442).

The idea of peoples' rights advanced by the African Charter on Human and Peoples' Rights, 1981 defines an African concept of human rights. The recognition given to peoples' rights in the African Charter not only distinguishes this Charter from other regional human rights treaties, but also highlights the historical struggles of African peoples to resist domination and exploitation and achieve political emancipation as well as economic and social justice. This is summarised in the preamble to the African Charter on Human and Peoples' Rights, which declares that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples." It also undergirds the reaffirmation made in the preamble of the same Charter of "the pledge they (i.e., States Parties to the Charter) solemnly made in article 2 of the said Charter (the Charter of the Organization of African Unity) to eradicate all forms of colonialism from Africa, to coordinate and intensify their efforts to achieve a better life for the peoples of Africa ...". Hence, in its Article 19, the African Charter on Human and Peoples' Rights stipulates that "All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another." Article 20 expatiates this in its sub-Article (1) by asserting: "All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen." The teaching of human rights should be situated in this history and vision which are embodied in the African Renaissance.

### **The Teaching of Human Rights in Africa**

The teaching of human rights in Africa should take into account the recognition given by States Parties to the African Charter on Human and Peoples' Rights "that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection and ... that the reality and respect of peoples' rights should necessarily guarantee human rights" (1981: Preamble). As discussed earlier, the idea of peoples' rights gives an African content to human rights: it brings to the fore the struggles of African peoples to liberate themselves from foreign domination and political, economic, social and cultural exploitation. This affirmation that human rights stem from the attributes of human beings should also assist us to properly focus the teaching of human rights in the context of the African Renaissance. As noted by the United Nations:

Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection (1987: 4).

The preamble to the 1966 International Covenants on Human Rights also affirm that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Furthermore, "these rights derive from the inherent dignity of the human person". Denying any person his or her basic rights will, thus be tantamount to the loss of human dignity, which is the common denominator underpinning a person's rights; viz., respect, power, enlightenment, health, well-being, skill, affection and rectitude (Shaw, 1986: 173). Admittedly in certain limited circumstances human rights may be limited or suspended to secure due recognition of the rights of others and to meet the just requirements of the welfare of the community at large. But in recognition of the need to safeguard human dignity, the International Covenant on Civil and Political Rights (1966), makes provision for non-defeasible rights such as the right to life (Article 6), the right to freedom from torture or to cruel, inhuman or degrading treatment or punishment (Article 7), the right to freedom from slavery and servitude (Article 8) and the right to freedom of thought, conscience and religion (Article 18).

Rights are meaningful only if the supposed bearers are aware that they possess such rights. That is why the teaching of human rights in Africa should stress the duty imposed by the said Charter upon States "to promote and ensure, through teaching, education and publication, the respect of the rights and freedoms contained in the ... Charter and to see to it that these freedoms and rights as well as corresponding duties are understood" (1981: article 25). Equally important is the stress of the African Charter that States Parties "have the duty to guarantee the independence of the Courts" and "allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the ... Charter" (1981: Article 26). If human rights is to be more than mere rhetoric and the legal *maxim ubi jus ibi remedium*<sup>14</sup> is to bear any meaning, then governments and citizens must appreciate it and uphold the independence of the judiciary and national human rights institutions such as the Ombudsman for the effective protection of human rights and the maintenance of the democratic environment. On the premise that African traditions do not perceive the individual as isolated from community, the teaching of human rights in the context of the African Renaissance should also focus on the African Charter's mandate that the individual shall have duties

towards his family and society. In this respect, it is worth noting that it is not only Africans who assert that groups have human rights and that in certain situations, e.g. when genocide is being perpetrated, the individual's rights – including the right to life, the fulcrum of all other rights – become meaningful only when the rights of the group of which he is a member are protected.<sup>15</sup> Briefly stated, the teaching of human rights in the context of the African Renaissance should focus on the individual. But the rights of the group should remain an integral part of the rights of the individual.

## Conclusion

Through the idea of African Renaissance, which is steadily growing in popularity, Africa is seeking to awaken itself to meet the challenges posed by its developmental needs as the 21st century and the new millennium unfold. Africa's renaissance would reach fruition only if it is situated in the protection and enrichment of the rights of the people. The teaching of human rights in Africa's educational institutions should also take account of the imperative of the continent's renaissance. It should also aim at casting aside the cloak of national sovereignty behind which governments have committed serious crimes against their people. International peace and security demands respect for human rights. In the light of the genocide in Rwanda and wanton human rights abuses occurring elsewhere on the continent, the OAU must provide exemplary leadership in finally burying the principle of "non-interference in the internal affairs of States", which was enshrined in the OAU Charter (1963 Article III.2). It is under the cover of this principle that many atrocities have been committed.

## Notes

- \* Senior Lecturer, Faculty of Law, National University of Lesotho, Roma, Lesotho.
- 1. Moyo further contends that "To ignore this reality and pretend that the *African Renaissance* started in 1994 (when apartheid formally ended) would amount to dishonest and dangerous wishful thinking" (1998: 10).
- 2. To back this, Moyo gives an example of a tour of Asia by Mbeki in the course of which "His speeches there were underlined by platitudinous statements about the *African renaissance*, all of which were about South African commerce and industry, two pivotal areas that continue to be dominated by whites. But, even if whites did not dominate these areas, South Africa is not Africa and Africa is not South Africa" (1998: 10).
- 3. Vide *Debates of the Constitutional Assembly* (South Africa), No. 1, 29 March – 8 May 1996, cols. 422-427.
- 4. The "Freedom Front" is a political party in South Africa. Constand Viljoen, a former General in the South African army, is its leader.

5. Quoted in The Associated Press (1998), "Countries with poor human rights records defend themselves at UN", *The Associated Press*, December 11.
6. For specific references to these expressions in the UN Charter, see the following provisions of the Charter: preamble; article 1(3); article 13(1)(b); article 55; article 62; article 68 and article 76.
7. To appreciate this controversy, *vide*, e.g.: (i) Cranston, M. (1967), "Human Rights, Real and Supposed," in D.D. Raphael, (ed.), *Political Theory and the Rights of Man* (London: MacMillan); A. Gewirth, (1984), "The Epistemology of Human Rights", in P. Frankel, *et. al.* (eds.), *Human Rights* (Oxford: Basil Blackwell); and T. Campbell, *et. al.* (eds.) (1986), *Human Rights: From Rhetoric to Reality* (New York: Blackwell).
8. The fundamental human rights principle of equality and non-discrimination does not mandate sameness of treatment of all persons at all times. It provides for both formal, absolute, or mathematical equality (i.e., sameness of treatment) and relative equality (i.e., differential treatment). *Vide* Warwick, M. (1983), *Equality and Discrimination Under International Law* (Oxford: Clarendon Press); and The dissenting judgment of Judge Tanaka in the *South-West Africa Cases (2nd Phase)*, 1966, International Court of Justice.
9. The ILO mission did, however, note an exception to this legal limitation in "a 1977 Order which allows a married woman to open a bank account at Lesotho Bank in terms of *Lesotho National Development and Savings Order of 1971* (which created Lesotho Bank). It expressly states that a married woman whether under marital power or not, may be a depositor in the savings bank and may without assistance execute all necessary documents and give all necessary acquittance and be liable to all obligations attached to depositors. Credit, however, is still restricted." (International Labour Organization, 1994: 46).
10. *Vide*, generally, Castberg, F. (1968), "Natural Law and Human Rights: An Idea-Historical Survey", in Eide, A. and Schou, A. (eds.), *International Protection of Human Rights* (Nobel Symposium, 7th Oslo, 1967) (New York: Interscience Publishers).
11. 60 US 393 (1857).
12. *Ibid.*, at 407.
13. 163 US 537 (1896).
14. The expression literally means where there is a right, there is a remedy.
15. According to article II of the UN Convention on the Prevention and Punishment of the Crime of Genocide, 1948:

... genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious



group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group." (italics added).

## References

- Acheampong, K.A. (1993). "The Ramifications of Lesotho's Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women", *Lesotho Law Journal*, Vol. 9, No. 1, pp. 79-105.
- African Charter on Human and Peoples' Rights, 1981.
- Amnesty International (1991), Document AI Index: 10R/63/01/91.
- Appiah, K.A. (1992). In *My Father's House: Africa in the Philosophy of Culture* (London: Metheun).
- Bennett, T.W. (1995). *Human Rights and African Customary Law Under the South African Constitution* (Cape Town: Juta & Co. Ltd.).
- Bentham, J. (1970). "Anarchical Fallacies", in Melden, I.A. (ed.), *Human Rights* (Belmont, California: Wadsworth Publishing Co.).
- Castberg, F. (1968). "Natural Law and Human Rights: An Idea-Historical Survey", in Eide, A. and Schou, A. (eds.), *International Protection of Human Rights* (Nobel Symposium, 7th Oslo, 1967) (New York: Interscience Publishers).
- Charter of the Organization of African Unity, 1963.
- Dahl, R.A. (1992). *Democracy and Its Critics* (New Delhi, India: Orient Longman Ltd.).
- Debates of the Constitutional Assembly* (South Africa), No.1, 29 March-8 May 1996, cols. 422-427.
- Ghali, B.B. (1992). *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping* (New York: United Nations).
- Gitonga, A.K. (1988). *Democratic Theory and Practice in Africa* (Nairobi: Heinemann Kenya).
- Gregor, A.J. (1979). *Italian Fascism and Developmental Dictatorship* (Princeton, N.J.: Princeton University Press).
- International Labour Organization (1994), *Promoting Gender Equality in Employment in Lesotho: An Agenda for Action* (Geneva: ILO)
- Kartashkin, V. (1982), "The Socialist Countries and Human Rights", in Vasak, K. (gen. ed.), *The International Dimensions of Human Rights* (Westport, Conn.: Greenwood Press; Paris: Unesco).
- Kirkpatrick, E.M. (1983). *Chambers 20th Century Dictionary* (Edinburgh: W. & R. Chambers Ltd.).

- Light, D., et. al. (eds.) (1979). *Sociology* (5th ed.) (New York: Random House Inc.).
- McKay, R.B. (1978). "The 'Common Core' of Human Rights", in Henkin, A.H. (ed.), *Human Dignity: The Internationalization of Human Rights* (New York: Aspen Institute for Humanistic Ideas).
- Moyo, J.N. (May 1998). "The African Renaissance: A Critical Assessment", *African Political and Economic Monthly*, Vol. II, No. 7, 9-12.
- Ramphal, S.S. (1981). "Development and the Rule of Law", in International Commission of Jurists, *Development, Human Rights and the Rule of Law* (Oxford: Pergamon Press).
- Ronge, B. (1997). "The Dark Continent's False Dawn", *Sunday Times* (South Africa), November 23.
- Roosevelt, F.D. (1969). "Wartime aid to Democracies", *The Public Papers and Addresses of Franklin D. Roosevelt: 1938-1950*, Vol. 9 (Washington, D.C.: Samuel I. Rosenman).
- Rowland, I.D. (1997). "The Renaissance Revealed", *New York Review of Books*, November 1997.
- Shaw, M.N. (1986). *International Law* (2nd edition) (Cambridge: Grotius Publications Ltd.).
- Shivji, I.G. (1989). *The Concept of Human Rights in Africa* (London: Codesria Book Series).
- Steiner, H.J. and Alston, P. (1996). *International Human Rights In Context: Law, Politics, Morals* (Oxford: Clarendon Press).
- The Associated Press, (1998). "Countries With Poor Human Rights Records Defend Themselves at UN", *The Associated Press* (New York), December 11.
- United Nations, (1947). *United Nations Yearbook: 1946-1947* (New York: United Nations).
- United Nations, (1987). *Human Rights: Questions and Answers* (New York: United Nations).
- United Nations, (1995). *The United Nations and Human Rights: 1945-1995* (New York: United Nations).
- United Nations Economic Commission for Africa, (1990). *International Conference on Popular Participation in the Recovery and Development Process in Africa* (Arusha, Tanzania: UNECA).
- Vale, P., and Maseko, S. (April 1998). "South Africa and the African Renaissance", *International Affairs*, Vol. 74, No. 2, 271-287.
- Warwick, M. (1983). *Equality and Discrimination Under International Law* (Oxford: Clarendon Press).
- Wilson, Jnr., T.W. (1978). "A Bedrock Consensus of Human Rights", in Henkin, A.H. (ed.), *Human Dignity: The Internationalization of Human Rights* (New York: Aspen Institute for Humanistic Ideas).

## **Cases**

*Dred Scott v Sanford*, 60 US 393 (1857).

*Plessy v Ferguson*, 163 US 537 (1896).

*South-West Africa Cases (2nd Phase)*, 1966, International Court of Justice.