

# Revolutions in the Maghreb – resisting authoritarianism and accessing the right to self-determination and democratic governance

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## *Abstract*

In December 2010 popular unrest erupted in Tunisia. This resulted in the exit of President Ben Ali who had been in power for twenty-three years. The revolt quickly spread to other parts of the Maghreb region and the Arab world. A common feature of the countries in these regions is that power is concentrated in the hands of a small ruling class, and fundamental rights and freedoms are a scarce commodity. Essentially, the demands of these revolts are centred on the quest for more freedoms and popular participation in government. Against this backdrop, this article examines the limits of the right to self-determination. With the aid of international norms, it is argued that the right to democracy is a fundamental requirement of governance. In this regard, the right to democracy is sequential to, and a logical consequence of the right to self-determination. It would appear, however, that several governments in post-independent Arab and African countries failed to create space for the articulation of democratic governance after attaining self-determination. Colonial regimes were merely replaced by authoritarian ones. Recent events in North Africa and the wider Arab world indicate a desire among the populace to participate in the process of governance. Perhaps, sub-Saharan Africa should learn some lessons from the North African revolutions.

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## **INTRODUCTION**

The struggle for decolonisation in Africa found easy and firm philosophical foundation in the right to self-determination. This is not particularly surprising as self-determination emphasises equality of persons and the right of all peoples to govern themselves. Upon wresting independence from their colonial masters, post-independent African governments argued that the right

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to self-determination terminated with the attainment of political independence. This simplistic view of self-determination does not embrace an internal functional system that caters for the participation of the people in the governance of states. In this regard, democratic governance is a natural consequence of the internal aspect of the right to self-determination. Consequently, self-determination finds affirmation in an evolutionary process that establishes self-rule, and confers the control of state resources and institutions of governance on the people. Access to democratic governance or the right thereto, demands that the people have a right to choose the system of governance, the right to participate in the selection process of those who govern them, the right generally to determine the mandate and tenure of those who govern them, and the retention of powers to recall them. However, mechanisms that guarantee public participation in governance, did not take root during the first two decades of independent Africa, rather, the style of governance gravitated in the opposite direction as authoritarian one-party and military regimes mushroomed all over the continent. Following the demise of the Soviet Union, the third wave of democratisation broke over the African continent, and sub-Saharan Africa became a beneficiary of this phenomenon as several one-party systems were replaced by political pluralism in the 1990s.<sup>1</sup> Though some leaders in Africa continue to replicate the old leadership pattern of clinging to power, the citizens of several countries now have the opportunity to participate in regular elections and have the choice of alternative candidates. Unfortunately, Africa north of the Sahara did not benefit from the political transformation heralded by the benefits of pluralisation of the 1990s. Authoritarian regimes remained, and long-serving leaders dug in their heels, ruling by emergency laws and entrenching strict police control over their states. Thus, it was hardly possible to change governments by constitutional and peaceful processes.

Since the people of the Maghreb region could not possibly exercise the right to participate in political governance, change was to come in a different and unexpected form. North Africa's destiny with reform commenced in Tunisia in December 2010. The demand for reform quickly spread from Tunisia, to Egypt, Algeria, Libya, and across the Suez to the gulf region.<sup>2</sup> The North African revolutions represent a demand by the people to participate in the governance of their nations. The right of the people to determine how they are governed, who governs them, as well as the right to recall their leaders,

<sup>1</sup> Examples include Ghana, Nigeria, Sierra Leone, Mali, Zambia, Benin and Malawi.

<sup>2</sup> Other countries affected by protests for reform are Syria, Yemen and Bahrain. Similar protests were suppressed or short-lived in Saudi Arabia and Iran.

are fundamental to the sustainability of the status of self-determination. Thus, the revolutions mark the rejection of authoritarian rule and a demand for the realisation of the right to self-determination and democratic governance.

Reviewing the normative development of the right to self-determination and the right to democracy, this article makes a conceptual link between the two. This conceptual link is found in the normative content of these rights as well as in their interpretation. Thus, the right to democracy and democratic governance is a manifestation of the internal aspect of self-determination. It is argued, therefore, that in demanding democratic governance, the Maghreb revolutions represent an assertion of the internal aspect of self-determination. Consequently, where the people are deprived of the right to assert their right to participate in political governance, they are justified in securing such rights by popular agitation. The article notes that in the Maghreb revolutions, the people exercised their right to self-determination which had been side-tracked by the authoritarian rule of minority elites.

## **AUTHORITARIAN RULE AND AFRICA**

### **The authoritarian state**

The authoritarian state has manifested itself in many forms. In this regard, countries have been ruled by monarchs, czars, emperors, Roman dictators, one-party communist regimes, and colonial regimes. The characteristic thread of 'mono-governance' runs through all these regimes. 'Mono-governance' refers to the concentration of power and decision-making in the hands of a few, to the exclusion of the entire populace. The rest of the populace essentially have no or limited access to participation in the decision-making processes of the state. Democratic rights are excessively limited and state institutions are personalised. The political establishment is not really representative of the people, resulting in governance without the consent of the governed. Since the opportunity for dissent and alternative opinion does not exist, such regimes usually enjoy only limited political support and usually entrench themselves in power and maintain the status quo through harsh and repressive means. Fundamental rights are replaced by emergency laws, excessive policing and militarisation of the state. Freedom of expression is curtailed, and the press is also usually subject to state curbs. Opposition voices are suppressed and heavy reliance is placed on the security forces who are usually the main constituents of such regimes. The system operates on fear and it is usually impossible to change such governments by peaceful or constitutional means. Thus, former communist states in Eastern Europe were brought down by peoples' revolutions in the 1990s.

### **The inception of modern authoritarianism and the demise of the right to self-determination in Africa**

During the pre-colonial era, the notion of collective responsibility was entrenched in the African social and political mix. Several African societies were governed by kings and rulers who were assisted by advisers. Political decisions and the settlement of disputes were usually heard at the kings' courts with the entire society, or at least the elders, in attendance.<sup>3</sup> These values have received modern articulation in the African Charter on Human and Peoples Rights<sup>4</sup> which provides for collective and group rights,<sup>5</sup> as well as duties towards one's society.<sup>6</sup> However, the advent of colonialism witnessed a paradigm shift in the political and administrative models of African societies. The relationship between colonial rulers and their subjects was typically one of master-servant. The colonial governors and administrators – district commissioners – wielded significant powers and made decisions in dictatorial style with little reference to the people.<sup>7</sup> On the eve of independence, undemocratic governance was entrenched in Africa, and post-independence leaders were happy to slip into the shoes of their colonial predecessors. The emergence of one-party dictatorships and military rule, coupled with massive rigging of elections, resulted in mono-governed states which deprived the people of the right to determine who would lead them and how they should be governed. Thus, the internal aspect of self-determination remained largely unrealised. However, the 1990s saw popular agitation by the people for political change in several sub-Saharan African states. Popular protests and loss of Soviet patronage led to the demise of long-serving dictators and one-party states and the emergence of political pluralism.<sup>8</sup>

### **Maghreb abstention from the reforms of the 1990s**

The Maghreb region was not affected by the changes of the 1990s, and long-standing dictators persevered. Most nations in the Maghreb and Arab Middle East remain under some form of mono-governance. Reference is made to the

<sup>3</sup> Mazrui notes: 'Many societies in Africa before colonialism endeavoured to limit the powers of their rulers.' See Mazrui 'Constitutional change and cultural engineering: Africa's search for new directions' in Oloka-Onyango (ed) *Constitutionalism in Africa: creating opportunities, facing challenges* (2001) 18 at 35.

<sup>4</sup> Adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982), entered into force on 21 October 1976.

<sup>5</sup> See generally articles 18–22 of the African Charter on Human and Peoples' Rights.

<sup>6</sup> Articles 27–29 African Charter on Human and Peoples' Rights.

<sup>7</sup> Nwabueze *A colonial history of Nigeria* (1982) 35–36.

<sup>8</sup> Ngarhodjim 'African Charter on Democracy, Elections and Governance: a critical analysis' (AfriMAP paper 2007). Available at: <http://www.afriMAP.org/papers> (last accessed 1 October 2012).

Middle East, as the revolutions eventually affected that region. The political systems of these states are mostly monarchies as in the case of Morocco, Saudi Arabia and Bahrain, quasi-military as was the case in Egypt, or 'theocratic' as is the case in Iran. Quite a few of these countries such as Egypt and Syria had been under emergency rule for decades. These regimes bear the hallmark of authoritarianism – they lack representative government, and freedom of expression and personal liberty are severely restricted. The leaderships in these countries are largely disengaged from the people. Elections in Tunisia and Egypt were a farce. In Libya, Colonel Gaddafi was an embodiment of the state and there was no genuine representative government. The regimes in these countries continued to cling to power long after they had lost popular political consent of the people. Failure to make democratic concessions ultimately resulted in the direct demand for democratic change by the people. Consequently, the recent revolutions in the Maghreb and the demand for internal self-determination were long coming.

#### **THE DEVELOPMENT OF THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW**

The right to self-determination forms the foundation for the assertion of independence and self-rule by peoples under colonial domination. This fundamental right of international law has been a faithful servant in the quest for statehood.<sup>9</sup> The right finds expression in customary international law<sup>10</sup> and in several international law instruments or treaties. The normative development of the right to self-determination in international law has clearly given significance to its internal aspect and the democratic imperative it creates. The following are some of the various treaties that provide for the right to self-determination. Most of these documents clearly consider the democratic imperative of the right to self-determination.

#### **The Charter of the United Nations**

The Charter of the United Nations<sup>11</sup> provides cursory reference to self-determination.<sup>12</sup> Article 1 of the Charter refers to self-determination as a

<sup>9</sup> It must be noted, however, that the right applies to peoples of organised states. Therefore, the right will be violated where a state is subjected to foreign occupation.

<sup>10</sup> *Namibia Case* (1971) ICJ Reports 16; *Legal consequences of the construction of a wall in the occupied Palestinian Territory* (2004) ICJ *Advisory Opinion* 43 ILM 1009 par 88.

<sup>11</sup> Signed on 26 June 1945, entered into force on 24 October 1945. Available at: <http://www.un.org/en/documents/charter/index.shtml> (last accessed 31 March 2012).

<sup>12</sup> Kone 'The right to self-determination in the Angolan Enclave of Cabinda' (paper presented at the Sixth Annual African Studies Consortium Workshop, 2 October 1998). Available at: <http://www.africa.upenn.edu/Workshop/kone98.html> (last accessed 26 March 2011).

principle underlying the United Nations' (UN) aim of developing friendly international relations. Article 55 provides that equal rights and self-determination are necessary for peaceful and friendly relations among nations. Chapter XI, which relates to colonies and trust territories, does not refer specifically to self-determination. Rather, it points to the importance of non-self-governing peoples and urges member states to exercise good neighbourliness to such peoples.<sup>13</sup> As has been said, reference to self-determination is sparse and watered-down in the Charter. Self-determination is described as a mere principle. This is due to the fact that the original parties to the Charter were all self-governing states.

### **The Universal Declaration of Human Rights**

Though UN declarations are soft law and generally non-binding, the Universal Declaration of Human Rights (UDHR)<sup>14</sup> has attained significant normative clout.<sup>15</sup> The Declaration contains individual rights<sup>16</sup> and makes no specific reference to self-determination which is to a large extent a collective right.<sup>17</sup> However, it takes cognisance of the very foundation of the democratic aspect of self-determination. In this regard, the Declaration notes that governments derive their authority from the will of the people.<sup>18</sup> It further states that the will of the people shall be expressed by genuine and periodic elections which shall be free and fair.<sup>19</sup> The Declaration states that,

[t]he will of the people shall be expressed in periodic and genuine elections which shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>20</sup>

While not recognising self-determination as a human right, the Declaration reiterates that modern democratic principles dictate that governments should not impose their will on the governed.<sup>21</sup> In this regard, leaders should stand down from office when their mandate is withdrawn through the democratic

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<sup>13</sup> Article 73 of the UN Charter.

<sup>14</sup> 10 December 1948, GA res 217 A (III).

<sup>15</sup> Kone n 12 above at 5.

<sup>16</sup> *Ibid.*

<sup>17</sup> Lefkowitz 'On the foundation of rights to political self-determination: secession, non-intervention and democratic governance' (2008) 39 *Journal of Social Philosophy* 492 at 493.

<sup>18</sup> Article 21(3) Universal Declaration of Human Rights.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

process. It is clear, therefore, that the internal aspect of self-determination, and the notion of democracy are embraced by the Declaration.

### **Declaration on the Granting of Independence to Colonial Countries and Peoples**

The early 1960s was the threshold of the attainment of independence for most African countries. Indeed, UN General Assembly Resolution 1514 (XV) adopted on 14 December 1960, which contained the Declaration on the Granting of Independence to Colonial Countries and Peoples,<sup>22</sup> saw the transformation of self-determination from a mere principle to a right.<sup>23</sup> This Declaration was borne out of the aspiration of the peoples of colonised entities to self-determination and the general perception that the UN Charter principles were being applied too slowly. The Declaration states that ‘all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.<sup>24</sup> The Declaration bases self-determination on the principle of equality of all peoples. It sounds a note of urgency and immediacy in relation to the attainment of independence. It urges that immediate steps be taken to grant independence to all non-self-governing territories.<sup>25</sup> It also emphasises that inadequacy of political, social, economic or educational preparedness should not be used as a pretext to forestall the granting of independence.<sup>26</sup> In sum, the Declaration forms the key legal justification for the realisation of self-determination by colonial territories.

### **The 1966 Covenants**

Not surprisingly, the right to self-determination resonates positively in the International Covenant on Civil and Political Rights (ICCPR)<sup>27</sup> and the

<sup>22</sup> GA/RES/15/1541 of 15 December 1960. Available at: <http://www.daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/152/88/IMG/NR015288.pdf?OpenElement> (last accessed 28 March 2012).

<sup>23</sup> Omar ‘The Right to Self-Determination and the Indigenous People of Western Sahara’ (2008) 21 *Cambridge Review of International Affairs* 41 at 42; Omar ‘The legal claim of the Saharawi people to the right of self-determination and decolonisation’ in Botha, Olivier & Van Tonder (eds) *Multilateralism and international law with Western Sahara as a case study* (2010) 56 at 57.

<sup>24</sup> Article 2 Declaration on the Granting of Independence to Colonial Countries and Peoples; see also Cassese *Self-determination of peoples: a legal appraisal* (1995) 128; *Western Sahara Case* (1975) ICJ Reports 33 pars 58–59.

<sup>25</sup> Article 5 Declaration on the Granting of Independence to Colonial Countries and Peoples.

<sup>26</sup> *Id* at art 3.

<sup>27</sup> Adopted and opened for signature, ratification and accession by GA resn 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171.

International Covenant on Social, Economic and Cultural Rights (ICESCR).<sup>28</sup> At the time of their conception, several Afro-Asian states had gained independence. These new and independent states were able to influence the human rights doctrine in these Covenants. Common article 1 of the Covenants provides for the right of all peoples to self-determination and freely to determine their political status and pursue their economic development. The provision also highlights the right of peoples freely to dispose of their natural wealth and resources, reiterating that they should not be deprived of their means of subsistence. This provision reflects Marxist-Leninist influence in that it links the political right to self-determination to the right to auto-control of economic resources.<sup>29</sup> But more importantly, these Covenants are a reflection of the influence of the newly independent nations whose numbers had, by the time of their drafting, swelled the UN. This provision is intended to serve the economic agenda of these newly independent nations, including the nationalisation of capital.<sup>30</sup> It is also seen as a bulwark against post-colonial economic interests in the former dependencies.<sup>31</sup> Fundamentally, reference is made to the right of peoples to determine their political status. Accordingly, the Covenants specifically state that the expression of democratic governance derives from the internal aspect of the right to self-determination. The Covenants, therefore, establish the link between self-determination and democratic governance in unequivocal terms. The right of peoples to determine their political status would include the right to determine the system of government. Therefore, systems of governance should not be imposed from outside or from within.

In its General Comment on article 25 of the ICCPR, the Human Rights Committee explained the relationship between the right of peoples to self-determination and the right of citizens to political participation. The committee noted that

By virtue of the rights covered by Article 1(1), peoples have the right to freely determine their political status and to enjoy the right to choose the form of their constitution or government. Article 25 deals with the right of

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<sup>28</sup> Adopted and opened for signature, ratification and accession by GA res 2200A (XXI) 16 December 1966, entered into force on 3 January 1976, 993 UNTS 3.

<sup>29</sup> Kone n 12 above at 6.

<sup>30</sup> *Ibid.*

<sup>31</sup> Kone n 12 above at 6.



individuals to participate in those processes which constitute the conduct of public affairs.<sup>32</sup>

Article 25 relates to the right to individual political participation in a system of collective decision-making. According to the Human Rights Committee, it 'lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant'.<sup>33</sup>

A number of state reports to the Human Rights Committee associate the right to self-determination with a right to democratic governance.<sup>34</sup> India's submission reads, 'The internal aspect of self-determination, it is suggested, includes the right of people to choose their own form of government and the right to democracy.'<sup>35</sup> In relation to Congo, the committee noted that the Congolese people were unable to exercise their right to self-determination due to postponement of elections. It called on Congo to hold elections as soon as possible to enable its citizens to exercise their rights under articles 1 and 25.<sup>36</sup> The combined effect of the right to self-determination and the right to political participation creates an obligation on all parties to the ICCPR to introduce and maintain democratic forms of government.<sup>37</sup>

### **The African Charter on Human and Peoples' Rights**

Given the historic experience of the African peoples, it is not surprising that the African Charter on Human and Peoples' Rights emphasises the right to self-determination. The Charter declares the rights of all peoples to existence.<sup>38</sup> It provides that colonised and oppressed peoples have a right to free themselves from the bonds of domination by resorting to any means recognised by the international community.<sup>39</sup> The doctrinal expression of self-determination in the African Charter is narrow in scope, limiting the right to colonised or oppressed peoples. Contextually, it appears that the intention of the parties to the Charter was to limit article 20 to the right to

<sup>32</sup> Human Rights Committee, General Comment No 25 'Article 25 (Participation in public affairs and the right to vote)', adopted 12 July 1996, par 2.

<sup>33</sup> *Ibid* par 1.

<sup>34</sup> Wheatley *Democracy, minorities and international law* (2005) 135; Wheatley 'Democracy and international law: a European perspective' (2002) 51 *ICLQ* 225, 231–232.

<sup>35</sup> Third Periodic Report (India), UN Doc CCPR/C/76/Add.6, 17 July 1996 par 32.

<sup>36</sup> Human Rights Committee, Concluding Observation on the Second Periodic Report of the Congo, UN Doc CCPR/C/79/Add.118, 27 March 2000, par 20; Wheatley n 34 above at 136.

<sup>37</sup> Wheatley n 34 above at 136.

<sup>38</sup> Article 20(1) African Charter on Human and Peoples' Rights.

<sup>39</sup> Article 20(2) African Charter on Human and Peoples' Rights.

break away from colonisation. While the mention of ‘oppressed peoples’ in article 20(2) of the Charter appears to widen the scope beyond the struggle for statehood, article 20(3), on the other hand, provides that states under foreign domination have a right to assistance from other states party to the Charter. Clearly, therefore, the intention of the contracting parties was to limit the scope of article 20 to the process of decolonisation.<sup>40</sup> However, the disjunctive reference to *colonised* or *oppressed* peoples comes to the aid of an interpretation that includes all oppressed peoples on the continent. It must be noted also that article 20(1) provides for the right of peoples to determine their political status. This provision clearly echoes the Wilsonian concept of the democratic right of peoples to govern themselves.<sup>41</sup> Hence a conceptual link between self-determination and democratic governance is clear from the Charter. Therefore, it is hard to justify self-determination on the basis of statehood without a concomitant democratic society. Clearly, the struggle for decolonisation extends to the realisation of a democratic state. If article 20 of the Charter permits ‘peoples’ to liberate themselves from oppression so as to attain self-determination, the same analogy should be applicable to the quest for internal democracy. In this regard, justification for the Maghreb revolutions lies in the Charter.

#### **THE ARTICULATION OF THE RIGHT TO DEMOCRACY IN INTERNATIONAL LAW**

The period spanning the 1960s to the end of the 1980s saw the consolidation of the sovereignty of African states. The unity and stability of young African states were sacrosanct. While various international norms on self-determination made a conceptual link to the filial right to democracy, it was only during the 1990s that the latter right received deeper normative reflection in international law. The right to democracy is now firmly entrenched in the African regional human rights system.

<sup>40</sup> However, it has been argued elsewhere that art 20 goes beyond the quest for statehood and applies to all oppressed peoples. See Idowu ‘Revisiting the right to self-determination in modern international law: implications for African States’ (2008) 6 *European Journal of Social Sciences* 43, 52–53; Angela ‘The Southern Sudan: a compelling case for secession’ (1994) 32 *Columbia Journal* 430.

<sup>41</sup> Former United States President, Woodrow Wilson, in his famous ‘Fourteen Points’ speech wherein he urged the end of World War I and the formation of the League of Nations, considered self-determination as the democratic right of people to govern themselves. See the speech by President Woodrow Wilson delivered at a joint session of the United States Congress on 8 January 1918. Available at: [http://wwi.lib.byu.edu/index.php/President\\_Wilson%27s\\_Fourteen\\_Points](http://wwi.lib.byu.edu/index.php/President_Wilson%27s_Fourteen_Points) (last accessed 9 June 2011).

### The African Charter on Human and Peoples' Rights

The African Charter is crafted with unique characteristics.<sup>42</sup> While it does not make specific reference to a right to democracy, it must be noted that article 13(1) provides that 'every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law'. Thus, the right to participate in government is recognised. This approach subjectively limits democratic participation, and its expression, to the extent permitted by the legal and political framework of individual countries, rather than the application of minimum international standards. It does not tackle the problem of repressive regimes that enact laws which effectively limit popular participation in governance. Thus, several African governments have, in the past, operated freely under one-party constitutions and emergency laws which allow very little room for democratic participation. However, with the inception of the African Union (AU), a normative commitment to democratic principles and political pluralism has emerged.

The African Commission on Human and Peoples' Rights has on a number of occasions dealt with article 13 of the African Charter. In fact, the commission has maintained a strong conceptual link between article 13 – which deals with the right to political participation and democratic governance – and article 20 – which deals with the right to self-determination. The mandate of the commission includes the protection and promotion of human and peoples' rights, and the interpretation of the Charter at the request of a state party, an institution of the AU or an African organisation recognised by the AU.<sup>43</sup> While the commission does not make binding decisions, its views and recommendations have come to be widely respected and are on occasion implemented by governments.<sup>44</sup> In giving form and content to article 13, the commission has stated clearly that unconstitutional changes of government, deprivation of participation in political governance, and arbitrary change in the system of governance, will amount to denial of the right to democracy. Thus, in *Dawda Jawara v The Gambia*<sup>45</sup> the complainant, the former head of state of The Gambia,

<sup>42</sup> For a discussion on the unique characteristics of the Charter, see Ankumah *The African Commission on Human and Peoples' Rights: practice and procedures* (1996) 159.

<sup>43</sup> Article 45 African Charter on Human and Peoples' Rights.

<sup>44</sup> See generally Viljoen & Louw 'The status of the findings of the African Commission: from moral persuasion to legal obligation' (2004) 48 *Journal of African Law* 1; Keetharuth 'Implementation of decisions of the African Commission on Human and Peoples' Rights' available at: <http://www.bristol.ac.uk/law/research/centres-themes/ihrsp/documents/sheilakeetharuthpres.pdf> (last accessed 30 April 2012).

<sup>45</sup> Communication 147/95 and 149/96 (2000).

complained that the military had overthrown his government by unconstitutional means. The communication alleged that the military junta had outlawed political parties and banned ministers of the former civilian government from taking part in political activities. Referring specifically to the right to participate in political governance, the commission noted that the imposition of a ban on former ministers and members of parliament is in contravention of their rights to participate freely in the government of their country as provided for by article 13(1) of the Charter.<sup>46</sup> The commission also noted that the banning of political parties violated the right to free association guaranteed under article 10(1) of the Charter.<sup>47</sup> It further noted that The Gambia had previously enjoyed the process of electing its government every five years through general elections.<sup>48</sup> These elections were contested by a plurality of political parties. The commission held that by taking power by force and bringing this process to a halt, the military was in violation of the right of the Gambian people freely to choose their government in terms of article 20(1) of the Charter. In this regard, it appears that the commission regarded the destruction of the system of political governance as a violation of the right to self-determination and the right to democracy. This decision establishes the nexus between the right to self-determination and the right to democracy.

Similarly, in *Lawyers for Human Rights v Swaziland*,<sup>49</sup> the King of Swaziland had passed a proclamation repealing the constitution, outlawing all political parties and declaring that all legislative, executive and judicial powers were vested in him. The commission found that this was in violation of article 13 of the Charter. The commission noted that political parties are a means by which citizens participate in governance either directly or through elected leaders of their choice. Therefore, by preventing the formation of political parties, the King had violated the right of the people to participate in the government of their country.<sup>50</sup>

In *Constitutional Rights Project and Civil Liberties Organisation v Nigeria*,<sup>51</sup> referring to article 20, the commission noted that the right of the people to determine their political status can be interpreted as the right freely to choose those who will govern them. The commission confirmed that article 20,

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<sup>46</sup> *Id* at par 67.

<sup>47</sup> *Id* at par 68.

<sup>48</sup> *Id* at par 71.

<sup>49</sup> Communication 251/2002.

<sup>50</sup> *Id* at par 53.

<sup>51</sup> Communication No 102/93; see also *Dawda Jawara v The Gambia* n 45 above.

which relates to self-determination, is the counterpart of article 13. Article 13 of the Charter, which creates an express right of citizens freely to participate in the government of their country by freely choosing their representatives in accordance with the law, is representative of the right to democracy. Thus, the recognition of a functional nexus between democratic governance and self-determination is unmistakable.

The commission centers the right to democracy on political participation and the collective expression of the will of the people. The decisions of the commission establish not only that the people should be free to determine their system of governance and participate in the election of their representatives, they also provide that any system that prevents any section of the citizenry from participating in democratic governance, potentially falls foul of the right to self-determination and the right to democracy.<sup>52</sup> That the right to democracy is well established as an international legal norm should no longer be a matter for debate. The articulation of this right resonates strongly within the context of the African legal framework.

### **The Constitutive Act of the African Union**

The transformation of the Organisation of African Unity (OAU) to the AU saw the dawn of new and emerging norms in the legal framework of the African continent. The firm and dogmatic adherence to the sanctity of the doctrine of state sovereignty and non-interference, has shifted somewhat in the direction of mutual cooperation among member states. Adherence to democratic principles, human rights, and the rule of law have been embraced as important canons in the legal instruments of the AU.

The Constitutive Act of the AU,<sup>53</sup> which is the basic law of the AU, sets out the continent's commitment to democratic principles. It is clear from the Constitutive Act that the principle of African solidarity, territorial integrity, and independence of states upon which the OAU was founded, remain cherished values of the AU.<sup>54</sup> However, the values of the present dispensation have been extended to embrace democratic principles and institutions, the promotion and protection of human rights, as well as popular

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<sup>52</sup> *Dawda Jawara v The Gambia* n 45 above; *Lawyers for Human Rights v Swaziland* n 49 above; *Legal Resources Foundation v Zambia* Communication 211/98; *Purohit and Moore v The Gambia* Communication 241/2001; *John Modise v Botswana* Communication 97/93.

<sup>53</sup> Adopted 11 July 2000.

<sup>54</sup> Articles 3(b) Constitutive Act of the African Union.

participation in governance.<sup>55</sup> The recognition of popular participation and democratic principles as core objectives and principles of the AU, are significant to the embedding of self-determination in the AU normative order. This creates the legal basis for self-determination as a democratic principle in African states.

### **The African Charter on Democracy, Elections and Governance**

The principles on democratic governance contained in the Constitutive Act of the AU were followed up by a Charter relating to the same issue. This can be viewed as a demonstration of the continent's commitment to democratic principles. The African Charter on Democracy, Elections and Governance<sup>56</sup> forms the blueprint for the institutionalisation of the principles of democracy, good governance and human rights. Respect for human rights and democratic principles,<sup>57</sup> representative government,<sup>58</sup> and the holding of transparent, free and regular elections<sup>59</sup> are core principles of the Charter. Popular participation by way of universal suffrage is recognised as an inalienable right.<sup>60</sup> Most significantly, the Charter prohibits any unconstitutional change of government, whether by coups d'état or by the refusal of an incumbent to relinquish power after free and fair elections.<sup>61</sup> The Charter, therefore, sanctions legitimate and representative government by the holding of regular, free and fair elections.<sup>62</sup> The Charter's commitment to regular, free and fair elections endows the people with the right to determine who will govern them. In terms of the Charter, access to and the exercise of power should be exercised only within the limits of national constitutions and the rule of law.<sup>63</sup> In this regard, the authority to govern emanates from the people and power should be attained only by the will of the people. To this extent, excessive and arbitrary use of power is prohibited. One may say, therefore, that the right to democracy is firmly established in African legal doctrine.

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<sup>55</sup> Articles 3(g) and 4(m) Constitutive Act of the African Union.

<sup>56</sup> Adopted on the 30 January 2007. Available at: <http://www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf> (last accessed 31 March 2011).

<sup>57</sup> African Charter on Democracy, Elections and Governance art 3(1).

<sup>58</sup> *Id* at art 3(3).

<sup>59</sup> *Id* at art 3(4).

<sup>60</sup> *Id* at art 4(2).

<sup>61</sup> *Id* at art 23.

<sup>62</sup> *Id* at arts 2(3), 3(3), 3(4), and 17.

<sup>63</sup> *Id* at art 3(2) African Charter on Democracy, Elections and Governance.

### DEMOCRACY AS A FUNCTIONAL ASPECT OF THE RIGHT TO SELF-DETERMINATION

The attainment of self-determination should incorporate a logical and progressive gravitation towards the democratic imperative. Wheatley poignantly describes the practice of democracy as internal self-government.<sup>64</sup> Ebobrah's definition of democracy is crucial to the articulation of democratic governance. According to him, democracy

refers to the process of involving the citizens of a state in the administration of that state in a manner that links the citizens and their representatives in the distribution of resources for the common good. This includes (but is not restricted to) the specific process by which representatives are elected and controlled by the people.<sup>65</sup>

The functional link between the right to self-determination and the right to democracy is unmistakable from this definition. As Idowu notes, 'A bridge has been built from self-determination as a process of decolonising to self-determination as a human right, a right of peoples.'<sup>66</sup> The author also refers to a norm creating consensus relating to the right to democracy, human rights and the rule of law forming part of a 'universal right of self-determination'.<sup>67</sup> Franck traces the development of self-determination to historical antecedents, recanting the rights of post-First World War vanquished Germany and Turkey, the recognised rights of colonies after the Second World War, and finally, its emergence as the rights of all peoples to participate in open

<sup>64</sup> Wheatley n 34 above at 134; Roth *Governmental illegitimacy in international law* (2000) 79.

<sup>65</sup> Ebobrah 'Is democracy now an issue in Africa? An evaluation of the African Charter on Democracy, Elections and Governance' (2007) 1 *Malawi Law Journal* 131 at 135; see generally Kofele-Kale 'Participatory rights in Africa: a brief overview of an emerging regional norm' (2008) 55 *Netherlands International Law Review* 233. Hendriks feels that 'in the political arena, the concept of representation has played an important role in operationalizing democracy – broadly understood as the idea that those potentially affected by collective decisions have the opportunity to participate and influence the deliberations and outcomes'. See Hendriks 'The democratic soup: mixed meanings of political representation in governance networks' (2009) 22 *Governance* 689, 690–691.

<sup>66</sup> Idowu n 40 above at 50; El Ouali goes on to mention that self-determination leading to independence has been abandoned by the international community in favour of democratic self-determination. See El Ouali 'Democratic self-determination and Western Sahara: how to bring an end to a long-standing conflict' in Botha, Olivier & van (eds) *Multilateralism and international law with Western Sahara as a case study* (2010) 6 at 7.

<sup>67</sup> Idowu n 40 above at 52.

democratic processes.<sup>68</sup> He argues that the democratic entitlement occurred in three normative phases. These are the right to self-determination, free expression, and entitlement to participatory electoral processes.<sup>69</sup> Wheatley also notes that the right to self-determination is opposable both against external sovereignties and against the government of the relevant population. Self-determination is a right of peoples and not of states. The existence of an effective control by the government and the habitual obedience of the people, provide 'presumptive evidence that the government constitutes a legitimate expression of self-determination by the people of the state.'<sup>70</sup> This presumption may be rebutted when the government is removed from power by the people.

More significantly, 'Self-determination postulates the right of a people organised in an established territory to determine its collective political destiny in a democratic fashion and is therefore at the core of the democratic entitlement.'<sup>71</sup> Founded on the right of peoples to determine their political system of governance and to select their leadership, the right to self-determination has an essential link to the right to democracy.<sup>72</sup> Thus, self-determination becomes the foundation of the democratic process of all states that have emerged from colonial rule. Udobana also notes that the right to democracy is a sub-species of the right to self-determination. According to him, democratic elections are the basis of the authority of any representative government. He speaks of the international protection of the capacity of the population to express and affect choices freely and influence the policies of governments.<sup>73</sup>

As has been noted before, the two human rights Covenants of 1966 recognise the right to democracy as an inextricable consequence of self-determination. In establishing the trusteeship regime under the UN Charter, members responsible for administering non-self-governing territories recognised a sacred duty to develop self-government and take account of the political aspirations of the peoples and assist them in the progressive development of

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<sup>68</sup> Franck 'The emerging right of democratic governance' (1992) 86 *African Journal of International Law* 46 at 59; Waldron 'Participation: the rights of rights' (1998) 98 *Proceedings of the Aristotelian Society* 307 at 321; Post 'Democracy and equality', (2006) 603 *Annals of the American Academy of Political and Social Science* 24 at 27.

<sup>69</sup> Franck n 68 above at 90; Udobana 'Articulating the right to democratic governance in Africa' (2003) 24 *Michigan Journal of International Law* 1233.

<sup>70</sup> Wheatley n 34 above at 134; Roth n 64 above at 419.

<sup>71</sup> Franck n 68 above at 52.

<sup>72</sup> *Ibid*; Held 'Sites of power, problems of democracy' (1994) 19 *Alternatives: Global, Local, Political* 221, 228.

<sup>73</sup> Udobana n 69 above at 1212.



their free political institutions.<sup>74</sup> The path to independence and self-determination followed a process of consultation with colonial peoples. Elections formed an integral part of the independence process, thus giving self-determination a democratic context. Unfortunately, upon attaining self-determination, African regimes generally did not permit the will of the people to prevail. Instead of transforming colonial administrations into full-blown democracies founded on the will of the people, power was monopolised by the political leadership of the new regimes.

### **THE MAGHREB REVOLUTIONS AND THE QUEST FOR DEMOCRATIC GOVERNANCE**

The Maghreb revolutions represent a rejection of authoritarianism and a quest for democratic governance. The realisation of democratic governance is generally attained by two means. First, democracy is 'given'. The culture of democracy is embodied in some states. In this regard, democracy is realised because its values form part of the political framework. Participation rights – such as the right to form and become members of political parties, the right to vote, and freedom of association – form an integral part of the political system. In democratic states, the exercise of the right to democratic governance is guaranteed by the constitution and respected by the institutions of government. Such institutions include the executive, the legislature, and an independent judiciary. Other institutions such as an independent electoral commission, a national human rights commission and a vibrant civil society are guarantors of democratic governance. Where these institutions fulfil their mandate in accordance with the constitution, popular participation is guaranteed, and political representatives and governments are elected and recalled from office by popular mandate. This is possible because the constitution, the rule of law, and human rights are respected and enforced by state organs. It must be noted that the so-called 'great democracies' that embody the respect of political freedoms, at some stage in their historical evolution, went through revolutions wherein the people demanded democratic freedoms. The English, French and American revolutions provide fervent reminders. This historical fact demonstrates that democratic freedoms are given or taken.

Second, democracy is 'taken'. In authoritarian states, accessing the right to democratic governance is restricted. Consequently, the people are left with no choice but to demand these rights. This may take the form of popular agitation. Raic suggests that an *a contrario* reading of the *Katangese*

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<sup>74</sup> Article 73 UN Charter.

*decision*<sup>75</sup> is to the effect that in situations of serious violations of human rights and denial of internal self-determination, the people could agitate for the right to internal self-determination which could lead to the disruption of the territorial integrity of the state.<sup>76</sup> By analogy, in the expression of their right to self-determination, the people may demand political freedoms and the right to democracy. This demand finds legal basis in article 20 of the African Charter which permits the people to rise up against oppressive governance. This presumptively authorises revolution against oppressive regimes.

John Locke theorised that revolution is not only a right, but an obligation when the government violates the trust of the people.<sup>77</sup> On the basis of the social contract, the people are the bearers of power, which they delegate to governments. Therefore, ultimate political power rests with the people. The people have the right to change governments when they are dissatisfied with their performance or when the government abuses power. Though change of governments should usually occur by constitutional means, when the constitutional means are absent or rendered unworkable, the people may revolt and remove the government by popular revolution.<sup>78</sup>

Maru argues for the legitimacy of the Maghreb revolutions. He states that these revolutions do not amount to unconstitutional changes, but rather, to

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<sup>75</sup> *Katangese Peoples' Congress v Zaire* Communication 75/92, 8th ACHPR AAR Annex VI (1994–1995). In this communication, the President of the Katangese Peoples' Congress had requested the African Commission to recognise the Katangese peoples' Congress as a liberation movement, entitled to support in its bid to secure the independence of the province of Katanga from Zaire, and to secure the expulsion of Zaire from Katanga. The commission held that in the absence of evidence that the people of Katanga are denied access to participate in the government of Zaire or of violations of their human rights, to the extent that the territorial integrity of Zaire could be called into question, the right to self-determination of the people of Katanga should be exercised in a manner consistent with the territorial integrity of Zaire.

<sup>76</sup> Raic *Statehood and the law of self-determination* (2002) 332, apparently referring to par 6 of the decision which reads: 'In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Article 13(1) of the African Charter, the commission holds the view that Katanga is obligated to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.'

<sup>77</sup> Locke *Two Treatises of Government* in Hollis (ed) (1764). Cited in Maru 'The North African uprisings under the African Union's normative framework' (paper delivered at the Conference on the Implications of North African Uprisings for Sub Saharan Africa, Inter-Africa Group, August 2012).

<sup>78</sup> Maru n 77 above at 10.

extra-constitutional changes of government.<sup>79</sup> He justifies this argument by conceptualising revolutions as fundamental human rights. Accordingly, constitutions form evidence of, rather than sources of, fundamental human rights. Constitutions serve as evidence of the social contract between the governors and the governed, and ensure that those who govern do not exceed the limits of their mandate. Bills of rights are merely intended to remind societies of the existence of human rights.<sup>80</sup> Accordingly, the right to revolution is extra-constitutional as the people are at liberty to activate their latent right to change constitutions and governments. Thus, the people have a right collectively to remove a government that has lost its credibility, where the means of removal through regular and constitutional means do not exist or have been rendered unworkable. Revolutions represent the will of the people to change governments that refuse or are unable to reform to meet the needs of the people. Revolutions are legitimate where there is systematic violation of human rights and the provisions of the constitution, where the government systematically and deliberately violates its fiduciary duty to the governed,<sup>81</sup> where the constitutional means for redress are inaccessible, and where the revolt is the act and will of the majority. The usurpation of power by a minority, does not amount to an extra-constitutional change of government. Rather, they are an unconstitutional change of government. While revolutions may lead to short periods of transition supported by the people, they may not be used by a minority – such as military ‘coupists’ – to govern at their will. In this regard, transitional governments should represent the act and will of the people. Such governments should enjoy popular support and be broad-based, and significantly representative of various sections of the society. In the midst of chaotic transitional periods, it is sometimes possible to identify representative leadership, as was in the case with the National Transitional Council in Libya. However, doubts may arise as to the level of support for the transitional leadership among the people. For example, while the military was popular in the early days of the Egyptian revolution, it quickly lost favour with the people who became suspicious of the sincerity of their promise to relinquish power. Also, the election of current president Mohamed Morsi who is aligned to the Muslim Brotherhood, showed that his support among the population was far from conclusive.<sup>82</sup> The resolution of such fluid situations demands a swift restoration of constitutional democracy.

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<sup>79</sup> *Ibid.* Unconstitutional changes are prohibited under the AU normative framework.

<sup>80</sup> Maru n 77 above at 11.

<sup>81</sup> *Ibid.*

<sup>82</sup> Morsi won only fifty-one per cent of the popular vote showing that at least forty-nine per cent of the voters did not support his candidacy.

The Maghreb revolts represent an assertion by oppressed peoples of their right to democratic governance. The restriction of democratic governance is unsustainable and results in the isolation of dictators who eventually lose their legitimacy to govern. The continuum of authoritarian rule and democratic governance represents absolute power in relation to those who govern on the one hand, and lack of freedoms on the part of the governed. Thus, the Maghreb revolutions represent the collective desire for the institutionalisation of democratic governance. The Maghreb movement was a typical manifestation of the collective nature of the right to self-determination and democracy. In functional democratic states, the collective exercise of the right to democracy occurs through the structures of the state. On the other hand, in states that deny the people democratic governance, the collective desire for democracy ultimately takes the form of agitation and protest.

#### **LESSONS FOR SUB-SAHARAN AFRICA**

Questions have been asked whether the North African ‘political earthquakes’ will spread to sub-Saharan Africa. Though sub-Saharan African states generally have pluralist constitutions, most of the reforms that took place in the 1990s were cosmetic. The continent continues to experience intolerance of political opposition, political violence against opposition leaders and supporters, the stifling of press freedom, election-rigging, and the refusal of incumbents to relinquish power. These drawbacks are reminiscent of the trappings of authoritarian rule. A few differences between North Africa and sub-Saharan Africa must, however, be considered. First, though North African countries have various ethnic groupings, they tend to be more homogenous than their sub-Saharan African neighbours which are mainly fragmented along several ethnic lines. In this regard, it was easier for North African societies to develop a common revolutionary agenda and face a common adversary.<sup>83</sup> Sub-Saharan governments, on the other hand, have the liberty of dividing interests along ethnic loyalties. In the midst of unpopularity, a government can still garner significant support from groups whose ‘ethnic kin’ are in government. Secondly, several sub-Saharan African states supposedly underwent democratisation in the 1990s. This period saw the introduction of political pluralism in several states in the region. Thus, the process of democratisation saw the restriction of presidential longevity. Presidential term limits were introduced in the new constitutions of some

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<sup>83</sup> It must be noted, however, that in Libya’s case, Gaddafi’s kinsmen in Sirte, his place of birth, stoutly resisted the revolution.

countries.<sup>84</sup> Consequently, there has been a change of heads of states and ruling political parties in a number of countries and, with some exceptions, sub-Saharan Africa is no longer burdened with long serving leaders as was the case during the first two decades of self-rule. In this regard, sub-Saharan Africa has to some extent, avoided the 'single-leader-fatigue' syndrome faced by its North African counterparts. Thirdly, the role played by information technology during the North African revolutions cannot be underestimated. The internet was widely used in organising and mobilising support for the Egyptian revolution. The use of internet blogs, and the ability to bypass government attempts to shut down the internet and to keep the information flowing, played a major role in kindling the flames of revolution.<sup>85</sup> Due to limited access, it is not conceivable that the internet can readily be used as a medium for revolution in the rest of Africa at the moment.

What is important, however, is that sub-Saharan African regimes should learn from the North African experience. It is abundantly clear that nations cannot be held hostage by the forces of authoritarianism indefinitely. This was demonstrated by the events relating to the elections in Senegal in March 2012, where the people engaged in mass protests against what was seen as then President Abdoulaye Wade's attempt to prolong his rule.<sup>86</sup> The people will always agitate for fundamental freedoms and human rights, and the right to govern themselves. The North African revolutions went beyond the socio-political issues of poverty, unemployment or corrupt government. They were an expression of the desire to end authoritarian rule and access basic freedoms and fundamental rights. Thus, unfettered access to self-determination through the expression of democratic rights is a prerequisite for the peaceful cohesion of all states. In this regard, the over-centralisation of power in the hands of a few should be avoided. Instead, state and

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<sup>84</sup> Presidential term limits are usually limited to two terms. Such limits were later removed by constitutional amendments in Cameroon and Uganda. Attempts to remove the term limits failed in Nigeria (Olusegun Obasanjo), Zambia (Frederick Chiluba) and Malawi (Baliki Muluzi). Out of Africa's 48 sub-Saharan countries, thirty-two had presidential term limits as at 2008.

<sup>85</sup> These revolutions were mainly fanned by the young generation.

<sup>86</sup> While the Constitution of Senegal provides for a two term limit, Wade decided to run for a third term, arguing that his election for the first term was under a previous constitution that did not provide for a term limit. He argued, therefore, that his first term should not be considered. The matter went to the Constitutional Court which upheld his argument. This caused wide spread protests among the population who wanted to see the end of Wade's rule. Opposition parties rallied behind presidential candidate Macky Sall in a runoff election and Wade was eventually defeated at the polls.

municipal functions should be exercised at different levels of society with a high level of transparency and accountability.<sup>87</sup>

Sub-Saharan Africa should therefore learn from the Maghreb experience and engage in preventive action to isolate political conflict. The creation of circumstances that will permit the determination of political contest through transparent mechanisms and the granting of genuine space to political opposition to operate freely, is crucial in preventing the resort to peoples' revolutions. In this regard, meaningful and credible reforms should be instituted while time permits. In particular, adherence to the dictates of national constitutions, as well as to the principles contained in the Constitutive Act, the African Charter on Human and Peoples' Rights, and the African Charter on Democracy, Elections and Governance is of fundamental importance. These principles include the respect for human rights and the rule of law, the fostering of strong institutions of democracy such as independent and credible judiciaries, an independent media, strong civil societies and *truly* independent and credible electoral commissions.

## CONCLUSION

Self-determination is not a process that terminates with the attainment of statehood. The internal aspect of self-determination involves the continued embracing of democratic values. Therefore, democratic governance is a logical sequence and an inevitable consequence of the right to self-determination. This requires political structures that enable the public to participate in the governance of their country. However, the first few decades of self-governance in Africa saw little more than the replacement of colonial rule by dictatorship. The full attainment of self-determination and democratic governance was frozen, as power was centralised in the hands of small elites. Thus, post-colonial governments were as undemocratic as their colonial predecessors and authoritarian states flourished at the expense of popular democratic governance. With the dawn of the AU, African leaders made a commitment to uphold democratic values. The Constitutive Act of the AU, the African Charter on Human and Peoples' Rights, and the African Charter on Democracy, Elections and Governance, all contain provisions recognising

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<sup>87</sup> Van der Walt & Seroo 'The implementation of the right to self-determination as a contribution to conflict prevention' Report of the International Conference of Experts held in Barcelona from 21 to 27 November (1998) 21; Hanberger 'Democratic accountability in decentralised governance' (2009) 32 *Scandinavian Political Studies* 1 at 2; Papadopoulos 'Cooperative forms of governance: problems of democratic accountability in complex environments' (2003) 42 *European Journal of Political Research* 473 476.

the right to democracy. These documents represent an upward turn in the continent's commitment to democratic governance. However, words must be matched by deeds. The North African revolutions demonstrate that self-determination and the right to democracy form a vital part of the existence of mankind. States that exclude the wider participation of the people from governance present an unsustainable choice of political system. Rule by threat and fear is not a viable substitute for democracy, human rights, and the rule of law. The North African revolutions have spread eastwards into the Gulf Region and not southwards into sub-Saharan Africa. African leaders should not be content with the reforms of the 1990s that brought about a semblance of change in a number of sub-Saharan African countries. There is little doubt that in most cases these changes were cosmetic. The holding of regular elections does not serve as a substitute for the need for strong, independent, and credible state institutions that guarantee resilient and credible democracies. The absence of credible and transparent institutions of governance amounts to a denial of democratic rights. The denial of these rights ultimately brews unrest and, possibly, revolution.

Revolutions of the people are justifiable where the people are denied democratic governance, and where it is impossible to change the system by constitutional means. These revolutions are justified as extra-constitutional means of change. The people are the repository of power and governments are their agents. Therefore, where governments fundamentally breach their mandate, totally exclude the people from participatory governance, and render the constitutional means of change impossible, the people may remove them by popular revolution. Therefore, the surest way to avoid the violent assertion of the right to self-determination and democratic governance is by making them accessible to the people.