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The relationship between peoples' rights and human rights in the context of the countries of Africa

The African Charter on Human and Peoples' Rights recognizes the universality of the human being in its Preamble. In its fifth paragraph the Preamble states that «... the reality and respect of peoples' rights should necessarily guarantee human rights». This postulate seems to echo the idea contained in the Preamble to the «Déclaration Universelle des Droits des Peuples» (Universal Declaration of the Rights of Peoples) to the effect that «... effective respect for human rights implies respect for peoples' rights»¹.

While the Universal Declaration of Human Rights was mainly concerned with the individual and mentioned "the people" only incidentally, various recent resolutions and recommendations adopted by the United Nations along with the OAU Charter, make the people, at least in their intentions, the principal beneficiary of decolonization and one of the concerns of states, thus marking, at the international level, a break with the conventional idea linked to a more individual view of the world and bringing about a shift as it were in the centre of gravity of international law.

The African Charter, it is true, takes the rights of peoples into account, thus falling in with African tradition, but does not overlook the individual whose rights must be respected and guaranteed by States at the same time as those of peoples. Even if the concepts of human rights and peoples' rights are not perceived in the same way by everyone, they do not represent alien values to the African.

The concern here is not to call into question the existence of such rights, regarded as acquired, but to determine the links between individual and collective rights. Africans, who are more attached to groups, having a more highly developed «gregarious instinct» than Westerners, feel secure only when they are together and consequently their individual rights are meaningful only to the extent that they are connected with those of the other members of the clan, the tribe or the commun-

¹ *Déclaration Universelle des Droits des Peuples* (Universal Declaration of the Rights of Peoples) in *Pour un Droit des Peuples* - A. Cassesse and E. Jouve, Paris, Berger - Levrault, 1978.

ity. The rights of individuals are expressed more concretely and in a nutshell by the right to life. This is a recognition of the inherent rights of each human being; it is a lasting right, perpetuated from generation to generation and every human being, every life, helps to give to the community the strength and influence it needs to establish and impose itself for the benefit of all. This involves the voluntary and natural "effacement" of the individual before the group. This fitting of the individual into the collective mould is encouraged by the very way in which traditional African society is organized, being fundamentally and essentially community-oriented. The traditional political system is made for the practice of direct democracy: this was the case in Madagascar through the grass-roots form of community organization represented by fokonolona, and in Tanzania through Ujamaa... Then it is based on consensus, that is to say that the main concern, the principal objective, is to narrow down or indeed to eliminate differences of opinion and to establish a sound basis for peaceful, harmonious coexistence, taking into account the various views expressed by the different members of the group.

Here we see the full significance of the palaver tree, beneath which, according to Julius Nyerere, the elders met and went on talking until they reached agreement².

It is clear then that the traditional African political systems gave people a real opportunity to have a hand in community management. The community was relevant to everyone, was everyone's concern and not the preserve of a handful of "specialists". This is far from being the case today when political leaders are all-powerful and will not tolerate being thwarted or opposed.

Thus, in seeking to determine the relationship, in the context of the countries of Africa, between peoples' rights and human rights as they are defined in existing universal international instruments and in the African Charter on Human and Peoples' Rights, one cannot fail to be perplexed by the fact that these universal instruments, when considered with reference to the practice of African States, seem to highlight a dramatic misunderstanding. One has the impression that the concepts defined and enshrined in them lose their meaning when placed in the context of African countries. As a result, states have a large share of the responsibility for promoting respect for human rights and the rights of peoples, ensuring the recognition and effective observance of those rights and, lastly, shaping the relationships between these "two categories" of rights.

Ambiguities in the relationship between human rights and peoples' rights

From the early days of decolonization, mis-understandings and indeed deception seem to have prevailed. The United Nations endeavoured to ensure that the principle of the right of peoples to self-determination be recognized and applied, and it was mainly the newly independent states that benefited from these liberating activities. The adoption, in United Nations and OAU fora, of resolutions, recommendations, conventions, protocols and the like, proclaiming the principles of territorial integrity, the inviolability of frontiers and non-interference in

² J. Nyerere, *Democracy and party system*, Dar es Salaam 1963 – translated by J. Mfoulou in *Socialisme, démocratique et unité africaine*.

domestic affairs has been instrumental in consolidating States and protecting political régimes rather than peoples, in whose name those international instruments were drawn up. It is therefore not in the least surprising that the concepts of the people and of the individual gradually became blurred and finally merged quite naturally with the concept of the state. For some governments, the terms "people" and "human being" are of no more than stylistic importance in international texts. The equation "State=people", however false and unreal, seems to be most widely accepted by African politicians.

To the extent that the state is no more than an expression of power in the service of a group or class and that it tends to favour the establishment of personal authority, it goes without saying that the relationship between peoples' rights and human rights is bound to be distorted. At the level of the state, politicians represent only themselves, and are more inclined to consolidate their power than to satisfy the aspirations of peoples and individuals. Equating the state with the people in this way is therefore unwarranted to say the least, for its result is to set in opposition human rights and peoples' rights or in any event to make possible the conflict between the state and the individual, with its trail of mourning and lamentation. This problem of the relationship between human rights and peoples' rights arises acutely in the African context on account of the specific attitude of African politicians to the state and their idea of Africa and Africans. As regards the first point, politicians identify with the state and this identification makes for the privatization and monopolization of the power vested in the state. To such an extent in fact that those concerned can, according to their requirements, represent in turn or simultaneously the state, the people and, on occasion, the individual. Thus, on the present African context, nothing is simple. Relations among human rights are largely subordinated to the exercise of state power. The result of this attitude is dramatic to the extent that the African States, demographically and culturally heterogeneous, cannot constitute a well-integrated "spiritual family", ethnic allegiance nearly always taking precedence over national consciousness and, inevitably, in the event of conflict, the state representing and protecting the ethnic group in power. In such distressing situations the state claims, with the use of force, to be defending national unity made into a dogma and enshrined in international texts. Cultural, ethnic and religious differences are considered as threats to national unity. Thus the struggle begun under colonization and did not end with accession to independence but is still continuing, no longer to recover national freedom, but to achieve national unity. However paradoxical it may seem, the search for unity leads to deeper political, social and cultural divisions. This applied, the word "unity" serves to justify every form of exaction at the expense of unassimilated national minorities. These, who are a factor of division in the eyes of political leaders, could not be considered as peoples or minority-peoples. Being unable to tolerate divergent aspirations, states, in the name of the people, opposed the development of human rights as expressed by national minorities. Their curious interpretation of the various international instruments leads to their presenting human rights as running counter to peoples' rights, or as obstacles to the promotion of peoples' rights.

The fact is that sometimes international instruments are ambiguous and they lend themselves easily to all sorts of interpretations. According to current theory, it was envisaged in the United Nations Charter that the right to self-

determination of colonized peoples would be used only once, thereby impoverishing the concept of self-determination and condemning national minorities to suffer the arbitrariness of the State's powers. As for the *African Charter on Human People's Rights*, even though it attempts in all its articles to have the relationship between the individual and the people recognized as being indissoluble and interdependent, the lack of precise definitions regarding the concept of people and the individual provides African political leaders with a way out in that it enables them to take advantage of ambiguities and omissions in the text.

It is undeniable that the African Charter on Human and Peoples' Rights represents a significant achievement in the African context. It constitutes a first step towards making political leaders and intellectuals aware of the problem of the relationship between human rights and peoples' rights and thereby enabling the sons and daughters of Africa to exercise and develop effectively their fundamental rights. But, however generous and fundamental they may be, the international instruments cannot suffice to make of Africa the cradle of human and peoples' rights without a radical change in attitudes at all levels.

The African contribution to the shaping of new relationships

Unlike Westerners in general and Europeans in particular, the Africans' great handicap is their having been unable to make a thorough study of traditional African values. As a result, when independence was attained, very few of the sons of Africa could venture to raise the problem of the comparison of cultures and of civilizations. A pernicious image remained. Colonized peoples were in the habit of considering human rights as a product of Western culture, quite simply because Western values had been imposed on them and treated as superior. Little by little African culture had been insidiously replaced by another culture in which Africans felt severely cramped and in which they slowly stifled. The situation was hardly any better at independence. A climate of mistrust seemed to affect relations between political leaders and intellectuals, an unhealthy atmosphere worsened by the development of a phenomenon referred to by political scientists as tribalism and which, like gangrene, eats away at almost all the African States. The institution of reigns of terror impairs and stifles political and intellectual thought.

This situation has dramatic consequences for traditional values. Africans have lost their memory. Immediate objectives were their main concerns and they left it to others to take responsibility for major problems. Being unfamiliar with their own traditions, they were forced to borrow more or less successfully from other sources in order to build up a specifically African modern society.

It was altogether symptomatic that the majority of works written on Africa, both during the colonial and pre-colonial period, were produced by foreigners who, whatever their human or scientific qualities, could not understand the exiting African communities in their totality and in all their complexity. And this is where African intellectuals may be taken to task. Instead of opting for a thorough study of traditional African values, if only in reaction to the Western cultural values foisted on them for years, they preferred, in moving towards decolonization and even at independence, to concentrate their physical and mental efforts on politics.

And, by an irony of fate, politics, which has given birth to so many hopes and sacrifices, seems to be the source of the woes besetting the African peoples and Africans individually.

The main problem is how to overcome these difficulties, this initial handicap, so that Africa can help to give a universal basis to human rights and peoples' rights, taking into account the differing cultural values of mankind. In other words, how can a regional and cultural approach to the problem of the relationship between human rights and peoples' rights be envisaged?

The development of awareness, the wind of change generated by the various universal international instruments, will be followed by positive effects only in the long term. This is why, as realists, those who drafted the African Charter on Human and Peoples' Rights were careful to avoid a direct clash with governments given their reservations in some areas. They took great care not to offend them so as to be able to lead them, slowly but surely, to a compromise. To improve the public image of Africa, the politicians in power must completely change their stance concerning the concepts of the State, the people and the individual. For the main objective is to reinstate that celebrated triad. This cannot be done unless awareness develops both at the top of the State apparatus and at the grass-roots level. This presupposes total liberation in all areas.

In fact, it is difficult to determine the border line between human rights and peoples' rights inasmuch as the people represents the whole and the human being as an individual is a component part of that whole. This means, generally speaking, that the people as a constituted entity wished for by individuals is no more than an expression of the combination, the sum total, of the aspirations expressed to the extent that those aspirations are integrated into the whole. In this way electoral consultations designed to discover the aspirations of the citizenry start off as a fundamental right of the individual but end up being claimed as a right of the people and hence can only be regarded as a form of essential participation by both the individual and the people in the management of the "res publica". But the individual must still know his rights and exercise them fully and freely. In the African context, the individual is therefore the people who, with little information, little awareness and little organization, cannot serve as a force to counter-balance that power which stems from the solitary exercise of political authority. The res publica has become the "res" of more or less honest specialists. Has this force of the people proved itself throughout the history of modern man? Was not the people, through the agency of what is known as public opinion, the cause, to cite only the recent events, of the end of the war in Viet Nam, and of Nixon's resignation, the condemning of the apartheid régime, the convergent movements of the ecologists and pacifists, the struggle against underdevelopment and social inequalities...?

The African people, made deaf, blind and insensitive to the ills of others, must be reborn and become a force on which the other peoples can count so that the generous concepts formulated in the United Nations and OAU Charters, in the universal international instruments and in the African Charter on Human and Peoples' Rights become everyday realities. The peoples of Africa, freed from authoritarian governments and having overcome the tribal and ethnic divisions maintained within national boundaries, cannot fail to be convinced of the vanity of their rights so long as human rights are not respected and effectively exercised.

And the links of close interdependence between human rights and peoples' rights will become perfectly clear to them.

Since the misadventures of Idi Amin Dada and Bokassa, a movement which is still hesitant but none the less real seems to be crossing Africa. Violations of rights, whether human or peoples' rights, will no longer be so easy to commit if all Africans take part in the work of mobilizing and sensitizing the African and international communities so that peoples' awareness will no longer be blunted by ideological manipulations which make them indifferent to the sufferings of others.

In the African context, the African Charter on Human and Peoples' Rights constitutes a wager on the future. And it bids fair to be won, first through the adoption of the Charter by acclamation at the Summit Conference of Heads of State and Government on 28 June 1981 and subsequently by its entry into force on 21 October 1986. These events constitute a great leap forward and demonstrate that the transformation of African society is inevitable.

It remains for Africans to create the conditions required to allow what has been achieved to be established on a firm basis and advance beyond the stage of pious intentions. ■