

Main Challenges of Europe-Africa Relations in the Field of Human Rights

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Sumário

O autor identifica cinco desafios fundamentais nas relações Europa-África relativa-mente às dimensões da governação e dos direitos humanos. O primeiro desafio diz respeito à necessidade de um apoio efectivo da UE ao processo de institucionalização do sistema africano de protecção dos direitos humanos, nomeadamente na implemen-tação do Protocolo à Carta Africana dos Direitos do Homem e dos Povos, bem como no estabelecimento do Tribunal Africano para estas questões.

O segundo passa pelo desenvolvimento de um diálogo intercultural alargado aos mais diversos actores, o qual permita avançar para um conceito multicultural e verdadeiramente universal de direitos humanos. As principais divergências encontram-se na relação entre direitos individuais e colectivos, na interligação entre direitos e deveres, no desafio que representam as diversas práticas tradicionais africanas relativamente a direitos humanos básicos como a integridade física, na compatibilidade do Islão com os direitos humanos e a democracia, e ainda no papel dos direitos económicos e sociais – nomeadamente o direito ao desenvolvimento – como parte integrante dos direitos humanos universais.

O terceiro desafio está ligado à necessidade de uma política de condicionalidade mais coerente e consistente ao nível da União Europeia, ultrapassando o unilateralismo e os padrões duplos de actuação actualmente existentes. Assim, dever-se-ia caminhar para construir um modelo baseado na indivisibilidade de todos os direitos humanos, numa abordagem pró-activa (e não reactiva) da condicionalidade e em procedimentos claros, imparciais e transparentes na aplicação de cláusulas de direitos humanos a países terceiros.

Outro desafio diz respeito à política da União Europeia em termos de migração, a qual se pretende mais consentânea com os modelos internacionais de direitos humanos fundamentais, mais do que excessivamente determinada por preocupações de segurança que têm conduzido a violações várias desses direitos.

Por último, importa realizar uma análise profunda do impacto das companhias tran-snacionais na situação de direitos humanos em África, bem como do papel que a União Europeia pode desempenhar no estabelecimento de padrões de controlo e su-pervisão das actividades dessas empresas.

First of all, let me start by thanking the organisers of this international conference for the event itself and for the warm invitation to take part in it and to share my comments and views about a very relevant topic on the agenda of international relations at the dawn of twenty-first century. In my view, there are five major challenges relating to Europe-Africa relations in the field of human rights and good governance:

- É The need of an adequate support from the European Union (EU, hereafter) to the evolving process of institutionalisation of the African system for the protection of human rights.
- É The development of an intercultural dialogue on the issue of human rights, with the aim of advancing towards a multicultural concept of human rights.
- É The need of a more coherent and consistent policy of conditionality from the side of the EU.
- É The migration policy of the EU should be developed according to well-established international standards in terms of basic human rights, and
- É A deep analysis of the impact of transnational corporations in the overall situation of human rights in Africa and the role the EU can play in the process of establishing certain standards for the control and supervision of the activities of private companies carrying out their activities in the African continent.

Africa did not have its own system for the protection of human rights until the adoption of the African Charter on Human and Peoples' Rights⁷³ (adopted in 1981, it entered into force in 1986) within the framework of the Organization for African Unity (OAU). Nevertheless, the African system, under the new African Union (AU) since 2002⁷⁴, is the weakest one of the three existing regional systems as far as human rights are concerned (the Council of Europe system⁷⁵, the Organization of American States system⁷⁶ and the system of the African Union). The system of the Council of Europe could be used as a model by African countries, and Europe should support this process. On the other hand, African countries should commit themselves to the strengthening of the system, especially by ratifying the Optional Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights⁷⁷. This Optional Protocol was adopted in June 1998, but it has not entered into force yet due to the small number of ratifications. In this sense, the lack of political will in most of the African countries is the main obstacle for its entry into force, since they are very reluctant to the possibility of being supervised and monitored by a body of a jurisdictional nature such as the African Court. They prefer a situation in which States keep control over the process of accountability in cases of violations of human rights.

Institutionalisation of the African System for the Protection of Human Rights

The second challenge to Europe-Africa relations in terms of human rights is the need of opening a dialogue for the establishment of a truly universal concept of human rights⁷⁸. This dialogue should not be restricted to representatives of States; on the contrary, other actors like NGOs⁷⁹, academics, social movements... should take part in this dialogue, since human rights are an issue of concern not only for States but for every single actor in society.

Towards a Multicultural Concept of Human Rights

We have to acknowledge that there are substantial differences in the way Europe and Africa understand human rights. There exist divergent approaches, expressed in the differences between the European Convention on Human Rights (1950) and the African Charter on Human and Peoples' Rights (1981). I would suggest at least five topics in which dialogue is absolutely essential:

- 1 The relation between individual rights and collective rights, since the African cosmivision emphasizes much more the collective dimension of human rights⁸⁰.
- 1 The relation between rights and duties⁸¹. In this sense, whereas the European Convention on Human Rights does not even mention duties, the African Charter has a whole chapter devoted to duties as a necessary complement of rights⁸².
- 1 The challenge of some African traditional practices to basic human rights like the right to physical integrity⁸³.
- 1 The issue of compatibility of Islam with human rights and democracy⁸⁴, and
- 1 The role of economic, social and cultural rights and the right to development⁸⁵ as an integral part of universal human rights. We should not forget that the African Charter is the only regional legal instrument that has incorporated both economic, social and cultural rights and solidarity rights. In this sense, the African Charter has recognised solidarity rights such as the right to development⁸⁶, the right to peace⁸⁷ or the right to a healthy environment⁸⁸.

In all these issues, a permanent and an open dialogue are necessary. Some lessons could be learned from the experience of the Euro-Mediterranean Dialogue, with the participation of some African countries, initiated in Barcelona in November 1995 under the auspices of the Spanish Presidency of the European Union⁸⁹.

The Need for Revision The third challenge is the establishment of a coherent and consistent policy of of the Policy of conditionality from the EU in its relations with the African continent.

Conditionality of the EU As we all know, conditionality is one of the most important principles the EU applies in its relations with third countries in the fields of development aid⁹⁰, trade and other forms of cooperation⁹¹. So far, the application of conditionality has been presided by *unilateralism* and *double standards*⁹².

In order for it to be more coherent and more consistent, conditionality should be based on the following principles:

- 1) Indivisibility and interdependence of all human rights. In most of the cases, conditionality is only based on the monitoring of civil and political rights, without fully taking into consideration economic, social and cultural rights. In this respect, special attention should be paid to the situation of economic, social and cultural rights in the given country and to the effects of the application of conditionality, particularly when it adopts the form of economic sanctions, in the living conditions of the population, especially the effects on vulnerable groups⁹³.
- 2) Dialogue with the different countries with which the EU holds relations should be a key element for the application of the policy of conditionality.
- 3) Emphasis should be made in a *proactive approach* to conditionality rather than

exclusively *reactive policies* designed to respond to human rights violations, including sanctions as a last resort. Human rights have to be present in all policies implemented by the EU, including trade or migration policies. The mainstreaming of human rights in EU policies and norms is one of the main challenges if the EU wants to maintain coherence and consistency in its adherence to the principle of conditionality in its relations with third countries.

- 2 Finally, the EU should establish a clear, impartial and transparent procedure for the application of human rights clauses to third countries. If this is not the case – and we are witnessing now an absence of a procedure of this nature – we face the risk of contaminating the application of conditionality with politics and specific interests of different Member States of the EU.

The fourth challenge for the human rights dimension of Europe-Africa relations is how to integrate human rights and development concerns into the migration policies both of the EU itself and of Member States. Migration Policy of the EU

The attitude towards asylum-seekers and migrants is a key component of a human rights policy⁹⁴. According to some independent reports⁹⁵, one of the most worrying areas of concern in the field of human rights in Europe nowadays is the treatment given to asylum-seekers and migrants. They report violations of basic human rights in aspects such as torture and ill treatment; expulsions from some European countries with no respect to the basic guarantees granted by international standards; social exclusion; violation of ILO standards at work... etc.

The problem when dealing with asylum and migration issues is that the prevailing approach in most of the European countries is driven more by concerns of security, especially the events of September 11th in the United States, rather than of a policy of full respect for fundamental human rights. In this sense, it is illustrative that no country from the EU has ratified yet the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families⁹⁶, the most progressive international legal instrument for the protection of their basic labour rights⁹⁷.

Finally, the fifth challenge in the field of human rights is the role played by Europe-based transnational corporations (TNCs) and the response of the EU to this situation. In recent years, a growing concern has emerged about the activities carried out by TNCs and their impact in the enjoyment of human rights in Africa⁹⁸. According to the views expressed by Mary Robinson, former United Nations High Commissioner for Human Rights, in a report on *Business and Human Rights*, “Corporations should support and respect the protection of internationally proclaimed human rights within their sphere of influence and make sure they are not complicit in human rights abuses”⁹⁹. The Role of Transnational Corporations

Some NGOs have reported abuses by TNCs of basic labour rights, exploitation of child labour, interference in the internal affairs of certain States, serious environmental consequences related to their production activities, gross human rights violations in countries like Nigeria¹⁰⁰, Sudan or the Democratic Republic of Congo... To cite just one example, Amnesty International denounced in 2000 several TNCs from the oil sector for involvement in serious human rights violations occurring in Sudan; furthermore, in

some cases these corporations benefit from those same human rights violations, given that they pave the way for the exploitation of oil¹⁰¹.

Since the 1970s there have been several initiatives by United Nations, the EU, the ILO, the OECD... attempting to establish certain standards and principles to be respected by TNCs. The United Nations has been trying to adopt a Code of Conduct in which the activities of such corporations are obliged to follow certain principles. One of the latest versions of this draft of the Code of Conduct (1990), which unfortunately has not yet been approved due to the opposition on the industrialized nations where the majority of TNCs have their headquarters, states in article 14 that "transnational corporations should respect human rights and basic freedoms in the countries where they carry out their activities...". Likewise, the UN Sub-Commission of Human Rights has recently decided to form a Working Group in charge of looking into the business practices of TNCs to see what impact they have on the enjoyment of human rights¹⁰². The Working Group held its first session in August 1999, confirming the serious hazards that certain work methods and activities of some TNCs present for human rights as a whole¹⁰³. In subsequent reports, this Working Group has clearly demonstrated the risks some TNCs pose for an adequate protection of both civil and political rights and economic, social and cultural rights¹⁰⁴.

The EU should take a leading role in all these initiatives and try to develop its own standards to oblige EU-based companies operating in third world countries to observe basic human rights. So far, the role played by the EU has been very limited and clearly insufficient¹⁰⁵.

As we can see after having analysed the main challenges Euro-Africa relations face in the field of human rights, we have a long way to go and efforts to overcome all these difficulties are more than welcome. This conference should be viewed as a milestone in this demanding but, on the other hand, exciting process.