



“Democracy, Elections and Governance in Africa”

MOOC Democracy, Elections and Governance in Africa

Course: Democracy, Human rights and Gender

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Welcome

Welcome everyone. My name is Glory HOSSOU. I am a lawyer and human rights specialist. I am in charge of presenting the course "Democracy, Human Rights and Gender" as part of the "**Democracy, Elections and Governance in Africa**" MOOC organised by AfricTivistes on behalf of the **Charter Project Africa**.

In this six-module course, I will teach you the basic principles of democracy, human rights and gender on the continent, based on the African Charter on Democracy, Elections and Governance.

THE FUNDAMENTAL ELEMENTS OF DEMOCRACY

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Through this course, you will be able to know the basic elements of democracy, those essential components without which one cannot speak of democracy or the rule of law.

You will learn about the types of democracy and how they are put into practice.

You will learn more about the principle of separation of powers and its requirements and finally, we will review some guiding principles and democratic values.

Conceptual clarification

First of all, let's define democracy?

The name democracy comes from two Greek words: demos and kratos. Demos means people and Kratos means power. It is therefore a system in which power belongs to the people.

The most widely accepted definition of democracy is given by President Abraham Lincoln. He defined democracy in 1863 as “**government of the people, by the people and for the people**”.

Winston Churchill later said in 1947 that **democracy is the worst system of government outside of all others that have been tried in history.**

We will see in this course why do these two personalities define democracy in such terms.

Democracy is a political system in which decisions are made not by the few, but by the many.

This is what has been referred to as the government of the people (of the masses) by the people (by the majority). It is a form of government that guarantees *equality and freedom of citizens, the separation of powers, political pluralism and the rule of law.*

This form of government is different from monarchy, aristocracy and dictatorship.

To put it plainly, one could say that in a democratic system, power comes from the people, is exercised by the people, and for their own interests.

Types of Democracy

1. Equality

First of all, democracy implies civic equality. Within a democracy, citizens are all subject to the same laws and are differentiated from one another only by their merit.

Henceforth, poverty should not prevent anyone from taking part in the functioning of the state. The aim is not to ensure the same resources for all citizens, but to guarantee the equality of all before the law through the impartiality of the judiciary.

Democracy has become a political system in which citizens have sovereignty and exercise it in three ways:

- Direct when the citizens themselves adopt the laws and important decisions and choose the executing agents themselves, who are usually dismissable. **This is called direct democracy;**
- Indirectly, when representatives are chosen by lot or elected by the citizens, for a non-binding term in office of limited duration, during which they are generally not liable to be dismissed by the citizens. **This is called representative democracy;**
- Semi-direct when citizens are called upon to decide themselves on certain laws, through referendums, which can be either a popular initiative referendum, or a possibility to veto a bill...

D *e* **m** **O** **C** **r** *a* **C** **Y**

Under the rule of law, the State, as a superpower, is subject to the law in force and cannot evade it in case of breach.

In this regulated system, citizens can sue the State or its branches before national or international jurisdictions in order to stop/establish a violation and ask for compensation.

2. Separation of powers

Democracy also implies freedom. It is the acknowledged and ensured freedom of all citizens, without discrimination, guaranteeing a democratic space. Ensuring the fundamental freedoms of each individual is therefore one of the conditions for the existence of democracy.

This is the purpose of the separation of the three powers: the power to make laws (legislative), the power to apply them (executive) and the power to enforce them (judicial).

If two of these powers merge, as it was under the monarchy, the freedom of citizens and democracy can be jeopardised. This is why democracy has supervisory bodies such as the Constitutional courts in Benin, Togo, South Africa and Senegal.

In most modern democracies, and in Africa in particular, the Constitution sets out the way in which power is distributed among the different organs and the competencies assigned to them respectively.

It is important that the power of the State does not end up in the hands of a single person or a small group of people, because in most cases this leads to an abuse of power.

As Charles de Secondat, Baron de Montesquieu said in *"De l'esprit des lois" in 1748, "It is an eternal experience that every wo/man who has power is impelled to abuse it. S/He tends to continue until s/he finds limits"*.

To put it simply, there are three powers within a State:

- the legislative power which passes laws;
- the executive power which enforces the laws and government policy;
- the judicial power which punishes violations of the laws in force.

Two major rules govern the principle of separation of powers:
specialisation and independence.

Specialisation means that each power has its own area of competence; it cannot interfere in the sphere of another body and all this is intended to avoid absolutism.

Legislative power is exercised by the parliament, which is composed of one or two chambers, depending on the regime. These are the lower and upper houses. In a democracy, the parliament passes the law and controls the action of the government. The control can be exercised through oral or written questions addressed to the government seeking to explain itself on a given subject. Parliamentarians are elected by the people for a fixed term.

Executive power is exercised by the head of State or the government or both, depending on the system: presidential, parliamentary or mixed. Its mission is to execute the laws passed by parliament. It also has the power of law enforcement and therefore a monopoly on legitimate coercion. Thus, it is the executive's responsibility to define the broad development directives and to guarantee security, but also to ensure that the population enjoy their rights.

Judicial power is exercised by judges. They sanction non-compliance with the law and punish all offenders.

The rule of independence of powers. This means that the three powers are placed on an equal footing. One power cannot command another. The objective is to fight against absolutism, arbitrariness or the sole will of an individual who submits all other powers to his/her control.

The last rule that we will study with regard to the separation of powers relates to the existence of control procedures. Each power can hold means of pressure on the others. These are procedures of checks and balances. As Montesquieu says, ***"For power not to be abused, it is necessary from the very nature of things that power should be a check to power"*** *De l'esprit des lois*, 1748.

The separation of powers is essential for democracy.

In the absence of separation of powers, confusion can lead to an authoritarian regime where the will of an individual or group of individuals will be the law for the majority.

When all powers are concentrated in the hands of one person or group of people, there is no counter power to balance them, as in an absolute monarchy where the king holds the right of life and death over his subjects.

He writes the law, executes it and judges. He can therefore send anyone to prison without justification or accountability to anyone.

Most countries refer to themselves as "democratic countries" where the principle of separation of powers is respected. No country calls itself an "authoritarian" or dictatorial country.

"Democracy is not the law of the majority, but the protection of the minority." Albert CAMUS.

Some democratic principles and values. In a democratic state, the following principles must be respected:

- The rule of law based on respect for the supremacy of the Constitution and constitutional order in the organisation of States;
- The regular holding of free and transparent elections in order to institutionalise a legitimate authority and government as well as democratic changes of government;
- The prohibition, rejection, condemnation and sanction of any unconstitutional change of government in any State as a serious threat to stability, peace, security and development;
- The need to seek a national consensus around any initiative aimed at revising the Constitution by resorting to a referendum if necessary;
- The respect of human rights and the fight against all forms of discrimination. The inclusion of women, people with disabilities, minorities, etc.
- The development of legislative frameworks promoting democratic culture, citizen participation, peace, tolerance, good governance, access to information, freedom of the press and the fight against corruption.

Conclusion

What you need to remember

- 1) Fundamental elements of democracy
- 2) Equality
- 3) Separation of powers
- 4) Rule of independence of powers.
- 5) Democratic principles and values

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See you soon !

PLURALISM AND DEMOCRATIC CULTURE



In a democratic society, pluralism is defined by the respect, acceptance and recognition of all points of view, however different or divergent they may be, and there should be no obstacles to their dissemination and application.

Pluralism is based on contradictory discussions, the results of which are often based on compromises that end up satisfying all groups involved, or at least are generally acceptable.

In pluralism and democratic culture, dialogues, viewpoints and discussions, as well as the ideas and points of view debated therein, have a constructive character within the framework of the social processes of expression of the political ideas and will of citizens, no matter how contrary, opposed to the regime in place or close to the opposition they may be.

Tolerance must be the norm. Nothing can be taken for granted and a culture of permanent vigilance is needed to preserve these achievements.

Pluralism and democratic culture

Democracy implies the holding of free and regular elections in which citizens choose their leaders by voting or by universal, equal and secret suffrage.

This implies the existence of several political parties representing all political schools of thought.

This allows the people to have a real choice and to vote freely for a particular party. Or for a particular person.

Political change of power is also an essential component of democratic culture. It stems from the political pluralism discussed before. It is the succession in power of political schools of thoughts depending on the outcomes and the type of election.

Democracy also implies fundamental freedoms. The right to life, the right to privacy, freedom of expression, the right of the press, the right to information, the right to protest, equality between men and women, freedoms of thought, conscience and religion, etc.

The media must be free and without interference.

In a democracy we should not see journalists imprisoned for their journalistic activities. Even worse, journalists should not be murdered or kidnapped.

The media organs must be created and exercised their role freely because free and independent media are inherent to the vitality of democracy.

For an effective culture of democracy, it is important to :

- seek a national consensus on any initiative to revise the Constitution, if necessary by means of a referendum or broad popular consultation;
- respect human rights and fight against all forms of discrimination
- Include women, people with disabilities, minorities, etc. in development programmes;
- Ensure that economic development goes hand in hand with human development and that no one is left behind.

Participatory democracy i.e. the ability of parliaments and legally recognised political parties to carry out their essential functions; freedom of expression, especially freedom of the press and the promotion of professional media. Not to mention strong partnerships and dialogue between government and civil society. Democratic culture and practice are key to lasting peace between the State and its various subdivisions (local institutions; traditional institutions...) States Parties to the ACDEG are striving to find appropriate ways to increase their integration and effectiveness within the broader AU democratic system in order to instill political pluralism and tolerance. Given their universality, interdependence and indivisibility, the principles of respect for human rights and fundamental freedoms must be fiercely preserved by the State Parties to the ACDEG. Unconstitutional changes of government are a real threat to the consolidation of the principles of human rights protection.

The development of the continent will not be achieved without the political empowerment and participation of women in public and private institutions in the various AU member countries. The crucial role of women in strengthening democracy and their full and active participation in decision-making processes and structures must be consolidated. In this course, our instructors will review the full and active participation of women in electoral processes and at all levels of representation and decision-making in national, regional and continental institutions in the first decade of the 21st century.

Conclusion

What you need to remember

- 1- Democracy implies the holding of free and regular elections
- 2- The existence of several political parties representing all currents of thought.
- 3- The alternation of power is an essential component of the democratic culture
- 4- Fundamental freedoms: the right to life, the right to privacy, freedom of expression, the right of the press, the right to information.

STATE OF HUMAN RIGHTS IN AFRICA



STATE OF HUMAN RIGHTS IN AFRICA

Structure

Definition of human rights;

Characteristics of human rights ;

Human rights protection instruments;

Human rights protection mechanisms;

What's new in human rights in Africa



Human rights, also called fundamental rights, are the rights that result from the inherent dignity of every human being.

They transcend the State and are binding on all public authorities.



They are rooted in almost all cultural traditions of the world.

Human rights are not a Western brainchild as wrongly believed by some people.



History of human rights

*Around 1793-1750 before Jesus-Christ, was written **the code of Hammurabi**, King of Babylon. It is a collection of jurisprudence engraved on basalt and can be considered as the first code of human rights.*

It already provided, at the time, for the rights of the individual, the right to life, the prohibition of theft...

Another historical document is the *Decalogue*, also called *the Ten Laws or the Ten Words*. It was written around 900 before Jesus Christ and was given to Moses by God on Mount Sinai.

It is one of the founding texts of *Judaism* and *Christianity* and contains several prescriptions in the form of prohibitions:

- **The right to respect life**
- **The duty to respect other people's property**
- **The obligation not to bear false witness**
- **The right to enjoy the respect of their children**



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CREER OU
REJOINDRE
DES GROUPES



16

PROTECTION DE LA
VIE PRIVEE



17

ACCES AUX
INFORMATIONS



18

RESPONSABILITE
DES PARENTS



19

PROTECTION
CONTRE LA
VIOLENCE



20

ENFANTS PRIVES
DE FAMILLE



21

ENFANTS ADOPTES



22

ENFANTS REFUGIES



23

ENFANTS EN
SITUATION DE
HANDICAP



24

SANTE, EAU,
NOURRITURE,
ENVIRONNEMENT



25

REVOIR LE
PLACEMENT
DE L'ENFANT



26

AIDE DES
GOUVERNEMENTS



27

NOURRITURE,
VETEMENTS ET
LOGEMENT SUR



28

ACCES A
L'EDUCATION



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OBJECTIFS DE
L'EDUCATION



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CULTURE, LANGUE
ET RELIGION
DIFFERENTES



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REPOS, JEU,
CULTURE ET ARTS



32

PROTECTION
CONTRE LE TRAVAIL
DANGEREUX



33

PROTECTION
CONTRE LES
DROGUES



34

PROTECTION CONTRE
LES VIOLENCES
SEXUELLES



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PREVENTION DE LA
VENTE ET DE LA
TRAITE

A little further in the modern period, we have the Declaration of Rights of Virginia adopted in 1776.

It will be used by U.S. President JEFFERSON to write the Declaration of American Independence. It is the first text presented in the form of a declaration.

More recently, in 1789, the Declaration of Human and Citizen's Rights was adopted in France during the Revolution.

This declaration put an end to royal absolutism and recognised the sacred nature of life, the right to own land and many other rights.

Since the 18th century, human rights have been acknowledged in a rather fragmented way and have multiplied in the form of proclamations, national then international declarations.

This rapidly generated a pedagogical or scientific need to organise them. The classifications are eminently multiple and diverse depending on the times, the civilizations and the regions.

Nowadays, human rights are embodied in a dozen international legal instruments and are intended to protect mankind and the world from a third world war.

They are universal, irrevocable, inalienable and indivisible.

The characteristics of human rights

Three characteristics will be studied in this course. They are inalienability, indivisibility and universality.

First, inalienability: This means that human rights cannot be lost because they are inherent to human existence. But in some circumstances, some of these rights, not all, may be restricted or limited **EX:** When a person is accused of a crime; or in a national emergency, a government may make a public declaration and derogate from some rights by imposing a curfew that will reduce citizens' freedom of movement.

Then, indivisibility: This means that human rights are inseparable, interdependent and interrelated. Different rights are intrinsically linked and therefore cannot be considered independently of each other.

The enjoyment of one right depends on the enjoyment of many other rights. No right prevails over another.

Finally, universality: This means that human rights apply to all individuals everywhere in the world, without time limit. Everyone is entitled to all the rights and freedoms proclaimed without distinction of any kind, such as **race**, **ethnic background**, **colour**, **sex**, **sexual orientation**, **disability**, **language**, **religion**, **political or other opinion**, **social or national origin**, **birth** or other status.

Conclusion

What you need to remember

- 1- Defining Human Rights
- 2- History of Human Rights
- 3- The characteristics of human rights: inalienability, indivisibility and universality.

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See you soon!

Human rights protection instruments



Human rights protection instruments are conventional, legislative or regulatory texts that promote and protect human rights.

They exist at the **national, regional and international** levels. Of course, each instrument must be in conformity with the others in the respect of the Kelsen system.

It must be noted here that African States have fully participated in the internationalisation of human rights.

International level

The United Nations Charter

The Universal Declaration of Human Rights, 1948

The International Covenant on Civil and Political Rights, 1966

The International Covenant on Economic, Social and Cultural Rights (1966)

The Convention on the Elimination of All Forms of Discrimination against Women (1973)

The Convention on the Rights of the Child (1989)

Etc.

Regional level

The African Charter on Human and Peoples' Rights 1981

The African Charter on the Rights and Welfare of the Child

The Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

The African Charter on Democracy, Elections and Governance.

African Union (AU) Convention
Governing the Specific Aspects of
Refugee Problems in Africa;

Protocol to the African Charter on
Human and Peoples' Rights on the
establishment of an African Court on
Human and Peoples' Rights.



The Constitution is the supreme norm, superior to all other norms within the States.

Most States today have modern constitutions that provide for the respect of human rights and the modalities of access to power.

Then there are laws and regulations that also guarantee human rights.

This is the case in Benin with the Children's Code or the Information and Communication Code.

Human rights protection mechanisms



Human rights protection mechanisms are the jurisdictional, judicial or quasi-judicial bodies responsible for enforcing the human rights instruments discussed above. They mostly sanction and are considered as the gatekeepers.

These human rights protection mechanisms can be found at **national, regional and international levels.**

NATIONAL MECHANISMS

Constitutional Court/Councils

National Human Rights Councils (NHRCs)

INF

PSCs

CIPEC

The Courts

Courts of Appeal

The Supreme Court

Etc.

Regional mechanisms

- The African Commission on Human and Peoples' Rights ;
The Special Procedures of the African Commission on Human and Peoples' Rights;
- The African Court on Human and Peoples' Rights;
- The African Committee of Experts on the Rights and Welfare of the Child;
- The ECOWAS Court of Justice

Etc.

The United Nations Human Rights Council

Special Committees or Treaty Bodies

The Universal Periodic Review

Special Procedures

The International Criminal Court



Human rights in Africa: facts and challenges

The state of human rights in Africa has somewhat wavered in recent years.

A situational analysis reveals encouraging elements on the one hand and fears and setbacks on the other.



POSITIVE ELEMENTS

- An electoral democracy maintained with the holding of regular elections and the observation of political change of power in most West African countries.
- The election in recent years of many West African countries to the United Nations Human Rights Council (Benin, Togo, Senegal, etc).
- The decline in the death penalty. Most West African countries have abolished capital punishment or renounced executions for decades.

SETBACKS

Freedom of expression

Freedom of speech is under threat around the world and there must be urgent action taken to protect this essential human right for all people.

In recent years, the internet has been cut off in several countries violating the right to access information, the right to freedom of expression and many other fundamental human rights. This was the case in Togo in 2017 where the authorities decided to cut off the internet during opposition demonstrations.

In Benin, too, considered by some as a democracy reference, the internet was cut off during the legislative elections of April 2019.

Benin at the time joined the very closed circle of states where the internet is cut off, preventing people from expressing themselves. Burkina Faso, Sudan, Ethiopia and Senegal have also cut off or restricted internet access in recent years.

To finish on this topic, it should be noted that the ECOWAS Court of Justice ruled on internet shutdown in Togo in 2017. The Court recognised that this was a violation of the right to freedom of expression and condemned the Togolese State.

Still on freedom of expression, many journalists have been arrested and prosecuted in recent years in several African countries.

This is the case of Ignace SOSSOU who was sentenced to 18 months in prison in Benin for harassment through electronic communication. The United Nations Working Group on Arbitrary Detention, to which the journalist's counsel was referred, described the journalist's detention as arbitrary and asked the Beninese authorities to compensate him.

In Niger and Togo, Samira Sabou, Ferdinand Ayité and Joël Egah were respectively prosecuted. Amnesty International considered this an attack on freedom of expression and called for the release of these journalists.

It should be noted that most of these prosecutions are made possible by the promulgation of domestic norms that allow the imprisonment of journalists in full disregard of international law. The UN Working Group on Arbitrary Detention has asked Benin to revise certain provisions of its digital law and bring it in line with international human rights law;

Citizens' movements have emerged in recent years in Africa. Y'en a marre in Senegal, Lucha in the Democratic Republic of Congo and Balai Citoyen in Burkina Faso are just a few examples.

In Burkina Faso, in 2014, popular demonstrations toppled President Blaise COMPAORE as he tried to revise the Constitution to stay longer in power. He had been at the helm of the country since 1987.

In Benin in 2019, during the demonstrations against the controversial legislative elections, at least 04 people were killed, including a 19 year old and a 37 year old woman and mother of 5 children, the last of whom was only 5 months old.

In **Senegal**, during the **FreeSenegal** protests of March 2021, many people were killed while demonstrating peacefully. This was the case of the young tailor Cheikh WADE who was demonstrating with the Senegalese flag in his hand. He was shot dead.

In the **Republic of Guinea** and in **Côte d'Ivoire**, demonstrations were organised to contest the third term candidacies of Alpha CONDE and Alassane OUATTARA.

These demonstrations were violently repressed and many people were arrested and imprisoned. Many people were also killed.

In **Benin**, **Senegal**, **Nigeria** and **Guinea**, the families of the victims are still waiting for reparation and guarantees of non-repetition from the governments.



People should not be driven by a sense of fear or apprehension for their physical integrity or even for their lives when it comes to occupying the public space to demonstrate or to claim their freedoms.

The withdrawal of the right of citizens to appeal directly to the African Court on Human and Peoples' Rights.

The resurgence of gender-based violence (rape, violence against girls and women in Benin, Nigeria, Senegal and Guinea);

Violence against people because of their sexual orientation or gender identity;

The human rights situation in detention centres.



HUMAN RIGHTS



CHALLENGES

Africa must take up the challenge of respecting and protecting human rights.

This requires :

Compliance of national laws with international human rights commitments that are regularly ratified;

Combating the shrinking of civic space and encouraging citizen participation and the exercise of fundamental rights and freedoms;

Passing of laws on participation in public affairs by women, people with disabilities, etc.

Fight against corruption and impunity in all areas without exception;

Wider dissemination of conventions and laws relating to human rights;

Education of the population on human rights and the values of tolerance, peace and living together.

The signing and ratification of the Additional Protocol to the African Charter on Human and Peoples' Rights creating an African Court on Human and Peoples' Rights.

The **authorisation** of individuals and NGOs to **bring cases** directly to the **African Court** on Human and Peoples' Rights in accordance with Article 34-6 of the Protocol;

The **implementation** of **court decisions** and **recommendations** of human rights treaty bodies;

And above all, overcoming the ignorance of Human Rights by the African populations.

Conclusion

What you need to remember

- 1- Human rights mechanisms: national, regional and international
- 2- Facts and challenges
- 3- Fears and setbacks: on freedom of expression, freedom of demonstration, increase in gender-based violence (rape, violence against girls and women)
- 4- Challenges: respect for human rights, fight against the shrinking of civic space, fight against corruption and impunity, signing and ratification of the additional protocol to the African Charter on Human and Peoples' Rights creating an African Court on Human and Peoples' Rights.

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See you soon!

