

## African Union

Stephen S. Kingah

### 1 Introduction: History of the African Union

The African Union (AU) came into being in 2002 following the adoption of the AU Constitutive Act in 2001. The Union was created to replace the Organization of African Unity (OAU), which had been established in 1963 to combat apartheid in Southern Africa and also assist countries that were still under colonial rule to gain independence. The push for the creation of the Union was generated in September 1999 when African leaders adopted the Sirte Declaration (Busumtwi-Sam 2006). The declaration called for the creation of a new organization to replace the erstwhile OAU.

During the run-up to the creation of the OAU there were leaders who wanted a more radical approach to African integration. They advocated for the creation of a United States of Africa. They formed the Casablanca Group and were led by figures such as Kwame Nkrumah of Ghana, Julius Nyerere of Tanzania and Gamal Abd al-Nasser (Nasser) of Egypt. On the other hand there was the Monrovia Group which preferred a more measured approach to integration. The countries of the Monrovia Group were led by the post-independence figures of francophone African countries that had just obtained their autonomy. They were more cautious and jealously protected their sovereignty. They were suspicious of any inclinations to defer powers to any so-called African government. As an organization the OAU registered achievements in assisting liberation movements in Africa to attain self-rule for their various countries.

However, the organization was a victim of its times, mindful that forces of the Cold War helped to undermine the cohesion that would have been needed in the continent. Many African leaders were used by respective global powers for specific strategic objectives. These leaders were supported by the West or the Union of Soviet Socialist Republics (USSR) as a function of their geo-strategic relevance rather than their appeal to democratic precepts. With the end of the Cold War and the reigning wave of deregulation and the rise of the middle class in many an African countries, populations started making more demands on their leaders in terms of accountability and transparency. More and more military coups diminished. Even at the continental level the OAU, which had previously been led by tyrants such as Col Idi Amin Dada of Uganda, made calls for the suspension of governments that had come to power through unconstitutional means.

The OAU was successful in helping countries attain political independence, but it failed to help them consolidate internal democracy (Murithi 2007). It is this demand for more democracy that has been carried over by the African Union, the majority of members of which are now acceptable, albeit flawed, democracies. Although the AU's Constitutive Act includes democracy as a principle and also reverses the previous OAU position of non-interference in member states, the Union has adopted a more gradualist approach to the issue of democracy promotion (Murithi 2007, 9).

Since its creation, the AU has made pronouncements on the need for enhancing democracy in countries that have been faced with challenges to democracy, such as Niger, Guinea, Madagascar and Côte d'Ivoire. The tool of choice has often been temporary suspension, but the Union has also been faced with 'hard cases' such as Zimbabwe, Nigeria, Egypt and Libya.

Some African leaders have looked on Robert Mugabe as a hero. He has received unblemished support from countries like Angola, Namibia and Libya, amongst others. Yet a new breed of African leaders such as Ellen Johnson-Sirleaf (Liberia) and Ian Khama (Botswana) have been unreserved in their criticism of Mugabe's high-handed approach to opposition members. The difficult situation in the AU's response to the

situation in Zimbabwe has been that of treading a fine line between castigating a former stalwart of the liberation struggle (an effort around which the OAU justified its existence) and the need to look good to the outside world of donors who are keen to see the AU take tougher stances on regimes that appear to undermine democracy. So the AU Commission has often been constrained and limited in its margin of response to the situation in Zimbabwe.

Nigeria has presented a different kind of challenge for the AU. Since 1999 it has organized three general elections, the latest of which was in 2011. It is the largest country on the continent in terms of area and has also been a major contributor in the peace-keeping efforts of the AU. So in those cases where there have been irregularities in elections, the AU has been careful in dealing with the African behemoth.

Another main contributor to the AU has been Egypt. It is noteworthy that the AU was apparently caught off guard during the revolution that took place in the country in January 2011. Its response to the developments both in Cairo and Tunis was either timid or basically mute compared to the magnitude of the events and the international ramifications.

In Libya the Union has once again seen its efforts undermined by convoluting international interests. Even before the AU could send its mission to Tripoli, French and British troops had commenced the enforcement of a no-fly zone. It is true that the AU Commission head Jean Ping was later invited, *ex post facto*, to some of the meetings on Libya in Paris but this does not obviate the limited input that the AU *per se* has made to the fast-evolving situation. The main African face in Tripoli has been neither Jean Ping nor Obiang Nguema Mbasago, who was the Summit chair. In absence of real leadership from the African side, Jacob Zuma made efforts to address the stalemate between Col Muammar al-Qaddafi and the rebels in Benghazi.

The AU response to Libya clearly demonstrated that the AU finds it hard to act as a single actor on critical international matters. As non-permanent members of the UN Security Council, South Africa, Nigeria and Gabon all voted in favour of the imposition of the no-fly zone even as the AU Commission was still figuring out what it should do. Leaders like Paul Kagame of Rwanda and Yoweri Kaguta Museveni of Uganda openly disagreed on what could be done to Qaddafi. While Kagame pleaded deftly for a sterling international response to stop Qaddafi from potential atrocities, Museveni voiced his concern against the international effort to oust the Libyan brother leader (Museveni 2011).

As difficult as it already is to sustain democracy at the municipal level, it is even more daunting as a challenge to endeavour to foster the principle and capture democratic trends at the continental stage. It is now agreed that the notion of democracy in international organizations is under-theorized (Brown 2005). What does democracy entail in terms of the functioning of international organizations? Can the AU be regarded as a democratic organization? What are the elements within its governance structure and principles upheld that can corroborate the claim that the organization is democratic or otherwise?

In addressing these issues the rest of the chapter considers the evolution of the democratic principles and the governance structure of the Union in section 2. Aspects of democracy and political freedoms in member states will also be assessed in section 3, with an emphasis on the period between 2002 and 2012. Elements of input legitimacy and popular participation in the activities of the Union are discussed in sections 4 and 5. Understanding the mechanisms of popular participation is not enough. It is also vital to consider the tools and modalities of popular control in the Union. This is addressed in section 6. Section 7 articulates the supranational elements of the Union and discusses what

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impact this has for democracy in the Union. As democracy is closely linked to the protection and promotion of human rights, section 8 further expands on the human rights dimensions of democratic promotion at the AU. Finally elements of output legitimacy of the Union are presented in section 9. This is done in tandem with the role of some international actors in supporting democratic trends in Africa.

## 2 Evolution of democratic principles and the governance structure of the Union

### 2.1 Evolution of the adoption of the principles of democracy at the continental level

The OAU Charter that gave birth to the first continental political project did not have specific references to the promotion of democracy. What was vital for the OAU was appropriation of self-rule for states. Once this was secured, attention was rather placed on safeguarding national sovereignty. That is why the commandeering principle under the OAU Charter was the celebration of sovereignty and non-interference in the internal affairs of member states. That being said, towards the end of the OAU, leaders did take important initiatives to temper the erstwhile approach of non-interference in the internal, *ipso facto* democratic processes at the municipal levels. First OAU leaders adopted the Algiers Declaration of 1999. In the meeting that resulted in the declaration the Assembly of the OAU noted that all the governments that came to power through unconstitutional means should restore the same promptly (OAU 1999).

This was followed by the Lomé Declaration of 2000. The Lomé Declaration also fortified the resolve of leaders to combat unconstitutional takeovers. This declaration came at an appropriate time when Africa had chronicled many coups (Kane 2008, 454). The Lomé text was a watershed in its clarity as to the meaning of unconstitutional takeover. It stated, *inter alia*, that unconstitutional takeover of power entails: a) military *coup d'état* against a democratically elected government; b) intervention by mercenaries to replace a democratically elected government; c) replacement of democratically elected governments by armed dissident groups and rebel movements; or d) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections (OAU 2000, 39–40). It further outlined steps that have to be followed when there is an unconstitutional takeover. It stated that a period of up to six months should be accorded to the perpetrators of the unconstitutional change to restore constitutional order. During the six-month period, the government concerned should be suspended from participating in the policy organs of the OAU. Apart from the sanctions provided for under Art. 115 of the OAU Financial Rules and Regulations, the governments concerned are not allowed to participate in meetings of the Central Organ and Sessions of the Council of Ministers and the Assembly of Heads of State and Government. Exclusion from participating in the OAU policy organs could not affect the country's membership in the OAU and therefore did not preclude it from honouring its basic obligations towards the OAU, including financial contributions to the regular budget (OAU 2000, 41). Following this period, targeted sanctions mainly relating to travel restrictions for perpetrators are envisaged, but the Lomé text has been criticized because it is weak on the point of being inapplicable to coups conducted against military regimes (Fombad 2006). Put otherwise, it does not cover situations where takeovers are carried out against regimes that themselves seized power through unconstitutional means.

The Constitutive Act of the African Union (the Act or the AU CA, AU 2000) in Art. 4(p) takes up the issue of unconstitutional takeovers and stipulates that one of the major principles of the AU will be the condemnation and rejection of unconstitutional changes in government. The Act further provides in Art. 30 that 'Governments which come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'.

In 2002 African leaders went a step further in their aim to foster democracy when they adopted the Durban Declaration on the Principles Governing Democratic Elections in Africa. One of the problems associated with the declaration as well as with most of the best endeavour declarations of the AU is that they are non-binding and so states have great latitude in applying the texts as it so pleases them (Fombad 2006, 23). Many choose to abstain from some of the declarations. Yet there is no viable option that exists to provide incentives for states to regard the provisions of these clauses as mandatory.

The adoption of the CA of the African Union marked a major shift in incorporating comprehensive clauses in democracy promotion. The ninth recital of the preamble espouses the importance of promoting the culture of good governance, democracy and the rule of law. An important principle that is integrated in the Act is popular participation (AU 2000, Art. 4(c)). Ensuring that there is popular participation in government is also one of the major goals of the Union (AU 2000, Art. 3(g)). These being said, one aspect of the criticism levied against the AU CA has been on the fact that there was no popular consultation by the leaders of their people before the adoption of the Act (Udombana 2002a, 219; Olowu 2003, 214). Indeed, it has been argued that one of the down-sides of the democracy components of the Act is that there are no attempts made in it to provide the African flavour of democracy (Fombad 2006, 22).

One of the main documents of the AU that has marked the evolution of democracy at the continental level is the Charter on Democracy and Elections entered into force in February 2012. It has been widely acclaimed and well received as a text that embodies the aspirations of freedom and development finely dovetailed (Motitsoe 2009, 8). The fact that elections are used by many as a litmus test for democracy has received a lot of attention. Although elections are not the be-all and end-all in terms of sustainable development-friendly democratic trends, free and transparent elections provide an important gauge for the legitimacy of leaders and processes.<sup>1</sup> For its part the AU is increasingly being called upon to monitor elections in African states and it has crafted guidelines to this effect. In recognizing the importance of transparent elections, the AU Authority or Commission has created the African Trust Fund for Electoral Observation and Assistance (AU 2004, 1–2).

This notwithstanding, popular choice in Africa is seldom mirrored in the actions of leaders (Ake 2003, 125), and the AU has not maintained a strong voice or lead in denouncing electoral irregularities in many recent electoral processes, such as those in Egypt, Ethiopia, Uganda and Zimbabwe (Udombana 2003a, 1210). It has also been noted that the Charter may be one of the best legacies of the African Union (Kabatwio 2010). However, it has attracted much criticism, with some observers describing it as a mirage to deceive international donors (Mbapndah and Njungwe 2008). States have been timid in signing up to the text (Friedman 2009, 6), with the early birds being Mauritania, Sierra Leone, Ethiopia and Burkina Faso (Civil Society 2010, 2). The low uptake of the initiative explains why civil society organizations such as the Institute for Democracy in Africa (IDASA) have been encouraging countries like Cape Verde, Senegal, Sierra Leone, Ghana, Kenya, Botswana, Namibia, Rwanda, Burundi and South Africa to ratify the Charter (Gilbert 2009; Mogomotsi Magome 2010).

### 2.2 The governance structure of the Union and nature of appointment

The main organs of the African Union are the Assembly of Heads of State and Government, the Executive Council, specialized technical committees, the Committee of Permanent Representatives, the Pan-African Parliament (PAP), the Commission or the Authority, the African Court of Justice and Human Rights (ACJHR), the Economic Social and Cultural Council (ECOSOCC), and the Peace and Security Council (PSC). Other bodies include the New Partnership for Africa's Development (NEPAD), the African Peer Review Mechanism (APRM), Council of Former Leaders (African Forum) and financial institutions that are still being established.

#### 2.2.1 The Assembly of Heads of State and Government

At the zenith of the governance structure is the Assembly of Heads of State and Government. That some of the African leaders are elected democratically or otherwise cannot be detached from the issue of prevalence of democracy within the organ itself at the AU level. Put differently, it is hard to ascertain that the level of democracy of the Assembly is acceptable if the majority of leaders that make up the group mainly came to power through unconstitutional means.

Decisions of the Assembly are often adopted by unanimity. If such consensus is not attained then a two-thirds majority is used as threshold. However, on matters that are procedural, the cut off is a simple majority (AU 2000, Art. 7). The Assembly has the power to appoint judges of the AU, the president of the Authority and the power to adopt the budget. It also has the mandate to accept or reject membership (AU 2000, Art. 9).

To the extent that rotating leaders of the AU Assembly are elected from their peers, it may be averred that it is a democratic organ.

However, this raises the question of the democratic nature of AU chairs that are elected by their peers even if they themselves were not elected at home through the ballot, as has been the case of Qaddafi of Libya. The recent events in Libya show how tenuous Qaddafi's grip on Libya proved to be. Also the demise of Zine al-Abidine Ben Ali (of Tunisia) and the resignation of President Muhammad Hosni Mubarak (Egypt)—all former stalwarts of the African Union regarded by their former peers as leaders of the AU—show that African tyrants can hardly make claim to democracy. So before adhering to a so-called democratic paradigm at the continental level individual countries also need to pay heed to grassroots and democratic demands of their people.

The events in the North African countries will lead to greater attention being paid to the democratic nature of the Assembly, and if the current wave in North Africa also sweeps into the countries of sub-Saharan Africa, greater focus will be placed on autocrats like Obiang Nguema Mbasogo of Equatorial Guinea, who led the AU Assembly in 2011/2012. It is vital that civil society organizations continue to exert pressure for greater democratic reform at the national level.

As a group, leaders of the African Union have adopted comparably strong positions in the recent instances of unconstitutional takeover of power in countries like Madagascar and Niger. It could be argued that the Assembly made bold pronouncements because of the relatively small nature of these countries. The real test for the AU leaders was how to address the situation in Côte d'Ivoire. The situation in the former French colony was complex because following the presidential elections of 2010, the constitutional court invalidated a decision of the electoral commission that had declared opposition leader Alassane Ouattara President. The constitutional court went ahead to declare and install incumbent Laurent Gbagbo as president. AU leaders quickly met and decided to send Raila Odinga, whose initial position was a default stance adopted by the 'international community' and the United Nations (UN) declaring Ouattara the winner. With the strong backing of the UN, France, the USA and other international actors, Ouattara was sworn in as President after the arrest of Gbagbo. As peace remains tenuous, so too does the effort to consolidate reconciliation between the various factions in the country. For the AU the real question is whether it should have been able to pierce through the Ouattara-Gbagbo stalemate without the conspicuous support of the 'international community'.

Another difficult case for the AU to handle has been Mugabe's Zimbabwe. While some African leaders consider Mugabe to be a hero, especially in his efforts to wring farms owned by whites from their hands, he is loathed for his disregard for democracy and repression of the opposition. Even at the subregional level of the Southern African Development Community (SADC) a unified approach on Zimbabwe has been difficult.

### 2.2.2 The Executive Council

The Assembly of Heads of State and Government is closely assisted in its tasks by the Executive Council. The Council is composed, *prima facie*, of ministers of external relations or of any ministers or authorities as appointed by the sending states (AU 2000, Art. 10). While the Assembly meets once annually the Council meets twice during the ordinary sessions.

Decisions, as in the Assembly, are adopted by consensus. If there is no consensus then the decisions are taken on the basis of a two-thirds majority. A quorum is set at two-thirds of the Council's composition. Procedural issues are settled through simple majority voting (AU 2000, Art. 11). The main attribute of the Council is to lead all the aspects of functional integration in the areas of trade, energy, science and technology amongst others (AU 2000, Art. 13).

The Executive Council normally does the bidding of the Assembly and seldom takes initiatives that are independent of the Assembly. Again the perception of the real democratic nature of this organ is a function of the democratic nature of the Assembly. If the leaders themselves are leading corrupt regimes that are dictatorships, this marker will also be ascribed to the ministers that do their bidding.

### 2.2.3 Specialized technical committees and the Committee of Permanent Representatives

The specialized technical committees are accountable to the Executive Council. They are composed of either ministers or senior officials. There are seven technical committees that focus on: a) rural and agricultural economy; b) financial and monetary issues; c) trade, customs and immigration issues; d) industry, science and technology, energy, natural resources and the environment; e) transport, communications

and tourism; f) health, labour and social affairs; and g) education, culture and human resources (AU 2000, Art. 14).

The committees are charged with preparing programmes for the Council and also ensure follow-up of the implementation of the projects and programmes of the Union. They equally co-ordinate AU programmes and present recommendations to the Executive Council. The committees meet as often as necessity dictates.

The Committee of Permanent Representatives is composed of ambassadors of the member states, who are based in Addis Ababa. The committee lays the ground work for the meetings of the Executive Council and also takes instructions from this organ.

### 2.2.4 Pan-African Parliament

The organ regarded as most reflective of democratic tenets is the Pan-African Parliament (PAP) (AU 2000, Art. 17), created specifically to mirror the concerns of the African population in the continental administrative architecture. During the discussions that preceded the creation of the PAP, Egypt and Libya wanted to host the PAP (Cilliers and Mashele 2004). Finally, with the efforts of Frene Ginwala and South African former President Thabo Mbeki, South Africa, won the bid. Arguably South Africa has been the force behind the PAP and remains the leading anchor of it (Mashele 2005, 108).

The PAP was inaugurated on 18 March 2004. It currently has 230 members. The main legal text that sanctions the attributions of the PAP is the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament (AEC 2001).<sup>2</sup> The spirit of what is expected of the PAP in terms of democracy is well captured in the fourth indent to the preamble of the Protocol, which states that the driving vision is to 'provide a common platform for African peoples and their grass-roots organisations to be more involved in discussions and decision-making on the problems and challenges facing the Continent'. Art. 2(2) states that the PAP will represent the peoples of Africa. Art. 2(3) makes clear that it will be a consultative body and that this may evolve. The protocol also stipulates that PAP members are not elected through universal suffrage. They are selected from the national assemblies of the various member states (Art. 5(1)), and their tenures are expunged once that also happens at the national level. As discussed later, this has posed a problem in terms of continuity of agendas and maintaining institutional memory.

The composition of the PAP is based on the principle of equality. Each country is represented by five members and at least one of the members must be a woman (Art. 4(2)). They are considered legally to be independent and not mouthpieces for the governments or parties they represent (Art. 6). Art. 12 states that the PAP is led by a president and four vice-presidents. It meets twice a year in an ordinary session and its proceedings are supposed to be conducted publicly (Art. 14). While there are two plenary sessions, there are four committee sessions per year.

Art. 3(2) states, *inter alia*, that the goals of the PAP include the promotion of democracy in Africa. Based in South Africa, it has consultative and advisory roles. There are hopes that its attributes will evolve into a more legislative mandate. The members of the PAP are not elected through direct universal suffrage as is the case with members of the Parliament of the European Union (EU). Rather, members of the PAP are elected as members due to their membership in national assemblies of the member states of the AU. Thus, they are representatives of the national parliaments. The PAP has its own rules of procedure (Mongella 2005).

There are 10 PAP committees: the Committee on Education, Culture, Tourism and Human Resources; the Committee on Co-operation, International Relations and Conflict Resolution; the Committee on Gender, Family, Youth and People with Disability; the Committee on Rural Economy, Agriculture, Natural Resources and Environment; the Committee on Monetary and Financial Affairs Functions; the Committee on Trade, Customs and Immigration Matters; the Committee on Health, Labour and Social Affairs; the Committee on Transport, Industry, Communications, Energy, Science and Technology; the Committee on Justice and Human Rights; and the Committee on Rules, Privileges and Discipline. The committees rely on the resources of experts in taking decisions. For instance, the Committee on Co-operation, International Relations and Conflict Resolution relied on the expert opinions of the Institute for Security Studies (ISS) in South Africa when insisting that the parties in the conflict in Côte d'Ivoire respect the timeline for democratic elections (Boshoff 2006).

Amongst its powers and functions is the provision of advice and recommendations on key issues such as the consolidation of democracy

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and promotion of good governance in member states (AU 2000, Art. 11). This is arguably the main task of the PAP. It has done this through the observance of elections. It has observed elections in Kenya, Zimbabwe, Angola, Swaziland, Ghana and Namibia and its impact on these has been well regarded. However, there are other efforts that have had mediocre results partly because these missions had to be conducted jointly as part of the AU team. Such missions like those in Sudan, Mauritius, Burundi, Guinea and Ethiopia have been marked by problems of co-operation with the AU Commission. In the case of Ethiopia PAP members noted that they were treated with condescension by some of the AU Commission staff.<sup>3</sup> During the Ethiopian mission the PAP members were sent to the most remote areas with little logistical and transport support. Another major problem faced was that of no translators to help translate documents to be used that were only available in the local language. The majority of the PAP members are of the opinion that the PAP should conduct its own, independent missions mindful that the relations with the AU Commission on joint missions have been marked by blatant disregard of the PAP members (Hon. Joseph Njobvuyalema, Malawi; Hon. Kingsley Namakhwa, Malawi; Hon. Rashid Pelpuo, Ghana; Hon. Elizabeth Agyeman, Ghana).<sup>4</sup> Members like Shamakokera Tharcisse (Rwanda) have been particularly concerned that the reports of the joint missions by the AU Commission and the PAP have to be endorsed by the president of the African Union Commission before they are circulated amongst PAP members (Pan-African Parliament 2010, 9).

Constant features on the agenda of the PAP include peace and security, especially in Sudan and in the Great Lakes region. Other matters include food security and climate change. In any event the PAP works together with the AU Commission to ensure that what is on its agenda is synchronized with what the heads of state have on their agenda.

Being a young organ, the PAP is facing common challenges but there are innovative strategies that have been considered or are being considered to address some of the problems. The first issue is that of PAP's connection to the African people it is supposed to represent, *ipso facto*, its links with civil society organizations (CSOs). The PAP has expressed the desire and made outreach efforts to civil society organizations. In a meeting held in Midrand in 2007, CSOs urged the PAP to be more active in fostering a strong continental governance agenda (Civil Society 2007). CSOs that are working closely with the PAP include IDASA and the Open Society Institute, amongst others. It worked with CSOs in pushing for the ratification of the AU Charter on Democracy teaming with them advising countries like Uganda, Chad and Zimbabwe. Also co-operation with CSOs is now strong on press freedom. They are working together to guarantee press freedom from a legislative angle. Finally, collaboration with CSOs is being forged on youth issues and youth development—they are co-operating to create a Pan-African Youth Parliament. However, work with CSOs and outreach to African people is hampered by lack of adequate funding for more innovative activities that are inclusive.

The second challenge is ensuring coherence between the actions of the PAP, national parliaments and regional assemblies of the various regional bodies. Relations between PAP and the parliaments of the various subregional bodies like the Economic Community of West African States (ECOWAS), the Economic and Monetary Community of Central Africa (CEMAC), and the Southern African Development Community Parliamentary Forum (SADC PF) are cordial. The PAP often invites the members of these bodies to its annual speakers' conference while the various regional parliaments also consult with the PAP when they have special events,<sup>5</sup> but a clear strategy across the regional parliaments to eventually consolidate their efforts under one umbrella parliament is a vision that is worthwhile, mindful that the current system of parallel national, subregional and continental parliaments expose many issues of incoherence and needless duplication.

Third, in terms of the conditions of work, each parliamentarian is provided with an office and communications facilities. This has been due to the generosity of the government of South Africa that played a critical role in the creation of the parliament. However, certain needs abound. For instance, there are no legislative assistants for the legislators, but some of the delegations are often accompanied by one or two assistants if the country can afford them. The issue of too few assistants is a real problem, mindful that legislators have to rely on the research of collaborators on the key issues of the moment, but the lack of assistants is representative of a broader issue in deficiency of human resources within the PAP. At the moment there are only 44 permanent members of staff of the PAP. In any case, a new organigram of the PAP has been recently approved. In this new configuration there will be 150 members of staff who are scenes being recruited. However, to make good the current

shortfall, PAP always makes recourse to support staff from the national parliaments during the plenary sessions in May and October. It also recruits freelance staffers from member states. These are often interpreters.<sup>6</sup>

Fourth, another issue that always comes up when the PAP is evoked is the question of direct elections and universal suffrage. In the immediate future the PAP will not be the full law-making organ that is desired by many and there will be no universal suffrage. Many have called for this. Not that PAP and African leaders are indifferent. Actually, the Protocol creating the PAP makes provision for multi-year reviews after every five-year period. The PAP is now going through such a process. A consultant was commissioned to make proposals on changes. Some of the proposals referred to greater legislative powers to be conferred on the PAP. The proposals are being reviewed by a review panel led by the AU Commission legal service. Those close to the process note that leaders may endorse a gradualist approach for the evolution of the PAP. Most of the proposals of the consultancy have been watered. Instead of the direct legislative powers and direct elections, it is proposed that future members of PAP will be elected by members of the various national parliaments sitting as electoral colleges.

Also the current practice of dual membership in the national and AU parliaments will be stopped. Currently membership in the PAP is a function of membership in the national parliament. This poses problems in terms of longevity of the PAP members and continuity of its work. The current practice results in the advent of an average of 10 new PAP members at the turn of each session. This poses a problem in terms of building strong caucuses and also forging a sterling institutional memory. The current proposal is to have full membership solely for the PAP that is not linked to membership of the national parliaments.<sup>7</sup> The national electoral colleges (that is, the various national parliaments) will elect five PAP members either from national parliaments or outside the national parliaments. The key element is abrogation of dual membership so that if a member of a national parliament is elected, he or she forfeits membership in the national parliament. It is hoped that PAP members will then be in a position to dedicate more time to the affairs of the AU, spending at least four months in South Africa per year. The proposal was tabled before the AU Assembly at the Malabo Summit of 2011. Leaders agreed in principle on delinking the mandates of national/PAP deputies, but they deferred decisions on the oversight and legislative functions of the PAP until their summit of January 2013. However, some leaders expressed reservations on final proposals on the oversight and legislative roles of the PAP. The leaders once more deferred the matter, to the summit of January 2014 pending further consultations.<sup>8</sup>

Fifth, as with most international organizations, especially those in Africa, PAP faces major constraints in terms of funding. This is a problem that can be ascribed to the AU as a whole. Of the US\$260m. of AU's annual budget for 2011, AU member states paid for about 40%, with Algeria, Egypt, Libya, Nigeria and South Africa paying \$15m. each. The remaining part was granted by the People's Republic of China, the EU and the USA.<sup>9</sup> At the moment PAP is financed through its operational budget and programme budget. The operational budget is billed to AU member states and has always been a fraction of what is asked for by the PAP. The programme budget is footed by donors, with the main donors being the EU, the German government, Italy, the Netherlands, the Open Society Institute, the Association of European Parliamentarians for Africa, and the African Capacity Building Foundation, amongst others. Proposals have been made in the past for direct funding, so ideas have been mooted such as a tax on airline companies and also a direct tax on every working African to be collected by the African governments. However, these ideas are still being debated. Also a Trust Fund for the PAP was created in 2006 to assuage the problems of PAP funding. However, due to criticism of the fund's management both from within the PAP and from outside, the new leadership of the PAP froze the fund in 2009.

Finally the more generic challenges facing the PAP include its permanent transformation from being an ad hoc organ into a more stable and permanent presence within AU's institutional architecture. Another problem is that of visibility and popular awareness. A recent survey found that more Africans were aware of the European Parliament than they were of the PAP. Countering such challenges will require clearer communications and outreach strategies.<sup>10</sup>

Better communications will also enhance the relations between the PAP and the other AU organs. Issues of institutional incoherence have surfaced especially in the area of election monitoring. Before 2007 elections were monitored by the AU Commission. Towards the end of 2007 the PAP decided to send its own autonomous observer mission to monitor the elections in Kenya. This was partly due to a strong

perception that the AU Commission, being an executive body could not provide as independent a picture of elections as the PAP would. So PAP started sending its own observers to elections such as those in Zimbabwe and it was relatively measured and critical in its reports. In a decision from AU leaders it was agreed that missions be joint, but the debate on the issue has been re-opened by some PAP members and they have tabled a proposal to the AU leaders to reconsider the decision on joint missions. This decision is pending.<sup>11</sup>

It is true that the PAP still has little influence, as discussed above. However, mindful of its embryonic nature, the PAP has come a long way and its prospects are brighter mindful of the support and momentum it now garners. Also when one compares the PAP to other parliaments like the European Parliament and the time it has taken to get where it is, then the PAP has to be commended and its growth needs to be understood in such a context (Cilliers and Mashele 2004). Also in African subregional parliaments, only the East African Legislative Assembly has the power to vote for bills and this is steeped in the history of the East African Federation that was strong under the British colonial rule in East Africa.

Moving ahead, some of the actions that the PAP could take to enhance its effectiveness include a more proactive role calling for inquiries on specific issues and challenges affecting African people. It would also be helpful if the PAP could have the powers to compel hearings for members of the Commission,<sup>12</sup> but for this to happen the AU as a whole needs to grapple with the logistical dimension of its set-up. Will the organization be able to function properly mindful that institutions are dispersed in far flung countries? One can read this as a strategy for greater inclusion, but the sustainability of this arrangement could be tested in the foreseeable future. Finally the real issue of sustainability for the PAP will be to take a greater principled stance regardless of the positions of the AU Assembly or the Commission on specific issues. One of the reasons many do not regard the PAP with seriousness is that most PAP members come from countries where the levels of democracy and accountability are simply a caricature (Mashele 2005). This perception could change if the PAP were to become more autonomous. The current proposals for the PAP's reform are timid when compared to the desired levels of PAP oversight, but mindful of the nature of African politics, it could be the only realistic and pragmatic option available.

### 2.2.5 Court of Justice and Human Rights

The AU also has a Court of Justice and Human Rights (AU 2000, Art. 18). This organ is a merger of the African Court of Justice and the African Court of Human Rights. The judges are appointed and not elected. They are appointed by the Assembly of Heads of State and Government. Some observers have argued that by creating a promising court of general competence at the level of the AU, African leaders have gradually come to terms with the fact that judicial recourse is salient (Packer and Rukare 2002, 373).

The creation of such a strong judicial arm is considered an important buffer to temper the very strong leverage hitherto wielded by the political organs of the continental organization when it was still the OAU (Udombana 2002b, 108; Udombana 2002c, 246; Udombana 2003b, 864–65). However the court can only function apoposely if the political masters allow it the appropriate mandate and latitude for action (Kingah 2006). The Court will work closely with the African Commission on International Law. The members of this Commission are also appointed by the heads of state and government.

The court will have to continue the sterling tradition of hearing petitions that were previously heard by the African Commission on Human and Peoples' Rights. The court issued its first decision in 2009. The matter was brought before it by Michelot Yogogombaye to challenge the proceedings instituted by the Republic of Senegal with the goal of charging, trying and sentencing Hissein Habré, the former head of state of Chad who is currently a political refugee in Senegal. The court dismissed the matter on the basis of the lack of jurisdiction on its part.<sup>13</sup>

### 2.2.6 The Authority or the Commission

The main organ of the Union that is most visible to the outside world is the Commission or the Authority (AU 2000, Art. 20). The Commission is led by a president and his or her deputy. He or she leads a team of nine commissioners and a legal counsel.<sup>14</sup> Nine commissioners head nine directorates, namely, the directorates of conferences and events; peace and security; political affairs; infrastructure and energy; social affairs; human resources, science and technology; trade and industry;

rural economy and agriculture; and economic affairs. The Commission president and commissioners are all appointed by the Assembly of the Heads of State and Government. The Commission is regarded as the engine of the AU and plays a crucial role in the implementation of the AU's democracy and good governance agenda (Fombad 2006, 27).

The Commission has wide-ranging powers to speak for members. However, these powers are light. It represents the Union in formal dialogues with third parties but in critical negotiations such as trade its mandate is weak. States still retain their competences to negotiate international trade deals or go through their respective regional economic arrangements. So its supranational mandate, however cherished and celebrated, is more an aspiration than a reality. For instance, in the negotiations of the economic partnership agreements between the EU and ACP (Africa, Caribbean, Pacific) regions, the AU has insisted that it co-ordinate the positions of the African regions, but this demand has been received coldly by the ACP countries and regions that are engaged in the negotiations. It is hard to see how the Commission will assume increased powers at the international level if states do not allow it to negotiate on their behalf on vital global issues including trade and environmental protection. So the goal of having the Commission serve as the voice of African countries in many fields is honoured more in breach than observance.

In matters of security the AU Commission is more visible working with the Peace and Security Council (PSC). The Commission has sanctioned a number of peace missions in African countries and remains involved in Sudan and Somalia, but even in this area the actions that can be taken by the Commission are as ambitious on paper as they are ineffective in reality. Take the recent action by some North Atlantic Treaty Organization (NATO) countries in Libya to oust Qaddafi. During the run-up to the imposition of the no-fly zone in the country in March 2011, AU Commission leaders alongside a select group of African leaders were dispatched to the country. They sought permission to enter into the country but were rebuffed by NATO Allies. This event exposed the moribund nature of the AU as an international security actor. To be fair, the organization is just a sum of its parts and cannot expect it to provide what its members themselves lack. Also, even if the weaknesses of the Commission were exposed in the Libya saga, one should not forget the bold actions co-ordinated by the Commission in terms of the AU missions to restore peace in Burundi in 2003 and in the Comoros in 2008. Its efforts in Sudan and Somalia have been more of a challenge and open to criticism.

### 2.2.7 Peace and Security Council

The Peace and Security Council (PSC) of the Union was a novel institution established in May 2004. The PSC has 15 members who are elected on regional lines and on the basis of geographic representation. The members of the Council are elected from amongst the members of the African Union. The PSC plays a critical role in upholding democracy in the sense that its early-warning mechanism can easily signal instances where derogations from democratic precepts and practices may herald instability in various countries. This aspect of the role of the PSC is embodied in the AU Charter on Democracy. The Charter states that 'When the Peace and Security Council observes that there has been an unconstitutional change of government in a State Party, and that diplomatic initiatives have failed, it shall suspend the said State Party from the exercise of its right to participate in the activities of the Union in accordance with the provisions of arts. 30 of the Constitutive Act and 7(g) of the Protocol. The suspension shall take effect immediately' (AU 2007, Art. 25(1)).

The creation of this arm for the AU has been one of the most important innovations and developments that distinguish the AU from its predecessor. Regardless of the power struggles between states in terms of representativeness on the Council, it should be noted that the entity has proven important for the continent at a time when some important countries were riddled with civil strife. It has met and taken action in terms of sanctions in cases of unconstitutional takeovers including in Niger, Madagascar and Guinea. The Council was also very instrumental in seeking a negotiated and peaceful solution to the problems that Côte d'Ivoire experienced following the post-presidential electoral stalemate in that country.

It is vital to observe how the work of this organ will proceed. The PSC is still composed of the member states that represent special interests. It is not very clear how the PSC will be when working independently from the Executive Council. In other words, why create a detached organ from the Executive Council both of which can be composed of ministers? Put otherwise, would it not be also sensible and

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useful to create special councils on other vital issues such as the environment and development? Also it would be interesting to view the evolution of the relationship between this organ and international outfits such as the UN Security Council and the International Criminal Court.

The keen presence of member states within the PSC make it less effective as a supranational entity that can adopt actions that truly represent the views of the African Union as a whole. Again the case of Libya comes to mind. While some African states abhorred the imposition of the non-fly zone, other that were members of the UN Security Council voted for it. Such patent divisions at the global level expose questions about the viability of the PSC of the AU as a supranational entity.

### 2.2.8 *The Economic, Social and Cultural Council (ECOSOCC)*

The ECOSOCC of the AU is an organ that is democratic in the sense of representing the interests of civil society organizations including social, cultural and professional groups (AU 2000, Art. 22). Initially South Africa wanted to host ECOSOCC while Libya was keen to host the PAP (Cilliers 2002), but considering the little prestige in hosting ECOSOCC, South Africa turned its interests elsewhere.

ECOSOCC was launched on 9 September 2008 in Dar es Salaam. It was created on the principle that the AU be people-driven and include all social groups, that is, a community-based partnership between governments and all forms of civil society organization (CHRR 2008). All the representatives of the various states to the ECOSOCC general assembly have not been elected. ECOSOCC was initially organized on the basis of an Interim Standing Committee that was presided over by the late Nobel Laureate Wangari Maathai.

It is organized into a general assembly, a standing committee, sectoral committees, a credentials committee and a secretariat. The general assembly is composed of 150 members. Six of these are nominated by the AU Commission and make up the highest decision-making organ of the Council. Two representatives are elected from each member state, 10 from the regional level, eight from the continental stage and 20 from the diaspora. The standing committee is made up of 15 members representing the five regions in Africa (North, South, East, West and Centre). The committee serves as the co-ordinating organ for the Council. The credentials committee is tasked with vetting the CSOs that are selected to participate in the ECOSOCC. It has five members. The sectoral committees cover the following themes: political and security; political affairs; infrastructure and energy; social affairs and health; human resources, science and technology; trade and industry; rural economy and agriculture; economic affairs; women and gender; and cross-cutting programmes. The Citizens and Diaspora Office (CIDO) within the AU Commission serves as the secretariat of the ECOSOCC.

Although greater involvement of CSOs in the activities of the African Union has been welcome, many problems abound. First, CSOs are not always aware of what the AU is doing and the rules that should sanction the relations between the two.<sup>15</sup> Second is the issue of hosting the ECOSOCC in the AU Commission within the unit of CIDO. The lack of ECOSOCC permanent secretariat and limited number of persons working in CIDO have led to a situation where CIDO is constantly overwhelmed with work.<sup>16</sup> Third, the issue of verification of who is selected into ECOSOCC remains another burning issue.<sup>17</sup> There is also a very strong perception amongst civil society organizations that ECOSOCC does not set but instead reacts to the agenda, as outlined by the AU Commission and Assembly. One leader of the African Forum and Network on Debt and Development (AFRODAD) voiced frustrations shared by CSOs of being a rubber stamp for the principal organs to use in legitimizing their decisions.<sup>18</sup> Fourth, by incorporating CSOs into the architecture of the AU through the ECOSOCC, which itself is not a strong rule-making organ, access to real institutions for CSOs to the Assembly and the Commission is curtailed by default (Sturman and Cilliers 2003, 74). Fifth, the real challenge for the AU's ECOSOCC is not to be representative by replicating European models of social and economic councils, but rather to have a council that truly represents Africa with core parts of society like traditional and spiritual figures also given a voice (Sturman and Cilliers 2003, 78). Finally, the relationship between the ECOSOCC general assembly and ECOSOCC Bureau on the one hand, and CIDO on the other is hardly an easy one. In certain cases CIDO is either slow or indifferent to the tasks set for it by the general assembly or the bureau.<sup>19</sup>

### 2.2.9 *NEPAD and the APRM*

Besides the formal and conventional organs of the AU there are also special programmes that are indicative of the level of democracy that

the Union embodies. These programmes include the New Partnership for Africa's Development (NEPAD) and its special initiative known as the African Peer Review Mechanism (APRM).

NEPAD was initiated as a new template for Africa's development. At a ministerial meeting of the UN Economic Commission for Africa (UNECA) in Algiers in May 2001 the government of South Africa presented a document entitled the Millennium Partnership for the African Recovery Programme.<sup>20</sup> In the same event President Abdoulaye Wade of Senegal also tabled his Omega Plan for Africa. UNECA on its part submitted a Compact for African Recovery. The states agreed in Algiers that all the programmes be consolidated before the OAU Summit in Lusaka of July 2001. So in July 2001 a consolidated text was presented African leaders as the New African Initiative (NAI) (Melber 2002, 7). It took shape as NEPAD on 23 October 2001 in Abuja, Nigeria (Kanbur 2001, 2). The key dimensions of NEPAD are African ownership, responsibility, democracy and development/people-centred leadership (Mucavele 2006, 1–2).

NEPAD was widely tipped as Africa's Marshall Plan. Yet, the newness of the process has been open to debate (Olukoshi 2002, 10). Although welcomed in many quarters as the road map for Africa by Africa,<sup>21</sup> it is an initiative that was crafted by few African leaders who did not sufficiently consult African civil society groups. That is why some observers intimate that NEPAD has a deficit of bottom-up ownership (Busumtwi-Sam 2006, 78). Also it has been argued that NEPAD faces problems of short time for implementation, absence of pressure (or sanctions) which it can bring to bear on recalcitrant states (Heubaum 2005, 1) and that civil society is not properly integrated in the processes (Fombad 2006, 33–34). Taylor intimates that NEPAD has provoked a lot of scepticism and fails to reflect the fact that 'the empirical state in Africa does not conform to Western conceptions of the Weberian state' (Taylor 2005, 153). He further expresses equivocation as to the success of a democracy-friendly initiative in a continent where some leaders are dictators. He concludes that 'the chance that such elites will commit effective class suicide in furtherance of NEPAD is viewed with some doubt' (Taylor 2005, 154).

The APRM is a tool of NEPAD. It was initiated in 2003 following the adoption in Durban by African leaders of the Durban Declaration on Democracy, Political, Economic and Corporate Governance in 2002 (Kebonang and Fombad 2006). The underlying approach of the APRM follows the strong review tradition established by the Art. IV Consultations of the International Monetary Fund (IMF), the peer review system of the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organization's (WTO) Trade Policy Review system. The APRM is funded, amongst others, through an APRM Trust Fund. It was envisaged to be the device with which to ensure better governance through a means of mutual assessment or reciprocal peer review.

There are four APRM structures. The first is the APRM Forum, which is composed of African leaders whose countries participate in the initiative. The Forum is resourced by the APRM Panel, composed of seven individuals selected on the basis of probity, integrity and public service.<sup>22</sup> At the national level each country has an APRM focal point (Kajee 2005, 7). The focal point serves as the nexus or the liaison between national bodies and the continental structures of the peer review system (Kajee 2003/04). Finally, the APRM secretariat provides the day-to-day management input needed for the smooth operation of the initiative.

There are four reviews under the APRM system. They include the base review that is initiated after 18 months of being signatory to the APRM text, the periodic or the conventional reviews, reviews requested by members, and finally reviews triggered by imminent crisis (Kebonang and Fombad 2006, 46). The conventional reviews are conducted in stages. The first stage includes the signing of the memorandum of understanding and the preparation of the documents on the country by the APRM secretariat. This stage also includes the creation of the national focal point and the APRM national co-ordinating commissions. The second stage is composed of a country review visit by the members of an APRM Team. The Teams are led by members of the APRM Panel. During the third stage the review team is tasked with the drafting of the report of the visit. The report is meant to provide recommendations based on the visit conducted by the APRM Team. The report is then submitted to the APRM Panel by the secretariat. At the final stage the report is tabled to the APRM Forum, AU bodies such as the PAP and to the public (Kajee 2003/04, 252–53).

While the APRM has been received as a worthwhile initiative, some have argued that problems relating to funding, criteria for the selection of some Panel members, human resources concerns and absence of sanctions are issues to be carefully considered (Kebonang and Fombad 2006, 50–51).

In addition, it has also been submitted that the reviews of the Panel need to be more focused to be more effective. Calls have equally been made for the greater involvement of civil society organizations in the APRM process (Kanbur 2004, 1). Moving forward, one of the suggestions to make the APRM more viable and credible could be to encode its founding text as a Protocol so that it can be legally and constitutionally watertight within the AU's Constitutional framework (Melber 2006).

Another vital body of the AU that is mainly advisory in its attributes is the group of former leaders (the African Forum). The creation of the group was facilitated by the Washington, DC-based think tank known as the National Democratic Institute. In 2005 the group of former leaders issued a declaration and in it the former leaders submitted that 'changes of power and political succession should always be based on constitutional rule and democratic principles' (African Statesmen Initiative 2005, 2).

### 2.2.10 Financial bodies

The dispersal of AU institutions around the continent aims to enhance broad participation of all the African countries. Apart from the African Commission on Human and Peoples' Rights in Banjul, the ACJHR in Arusha and the NEPAD and the PAP in South Africa, the financial institutions are to be spread across a number of countries. The first financial institution will be the African Central Bank, which is to be based in Nigeria. Plans are to create a fully operational central bank by 2028. The bank will manage a single currency or 'Afro' for the entire continent. It will regulate and supervise the banking sector and also determine the official exchange and interest rates. The second financial institution is the African Investment Bank, which is to be based in Tripoli in Libya. One of the main principles behind the Bank is that of consent of the local governments for the funding of planned initiatives. Finally the African Monetary Fund will be based in Yaoundé, Cameroon. In time, the operations of the Fund will be transferred to the Central Bank. Moving ahead many challenges abound that could torpedo efforts to erect these financial institutions. First the situation in Libya is far from stable and with the ousting of Qaddafi, one of the main forces behind the creation of the African Investment Bank is gone. Given the need for reconstruction in Libya it will be hard to see how the new leaders of that country would justify the creation of such a continent-wide investment bank while there are acute needs in their backyard. Second, the planned creation of the African Central Bank in Nigeria could be rendered more challenging by the issues of rising militant Islam and the threats it poses to the state institutions of that country. Finally the African Monetary Fund that would be in Yaoundé is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro to which some of the African currencies are pegged. Also the continued crisis in the EU will bode ill for such a scheme.

## 3 Democracy and political freedom in AU member states

As noted earlier, the degree of democracy that can be obtained in the continental organization cannot be de-linked from the levels of democracy that exist at the national levels. The birth of the AU was aligned to a wave of increased demands both from within and beyond Africa for greater freedoms and for more accountability on the part of African leaders. A review of the state of democracy in African countries can be accessed from the surveys of the levels of political freedoms guaranteed citizens as assessed by Freedom House and collated in Table 13.1.

From the surveys of 2002, when the AU was created, to 2012, the picture is not positive. Not a single country has made progress from being not free to being free. What is more, no country has made progress between the threshold periods from being partly free to free. While nine countries have been constantly free in the period examined (Benin, Botswana, Cape Verde, Ghana, Mali, Mauritius, Namibia, São Tomé and Príncipe, and South Africa) and five moved from not free to partly free (Burundi, Kenya, Liberia, Guinea and Tunisia), nine countries became classified as not free after being partly free in 2002: Côte d'Ivoire, the Democratic Republic of the Congo (DRC), Djibouti, Ethiopia, Gabon, Gambia, Mauritania, Western Sahara and Somalia.

The scores are also reflective of the survey of world democracy that is conducted by the Economist Intelligence Unit. This is based on a list of 60 detailed indicators that can be understood under five sections: electoral process and pluralism, civil liberties, functioning of government, political participation, and political culture. The survey of 2011 assessed 167 countries. The scores ranged over 0–10, with Norway

scoring 9.80 and the Democratic People's Republic of Korea (North Korea) trailing with 1.08. Countries are classified into full democracy, flawed democracy, hybrid regime and authoritarian regime. The parliamentary republic and parliamentary democracy of Mauritius featured as the sole African nation regarded as a full democracy with a score of 8.04. Cape Verde had a good score of 7.92, making it the best score in the list of flawed democracies. Usual suspects such as South Africa, Botswana, Namibia, Ghana and Mali were also in the class of flawed democracies. At the tail of the table 53 countries were regarded as authoritarian regimes. African countries were in the majority in this segment, with a total of 27 countries of the 53 dictatorships (Economist Intelligence Unit 2011, 3–5).

It is revealing that these figures corroborate or are corroborated by the scores of most African countries in the measurement of transparency in the political governance processes. In 2002 six African countries had transparency scores that figure amongst the top 50 (in order of merit: Botswana, Namibia, South Africa, Tunisia, Mauritius and Ghana). In the same year five African countries featured amongst the worst 10 performers (Uganda, Kenya, Angola, Madagascar and Nigeria). In 2012 the report of Transparency International revealed that only five African countries made the top 50 (Botswana, Cape Verde, Mauritius and Rwanda).<sup>23</sup> At the tail of the table African countries accounted for four of the 10 worst performers (Burundi, Chad, Sudan and Somalia).<sup>24</sup>

One area where African states have also lagged is in the field of transparent elections. In 2010 the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights highlighted the importance of transparent elections for sustainable democracies. It was stated in the final resolution of the Forum that 'Regular elections constitute a key element of the democratization process and therefore, are essential ingredients for good governance, the rule of law, the maintenance and promotion of peace, security, stability and development' (Permanent Forum of Arab-African Dialogue on Democracy and Human Rights 2010).

Many African citizens still believe that engaging in politics is accompanied by risks to one's life. At the national stage there are many challenges that explain the weak drive by nations towards true democracy and an acceptable spirit of governance. These problems include lack of sound and civic education, weak civil society, weak parliamentarians, the continuous threat of militant groups and the potential problems of very strong militaries.

### 3.1 Lack of sound and civic education

It is true that more and more Africans are gaining access to education, but the population of the continent remains largely rural with curtailed access to modern forms of education. One of the critical factors that will enhance democracy in Africa will be the increased demand for democratic reform from an active middle class (Akosah-Sarpong 2010) which is still under construction in many African states.

### 3.2 Weak civil society

In countries such as Rwanda and Ethiopia (regarded at times as darlings of Western donors), where there are patent indications of authoritarian tendencies (McLure 2010), civil society is key to challenging dictatorial proclivities and to providing a sense of social consciousness for the population (Monga 1996, 2). In Burkina Faso, for instance, vibrant civil society groups are now being created to foster greater transparency in the use of the budget<sup>25</sup> as well as in the efforts to combat corruption<sup>26</sup> and include women in the democratic process.<sup>27</sup> In vital processes such as the adoption of major social and political programmes they are often not properly included. For instance, in the adoption of the NEPAD programme civil society was not sufficiently consulted (Mathews 2003, 73; Biswas 2003, 33; Olowu 2003, 214). Civil society groups that are able and willing need to be allowed entrance into the policy spaces at the national and regional levels.

### 3.3 Weak parliamentarians

The role of parliamentarians at the national level in fostering democracy cannot be underestimated. Yet more often than not parliaments are dominated by single parties with members who permeate the entire government body. For instance, in Angola the Popular Movement for the Liberation of Angola (MPLA) led by José Eduardo dos Santos calls the shots. So too does the party of Cameroon's President Paul Biya (the Cameroon People's Democratic Movement). This is a trend in most African states. The dominance of single parties which often dominate in national elections through fraudulent elections undermines the role of national

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**Table 13.1** Freedom House's collated survey on political freedom between 2002 and 2012

Country	2002	2012
Algeria	Not free	Not free
Angola	Not free	Not free
Benin	Free	Free
Botswana	Free	Free
Burkina Faso	Partly free	Partly free
Burundi	Not free	Partly free
Cameroon	Not free	Not free
Cape Verde	Free	Free
Central African Republic	Partly free	Partly free
Chad	Not free	Not free
Comoros	Partly free	Partly free
Côte d'Ivoire	Partly free	Not free
Congo	Not free	Not free
Democratic Republic of the Congo	Partly free	Not free
Djibouti	Partly free	Not free
Egypt	Not free	Not free
Equatorial Guinea	Not free	Not free
Eritrea	Not free	Not free
Ethiopia	Partly free	Not free
Gabon	Partly free	Not free
Gambia	Partly free	Not free
Ghana	Free	Free
Guinea	Not free	Partly free
Guinea Bissau	Partly free	Partly free
Kenya	Not free	Partly free
Lesotho	Free	Partly free
Liberia	Not free	Partly free
Libya	Not free	Not free
Malawi	Partly free	Partly free
Mali	Free	Free
Mauritania	Partly free	Not free
Mauritius	Free	Free
Morocco	Partly free	Partly free
Mozambique	Partly free	Partly free
Namibia	Free	Free
Niger	Partly free	Partly free
Nigeria	Partly free	Partly free
Rwanda	Not free	Not free
Sahrawi Arab Democratic Republic	Partly free	Not free
São Tomé and Príncipe	Free	Free
Senegal	Partly free	Partly free
Seychelles	Partly free	Partly free
Sierra Leone	Partly free	Partly free
Somalia	Partly free	Not free
Somaliland	Partly free	Partly free
South Africa	Free	Free
South Sudan	–	Not free
Sudan	Not free	Not free
Swaziland	Not free	Not free
Tanzania	Partly free	Partly free
Togo	Partly free	Partly free
Tunisia	Not free	Partly free
Uganda	Partly free	Partly free
Zambia	Partly free	Partly free
Zimbabwe	Not free	Not free

Source: Freedom House 2002, 2012

parliaments. Again, in a country like Burkina Faso true democratic reform is often stifled by the presidential majority coalition that tends to agree with all the proposals of the Blaise Compaoré Government.<sup>28</sup>

### 3.4 Potential problems of very strong militaries

Many Africans remain frustrated that their countries are not well governed. One would have thought that the advent of the AU would

usher in a coup-free era in Africa, but as borne out by events in Mauritania, Guinea and Niger, this has not been the case. From the period of independence of many countries in the 1960s until 2000 there were over 180 changes in government and 56% of these (or 101) were unconstitutional, with the majority led by military men (Magloire 2002, 155). The seed of military rule is often fuelled by the feeling of poor governance. This frustration is well captured in the words of Nicky Oppenheimer, who has intimated that 'there is no reason why



Africa should not be well-governed, why some of its potentially richest countries should continue to tolerate the dictators, warlords and party elites who have ransacked their wealth and reduced their people to penury' (Oppenheimer 2005). He adds that there is not a single reason why a well-governed Africa should not be able to throw off the shackles of aid dependency and compete on equal terms in our globalized world.

The critical challenge for African countries is to balance very real political/military pressures. For instance, the recent coup in Mauritania brings a deep conundrum into sharper relief. This dilemma is discussed by Hochman in his analysis of the 2008 coup in Mauritania, wherein he posits: 'Is it possible for a civilian president to manage a pluralistic parliamentary democracy, particularly one open to populist Islamist parties, while, under the watchful eye of a strong military, also countering terrorism?' (Hochman 2009: 221). He further argues that pressure from abroad (and from within) to fight terrorist foot soldiers such as those of al-Qa'ida and its affiliates make it even harder for a civilian president to compete with the military's security apparatus (Hochman 2009, 224). For him the recent military takeover in Mauritania indicates that 'weak civilian presidents are no match for strong, experienced, bureaucratized militaries, particularly in brand-new democracies that are multiethnic and multiracial' (Hochman 2009, 224). The solution in such cases, Hochman contends, will be to elect a civilian president that enjoys maximum public popularity and credibility (Hochman 2009, 226).

### 3.5 Life presidents and the temptation to create endless terms

In many African countries leaders endeavour to stay endlessly in power, with some declaring they are God (Ali Soilih of the Comoros), life leaders (Mobutu, Banda, Bokassa) and guides/brother leaders (Qaddafi) (van Wyk 2007, 11). This tendency has not subsided as some of the current leaders have striven to amend constitutions to extend their grip on power. In other instances they have been making behind-the-scenes efforts to push their children to continue in unstated dynasties as in Togo, the DRC, and gradually Senegal and Equatorial Guinea.

## 4 The African Union and input legitimacy

Aspects of input legitimacy at the continental level are ensured through the involvement of the population in the activities of the Union. This can be secured through the active participation of representatives and of civil society organizations in the functioning of the Union. The spirit of popular participation in the activities of the AU is well engrained in the Constitutive Act of the Union. Art. 3(g) states that one of the goals of the AU will be to 'Promote democratic principles and institutions, popular participation and good governance'. In the same vein, Art. 4(m) is to the effect that one of the principles of the AU will be 'Respect for democratic principles, human rights, the rule of law and good governance'. Art. 4(p) goes further and addresses the question of unconstitutional takeovers head on. It stipulates that one of the principles of the Union will be the 'Condemnation and rejection of unconstitutional changes of governments' (AU 2000).

These goals and principles notwithstanding, the AU has attracted caustic criticism because in certain instances it is regarded as applying dual standards to similar situations. For instance, it was vocal on the unconstitutional takeovers that have occurred in Togo, Mauritania and even Madagascar, yet has been relatively measured or even mute in the case of Zimbabwe (Cooke 2009), where 'Mugabe is not interested in establishing a positive legacy for his presidency', but instead is more concerned about being tried for war crimes or wholesale theft (Rotberg 2010).

An organ that would have been at the fore in terms of enhancing the democratic credentials of the Union on the continental pedestal is the PAP. Parliamentarians of the PAP are not elected directly and there are no continent-wide political parties or families as obtains within the European Parliament. Within the Union's structures, ECOSOCC is the main conduit between the concerns of the Union's organs and civil society organizations. Some organizations are registered and recognized by the AU while others operate on a more independent basis.

## 5 Popular participation and the African Union

The Treaty of Lisbon of the EU introduces the citizens' initiative whereby 1m. or more citizens can initiate law. Such a provision or practice is not foreseen under the Constitutive Act of the African Union. It is true that

the AUCA accords great room for aspects of democracy, good governance and the precepts of popular participation. The thinness of the AUCA and of these clauses provides credence to the view that much leeway or latitude for interpretation is accorded to the policy maker and enforcers of the Act.

Again, unlike in countries such as the Netherlands, France and Ireland where the EU's constitutional treaty was subjected to popular scrutiny via referendums that turned sour in some cases, the AUCA was not subjected to such scrutiny and there is always the feeling that decisions are simply taken by the leaders and then rammed down the throats of citizens. Even on vital initiatives such as NEPAD and the APRM, the leaders developed the ideas then sold these first to donors before returning to the views of their people and civil society organizations back in Africa.

One of the intrinsic problems with integration efforts at the continental level is that the majority of the African masses lack the resources and capacity to monitor comprehensively what is taking place in the AU institutions (Houghton 2005, 5). Yet for there to be democracy in AU bodies, popular participation marked by the close involvement of people and popular organizations is vital (OAU 1990, 3). Through the African Union's structure itself, civil society groups are expected to act through the ECOSOCC, but civil society actions that influence the Union have been dormant, to say the least. With a few exceptions such as the IDASA, which has developed programmes to foster democracy at the continental level, organizations are rather parochial in their focus. One reason for this lack of continental focus on African Union issues could be that organizations are bereft of resources to participate fully in the meetings of the AU. Another reason is the sheer aversion that many African political leaders hold regarding the role of civil society organizations that are often considered either lackeys of the opposition or pawns of foreign powers.

That being said, other grassroots movements are taking the AU to task on various social issues. Women leaders such as Aminata Traoré as well as the PAP's former leader Gertrude Mongella are leading the charge to enhance popular participation of African citizens in the instances of the African Union. The PAP, for one, has sought to enhance the ties between CSOs and the AU (Southern African Trust 2007, 1). While civil society organizations may want more participation in AU activities, the actions of some governments often prevent access to AU meetings and summits. This is especially the case when visa conditions are made more stringent (Afrimap *et al.* 2007, 3).

## 6 Popular control of the African Union

Popular control options for citizens of the AU are non-existent. First, the system of ombudsmen that is well developed under EU law does not exist under the AU's system. Second, for citizens to control AU leaders they have to have access to reliable information, yet this is not always easy to come by mindful of the nature of tight secrecy under which the meetings of the instances of the AU take place. It is true that the official documents have been hosted on the AU website and can be accessed through the internet. While the official documents such as treaties are worthwhile, important texts such as proceedings of ministerial meetings and *travaux préparatoires* are not easy to come by. Also, to have access to AU officials can often be a daunting experience. In other issue areas Afrobarometers have been started in an initiative led by Michigan State University, USA. The problem with Afrobarometers is that they are narrow in their sample studies.

Third, a truly continental media that will maturely present and criticize the work of the Union in particular is still to be developed. This is also true of the academic community whereby a strong epistemic group around AU issues is still germinating. What will a future AU Law entail? Will it reflect the rules of the AU alongside the rules of all the regional economic communities recognized as AEC building blocks? Will it take into account and reflect the legal architecture of systems such as the Organization for the Harmonization of Business Law in Africa (OHADA)? For there to be true popular control of the actions of the AU, these questions need to be posed and answered. In fairness to the AU the organization has set up the African Union International Law Commission to provide views and recommendations on such issues. It is hoped that this group will be able to develop clear ideas as to how AU Law will evolve as a regime on its own and as a legal system that relates to international law.

Finally the PAP and the African Court of Justice and Human Rights are two institutions through which citizens could exert popular control on the executives of the Union. Yet, as mentioned, the PAP is, de

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facto, a consultative organ bereft of legislative powers. The court, on the other hand, only entertains complaints mainly from member states and from the organs such as the Assembly. It can also receive individual complaints from workers of the AU and from third parties (AU 2003). While the provision is silent on the meaning of third parties, it is arguable that private individuals may come under this category. The court could draw heavily from the experiences of the African Commission on Human and Peoples' Rights. This entity has been very forthright in entertaining complaints from private groups as well as public entities. Many governments, including those in Nigeria and Cameroon, have been arraigned before the Commission to respond to complaints regarding discrimination based on political and socio-economic grounds. So the new court has a good playbook in protecting the rights of citizens and corporate groups as the case may be. Also it would be vital for states to approach the court in dealing with specific kinds of disputes, whether these be in the realm of territorial issues or perceived violations of political sovereignty. In assuming this increased role as arbiter between states the court will help to dilute the perverse effects of the paradox whereby AU leaders keep sermonizing about unity while erecting borders that they deftly defend at the level of the International Court of Justice. A greater role for the new court will also help to assuage the debilitating observation that the international community has developed the International Criminal Court as a tool to go after mainly African leaders. A stronger court should be in a position to lead trials of African tyrannical leaders in Africa.

## 7 The African Union and supranationalism

In EU Studies, there have been waves of functionalism, neo-functionalism, realism and liberal intergovernmentalism, all regarded in varying time periods as the underlying thread explaining the evolution of European integration. In Africa the reverse seems to have been the case. Gradual germination of regional integration from one policy area to the next has not been the case. Rather, leaders have always had the proclivity to decree regional integration by fiat through the creation of supranational institutions that are not accorded the chance to grow organically. This can be partly explained by hasty bouts of frivolous diplomacy to create in posterity the feel of an individual's place in history. How else would one explain the fact that African regions have many regional courts yet all the border disputes in Africa (paradoxically geared at maintaining boundaries) have been heard at the International Court of Justice rather than at the regional courts?

Even if leaders decree supranational bodies, power largely remains in the African capitals. The majority of AU members are young countries. They still remain attached to sensitivities over sovereignty and are not wont to delegate powers easily to regional bodies. Besides, they do not amply fund these organs because: a) some of the countries are too poor themselves to do so; or b) they prefer weak regional bodies. So the AU remains a strong intergovernmental body. Whether this intergovernmental trend is more liberal or communal really depends on the issues at hand.

It is true that there are supranational bodies such as the Commission, the PAP and the Court. However, the degree to which these bodies can make directly applicable rules and take directly applicable action is thin. For instance, even if there is an African Group in Geneva, the African Union is not in a position to negotiate on behalf of AU states at the WTO, nor is it in a position to speak with a single voice for Africa in the Security Council of the UN. The PAP also has no legislative powers and cannot adopt rules that are directly applicable. In terms of security the AU lacks a continental police. There is the African Standby Force that has been intervening in Sudan, Burundi and Somalia, but these forces are mainly contributed by a few states including Nigeria, Uganda, South Africa and Rwanda.

## 8 The African Union's capacity to promote democracy and human rights, and challenges

### 8.1 The AU and promotion of human rights

Unlike its predecessor, the AU is an organization that has taken a strong position in terms of respect for human rights. The AUCA makes clear that it is in the area of gross violation of human rights in terms of crimes against humanity, war crimes and genocide that there can be intervention in order to reverse the situation. The AU continues to enforce these,

alongside the African Commission on Human Rights, the African Charter on Human and People's Rights or the Banjul Charter. The African Commission on Human Rights has a well-developed reporting and monitoring system and accords standing to individuals as well as non-state actors.

### 8.2 Constraints of the AU in implementing its democratic agenda

Some of the problems for the AU in meeting all its well-publicized democratic goals and agenda include limited financial and human resources, the timid mandate that is accorded the supranational bodies such as the Commission, the court and the Pan-African Parliament. In terms of resources, the AU is an organization that is largely dependent on foreign donors to make its budget. Payment of membership dues has often been timid and countries such as Libya and Nigeria have often stepped in to foot the bill for other states. Reduced funding windows mean a cut-back in some of the pro-democratic activities of the organization, such as monitoring of elections and the development of capacity programmes on issues of good governance. The problem of funding is also linked to the quality of personnel that the AU can hire and the duration of hire. Budget constraints have meant that top experts in specific areas are seldom attracted to the Union and even when they are, they often move on to other career openings. The problems of institutional knowledge loss attached to such moves cannot be underestimated. Second, even in those cases where there is the money, the continental bodies are often bereft of the adequate legal and constitutionally watertight mandate and powers to act strongly in areas where collective action makes sense. More often than not countries remain so attached to principles of sovereignty and autonomy and jealous of their hard-won independence, that they loath delegating powers to Addis Ababa.

## 9 The African Union, output legitimacy and the role of international actors

As argued above, the AU has been accorded thin powers by the leaders. This is reflected in the sketchy nature of the AU CA. In the field of democracy promotion the AU as an institution, through its organs, is more reflective of a democratic body than the OAU. The creation of NEPAD and its APRM are the apogee of this increased tendency to embrace democracy by the continental organization. The APRM has been well received and its work in countries such as Ghana positively reviewed. In other countries, there have been interruptions in rolling out the initiative. The use of money by some of the stakeholders in the Kenyan process was problematic. In Mauritius support from donors was lacking. In Rwanda the government had a tight lid on the process (SARP 2005, 3). Chris Stals, who chaired the APRM Panel visit to Ghana, noted that regional support and awareness was key for Ghana's success but he also warned that there can be no generalized template for APRM reviews as each country is unique (SARP 2005, 4).

In terms of its capacity to enhance democracy in African countries, this again has been a positive development compared to the OAU. More and more the Commission has taken principled stances in cases of unconstitutional takeovers of governments. In the cases of Togo, Madagascar and, recently, Guinea and Niger, members were treated to suspension pending the establishment of constitutional rule. For the Commission to deliver more in this respect, it needs to be resourced in terms of personnel and also funding, mindful that it has had to deal with budget shortfalls (Afrimap *et al.* 2007, 2).

Many international donors have been supportive of the new push by the African Union to lead democratic processes in Africa. Through the Millennium Challenge Corporation created under President George W. Bush the USA has been clear in its drive to promote efforts of countries that are enhancing democracy and good governance. President Barack Obama has carried on the flame and the USA is still a staunch advocate of democratic processes in Africa (Diamond 2009). Yet, this drive at the national level still has to be reflected on the continental pedestal. One major supporter of the AU has been the European Union. The EU has even created the special post of an EU ambassador to the AU who is based in Addis Ababa. So, too, has the AU a representative in the EU. The EU has supported many AU initiatives such as the Peace Facility.

## 10 Conclusion

The AU remains in early stages but it is gathering momentum aged 10. Increasingly the organization is affirming a strong position in defence of democracy and abhors unconstitutional takeovers (Lyman 2007). Yet, the continental instances can only act within their mandate and if they are underperforming it could be worthwhile revisiting the powers conferred on them to assess whether these could be augmented, especially in the realm of policing democracy. Moving forward, the AU needs to make its governance system more robust (Ohlen 2010; Siaroff 2007, 2; Kufuor 2005, 133). The APRM initiative is welcome. However, there should be clearer *ex post facto* conditions for defaulting members that are aggressively implemented irrespective of whether one is referring to the conditions in Zimbabwe, Togo or Niger. In addition, access to the AU for social actors could be widened (Ndulo 2003). Above all the AU CA would attract more legitimacy if vital issues such as the adoption of acts or important protocols were submitted to the African people directly for referendum.

An element that the AU may find hard to decipher in the future is the issue of continental leadership. One of the factors that drove the speedy creation of the AU and NEPAD was the zeal of leaders such as Mbeki, Kufuor and Obasanjo. These leaders have received their fair share of criticism. Yet, it cannot be taken for granted that their efforts provided ample catalyst for the AU to chide countries that derogated from upholding AU principles of democracy and rule of law. Since these leaders have left office, there has been a spate of unconstitutional takeovers in Madagascar, Mauritania, Guinea and Niger. All these situations have been accommodated under the umbrella of the AU. This is not to say that the presence of the former leaders cited could have forestalled these incidents. However, a strong engine or group of countries is needed to lead the AU project.

Libya could arguably be a leading country and its late leader was (regardless of motives) a champion of African integration. Yet, Qaddafi's mercurial approach and unpredictable stances at the international level diluted any hopes of him leading a coherent and realistic programme geared at a more democracy-friendly Union (van Niekerk 2009, 232). Jacob Zuma of South Africa could also be an option, but he has his hands full at home especially in addressing South Africa's increased levels of unemployment, poor treatment of migrant workers, the lumbering health system and a hike in levels of corruption (Johnson 2010).

So can the AU be regarded as an institution wherein democracy is fostered? Some have noted indeed that the real power of the AU will not be in military interventions but that the AU will gain international gravitas through being a normative or norm-setting power. This will come through its development and application of sterling democratic and governance principles that are to be adhered to by all its member states. All in all, the issue of lack of resources will remain predominant.

## Notes

- 1 See statement of Amara Essy made during the Africa Conference on Elections, Democracy and Governance: Strengthening African Initiatives, 7–10 April, 2003, Pretoria, South Africa.
- 2 The AEC Treaty itself in Art. 14 makes clear that to enhance the involvement of African people in the economic integration process, a parliament will be created (AEC 1991).
- 3 See interventions of Hob Mbutoh Njüngum at the Pan-African Parliament (2010, 4).
- 4 The statements of Hon. Rashid Pelpuo were strong: 'Members of Parliament are the cream of society; they represent the people of Africa, they are the pulse of our democracy, they are people whom we have to uphold, to show respect and reverence for, in terms of building a democratic transition in Africa. So, if they go out there, using economy tickets and flying in the economy, going without the needed facilities and materials to work with, it is an indictment on the very foundation and principle of PAP and our strive to democratize Africa. I want to say that we need, without any option to relook at this and to rethink and ask ourselves whether we need it or not. If we do not need it, we do not go for it, if we go for it because we need it, we have to ensure that we fully sponsor it, and that Members are comfortable when they go out there to observe' (Pan-African Parliament 2010, 9).
- 5 Interview: Khalid Dahab, 2011.
- 6 Interview: Dahab, 2011.
- 7 Interview: Dahab, 2011.
- 8 Interview: Dahab, 2013.

- 9 'The African Union: Short of Cash and Teeth', *The Economist*, 29 January 2011, 36.
- 10 Interview: Dahab, 2011.
- 11 Interview: Dahab, 2011.
- 12 Cilliers and Mashele (2004) also suggest that the PAP should have the authority to appoint or recommend the commissioners, but this would not be the proper role for the PAP. Nomination should remain the preserve of the Assembly but there could be hearings by the PAP to approve the team of commissioners.
- 13 African Court of Human and Peoples' Rights, *Michelot Yogogombaye v. The Republic of Senegal*, Application No.001/2008.
- 14 The chair of the AU Authority is Jean Ping (Gabon). His deputy is Erastus Mwencha.
- 15 African Union Civil Society Dialogue.
- 16 Interview: Austin Muneku, 2011.
- 17 Interview: Muneku, 2011.
- 18 Interview: Fanwell Bokossi, 2011.
- 19 Interview: Patrick Kayemba, 2011.
- 20 The South African or Mbeki Plan had been presented earlier in January 2001 at the World Economic Forum (Melber 2002, 6–13).
- 21 Kanbur (2004, 2) describes it as 'an Africa-wide initiative that is self-consciously democratic in its roots and aspirations'. He (Kanbur 2003, 2) argues further that even if complaints are made of inadequate civil society involvement in NEPAD, the involvement exceeds what was obtained under the Lagos Plan of Action.
- 22 Since 2006, members of the Panel have been Marie Angélique Savane (Senegal), Adebayo Adedeji as Chair. (Nigeria), Bethuel Kiplagat (Kenya), García Machel (Mozambique), Mohammed Babes (Algeria), Dorothy Djeuma (Cameroon) and Chris Stals (South Africa).
- 23 At positions 30, 39, 43 and 50 of the 176 countries assessed on the Transparency International Corruption Perception Index. See [www.transparency.org/cpi2012/results](http://www.transparency.org/cpi2012/results).
- 24 At positions 165, 165, 173 and 174.
- 25 Interview: Siméon Bontogo, 2010.
- 26 Interview: Maxime Nikiema, 2010.
- 27 Interview: Miriam Sedogo, 2010.
- 28 Interview: Barrister Benwendie Sankara, 2010.

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