

The Pan-African Parliament and African Union human rights actors, civil society and national human rights institutions: The importance of collaboration

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Summary

This article looks at possible areas of collaboration between the Pan-African Parliament and other human rights bodies within the African human rights system, national human rights institutions and civil society. This is done with reference to the manner in which the Pan-African Parliament has and is likely to co-ordinate its human rights activities.

1 Introduction

The creation of the Pan-African Parliament (PAP) is fundamentally linked to the transformation of the Organisation of African Unity (OAU) into the African Union (AU). This is largely because the Assembly of the AU adopted, in 2000, the Constitutive Act of the AU with the PAP as one of the organs of the AU. Under the AU Constitutive Act, the PAP is tasked with ensuring the full participation of African peoples in the development and economic integration of Africa.² The legal basis of the PAP is located in the Protocol to the Treaty Establishing the African Economic Community (AEC) Relating

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2 Art 17 AU Constitutive Act; see also art 4 of the African Charter on Democracy,

to the Pan-African Parliament (PAP Protocol) and the AU Constitutive Act.³

In a move that was hailed by many as a true sign of integration in Africa, 18 March 2004 saw the inauguration of the much-anticipated continental parliamentary body in Africa – the PAP. The inaugural session of the PAP was held amidst great fanfare at the United Nations (UN) Economic Commission for Africa Conference Centre in Addis Ababa, Ethiopia. The then nascent parliamentary body was seen as bringing to life the ideals of pan-Africanism once pursued by many, among them Kwame Nkrumah, one of the great leaders of post-colonial Africa. The inauguration of the PAP was also seen as heralding the end of non-participation of Africans in the continental decision-making processes.

Most of the AU documents emphasise some form of collaboration between the various institutions within the African human rights system. In short, the designers of the AU human rights system demand institutional co-operation and links. Unfortunately, one of the most regrettable institutional mishaps of the AU human rights system is the failure of these architects to clearly and succinctly provide for the relationship between the various AU institutions. For example, the relationship between the African Court on Human and Peoples' Rights (African Human Rights Court) and the African Commission on Human and Peoples' Rights (African Commission) remained unclear until well after 2010. This lack of attention to detail continues to characterise the AU human rights system and is likely to inhibit its growth. That is why it is not only important to put forward the PAP as a human rights actor within the AU, but also to explain how it can effectively work with other human rights institutions to promote human rights.

This article, therefore, takes a look at the relationship between the PAP and other organs of the AU, in particular other human rights protection bodies. The discussion focuses on the manner in which the PAP has and is likely to co-ordinate its human rights activities. It concludes by calling for an improved relationship between the Parliament and other institutions dealing with human rights.

2 Background to the Pan-African Parliament

2.1 Establishment of the Pan-African Parliament

The AEC Treaty provided the modalities for the establishment of the African Economic Community in light of the Lagos Plan of Action, echoing the commitment of African leaders to have, by the year 2000,

Elections and Governance, putting forward participation through universal suffrage as an inalienable right for Africans.

3 Arts 2(3)(i) & 11 PAP Protocol; KD Magliveras & GJ Naldi 'The Pan-African Parliament of the African Union: An overview' (2003) 3 *African Human Rights Law Journal* 223.

a fully-fledged African Economic Community. The aim of the Community was to foster economic, social and cultural integration, increased economic self-reliance and self-sustained development in Africa.⁴ In order to attain the objectives of the Community as set out in the AEC Treaty and in accordance with the relevant provisions of the Treaty, it was resolved that the Community would, by stages, strengthen the existing regional economic communities, the harmonisation and co-ordination of policies among existing regional and future sub-regional or regional economic communities, and the harmonisation of national policies in order to promote Community activities, particularly in the fields of agriculture, industry, transport and communication, and human resources.⁵

The objectives of the Community, as aforementioned, were to be implemented through stages; at each stage specific activities were to be implemented concurrently.⁶ With respect to the PAP, it was agreed that it was to be set up and its membership determined by universal suffrage within five years after the establishment of an African common market.⁷ The 1991 AEC Treaty provides that the sixth stage would include the final setting up of the structure of the PAP and the election of its members by continental universal suffrage.⁸ In other words, the AEC Treaty, as such, did not in any way elaborate on the form or the nature of the envisaged Parliament. Instead, it simply provided that the PAP's powers, composition, organisation and functions were to be set out under the Protocol to be adopted at a later stage.⁹

When the AU replaced the OAU, the AU Constitutive Act left intact the AEC Treaty as long as it did not run contrary to the provisions of the AU Constitutive Act.¹⁰ With respect to the PAP, the Constitutive Act listed it as one of the organs of the AU,¹¹ and proceeded to echo the provisions of the 1991 AEC Treaty.¹² For example, it underscored the relevance of the participation of Africans in the development and economic integration of the continent.¹³

The 36th ordinary session of the Assembly of Heads of State and Government of the OAU – which was held from the 10 to 12 July 2000 in Lomé, Togo – led to the approval and adoption of the AU Constitutive Act. Almost a year later, on 1 March 2001, the PAP Protocol was adopted in Sirte, Libya,¹⁴ and was opened to all member

4 Art 4(1) AEC Treaty.

5 Art 4(2)(e).

6 Art 6(2).

7 Art 6(2)(f)(iv).

8 Art 6 read with art 7.

9 Art 14(2).

10 Art 33(2) AU Constitutive Act.

11 Art 5(c).

12 Art 14 AEC Treaty.

13 Art 17 AU Constitutive Act.

14 As above.

states of the AU for signature and ratification.¹⁵ The instruments of ratification or accession were deposited with the Secretary-General of the defunct OAU.¹⁶ The PAP Protocol came into force after Senegal deposited the 24th ratification instrument.¹⁷ Not all member states of the AU and the AEC have ratified the PAP Protocol. By 30 November 2013, seven AU member states had not ratified the PAP Protocol. These states are Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, São Tomé and Príncipe, Somalia, Liberia and South Sudan.¹⁸ Of the seven, Eritrea, Somalia and South Sudan also never became members of the AEC.¹⁹ All seven countries have, however, ratified the AU Constitutive Act, meaning that they have accepted and agreed, under article 5, that the PAP is one of the organs of the AU. Having become part of the AU only in 2011, it remains to be seen whether South Sudan will ratify the PAP Protocol in the near future. It further remains to be seen how the non-ratification of the PAP Protocol by these seven countries will affect the integration process and movement towards supra-nationalism in Africa.

2.2 Objectives, functions and powers of the Pan-African Parliament

Article 3 of the PAP Protocol sets out nine objectives of the PAP and reflect what African leaders had in mind, especially in so far as integration in Africa is concerned.²⁰ The essence of the objectives of the PAP as set out under article 3 of the PAP Protocol is primarily to facilitate the effective implementation of the policies and objectives of the then OAU/AEC and ultimately those of the AU. Its objectives are further to educate the peoples of Africa about the objectives and policies aimed at integrating the African continent within the larger framework of the AU, to promote self-reliance, co-operation, peace and security in Africa. Most importantly, the objective of the PAP is to encourage good governance and to promote the principles of human rights and democracy in Africa. These objectives mirror, in substance, the Preamble of the PAP Protocol and the provisions of the 1991 AEC Treaty in that they mention the same aspects, except that the PAP Protocol expands on what is mentioned in both Preambles by setting out in specific terms the powers and functions of the PAP.

15 Art 21 PAP Protocol.

16 Art 21(2).

17 This is because art 22 of the PAP Protocol provides that the Protocol will enter into force after the deposit of the instruments of ratification by a simple majority of the 42 member (AEC) states; <http://allafrica.com/stories/200311210503.html> (accessed 16 February 2011).

18 C Heyns & M Killander (eds) *Compendium of key human rights documents of the African Union* (2007) 14-17; see generally <http://www.au.int/en/treaties> (accessed 23 April 2013) 503-508.

19 As above.

20 Art 3 PAP Protocol.

One of the objectives confirms that the PAP is intended to 'promote the principles of human rights and democracy in Africa'.²¹ Unlike the European Parliament (EP), the PAP has been mandated explicitly to promote human rights in Africa.²² The EP was set up without a specific mandate to promote or protect human rights and none of the founding treaties of the EP makes specific reference to human rights.²³ Both the 1952 Treaty of Paris²⁴ and the 1957 Treaty Establishing the European Economic Community (EEC) (Treaty of Rome)²⁵ are silent about human rights. Before the significant amendment, which introduced the co-decision procedures of the EU, was made by the Maastricht Treaty, the EP had to operate with the little powers that were conferred upon it by the founding treaties.²⁶ It can be concluded that, compared to the EP, the PAP actually finds itself in a better position in so far as the potential to promote human rights is concerned. In this respect, the PAP is more akin to the Parliament of the Council of Europe (PACE), which also has an explicit human rights mandate.

The Protocol further provides that during its first five years, the PAP will be able to discuss or express an opinion on any matter raised by its members or at the request of one of the other policy organs.²⁷ After deliberations, the PAP is free to make such recommendations as it deems appropriate and is mandated to make such recommendations on 'any matter', including issues pertaining to the respect for human rights, the consolidation of democracy, the promotion of good governance in Africa and the promotion of the rule of law.²⁸

21 Art 3(2).

22 T Demeke 'The new Pan-African Parliament: Prospects and challenges in view of the experience of the European Parliament' (2004) 4 *African Human Rights Law Journal* 62. Between the EP, the PAP and the PACE, it appears that the PACE's commitment to human rights issues is more pronounced as it is rooted in the founding documents of the Council of Europe. See generally LM de Puig *International parliaments* (2008) 52-53; B Haller *Assembly for Europe* (2006) 66-101.

23 As above.

24 The Treaty Establishing the European Coal and Steel Community (ECSC) was signed in Paris by Belgium, France, Italy, the Federal Republic of Germany, Luxembourg and The Netherlands. It entered into force for a 50-year period; <http://www.europarl.europa.eu/parliament/archive/staticDisplay.do?id=77&pageRank=13&language=EN> (accessed 26 June 2010).

25 Also known as the Treaty of Rome, signed 25 March 1957. Original Founding Treaty of the EEC, since renamed the European Community (EC), and integrated as part of the European Union (EU). The main provisions of the treaty still apply, but it has been amended by later treaties, so it should not be regarded as a current version. Various provisions have been reworded and renumbered; <http://www.britannica.com/EBchecked/topic/508886/Treaty-of-Rome> (accessed 13 March 2011).

26 M Shackleton 'The European Parliament' in J Peterson & M Shackleton (eds) *The institutions of the European Union* (2003) 107.

27 Art 11(1) PAP Protocol.

28 As above.

As one of the 'legislative' organs of the AU, the PAP is supposed to have an oversight role over the AU executive.²⁹ As of now, its mandate is limited to deliberating on issues and adopting reports and non-binding recommendations.³⁰ However, 'its evolution into a legislative organ is anticipated as regional integration is strengthened and the need for the harmonisation of laws in Africa increases'.³¹ The legislative mandate of the PAP remains one of the most important mandates of the continental body and, as such, is important in so far as the promotion of human rights in Africa is concerned. The acceptance of this mandate is also highlighted by the debates surrounding its functions and powers after it had concluded its inaugural five-year term.³²

The PAP is mandated to discuss its own budget and the budget of the AEC/AU and to make recommendations before the approval of the budget by the Assembly.³³ It is further mandated to work towards the harmonisation and co-ordination of laws of the member states,³⁴ policies, measures, programmes and other activities of Regional Economic Communities (RECs),³⁵ as well as the parliamentary *fora*, and to promote the programmes and objectives of the AU in the constituencies of member states. The PAP can make recommendations aimed at contributing to the attainment of the objectives of the AEC/AU and draw attention to the challenges facing the integration process in Africa as well as make recommendations on how to deal with such challenges.³⁶ It can also request officials of the AU to attend its sessions, produce documents or assist in the discharge of its duties, adopt its rules of procedure, elect its president and decide on such matters as the size of the AU Assembly as well as on the required staff of the PAP. The PAP is also allowed to undertake such duties that it might deem necessary or appropriate to achieve the objectives set out in the Protocol.³⁷

Since its establishment, the PAP has undertaken several activities pursuant to fulfilling or performing its functions under the PAP Protocol. The Parliament has held two ordinary sessions per year since its inauguration in 2004. It is during these sessions that the Parliament

29 Resolution on Oversight (AU Doc PAP-Res 004/04); F Viljoen *International human rights law in Africa* (2012) 186.

30 Press statement 'LLM students in human rights and democratisation in Africa' Centre for Human Rights, University of Pretoria <http://www.chr.up.ac.za> (accessed 20 September 2008); see also Centre for Human Rights 'The role of the PAP in conflict resolution and peacemaking in Africa' <http://www.chr.up.ac.za> (accessed 20 September 2008).

31 Viljoen (n 29 above) 184.

32 South African Institute of International Affairs *Pan-African Parliament: Evaluating an evolution* (2009).

33 Art 11(2) PAP Protocol.

34 Art 11(3).

35 Art 11(7).

36 Art 11(4).

37 Art 11(9) read with art 3 PAP Protocol.

debates motions and questions tabled before it. Following these debates, the Parliament has passed recommendations and resolutions on issues such as elections, the economy, culture and co-operation. Some of these resolutions and recommendations are country-specific. Several fact-finding missions to a number of countries have been undertaken by the PAP, with reports of such missions tabled before the Parliament once the mission has been completed.

2.3 Institutional framework of the Pan-African Parliament relevant to the promotion of human rights

Membership of the PAP is open to those countries who are members of the AU or are state parties to the AEC Treaty. Each member state is represented by five representatives, usually elected from the respective national parliaments or deliberative organs. All member states' representatives to the PAP together make up the Plenary, which is the cornerstone and central organ of the Parliament. All the functions and powers of the PAP, as elaborated and specifically provided for under the PAP Protocol, are carried out by the Plenary.³⁸ One specific function of the Plenary is to debate the various issues and questions tabled before the Parliament. The Plenary addresses various issues of concern to Africans and passes resolutions which are taken to be the voice of Africans through the PAP.

To assist with dealing with issues that are placed before the Parliament, the PAP initially created ten Permanent Committees.³⁹ It appears that the ten Permanent Committees were created in order to allow the Parliament to co-ordinate the various activities of the PAP on the continent dealing with different aspects of life in Africa. In particular, the PAP established the following committees: the Committee on Rural Economy, Agriculture, Natural Resources and Environment; the Committee on Monetary and Financial Affairs; the Committee on Trade, Customs and Immigration Matters; the Committee on Co-Operation, International Relations and Conflict Resolutions; the Committee on Transport, Industry, Communication, Energy, Science and Technology; the Committee on Health, Labour and Social Affairs; the Committee on Education, Culture, Tourism and Human Resources; the Committee on Gender, Family, Youth and People with Disabilities; the Committee on Justice and Human Rights; and the Committee on Rules, Privileges and Discipline.

Permanent Committees are made up of not more than 30 members, with each region appointing at least three members to the Committee.⁴⁰ When making such an appointment, the Rules of Procedure enjoin the region to take into account gender balance.⁴¹ However, the Rules do not provide for any quota for the women that

38 Art 11 PAP Protocol, read with Rule 4 of the PAP Rules of Procedure.

39 Rule 22 PAP Rules of Procedure.

40 Rule 22(5) PAP Rules of Procedure.

41 As above.

are expected to be appointed by the region to any of the Permanent Committees. One of the limitations imposed on membership to the various Permanent Committees is that one member is not allowed to serve in more than one committee at the same time.⁴² The general functions of these Permanent Committees are set out under the PAP Rules of Procedure,⁴³ which provide at the outset '[t]hat the President shall, on the advice of the Bureau, determine the business to be handled by the Committees' and that the Parliament may allocate any other matter to any committee it deems appropriate.⁴⁴ The specific functions of the committees are then set out in Rule 26 of the PAP Rules of Procedure.

The Permanent Committee on Justice and Human Rights (PCJHR) is responsible for assisting the PAP in its role of harmonising and co-ordinating the laws of member states.⁴⁵ Considering what the PAP has done as regards human rights, it is not clear what exactly the architects of the PAP envisaged in relation to the duty of the PCJHR to harmonise the laws of the member states. It is, however, conceivable that they referred to harmonisation in the context of the duty of the PAP to ensure consistency amongst the laws of the member states with a view to ensuring a common standard across the continent. This conception of harmonisation envisages the possibility of having uniform laws on the continent.

The PCJHR is also responsible for promoting the respect and development of sound principles of freedom, civil liberties, justice, human and peoples' rights and fundamental rights within the AU.⁴⁶ The Permanent Committee on Gender, Family, Youth and People with Disabilities is largely responsible for considering issues relating to the promotion of gender equality, and is supposed to oversee the development of policies and activities of the AU relating to family, youth and people with disabilities. One notable function of the Permanent Committee on Co-Operation, International Relations and Conflict Resolutions is to assist the Parliament in its efforts of conflict prevention and resolution.⁴⁷

The more general functions of the PCJHR are to handle business as determined by the President of the Parliament on the advice of the Bureau,⁴⁸ and further to handle business that is ordinarily handled by the corresponding specialised technical committee responsible to the Executive Council in accordance with article 14 of the Constitutive Act. More specifically, the PCJHR must (a) assist Parliament in its role of harmonising and co-ordinating the laws of the member states, and

42 Rule 22(11).

43 As above.

44 Rule 25(3).

45 Rule 26(9)(a).

46 Rule 26(9)(b).

47 Rule 26(4)(d).

48 Rule 25.

(b) promote respect and the development of sound principles of freedom, civil liberties, justice, human and peoples' rights and fundamental freedoms within the AU.⁴⁹ The foregoing are the provisions pertaining to the mandate of the PCJHR as discernible from the Rules of Procedure. A cursory look at the functions of the PCJHR as provided for under the PAP Rules of Procedure⁵⁰ is likely to lead one to the conclusion that the mandate of the PCJHR is somewhat limited. However, upon closer inspection, the Rules of Procedure reveal that the Committee is empowered to do more with regard to human rights issues.

To date, the Committee has been involved in several activities that are aimed at furthering the respect for human rights in Africa. The activities of the Committee are largely characterised by workshops, fact-finding missions, elections observer missions as well as lobby work in relation to the ratification of human rights instruments as well as capacity building. A perusal of the Committee's 2009 action plan and budget for the years 2007 to 2010, for example, indicates that the Committee has classified its activities as observation, fact-finding activities, institutional exchange and partnership activities, promotion activities, research, study and documentation activities and activities relating to international justice.⁵¹ This is clearly in line with the mandate of the Committee, which is essentially to act as a vehicle for the Parliament to promote respect for human rights and justice in Africa. A further perusal of the available Committee reports reveals that there is no particular format that the reports follow so as to make more nuanced the above demarcation of its mandate. The end result is that the reports come across as incoherent and in the process failing to really make known the important work that the Committee undertook.

3 Pan-African Parliament and African Union institutions dealing with human rights

3.1 Introduction

The human rights mandate of the PAP is primarily promotional. Closer collaboration between the PAP and AU institutions dealing with human rights could result in a marked improvement in the promotion of human rights. So far, the Parliament has been involved in

49 Rule 26(9)(b).

50 Rule 29.

51 The budget for the years 2007-2010 of the Committee on Justice and Human Rights relating to the Work Plan on the basis of the Strategic Plan of the Pan-African Parliament; Committee on Justice and Human Rights – Action Plan 2008 – 2009 (both on file with the author).

numerous fact-finding missions⁵² and election observer missions⁵³ and has carried out a number of human rights-oriented workshops and symposia. The PAP's resolutions and recommendations have over the years sought to encourage member states to ratify some of the African human rights treaties.⁵⁴ The PAP thus offers these institutions the platform to disseminate and encourage member states to ratify and domesticate human rights treaties. In that sense, the possible areas for collaboration between the PAP and other institutions are vast and should be nurtured.

The long-term benefits of the collaboration envisaged here are that the PAP will provide other institutions with the platform to advocate the protection and promotion of human rights at the domestic level. In turn, the Parliament will benefit from the expertise offered by these bodies and thus improve its efforts in the promotion of human rights. For example, the African Commission could assist the PCJHR on such issues as handling the parliamentary petitions, while the Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) may prove to be useful to the Committee on Gender, Family, Youth and People with Disabilities. The exchange of ideas on areas such as fact finding and election observer missions will go a long way towards improving the PAP's efforts in those areas.

The PAP Rules of Procedure make provision⁵⁵ for the relationship between the Parliament and other organs of the AU. The other article 5 organs of the AU are the Assembly of the AU; the Executive Council; the Court of Justice; the Commission; the Permanent Representatives' Committee; the Specialised Technical Committees; the Economic, Social and Cultural Council; and the financial institutions.⁵⁶ In addition to these institutions, there are those which can be referred to as 'AU treaty-based institutions', namely, the African Commission and the African Children's Committee. These are protective bodies aimed at monitoring the implementation of the rights established under the African Charter and the African Charter on the Rights and Welfare of the Child (African Children's Charter).

Despite the PAP's limited use of its mandate with respect to human rights, it should be viewed as forming part of those organs of the AU specifically mandated to deal with human rights. Understanding the mandate of the PAP in that fashion has its advantages. Chief among them is the recognition from other AU human rights institutions of its

52 To date, it has undertaken about 10 missions to different countries in Africa. Countries to which these fact-finding missions have been undertaken include the Democratic Republic of the Congo, Mauritania, Sudan, Côte d'Ivoire, Rwanda, Chad, Central African Republic, Tunisia and Libya.

53 Some of the countries that the PAP sent elections observer missions to include the Democratic Republic of the Congo, Ghana, Kenya, Swaziland and Zimbabwe.

54 Eg Resolution on Ratification of Protocol on Women's Rights in Africa, PAP Res 006/04, adopted by the PAP during its 2nd ordinary session, 13-24 November 2006, Midrand, South Africa.

55 Part XIV PAP Rules of Procedure.

56 Arts 5(1)(a)-(i) AU Constitutive Act.

strategic position, value or potential. Further, it will create greater room for the establishment of synergies likely to ensure augmented human rights promotion and protection in Africa. Against this background, the following paragraph provides a discussion of the actual and potential relationship between the PAP and other AU human rights institutions.

3.2 Pan-African Parliament and the quasi-judicial and judicial institutions of the African Union

The African human rights system is mainly made up of the African Commission, the African Children's Committee and the African Human Rights Court. These institutions, the primary custodians of human rights in Africa, have elicited considerable academic energy.⁵⁷ Considering that the PAP has a human rights mandate, the question may well be posed as to how it will co-exist with these institutions for the effective promotion of human rights on the continent. The following discussion will be speculative, considering that currently there is little, if any, actual relationship between the PAP and these institutions. It is possible that the drivers of these institutions are not aware that the Parliament has a promotional human rights mandate.

It is argued here that the relationship between the PAP and other organs of the African human rights system may be manifested in two ways. First, the relationship may manifest itself through the litigation powers of the PAP, that is, instances where the Parliament is able to seek recourse before those institutions with a quasi-judicial or judicial mandate. Second, the promotional mandate of the PAP may be exercised in conjunction with the AU's quasi-judicial and judicial bodies. It is therefore appropriate to highlight how the PAP may relate with other actors within the African human rights system.

The provisions of the PAP Protocol relating to the functions and powers of the Parliament do not make any reference to the ability of the PAP to submit any matter for adjudication to the quasi-judicial or judicial bodies of the AU. Without belabouring the point, it appears that the PAP cannot submit any communication or any request for an advisory opinion to the African Commission and the African Children's Committee. Considering that both institutions predated the PAP, it is

57 ANM Abdullahi 'Human rights protection in Africa: Toward effective mechanisms' (1997) 3 *East African Journal of Peace and Human Rights* 1-31; EEO Alemika 'Protection and realisation of human rights in Africa' (2001) 1 *The Constitution – A journal of constitutional development* 41; DM Chirwa 'The merits and demerits of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 157; SA Dersso 'The jurisprudence of the African Commission with respect to peoples' rights' (2006) 6 *African Human Rights Law Journal* 358; F Viljoen 'The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child' (1998) 31 *Comparative and International Law Journal of Southern Africa* 198; F Viljoen & E Baimu 'Courts of Africa: Considering the co-existence of the African Court on Human and Peoples' Rights and the African Court of Justice' (2004) 22 *Netherlands Quarterly of Human Rights* 254.

not at all surprising that the Parliament is not explicitly mandated to submit any communications to these two bodies. Individual communications to the African Commission are limited to individuals, groups of persons or non-governmental organisations (NGOs).⁵⁸ Communications to the African Children's Committee may be submitted by individuals, groups or NGOs recognised by the OAU/AU member states and the UN.⁵⁹

The PAP Protocol only makes reference to the African Court of Justice. Considering that the African Court of Justice and the PAP both emanate from the AEC Treaty of 1991, this should not be surprising. The PAP Protocol provides that the African Court of Justice will be empowered to adjudicate over matters relating to the interpretation of the PAP Protocol.⁶⁰ However, following the decision of the AU to merge the African Human Rights Court and the Court of Justice into the African Court of Justice and Human Rights,⁶¹ and pending the entry into force of the Protocol Establishing the African Court of Justice and Human Rights, such matters will be submitted to the AU Assembly for resolution.⁶² Currently, the relationship between the PAP and the African Human Rights Court is limited to the exchange of information through presentations and seminars. However, the Parliament is at liberty to seek advisory opinions from the African Human Rights Court on matters relating to the African Charter or any other relevant human rights instruments.⁶³ This is based on the fact that, in addition to its contentious jurisdiction, the African Court has been vested with advisory powers. Such advisory opinions, however, may not be sought with respect to cases that have been submitted to the African Commission for adjudication.⁶⁴

While it is clear that at the moment the PAP cannot institute matters against other organs of the AU before the African Human

58 Viljoen (n 29 above) 304.

59 Art 44 African Children's Charter.

60 Art 20 PAP Protocol.

61 For a detailed discussion on the merger of the African Court on Human and Peoples' Rights and the African Court of Justice, see F Viljoen 'AU Assembly should consider human rights implications before adopting the Amending Merged Court Protocol' (posted 23 May 2012) <http://africlaw.com/tag/african-court-on-human-and-peoples-rights/> (accessed 31 January 2013); Viljoen & Baimu (n 57 above) 241; CM Peter 'The proposed African Court of Justice: Jurisprudential, procedural, enforcement problems and beyond' (1993) 1 *East African Journal of Peace and Human Rights* 117; NJ Udombana 'An African Human Rights Court and an African Union Court: A needful duality or a needless duplication' (2003) 28 *Brooklyn Journal of International Law* 811. The list of countries that have signed, ratified or acceded to the Protocol on the Statute of the African Court of Justice and Human Rights, downloaded from the website of the AU <http://www.africa-union.org> on 19 April 2010, shows that as at that date, 21 states had signed the Protocol, but only two states had ratified/acceded and deposited their instruments with the African Union Commission (AUC), namely, Libya and Mali.

62 As above.

63 Art 4(1) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

64 As above.

Rights Court, a reading of the provisions of the Protocol on the Statute of the African Court of Justice and Human Rights indicates otherwise. Once the merged court becomes operational, it will be able to receive and consider cases relating to, among other things, the interpretation of the AU Constitutive Act and all acts, decisions, regulations and directives of the organs of the AU.⁶⁵ Further, the Court will be able to adjudicate over disputes pertaining to a breach of an obligation owed to a state party or to the AU.⁶⁶ The PAP, together with the AU Assembly and other organs of the AU, will be able to submit cases to the Court for adjudication.⁶⁷ This will be in relation to the interpretation and application of the AU Constitutive Act, other AU treaties, questions of international law as well as acts, decisions, regulations and directives of the organs of the AU.⁶⁸ With the notable exception of the AU Assembly and the PAP, other organs of the AU will have to seek authorisation from the Assembly to submit cases before the African Court of Justice and Human Rights.⁶⁹ Thus, a holistic interpretation of the aforementioned provisions clothes the African Court of Justice and Human Rights with jurisdiction to entertain matters submitted by the PAP as against member states and other AU organs.

The position adopted under the Protocol on the Statute of the African Court of Justice and Human Rights is similar to the position adopted by the EU with respect to the EP's powers of litigation. The ability of the PAP to submit cases before the African Court of Justice and Human Rights is particularly important as it will, in the long term, allow the Court to interpret, and where necessary delineate, the powers of the PAP as well as define the relationship between the PAP and other organs of the AU. As mentioned, the EP was vested with the power to litigate by the Lisbon Treaty so as to ensure that the consultation procedure is adhered to by other members of the EU, in particular the Commission.⁷⁰ The consultation procedure of the EU is a well-established method of consultation that ensures the involvement of the EP in EU legislation.⁷¹ According to this procedure, the EU Commission and the Council consult the EP by submitting to it whatever piece of legislation under consideration before it is made law.⁷² The EU Commission and the Council have no duty to follow, or even read, the response of the EP, but they are under a duty to respect the co-decision procedure and thus to wait for the response of

65 Arts 28(a)-(h) Protocol to the African Charter on Human and Peoples' Rights on the Statute of the African Court of Justice and Human Rights.

66 As above.

67 Art 29(1)(b) African Court of Justice Protocol.

68 Art 28.

69 Art 29(b).

70 N Neill *The government and politics of the European Union* (2006) 242.

71 As above.

72 As above.

the EP on the proposed law.⁷³ In the famous *Isoglucose* case,⁷⁴ the EU Commission and Council failed to wait for the EP's opinion under the consultation procedure. The gist of the case submitted before the Court was that the Council had not exhausted all the possibilities open to it for getting the EP's opinion and, in particular, it had not requested an extraordinary parliamentary session as it had the right to. It was in that context that the EP succeeded in getting the EU Court to annul the decision which was made without the consultation procedure having been properly followed.

The PAP Protocol is currently undergoing review with particular emphasis being placed on the possibility of expanding its legislative competence. Still, the 2011 Draft Revised PAP Protocol does not clothe the PAP with the power to submit contentious disputes against any of the AU organs before any judicial organs of the AU.⁷⁵ It only makes provision for relations between the PAP, parliaments of the RECs and national parliaments or other deliberative organs.⁷⁶ It further provides that the PAP may solicit the interpretation of legal instruments of the AU by the African Court of Justice and Human Rights.⁷⁷ In essence, the provision of this Draft Revised PAP Protocol mirrors, in so far as advisory jurisdiction of the Court is concerned, the provision of the Protocol of the Statute of the African Court of Justice and Human Rights. These additions to the Draft Revised PAP Protocol, if they are to be carried forward, are unlikely to make any significant changes to the *status quo*. This is because it appears that the Draft Revised PAP Protocol merely mentions the African Court of Justice and Human Rights, a matter which has already been provided for by the Protocol to the African Court of Justice and Human Rights.

The Draft Revised PAP Protocol should have specifically spelled out the PAP's ability to launch proceedings before the AU's judicial bodies as against other AU organs, as is the case with the EP. Demeke argues that, due to the problem of violation of human rights in Africa, it is important that the PAP should be 'granted *locus standi* to bring a case against other institutions of the AU before the two regional courts'.⁷⁸ Unfortunately, the current Draft Revised Protocol does not seem to address this *lacuna*.

3.3 Pan-African Parliament and the New Partnership for Africa's Development and the African Peer Review Mechanism

The African Peer Review Mechanism (APRM) and the PAP have both been identified as being geared towards ensuring an Africa that

73 As above.

74 *SA Roquette Freres v Council* [1980] ECR 3333 3424.

75 Art 21 Draft Revised Protocol, Exp/Legal/AUC-Auth/4(v)Rev.1, <http://www.au.int/.../Draft%20Protocol%20/PAP> (accessed 31 October 2013).

76 Art 20 Draft Revised Protocol.

77 Art 21.

78 Demeke (n 22 above) 60.

respects and protects the rights of its citizens. Both appear as a sign of Africa's commitment to governance. As already indicated, the PAP is clearly mandated to promote human rights on the continent. The APRM was established to 'monitor and assess the compliance of African governments with the norms of governance and human rights'.⁷⁹ The APRM, which was conceived by the New Partnership for Africa's Development (NEPAD),⁸⁰ is in essence a voluntary exercise through which selected members of the AU subject themselves to assessment by other member states on issues of democracy, good governance and socio-economic development.⁸¹

An extensive discussion of the processes and procedures of the APRM is beyond the ambit of this article. In fact, a large body of scholarly work has been dedicated to the establishment,⁸² the processes and procedure of the APRM,⁸³ as well as its effectiveness.⁸⁴ As it has been rightly noted, the APRM 'is arguably the strongest tool for members of Parliament to promote and monitor governance in Africa'.⁸⁵ This fact has been appreciated by the Parliament, and was codified into the PAP's strategic plan 2006-2010.⁸⁶ This plan identified 'the consolidation of the APRM process in all member states'⁸⁷ as an opportunity worth pursuing. The PAP has even

79 T Murithi 'Institutionalising Pan-Africanism: Transforming African Union values and principles into policy and practice' Institute for Security Studies (ISS) occasional paper, June 2007 143.

80 See generally O Jonas 'The quest to achieve African Renaissance: Reflections on NEPAD' (2012) 5 *Journal of Pan-African Studies* 83.

81 M Killander 'The role of the African Peer Review Mechanism in inducing compliance with human rights' unpublished LLD thesis, University of Pretoria, 2009 7.

82 R Kanbur 'The APRM: An assessment of concept and design' (2004) <http://www.arts.cornell.edu/poverty/kanbur/APRM.pdf> (accessed 16 August 2012); Z Kebonang 'African Peer Review Mechanism: An assessment' (2005) 61 *India Quarterly* 138; R Herbert & S Gruzd *The African Peer Review Mechanism: Lessons from the pioneers* (2008) <http://unpan1.un.org/intradoc/groups/public/documents/amdin/unpan036022.pdf> (accessed 8 January 2013).

83 See generally M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 41; F Gaer 'A voice not an echo: UPR and the UN treaty body system' (2007) 7 *Human Rights Law Review* 109; A Abebe 'Of shaming and bargaining of African states: African states and the UPR of the UN Human Rights Council' (2009) 9 *Human Rights Law Review* 1.

84 J Akokpari *Policing and preventing human rights abuses in Africa: The OAU, the AU, the NEPAD Peer Review* (2004) 32; AMB Mangu 'What future for human and peoples' rights under the African Union, New Partnership for Africa's Development, African Peer Review Mechanism and the African Court?' (2004) 29 *South African Yearbook of International Law* 136; M Hansungule 'Overview paper on the role of the APRM in strengthening governance in Africa: Opportunities and constraints in implementation' (undated), http://www.sarpn.org.za/documents/d0003007/APRM_review_Hansungule.pdf (accessed 16 August 2012) 6.

85 S Gruzd 'PAP and peer review: Enhancing involvement, adding value' South African Institute of International Affairs, <http://www.saiia.org.za/governance-and-aprm-opinion/pap-and-peer-review-enhancing-involvement-adding-value.html> (accessed 16 August 2012).

86 2006-2010 PAP Strategic Plan 7.

87 As above.

adopted resolutions and recommendations on the APRM, highlighting the importance of the APRM and the relevance of the Parliament to the APRM processes and urging member states to be part of the process.⁸⁸ In particular, the Parliament emphasised that adherence to the process was a sign that a state was committed to democracy and good governance.⁸⁹ The Economic Commission for Africa has highlighted that the participation of parliaments in the APRM is important for the success of the process.⁹⁰ This is so because parliamentarians are in a suitable position to influence government decisions and policies, and to enhance public ownership of the APRM.⁹¹ Parliamentarians are able to act as a bridge between citizens, civil society and the APRM processes, thereby creating space for improved public participation.⁹²

The PAP is enjoined to promote the harmonisation and co-ordination of the AU programmes.⁹³ This obviously includes the activities of NEPAD and the APRM. Perhaps recognising the importance of the eventual participation of the PAP in the activities of the APRM, the base document provided that '[s]ix months after [each country review report (CRR)] has been considered by the Heads of State and Government of the participating member countries, it should be formally and publicly tabled in key regional and sub-regional structures such as the Pan-African Parliament'.⁹⁴ It is expected that the report will not only be tabled, but will be debated by the PAP MPs before adoption.

The activity reports of the PAP indicate that there has been little participation of the PAP in the work of the APRM. In fact, it has been observed that the PAP's interaction with NEPAD has been 'peripheral'. 'Although these institutions are housed within a few kilometres of each other in Midrand, South Africa, they appear to exist miles apart.'⁹⁵ Living up to its 'talk shop' status or perhaps utilising its promotional mandate, the Parliament has held workshops with the United Nations Economic Commission for Africa (UNECA) aimed at

88 Resolution on Signing of the Adherence to the African Peer Review Mechanism - PAP-RES 001/05; Resolution for the awareness building of activities of the APRM Secretariat, the establishment of a working platform for PAP and the APRM Secretariat and the taking into account of the specific characteristics of each country in their evaluation - PAP/RES 04(VI)/06; Recommendations [sic] on the new Partnership for Africa's Development and the African Peer Review Mechanism - PAP - Rec 002/04; New Partnership for Africa's Development (NEPAD), Recommendation PAP - Rec 003/2006; Recommendation on Peace and Security Issues in Africa, PAP/Recom.01(VI)/06, para 5 .

89 PAP-RES 001/05.

90 Economic Commission for Africa *The role of the Parliament in APRM: Information on how parliamentarians can participate in APRM* (2011) 10.

91 As above.

92 As above. M Hansungule 'Malawi and the African Peer Review Mechanism: A bold step towards good governance?' (2008) 2 *Malawi Law Journal* 14.

93 Art 11(7) PAP Protocol & Rule 5 PAP Rules of Procedure.

94 Para 25 APRM Base Document 2001.

95 Gruzid (n 85 above).

educating them on their role in the APRM process.⁹⁶ The report of the work of the PAP for the period January to June 2009, without any details, records that the Parliament has a 'good working relationship with NEPAD and the APRM'⁹⁷ and that the 'last NEPAD-PAP dialogue meeting held in April 2009 set the way forward for the two institutions to strengthen their collaboration mechanisms'.⁹⁸

The PAP occasionally receives reports on the status of the implementation of the assessment missions in the countries that have undergone an APRM review.⁹⁹ The PAP has, for example, received Malawi's APRM report.¹⁰⁰ In the case of Ghana, Rwanda and Kenya, it is indicated that 'the PAP, upon extensive deliberations, exhorted African leaders to accede to the APRM review and implement its findings'.¹⁰¹ It has been said that the reports 'were tabled without much preparation, analysis or debate'.¹⁰² The representative nature of the PAP gave rise to the expectation that the reports would be presented and thoroughly debated by the PAP MPs. Through such debates, the position of the Parliament on the issues contained in the reports would become known and should possibly be used in the future by the countries concerned to improve their systems. Also, such debates would enable the country representatives to make a valuable input when the reports are debated at the national level.¹⁰³

Improved participation of the PAP in the APRM process is therefore necessary. UNECA has indicated that the PAP can participate in the APRM process in four major ways, namely, by regularly engaging in debates surrounding the APRM process; by engaging in capacity building; by undertaking APRM missions; and by making the APRM a regular item in its agenda for debate during the plenary sessions.¹⁰⁴ It is suggested that the PAP should adopt a more focused strategy in its

96 The workshop which was held in Addis Ababa, Ethiopia from 12-14 May targeted parliamentarians from francophone and Portuguese-speaking countries and was titled Enhancing the role and effective participation of parliamentarians in the African Peer Review Mechanism (APRM) Process, Activity Report of the Pan-African Parliament for the period January to June 2010, Kampala, Uganda 7.

97 Report of the work of the Pan-African Parliament for the period January to June 2009, Sirte, Libya, June/July 2009, EX.CL/526(XV) Rev.1, 2.

98 As above.

99 Report of the work of the Pan-African Parliament for the period January to December 2007, Addis Ababba, Ethiopia, 28-29 January 2008, PAP/S/RPT/72/08, 9.

100 Hansungule (n 92 above) 14.

101 Report of the work of the Pan-African Parliament for the period January to December 2007, Addis Ababba, Ethiopia, 28-29 January 2008, PAP/S/RPT/72/08 9.

102 Hebert & Gruzd (n 82 above).

103 Eg, during the debate on the Report of the Pan-African Parliament by the Kenya National Assembly Member of Parliament Oparanya, head of the PAP delegation from Kenya, noted that during the PAP debates on the APRM, negatives about Kenya were highlighted and these included corruption and marginalisation of tribal minorities; Kenya National Assembly Official Report, 12 June 2007, Motion on the Adoption of Report on 6th session of Pan-African Parliament, 1705-1718.

104 Gruzd (n 85 above).

interaction with the PAP so as to ensure that its participation in the APRM process is relevant and useful.

4 Pan-African Parliament and civil society

Civil society has emerged as one of the most important actors on the human rights agenda.¹⁰⁵ The participation of NGOs and international non-governmental organisations (INGOs) in the promotion and protection of human rights in Africa has over the years become more and more impressive.

The importance of civil society in the human rights agenda is evidenced by their participation in the work of the African Commission, the African Human Rights Court and the African Children's Committee.¹⁰⁶ Civil society organisations have straddled the promotional and protective human rights mandate. They have managed to submit cases involving the violation of human rights by AU member states, and have shown tremendous commitment towards the promotion of the various human rights mechanisms in Africa. Their promotion of human rights has shaped them into one of the best vehicles to champion the human rights cause in Africa.

The ever-vigilant civil society is usually more informed about the actions of the government and, in turn, the government is also aware of their agenda.¹⁰⁷ The promotion and protection of human rights work done by civil society is usually carried out by experts or human rights experts. It is also worth noting that some members of civil society are donor-funded and can carry out human rights promotional activities. It does come as a surprise that the PAP Protocol and the PAP Rules of Procedure make no provision for the participation of civil society in its activities.¹⁰⁸ The Economic Community of West-African States (ECOWAS) Parliament,¹⁰⁹ the East African Legislative Assembly

105 AE Rice & C Ritchie 'Relationships between international non-governmental organisations and the United Nations' (1995) 47 *Transnational Associations* 254.

106 Viljoen (n 29 above) 405; BD Mezmur 'The African Committee of Experts on the Rights and Welfare of the Child: An update' (2006) 6 *African Human Rights Law Journal* 549; BR Dinokopila 'Beyond paper-based affiliate status: National human rights institutions and the African Commission on Human and Peoples' Rights' (2010) 10 *African Human Rights Law Journal* 26; R Murray *The role of national human rights institutions at the international and regional levels: The experience of Africa* (2007).

107 SA Yeshanew 'Utilising the promotional mandate of the African Commission on Human and Peoples' Rights to promote human rights education in Africa' (2007) 7 *African Human Rights Law Journal* 202.

108 Southern Africa Trust 2007 - Establishing a civil society support mechanism with the Pan-African Parliament (PAP), the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM) 29, http://www.southernafricatrust.org/docs/CSO_Interface_Report_2007.pdf (accessed 18 August 2012).

109 Art 81 ECOWAS Treaty.

(EALA),¹¹⁰ the PACE¹¹¹ and the EP¹¹² are all mandated to co-operate with civil society in their respective jurisdictions by clear and unambiguous provisions in the founding treaties or their rules of procedure. The absence of a similar provision – specific to the co-operation of the PAP with civil society – has not prevented the Parliament from engaging civil society, though. The PAP Strategic Plan clearly earmarks co-operation with civil society and trade unions as one of the measures that will be adopted to ensure that ‘the peoples’ voices are represented, heard and listened to’.¹¹³ The PAP has also indicated that co-operation between civil society and the Parliament is undertaken within the larger framework of co-operation, as envisaged by the AU. It has cited provisions of the AU Constitutive Act¹¹⁴ and objectives of the Parliament in support of the collaboration between the Parliament and civil society.

The collaboration of the PAP and civil society is largely confined to workshops and conferences, most of which mainly benefit the PAP MPs. The workshops are usually preceded by presentations to the relevant committees for purposes of sharing with them the activities of a particular NGO. Most NGOs approach the PAP to indicate how they can assist and it is only then that they participate in the relevant committee sittings. In fact, it has been noted correctly that the PAP has largely collaborated ‘with research institutes and think tanks’¹¹⁵ and has not widened its network of civil society partners.

There are no clear efforts by the PAP to establish a permanent civil society forum as is the case with the African Commission. No interaction between the Parliament and civil society is visible when one visits the Parliament’s website. It must be pointed out that ‘thirty-five African and international civil society organisations working in over forty African countries participated in the first Consultative Dialogue with the Pan-African Parliament’.¹¹⁶ The impressive

110 EALA Strategic Plan 2010-2012 http://eala.org/oldsite041111/key-documents/doc_download/13-eala-strategic-plan-2010-2012.html (accessed 29 September 2012).

111 Art 44(5) Rules of Procedure of the PACE. See generally Parliamentary Assembly, Council of Europe Report, Political Affairs Committee on Co-operation between the Assembly and the Conference of INGO 7, <http://assembly.coe.int/Documents/WorkingDocs/Doc07/EDOC11441.pdf> (accessed 23 August 2012).

112 Rule 25 Rules of Procedure of the European Parliament; ANNEX XIX (to the European Parliament Rules of Procedure): Communicating Europe in partnership, para 7.

113 PAP Strategic Plan 12.

114 Art 17 AU Constitutive Act; African Civil Society Organisation and the Pan-African Parliament Consultative Dialogue *Report on building effective mechanisms for civil society engagement with the Pan-African and Regional Institutions*, 7-8 May 2007, Gallagher Estate, Midrand, South Africa 4, <http://www.southernafricatrust.org/docs/PAP%20Dialogue-dft5.pdf> (accessed 18 August 2012).

115 n 112 above, 5.

116 Submission from Civil Society Organisations to the Pan-African Parliament on the Proposal for Continental Government 14 May 2007, Gallagher Estate, Midrand, South Africa, http://www.afrimap.org/english/images/research_pdf/CSO_Submission_PAP_May2007.pdf (accessed 18 August 2012).

participation of civil society in this forum should have been the start of a robust relationship between the Parliament and civil society. However, on the contrary, an audit of the PAP Activity Reports from 2007 onwards indicates that the PAP and civil society have not fully implemented the recommendations that were adopted at the end of that consultative dialogue. It was recommended that the Parliament should invite more members of civil society to its sessions, publicise its activities, encourage civil society to participate in the work of the various permanent committees of the Parliament and have more joint activities.¹¹⁷

The PAP is yet to successfully secure greater participation of civil society in its activities. This buy-in is more than necessary and will most certainly improve the work of the Parliament. It will assist in taking the Parliament to the people. Such joint activities may include seminars, collaboration in elections and observer and fact-finding missions, participation in the petition procedure, presentations before the various Permanent Committees, as well as in monitoring the progress of member states on issues earmarked by the Parliament as necessitating the states' attention.

The Parliament should develop a normative framework within which it is to co-operate with civil society. This will in essence formalise the relationship between the two actors. The normative framework should be able to take into account the diversity of civil society, the parameters within which some members of civil society work as well as the varying expertise that civil society possesses. Further, the PAP should reach out and invite members of civil society to participate, to jointly co-ordinate activities and to publicise the work of the Parliament. It is imperative that the Parliament should move towards creating better synergies with members of civil society. The creation of a forum where the Parliament and civil society can consult each other consistently will certainly improve the promotion and protection of human rights in Africa. The West African Civil Society Forum and the African Commission NGO Forum¹¹⁸ may serve as possible models should the PAP establish such a forum. The former has participated actively in the activities of the ECOWAS Parliament, while the latter is well known for its contribution to the work of the African Commission.

117 Southern Africa Trust 2007 — Establishing a Civil Society Support Mechanism with the Pan-African Parliament (PAP), the New Partnership for Africa's Development (NEPAD) and the African Peer Review Mechanism (APRM) 12, http://www.southernafricatrust.org/docs/CSO_Interface_Report_2007.pdf (accessed 18 August 2012).

118 For more information, visit the African Commission NGO Forum at <http://www.ishr.ch/african-commission/ngo-forum> (accessed 20 August 2012).

5 Pan-African Parliament and national human rights institutions

The PAP has not made sufficient efforts to collaborate with national human rights institutions (NHRIs) in the promotion of human rights. Likewise, NHRIs have not made any effort to collaborate with the Parliament. This is perhaps due to the limited knowledge of the activities of the Parliament among NHRIs and the other way around. However, it is imperative that a stronger relationship between the two be established and nurtured.

A reflection on the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) adopted by UN General Assembly Resolution of 20 December 1993 reveals an opportunity for co-operation between the PAP and NHRIs. The nature, duties and functions of NHRIs have been discussed in detail elsewhere.¹¹⁹ Here, reasons for the involvement of these institutions in the activities of the PAP are identified.

First, the Paris Principles envisage collaboration between NHRIs and a wide spectrum of actors at country level. The Paris Principles encourage NHRIs to consult other bodies with a similar mandate. Considering that NHRIs are now regarded as a bridge providing a practical link between the governing and the governed,¹²⁰ their relationship with the PAP is more than necessary. The role of NHRIs is no longer considered as only limited to the national arena. They have proven that their relevance to the regional and international levels can no longer be ignored.¹²¹

Second, the unique position of NHRIs at the national level makes them suitable partners to collaborate with the Parliament. They are neither state actors nor members of civil society. It is therefore easier for them to address issues of public concern without being accused of being biased. That is why the Belgrade Principles on the Relationship between NHRIs and Parliaments (Belgrade Principles), adopted in February 2012, provide a useful framework for co-operation between

119 OC Kafor & SC Agbakwa 'On legalism, popular agency and "voices of suffering": The Nigerian National Human Rights Commission in context' (2002) 24 *Human Rights Quarterly* 663; International Council on Human Rights Policy *Performance and legitimacy: National human rights institutions* (2004) 3; ESCR Committee General Comment 10, The role of NHRIs in the protection of economic, social and cultural rights (1998) Doc E/1999/22; LC Reif 'Building democratic institutions: The role of national human rights institutions in good governance and human rights protection' (2000) 13 *Spring Harvard Human Rights Journal* 2; S Cardenas 'Emerging global actors: The United Nations and national human rights institutions' (2003) 9 *Global Governance* 23.

120 A Smith 'The unique position of national human rights institutions: A mixed blessing?' (2006) 28 *Human Rights Quarterly* 904.

121 See generally Dinokopila (n 105 above) 33, making a case for the acceptance of NHRIs as regional and international actors.

the two.¹²² The Belgrade Principles provide for four main areas of co-operation between NHRIs and parliaments.¹²³ These are co-operation in relation to: legislation, international human rights mechanisms, the education, training and awareness raising of human rights as well as monitoring the executive's response to the judgments of judicial and quasi-judicial bodies.¹²⁴ Even though the Belgrade Principles do not make specific reference to international parliamentary institutions, they provide a useful framework for a closer and more nuanced relationship between the PAP and NHRIs. A closer reading of the Belgrade Principles also reveals that the areas of co-operation indicated therein mirror most of the activities of the Parliament. A normative framework for co-operation between the Parliament and NHRIs will thus be easy to craft.

6 Conclusion

The PAP has the potential to become an important actor in the promotion of human rights in Africa. This article concludes that despite the fact that the PAP can, within its present powers, effectively operate with the AU human rights system, it has not succeeded in doing so. The level of co-operation between the PAP and other continental institutions can best be described as negligible. Each institution acknowledges the existence of the other, without actually taking advantage of each other's strategic position. With respect to the promotion of human rights, it can be concluded that the current role played by the PAP is unsatisfactory. This is because the PAP has so far neither utilised any of the existing human rights mechanisms to promote human rights, nor has it moved to create strong partnerships with human rights institutions such as the African Commission. The Parliament's collaboration with other AU human rights actors has so far failed to successfully assist the PAP in becoming a champion of human rights. The ineffectiveness of the Parliament in the promotion of human rights is perhaps due to the poor co-ordination of its human rights activities. Other factors could come into play, such as the fact that most of members of civil society are unaware of the various mechanisms within the PAP. For the PAP to become a strong human rights actor within the AU it is necessary that it creates strong institutional partnerships with members of civil society, other human rights bodies within the AU, and NHRIs.

122 <http://www.theioi.org/news/serbia-belgrade-principles-on-the-relationship-between-nhris-and-parliaments> (accessed 1 February 2013).

123 As above.

124 As above.