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 deal with that apartheid in Southern Africa and also assert countries that were still under colonial rule to gain independence. The push for the creation of the Union was generated in September 1997 when African leaders adopted the Addis Ababa Declaration (1997, 3). 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 reining 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 Idr I 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 by and large 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 unrestrained 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 convoluted 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. Muanmar 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 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 2008). 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
impact this has for democracy in the Union. As democracy is closely linked to the protection and promotion of human rights, section 8 further develops on the human rights dimensions of democratic promotion at the AU. Finally elements of output legitimacy of the AU 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 commanding 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 Abuja 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 entails: a) military coup d’état against a democratically elected govern- ment; b) intervention by mercenaries to replace a democratically elected government; c) replacement of democratically elected governments by armed disused 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 take- over. 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 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 2002a, 1210). It has also been noted that the Charter may be one of the best legacies of the African Union (Kabatwo 2010). However, it has attracted much criticism, with some observers describing it as a mirage to deceive international donors (Mbapuli 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 African Court of Justice and Human Rights (ACJHR), the Economic and Social 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).

In order to extend that rotating leaders of the AU Assembly are elected from their peers, it may be asserted that it is a democratic organ.

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 Act (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, 210). Indeed, it has been argued that one of the 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 it embodies the aspirations of freedom and development finely dovetailed (Mwine 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 fair elections and the transparent elections provide an important gauge of the level of democracy of leaders and processes. For its part the AU is increasingly being called upon to monitor elections in African states and it has crafted guidelines to that effect. In recognizing the importance of transparent elections, the AU has created the African Trust Fund for Electoral Observation and Assistance (AFREOU 2004, 1–2).

One aspect of the AU’s failure to act robustly is the lack of the ability to inhibit Zimbabwe from participating in its meetings and decision-making processes. This is because Zimbabwe had not been expelled from the AU and it was possible for the AU to continue to relate to Zimbabwe as a member state on its territory (Fombad 2006, 23).
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 in 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 governed 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 comparable strong positions in the recent instances of unconstitutional takeover of power in countries like Madagascar and Niger. It could be argued that the Assembly would have been stronger if these countries had not gained legitimacy through elections. Some AU members are considering 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 as winner. AU leaders quickly met to wring farms owned by whites from their model. In 2008, the AU called on the international community to encourage the Ouattara-Gbagbo stalemate 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. They are selected even if their term is expunged once that also happens at the national level.

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 farm owned by whites from their hands, he is leashed for his disregard for democracy and repression of the opposition. 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 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.

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2.2.2.3 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, culture and investment issues; d) industry, science and technology; e) natural resources and the environment; f) transport, communications and tourism; g) 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 (AEP) (AU 1999). 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.

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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 on its impact these have been well regarded. However, there are other efforts that have had mediate results partly because these missions had to be conducted jointly as part of the AU team. Such missions like those to 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. 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 blunt disregard of the PAP members (Hon. Joseph Nyobuyulena, Malawi; Hon. Kingsley Namakhwa, Malawi; Hon. Rashid Pelpuo, Ghana; Hon. Elizabeth Agyeman, Ghana). 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. The current proposal is that 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. It is not always well connected 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 stronger 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 admitting 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 parliamentary bodies of the various subregional bodies like the Economic Community of West African States (ECOWAS), the Economic and Monetary Community of Central Africa (CEMAC), the Economic Community of Central and 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.10 However, there are reports of instances in which relations between national parliaments and the PAP were reduced to a level where members of the various national parliaments sitting as electoral colleges. The PAP should conduct its own, independent missions mindful that the relations with the AU Commission on joint missions have been marked by blunt disregard of the PAP members (Hon. Joseph Nyobuyulena, Malawi; Hon. Rashid Pelpuo, Ghana; Hon. Elizabeth Agyeman, Ghana). 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).

Fourth, another issue that always come 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 it desires. Such missions like those to 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. 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 blunt disregard of the PAP members (Hon. Joseph Nyobuyulena, Malawi; Hon. Kingsley Namakhwa, Malawi; Hon. Rashid Pelpuo, Ghana; Hon. Elizabeth Agyeman, Ghana). 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).

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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 the 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 the longevity of the PAP 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 sterlin institutional perspective to have full membership change. In any event, membership of the PAP that is not linked to membership of the national parliaments. 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 PAP. 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.5

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 15% each. The remaining part was granted by the People’s Republic of China, the EU and the USA.7 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 the weakest part of the PAP’s funding. The programme budget is funded by donors, with the main donors being the EU, the German government, Italy, the Netherlands, the Open Society Institute, the Association of Internationally Elected 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.
perception that the AU Commission, being an executive body could not provide as independent a picture of elections as the PAP would. So PAP staff submitted their own observations, even with the support of Zimbabwe and Zambia. 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.11

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 better mindful of the support and momentum it now gains. Also when one compares the PAP to other parliaments like the European Parliament and the time it has taken to 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 be very helpful if the PAP had the power to hold hearings for members of the Commission,12 but for this to happen the AU as a whole needs to grapple with the logistic dimension of its set-up. Will the organization be able to function properly mindful that instead of being 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 regarding the positions of the AU leaders 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 (Mahele 2004). 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 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 be deployed in cases of disputed dispensation 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 regarding the positions of the AU leaders 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 (Mahele 2004). 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 pragmatic option available.

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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 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 the AU has faced in the recent 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 dedicated organ from the Executive Council both of which can be composed of ministers? Put otherwise, would it not be as sensible and
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 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 various African states as a whole. Again the case of Libya comes to mind. While some African states abstorred the imposition of the non-fly zone, others 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 small 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 actors, i.e., that a genuine African people’s organization should represent all social groups, various and all forms of civil society organization (CHR 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 secretariat, a standing 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 national level. 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 coordinating organ for the Council. The secretariat 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 parties; 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. Second, the issue is of hosting the ECOSOCC in the AU Commission within the AU. 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. Third, the issue of verification of who is selected into ECOSOCC remains another burning issue. There is also a very strong perception among 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. 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). Finally, 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 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 within the AU Commission serves as the secretariat of the ECOSOCC.

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. 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 (Oluokohu 2002, 10). Although welcomed in many quarters as the road map for Africa by African leaders, it is an initiative that was crafted by few African leaders who did not sufficiently consult African civil society groups. That is why NEPAD faces problems of short time for implementation, absence of pressure (or sanctions) which can bring to bear on recalcitrant states (Heubham 2003, 1) and that civil society is not properly integrated into NEPAD (Fombad 2006, 33–34). Taylor intimates that NEPAD has provoked a lot of scepticism and fail 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 (Keobonang 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. At the national level each country is represented by an APRM Team. The Teams are led by members of the APRM Secretariat. 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 (Keobonang 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 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 (Keobonang 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 APRM Panel members, human resources concerns and absence of civil society concerns are issues to be carefully considered (Keobonang and Fombad 2006, 39–51).
In addition, it has also been submitted that the reviews of the Panel need to be more focused to be more effective. Calh 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 2006 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 Investment Bank (AIB), 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. In time, the operations of the Fund will be transferred to the Central Bank. Moving towards reaching the goals that could torpedo efforts to erect these financial institutions. First the situation in Libya is complex, and with the ousting of Qaddafi, one of the main forces behind the creation of the African Investment Bank has 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 back yard. 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 is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro is also a promising endeavour, but its creation will mean that some African countries re-evaluate their economic ties to Europe and the euro.

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 from being partly free to being fully 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 35 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 (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). At the tail of the table African countries accounted for four of the 10 worst performers (Blundi, Chad, Sudan and Somalia).

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 putting in place transparent election processes for sustainable democracies, which 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 countries that have been driven 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 (Akossah-S空气净化) 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 latent 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 as well as in the efforts to combat corruption and include women in the democratic process. 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 parliamentarians 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
Table 13.1 Freedom House’s collated survey on political freedom between 2002 and 2012

<table>
<thead>
<tr>
<th>Country</th>
<th>2002</th>
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<td>Algeria</td>
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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 peoples’ security (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 concern over Sharif. This dilemma is discussed by Hochman in his analysis of the 2008 coup in Mauritania, wherein he posits: ‘It is 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-Qaeda 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 (Mobumi, Banda, Bokassa) and guides/brother leaders (Quaddafi) (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 unشاهد 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 ‘prevention 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 (Coskue 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 pedastal is the PAP. Parliamentarians of the PAP are not elected directly and are there are continent-wide political parties or families as obtains within the European Parliament. Within the Union’s structures, ECOSOC is the main conduit between the concerns of the Union’s organs and its 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 citizens can initiate law. Such 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 thinnest 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. Yet 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.

Finally the PAP and the African Court of Justice and Human Rights are two institutions through which civil society organizations can present their concerns to the Union’s organs. To date, however, this is not the case. African civil society organizations are often much more acutely aware of the benefits of participation at the local and regional level, where their views are often better heard.

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 about 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 made available and even accessed through the internet. While the official documents such as treaties are worthwhile, important texts such as proceedings of ministerial meetings and travaux preparatoires are not easy to come by. Also, to have access to AU official 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 size.

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 be? Will it reflect the rules of the AU alongside legal elements of 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 (OHAJA)? 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.

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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 violation of political sovereignty. In assuming this increased role as arbiter between states the Court will help to dilute the pernicious effects of the paradox whereby AU leaders keep sermonizing about unity while erecting borders that they defiantly 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 a thin. For instance, even if there is an African Group in Geneva, the AU cannot make directly applicable rules and take directly applicable action is at hand.

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 instruments that are not accorded the change 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 regional groups in the ECOWAS, for example, have many regional courts yet all of them are effectively of continuously perceived as institutional lacunae (borders) 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 organs 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.

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 refused to foot the bill for new regional initiatives. This 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 is all about the set of 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 supranational 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 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 (SARPN 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 no guaranteed template for APRM reviews as each country is unique (SARPN 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 (Afriforum et. al. 2007).

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 initiatives can only act within their mandate and if they are underperforming it could be worthwhile reviving 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; Siraff 2007; 2; Kufuor 2005, 133). The AU’s initiative is welcome. However, there should be clearer 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, Kufour and Obasanjo. These leaders have received their fair share of criticism. Yet, it must be taken for granted that 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 space 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 mercantilist approach and unpredictable stances at the international level dished any hope 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 stringent 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.

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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.
14 The chair of the AU Authority is Jean Ping (Gabon). His deputy is Erastus Mwencha.
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16 Interview: Austin Musuku, 2011.
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18 Interview: Fanwell Bokosi, 2011.
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20 The South African or Mbeki Plan had been presented earlier in January 2001 at the World Economic Forum (Mellher 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 Angelique Savane (Senegal), Adebayo Adejide as Chair (Nigeria), Bethuel Kiplagat (Kenya), Garcia Machel (Mozambique), Mohammed Babes (Algeria), Dorothy Djema (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.
24 At positions 165, 165, 173 and 174.


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