

**IMPLICATIONS OF ECOSOCC'S MANDATE FOR THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS IN AFRICA:
INQUIRY INTO THE RELATIONSHIP BETWEEN ECOSOCC AND THE HUMAN RIGHTS
ORGANS OF THE AFRICAN UNION**

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIRMENTS OF THE DEGREE LLM
(HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA)**

By

ESKEDAR A BEKELE

PREPARED UNDER THE SUPERVISION OF

DR ALEJANDRO LORITE ESCORIHUELA

AT THE

FACULTY OF LAW, AMERICAN UNIVERSITY OF CAIRO, EGYPT

27 OCTOBER 2006

DEDICATION

To my husband, Al

For your uninterrupted patience, encouragement and support; I love you.

ACKNOWLEDGMENTS

I would sincerely like to thank my supervisor, Dr Alejandro Lorite, for his guidance and critical comments, without which it would have been difficult to finalise this work. I would also like to pass my appreciation to the American University of Cairo for making our stay quite comfortable and for providing us with all the materials we needed. Special thanks to all Law Faculty members and specially Mr. Jatin Dua who has sacrificed his time and helped us with all the essentials.

I would also like to thank my dear family and friends who as usual were supportive and who gave me all the encouragement I needed. Special thanks to AI who went through this thesis and gave me his invaluable comments.

Finally, I wish to thank the Centre for Human Rights, Faculty of Law, University of Pretoria (South Africa) for giving me this opportunity and for making my stay comfortable during this LL M course.

ABBREVIATIONS

AU	African Union
ACHR:	American Convention on Human Rights
CBOs	Community-based Organisations
CoE:	Council of Europe
CoM:	Committee of Ministers
CSOs:	Civil Society Organisations
ECHR	European Court of Human Rights
ECHR:	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOCC	Economic, Social and Cultural Council of the African Union
ESC:	European Social Charter
IACHR:	Inter-American Commission on Human Rights
INGOs	International-Non-Governmental Organisations
NGOs	Non- Governmental Organisations
OAU	Organisation of African Unity
OAS:	Organisation of American States
PC:	Permanent Council of the OAS

TABLE OF CONTENTS

TITLE PAGE	
DECLARATION	I
ACKNOWLEDGMENT	II
ABBREVIATIONS	III
TABLE OF CONTENTS	IV
CHAPTER 1	
INTRODUCTION	1
1.1. Research question	1
1.2. Background and rationale to the research question	2
1.3. Literature review	5
1.4. Objective of the study	6
1.5. Methodology	7
1.6. Overview of Chapters	7
CHAPTER 2	
BACKGROUND, STRUCTURE AND MANDATE OF ECOSOCC	8
2.1. Introduction	8
2.2. Background, structure and mandate of ECOSOCC	8
2.2.1. African Union and human rights	8
2.2.2. Composition, membership and structure of ECOSOCC	10
Civil society organisations	10
Membership and eligibility	11
Organisational structure	12
2.3. Human rights dimension of ECOSOCC's mandate	13

2.3.1. Promotion of human rights and freedoms	13
2.3.2. EOCSOCC, gender equality and child's right	13
2.3.3. Capacity building of civil society	14
2.4. Conclusion	15
CHAPTER 3	
CIVIL SOCIETY PLATFORMS AND HUMAN RIGHTS INSTITUTIONS IN THE EUROPEAN AND INTER-AMERICAN SYSTEMS	16
3.1. Introduction	16
3.2. Civil society organisations and human rights mechanisms of CoE	17
3.2.1. The role and participation of civil society organisations	17
3.2.2. Relationship between civil society organisations and CoE human rights mechanisms	20
Promotional activity	20
Communication procedure	21
3.3. Civil society organisations and human rights mechanisms of the OAS	23
3.3.1. The role and participation of civil society organisations in the OAS	23
3.3.2. Relationship between civil society organisations and OAS human rights mechanisms	25
Promotional activity	25
Communication procedure	27
3.4. Conclusion	29
CHAPTER 4	
THE RELATIONSHIP BETWEEN ECOSOCC AND HUMAN RIGHTS ORGANS OF THE AFRICAN UNION	31
4.1. Introduction	31

4.2. African regional human rights bodies and their interaction with civil society organisations prior to the establishment of ECOSOCC	31
4.3. ECOSOCC and the African Commission on Human and Peoples' Rights	34
4.3.1. ECOSOCC and the promotional activity of the African Commission	34
4.3.2. The role and status of ECOSOCC in the Commission's communications procedure	38
4.3.3. The relationship between ECOSOCC and civil society organisations with observer status before the Commission	40
4.3.4. The role of ECOSOCC in the nomination and election of Commissioners	41
4.4. ECOSOCC and the African Court on Human and Peoples' Rights	42
4.4.1. ECOSOCC and <i>locus standi</i> at the African Court	42
4.4.2. The role of ECOSOCC in the nomination and election of judges	44
4.5. ECOSOCC and the African Committee on the Rights and Welfare of the Child	45
4.6. Conclusion	48
CHAPTER 5	
CONCLUSION AND RECOMMENDATIONS	49
5.1. Conclusion	49
5.2. Recommendations	50
BIBLIOGRAPHY	52

The creation of ECOSOCC is against authoritarian regimes, hostile external efforts and the negative waves of globalisation. You should be by the side of those who suffer injustice and are deprived of their basic human rights.

His Excellency Mr. Alpha Oumar Konare, Chairperson of the African Union Commission

Chapter 1

Introduction

1.1. Research question

By promoting and defending human rights and freedoms¹; by promoting the participation of African civil society in the implementation of the policies and programmes of the African Union (AU)²; and by forging greater partnership between social and professional groups, and governments³, the Economic, Social and Cultural Council (ECOSOCC) will play a critical role in the promotion and protection of human rights in Africa.⁴ However, it is far from clear how this important organ is related to human rights organs of the AU which includes the African Commission on Human and Peoples' Rights (the African Commission)⁵, the African Court on Human and Peoples' Rights (the African Court) and the African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts). How can effective relationship between ECOSOCC, on the one hand and these human rights organs, on the other, be achieved for the realisation of the human rights mandate of ECOSOCC?

¹ Art. 2(5) of Statute of ECOSOCC, adopted by the Heads of State & Government at the Third Ordinary Session of the Assembly in July 2004; [Assembly/AU/Dec.42 (III)].

² Art. 2(3) of the Statutes.

³ Art. 2(2) of the Statutes.

⁴ ECOSOCC will in particular ensure transparency and accountability in the promotion and protection of human rights through its platform of civil society organisations. See K Sturman & J Cilliers *ECOSOCC, bringing peoples' power to the African Union?* <<http://www.iss.co.za/Pubs/ASR/12No1/ESurman.html>>, 2003 (accessed 11 March 2006).

⁵ The Constitutive Act did not expressly mention the African Commission and attention has been paid to this defect by both the Commission and the Union and the Union has asked the Commission on how it can formulate itself so as to fit within the Union. It said 'the Commission should pursue reflection on the strengthening of the African system for the promotion and protection of human & peoples' rights to enable it to effectively meet the needs of the African population within the context of the Union, and submit a report thereon as early as possible'. *Decision on the 14th Annual Activity Report of the African Commission on Human & Peoples' Rights*, 37th ordinary sess. of the Assembly of Heads of State & government, 9-11 July, Lusaka, Zambia, AHG/Dec 162 (xxxvii) para 2.

1.2. Background and rationale to the research question

Under the Constitutive Act (the Act) of the AU, ECOSOCC has been established⁶ to act mainly as an advisory organ to the AU, composed of different civil society organisations (CSOs), which includes social and professional groups⁷, and non-governmental, community-based, voluntary and cultural organisations.⁸ The aim of ECOSOCC is to foster a close and strong partnership between the AU and CSOs in the continent. It is headed by a bureau of five regional representatives, a standing committee and a general assembly of 150 members.⁹

The articulation of the nature and composition of CSOs is quite remarkable. Social groups are defined as those representing various sectors, societies and communities in Africa such as women, elderly, the youth, and people with disability and special needs.¹⁰ Professional groups include but are not limited to, associations of artists, engineers, health practitioners, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups.¹¹ Non-governmental, community-based, voluntary, cultural organisations and social and professional groups in the African Diaspora are also incorporated as CSOs.¹²

ECOSOCC will provide an important forum for greater protection of human rights by underlining the multifaceted nature of human rights and creating the forum for greater participation of CSOs. These CSOs work in various aspects of human rights such as labour rights, trade, health, education, good governance, women rights, children's rights, vulnerable groups, etc. It seeks to effectuate 50 percent gender equality among its members.¹³

⁶ Art. 5 & Art. 22 of the Constitutive Act.

⁷ Art. 22 of the Act.

⁸ Art. 3 of the Statutes.

⁹ C Mutasa, *Is The African Union ECOSOCC A New Dawn and A New Deal?*
<<http://www.pambazuka.org/en/category/aumonitor/27625>> (accessed 11 March 2006).

¹⁰ Art. 3(2)a of the Statutes.

¹¹ Art. 3(2)b of the Statutes.

¹² Art. 3(2)c & d and Art.3(3).

¹³ Art. 4(2) of the statute.

ECOSOCC's role as a platform for partnership between AU and African governments on the one hand, and human rights CSOs on the other hand, will enhance the promotion and protection of human rights in Africa. This role is central to the human rights mandate of ECOSOCC. Nonetheless the human rights mandate of ECOSOCC can only be realised if an effective relationship with the human rights organs of the AU is achieved. These human rights organs include the African Commission, the African Court and the African Committee of Experts.

The African Commission was established by the African Charter on Human and Peoples' Right (the African Charter) in 1987.¹⁴ It is a quasi-judicial institution with the mandate to promote human and peoples' rights and ensure their protection in Africa.¹⁵ Its promotional activities include collecting documents and undertaking studies on human rights problems in Africa, organising seminars and disseminating human rights information, and encouraging national human rights institutions to do the same.¹⁶ It formulates principles and rules on which African governments can base their legislation,¹⁷ and in this effort, the Commission is encouraged to collaborate with African and other international institutions sharing similar visions.¹⁸ The African Commission also protects human and peoples' rights by responding to communications or complaints from states,¹⁹ individuals, and NGOs²⁰ that allege violations of the African Charter.²¹ Additionally, the Commission is empowered to interpret the Charter at the request of a state party, an institution of the AU or an African Organisation recognised by the AU.²² In interpreting and applying the African Charter, the African Commission applies international human rights standards, which include decisions by the United Nations treaty bodies.²³ It also may consider principles of law laid down by State parties to the

¹⁴ Art. 30 of the African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3. rev.5, entered into force on 21 October 1986.

¹⁵ As above and see also NJ Udombana *Between promise and performance: revisiting states' obligations under the African human rights Charter*, Stanford Journal of International Law, Board of Trustees of the Leland Stanford Junior University, 2004.

¹⁶ Art 45(1)(a) & Udombana as above.

¹⁷ Art. 45(1)(b) & Udombana as above.

¹⁸ Art. 45(1)(c) & Udombana as above.

¹⁹ Arts. 48 & 49 and Udombana as above.

²⁰ Art. 55 & Udombana as above.

²¹ Art. 45(2) & art. 56 for requirements in communications and Udombana as above.

²² Art. 45(3) & Udombana as above.

²³ Art. 60 & Udombana as above.

African Charter and African practices consistent with international human rights norms and standards.²⁴

In June 1998, the OAU adopted the Protocol to the African Charter on the establishment of the African Court which entered into force on 25 January 2004.²⁵ The African Court shall complement the protective mandate of the African Commission²⁶, the body that has exercised continental oversight over human rights since 1987. With regards to the appointment of judges for the Court, there are eleven judges²⁷ and the Protocol excludes the participation of national judges in cases involving nationals from their country.²⁸ The Court can also conduct enquires²⁹ like on-site visits for the purpose of fact-finding with respect to accusations and other claims.

The establishment of the African Court is indicative of the importance of the role of civil society in setting up human rights institutions in Africa. It was during a workshop preceding the 14th Session of the Commission in December 1993 that the International Commission of Jurist brought together NGOs and established a Working Group that drafted a protocol for the establishment of the African Court.³⁰ The African civil society organisations have rallied around this issue for several years.³¹ The task of producing the first draft protocol of the Court was left to the NGOs.³² Not only did NGOs push for the inclusion of specific provisions in the Draft Protocol which ensured women's representation in the Court, but also actively lobbied on behalf of female candidates when the actual election of judges was undertaken during 2005.

The African Committee of Experts on the Rights and Welfare of the Child which is composed of 11 members was established by the Charter³³ on 11 July 2001 in Lusaka, Zambia and inaugurated in May 2002. The Committee is elected by the

²⁴ Art. 61 & Udombana as above.

²⁵ Adopted by the Thirty Fourth ordinary session of the Assembly of Heads of State & Government of the Organisation of African Unity (OAU) Ouagadougou in 1998.

²⁶ Art. 2 of the Protocol.

²⁷ Art. 11(1) of the Protocol.

²⁸ Art. 22 of the Protocol.

²⁹ Art. 26(1) of the Protocol.

³⁰ A Motala, *'Non-Governmental Organizations in the African System'* in M Evans and R Murray (eds. 2002) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*.

³¹ As above.

³² As above.

³³ Charter on the Rights and Welfare of the Child, came into force on 29 November 1999.

Assembly of Heads of State and Government of the African Union. The main functions of the committee are the promotion and protection of Charter's rights, monitor their implementation and ensure their respect, interpret the provisions of the Charter at the request of state parties, institutions of the OAU/AU or any other institution.³⁴

Despite these developments, the AU Act does not refer to the African Commission nor does it mention the African Court³⁵ or the African Committee of Experts.³⁶ The authority of these institutions rests, independently, on individual states' ratification of their founding documents but the explicit commitment of African states to the work of these human rights bodies was not secured at a crucial moment.³⁷ With a non-reference of the Act to these important human rights bodies and with no specific legal guidance, it is not clear how these bodies interact with the newly established AU bodies under the Act like that of ECOSOCC.

1.3. Literature review

The researcher could not find literatures that try to answer directly the research question that has been posed. Elsheikh³⁸ stresses the need to have future strategies that ensure the promotion and protection of human rights and it has to be kept in mind that the African human rights system, in terms of structure such as the Commission, the Committee on the Rights and Welfare of the Child, the Court, the Secretariat of the Union and the African civil society, have to work in a cohesive manner, as its components are mutually supportive.

True as this might be, he does not tell us how to go about this co-ordination and he does not also mention organs like African Commission on Human and Peoples'

³⁴ The African Committee of Experts on the Rights and Welfare of the Child; <<http://www.africaninstitute.org/eng/afSystem/child/childcommittee.php>> (accessed 16 March 2006).

³⁵ The Assembly of the Union under its Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) adopted respectively at its Third (6-8 July 2004, Addis Ababa, Ethiopia) and Fifth (4-5 July 2005, Sirte, Libya), Ordinary Sessions, decided to merge the African Court on Human and Peoples' Rights and the Court of Justice of the African Union into a single Court. With this new development, 'the Constitutive Act of the AU will also need to be amended to reflect the new character of the integrated Court' quoted from The Coalition for an Effective African Court on Human & Peoples' Right, October 2004.

³⁶ B Manby, *The African Union, NEPAD and Human Rights: The Missing Agenda*, The John Hopkins University Press, 2004.

³⁷ As above.

³⁸ I Elsheikh, *The future relationship between the African Court and the African Commission*, African Human Rights Law Journal; vol. 2. no. 2. 2002, p. 260.

Rights and how it should co-ordinate with the newly established AU organs. Murray³⁹ rightfully points out that the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights are not well known among the new organs of the AU (the Addis Ababa organs). She criticises by saying that the creation of more institutions has taken place without giving much thought as to how they should be co-ordinated. There appears to be limited provision of information between the Addis Ababa organs like ECOSOCC and the African Commission and African Court. The Commissioners have not been regularly involved in the meetings of the AU organs while at the same time the attendance of AU representatives at the Commission's meetings have been minimal. There has also been little attempt to integrate the Commission's jurisprudence into the works of the AU and there is no reference to the Commission's resolutions and decisions on particular issues of relevance. Murray says that the CSSDCA Unit⁴⁰ was helping to provide some sort of institutional history and a holistic look at issues within the AU but how it is related to the other AU structures is not clear. With this confusing array of instruments and mechanisms, with little sense of each other's contribution and little co-ordination, optimistically she says human rights has infiltrated in all parts of the AU. However, she stresses that the AU must consider not only the standards it has set but also the mechanisms and bodies in existence, an examination of their respective remits, and how they should interact with each other in the future.

1.4. Objective of the study

The objective of the study is to show the importance of effective relationship between ECOSOCC, and the African Commission, the African Court and the Committee of Experts for the realisation of the human rights mandate of ECOSOCC. It also seeks to indicate modalities of effective and efficient relationship.

³⁹ The rest of the literature is taken from R Murray, *Human Rights in Africa: From the OAU to the African Union*, Cambridge University Press, 2004.

⁴⁰ CSSDCA is the Conference on Security, Stability, Development and Cooperation in Africa which was formally endorsed by the Assembly of Heads & Government of the OAU at the Extraordinary Summit in September 1999 in Sirte, Libya. It has worked actively to promote the ideal of people oriented AU, as specified in the Act but its main agenda has been to establish ECOSOCC as key organ of the Union, to foster and consolidate links with the African CSOs and the African Diaspora.

1.5. Methodology

In this research, the researcher will use two methods of research. These are the analytical and the comparative methods. The analytic method involves the interpretation of legal texts, legal materials, case laws and treaties. The comparative method involves the comparison of different jurisdictions that will help in the analysis.

While using these methods both primary and secondary sources will be used. Primary sources comprise of legal materials, legal texts, treaties, case laws, human rights instruments, etc. Secondary sources comprise of the use of libraries, internet, articles, publications, etc.

1.6. Overview of Chapters

The essay comprises five Chapters. Chapter one is introduction and begins by posing the research question and the justification for the research. Chapter two gives the introduction of ECOSOCC, its background, structure and mandates and looks into the Statutes of ECOSOCC, its draft Rules of Procedure and its strategic plan for the years 2005-2007. Chapter three makes a comparative analysis with other regional human rights systems, namely the Council of Europe and the Organisation of American States as a point of inspiration for the African system. Under Chapter four, the research discusses and analysis the possible relationships and coordinative mechanisms ECOSOCC can create with the human rights organs of the African Union in order to fulfil its human rights mandate. Chapter five makes a conclusion and concrete recommendations.

Chapter 2

Background, structure and mandate of ECOSOCC

2.1. Introduction

This Chapter is divided into two main parts. The first part deals with the background and structure of ECOSOCC while the second part discusses the human rights mandate of ECOSOCC, one of the organs of the AU.¹ It is imperative to look at the AU, the Constitutive Act (the Act) that established the AU and how human rights are given more emphasis under the AU as compared to the Organisation of African Unity (OAU). The Statutes of ECOSOCC (its composition, membership and structure) will be examined in order to have a better understanding of this organ. The second part mainly deals with the human rights mandate of ECOSOCC. The central theme of the thesis focuses on the human rights mandate of ECOSOCC and how it can be fulfilled in conjunction with the human rights bodies of the AU.

2.2. Background and structure of ECOSOCC

2.2.1. African Union and human rights

The AU was established by the Constitutive Act which entered into force on 26 May 2001. The OAU Assembly of Heads of State and Government adopted the Act of the AU² during its thirty-sixth Ordinary Session held in Lome, Togo, from 10-11 July 2000. In March 2001, all members of the OAU signed the Act and thus, the Assembly at its fifth extraordinary summit held in Sirte, Libya from 1-2 March 2001 declared the establishment of the AU.³ The AU became a legal and political reality when the Act entered into force on 26 May 2001.⁴ However, the formal launching of the AU took place in Durban, South Africa, from 9-10 July 2002, which coincided with the First Ordinary Session of the Assembly of the Union.

¹ Art. 5 of the Constitutive Act.

² Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (July 11, 2000) (entered into force May 26, 2001).

³ E Baimu, *The African Union: Hope for better protection of human rights in Africa?* in African Human Rights Law Journal, vol 1, no 2, 2001 and see also 5th OAU extraordinary session of the Assembly of the Heads of State and Government 1-2 March 2001 Sirte, Libya EAHG/Dec1-4 (V).

⁴ As above.

Human rights assumed a prominent role and position during the founding of the AU. The Act contains human rights provisions in its Preamble⁵ and those sections dealing with objectives and principles. The promotion and protection of human rights has been incorporated as core objectives of the Union.⁶ The symbiotic relationship between human rights on the one hand, and democracy and governance on the other, is also equally stressed.⁷ Though the time-honoured principle of non-interference in the affairs of a member state is unequivocally embraced in the Act, the promotion of human rights, gender equality, social justice, democracy and rule of law are stipulated as *ground norms* for the new continental body.⁸ As such, provisions are stipulated under the Act for the intervention of other members of the Union in member states where grave breaches of human rights have occurred.

The Act not only provides for the above norms and values, but also establishes and recognises new institutions whose mandates have far reaching implications for the promotion and protection of human rights on the continent. ECOSOCC is one of these institutions. The Pan-African Parliament and the African Court of Justice⁹ are institutions that are also explicitly recognised in the Act. Though the Act does not explicitly make reference to the African Commission on Human and Peoples' Rights, attempts have been made to integrate this institution within the formal structure of the Union.¹⁰ The Union has also taken measures to strengthen the twenty years old African Charter on Human and Peoples' Rights with additional Protocols on the Rights of Women¹¹ and the African Court¹². The establishment of new platforms such as New Partnership for African Development (NEPAD) is also indication of the commitment of the new organ and its members to the inter-dependence and inter-related nature of human rights. New

⁵ Para 10 of the Preamble states that African leaders are 'determined to promote & protect human & peoples' rights, consolidate democratic institutions and culture, and to ensure good governance and the rule of law'.

⁶ Art 3(h) of the Act.

⁷ Art 3(g) of the Act.

⁸ See art. 4 of the Act.

⁹ Both institutions are mentioned as organs of the Union, see art. 5 of the Act.

¹⁰ n 5 (Chapter 1) above.

¹¹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, adopted July 2003 and came into force in 25 November 2005.

¹² The Protocol on the establishment of the African Court on Human and Peoples' Rights was adopted by the Assembly of Heads of State and Government of the OAU in Ouagadougou in June 1998 and came into force in January 2004.

mechanisms such as the African Peer Review Mechanism (APRM) are introduced as new methods of monitoring States' commitment to human rights.

It is at this juncture that the establishment of ECOSOCC in the Union becomes very important and relevant. With the birth of the AU and ECOSOCC, the importance of CSOs being an integral part of the organisation's decision and policy making process¹³ has been recognised.

2.2.2. Composition, membership and structure of ECOSOCC

Civil society organisations

The Statutes do not define CSOs. Article 3, however, enlists those organisations that are included under the category of CSOs. As such, social groups are defined as those organisations which represent social issues, particularly issues affecting certain categories of individuals and groups including women, children, the youth, the elderly, people with disabilities and special needs.¹⁴ These categories of individuals and groups are protected under international and regional human rights instruments including the African Charter. Hence, the involvement of such CSOs in ECOSOCC will ensure that human rights have become an important component of AU-CSO partnership.

The second category of CSOs which are members of ECOSOCC include professional groups such as association of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal professionals, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry and agriculture as well as other private sector interest groups.¹⁵ Non-governmental organisations (NGOs), community-based organisations (CBOs), voluntary organisations¹⁶ and cultural organisations are also listed as being a part of civil society organisations.¹⁷ Article 3 of the Statutes stipulates that ECOSOCC shall include

¹³ Mutasa, n 9 (Chapter 1) above.

¹⁴ Art. 3(2)a of the Statutes of ECOSOCC.

¹⁵ Art. 3(2)b.

¹⁶ Art. 3(2)c.

¹⁷ Art. 3(2)d.

social and professional groups in the African Diaspora in accordance with the definition provided by the Executive Council.¹⁸

Membership and eligibility

According to the Statutes, one hundred and fifty CSOs including different institutions falling under the above categories shall become members of ECOSOCC.¹⁹ The composition of these members are as follows: two from each member state of the AU,²⁰ ten operating at the regional level,²¹ eight operating at the continental level,²² twenty from the African Diaspora covering the various continents of the world²³ and six in ex-officio capacity nominated by the Commission based on special considerations and in consultation with member States.²⁴ These members shall be elected by giving due regard to 50% gender equality and 50% representing youth between the ages of 18 and 35.²⁵

Not all CSOs can be members of ECOSOCC. Eligible CSOs are required to meet some specific membership requirements as outlined under Article 6²⁶ of the Statutes, and they must also pass through a consultation process which determines the modalities for their election from regional, continental and African Diaspora organisations.²⁷

Article 6 of the Statutes further states that CSOs that discriminate on the basis of religion, gender, tribe, ethnic, race or political basis are barred from representation.²⁸ It is also stated that there should be adherence to a code of ethics and conduct for CSOs affiliated to or working with the Union.²⁹ These last two paragraphs of article 6 are not eligibility requirements. They are rather statements of values member CSOs are required to adhere to in order to stay within ECOSOCC. So far the AU has not yet developed the Code of Conduct for CSOs.

¹⁸ Art. 3(3).
¹⁹ Art. 4(1).
²⁰ Art. 4(1)a.
²¹ Art. 4(1)b.
²² Art. 4(1)b.
²³ Art. 4(1)c.
²⁴ Art. 4(1)d.
²⁵ Art. 4(2).
²⁶ Art. 6(1)-(8).
²⁷ Art. 5.
²⁸ Art. 6(9).
²⁹ Art. 6(10).

Organisational structure

The structure of ECOSOCC involves the following four structures: General Assembly, Standing Committee, Sectoral Cluster Committees and Credentials Committee. The General Assembly is the highest decision and policy making body. It is composed of all members of ECOSOCC who are selected based on the criteria and the procedure set out in the Statutes.³⁰ It has a wide spectrum of activities which includes the preparation and submission of advisory opinions and reports as appropriate,³¹ approval and amendment of the code of ethics and conduct of CSOs affiliated to or working with the AU,³² and revision of the activities of ECOSOCC and proposal of appropriate actions and recommendations.³³

The Standing Committee³⁴ which is composed of eighteen members³⁵ is elected by the General Assembly and it is the coordinating structure of ECOSOCC.³⁶ Sectoral Cluster Committees which are at least twelve are established by the General Assembly and function as key operational mechanisms of ECOSOCC. They help in formulating opinions and providing inputs for the policies and programmes of the AU.³⁷ They also prepare and submit advisory opinions and reports of ECOSOCC³⁸ and perform any other functions as may be assigned to them.³⁹ These Committees cover numerous issues including human rights and cross-cutting programmes.⁴⁰ Lastly, the Credentials Committee is established by the General Assembly and shall be composed of nine members.⁴¹ Its functions are examining the credentials of members of ECOSOCC and their representatives.⁴²

³⁰ Art. 9(1) of the Statutes, rule 2 of the draft rules of procedure of ECOSOCC (revised February 2005).

³¹ Art. 9(2)b of the Statutes.

³² Art. 9(2)d.

³³ Art. 9(2)e.

³⁴ See Art. 10.

³⁵ Art. 10(1) of the Statutes & rule 13 of the draft rules.

³⁶ Art. 10(2)a of the Statutes.

³⁷ Art. 11(1) of the Statutes & rule 15(1) of the draft rules.

³⁸ Art. 11(2) of the Statutes.

³⁹ Art. 11(3).

⁴⁰ Art. 11(1) a-j.

⁴¹ Art. 12(1) a-d of the Statutes & rule 17(2) of the draft rules.

⁴² Art. 12(2) of the Statutes & rule 18(1) of the draft rules.

2.3. Human rights dimension of ECOSOCC's mandate

2.3.1. Promotion of human rights and freedoms

The mandate of the interim ECOSOCC covers a period of two years, that is, from March 2005 to March 2007. Its main mandate is to ensure the participation of a well organised, autonomous, transparent and accountable civil society at the continental level.⁴³ Through ECOSOCC, civil society must begin influencing policy changes within the AU by engaging the sectoral clusters of the Union.⁴⁴ Involving CSOs in the policy and decision making processes of the AU plays an important role in the promotion and protection of human rights and freedoms in the African continent. CSOs include different groups and expertise representing numerous social issues which have serious repercussions on human rights. Some of the human rights functions of ECOSOCC as provided in the Statutes include promotion of a culture of good governance, democracy, popular participation, human rights and freedoms, social justice,⁴⁵ rule of law, gender equality and child's rights⁴⁶ and promotion of a continuous dialogue between all segments of African people on issues concerning Africa and its future.⁴⁷ ECOSOCC should also facilitate the interaction between African CSOs and the AU for democratisation and development, provide policy advice and advocacy in the implementation of the AU mission and give legitimacy to CSOs so as to enable them to participate and promote the progressive values in African culture.⁴⁸

2.3.2. ECOSOCC, gender equality and child's rights

Gender equality and respect for the rights of children are other human rights mandates of ECOSOCC. In the present Africa where the rights of these vulnerable groups are not protected and where women and children are still facing difficulties, it is important for CSOs to equally represent women under ECOSOCC and to protect the rights of children. It is also provided in the Statutes that the elections of members of ECOSOCC

⁴³ ECOSOCC's vision, ECOSOCC Strategic Plan, 2005-2007.

⁴⁴ Mutasa, n 9 (Chapter One) above.

⁴⁵ Art. 2(5) of the Statutes.

⁴⁶ Art. 7(5).

⁴⁷ Art. 2(1).

⁴⁸ Key roles of the ECOSOCC, Strategic Plan n 43 above.

must ensure 50% gender equality.⁴⁹ The forging of a strong partnership between governments and all segments of civil society particularly women, youth, children⁵⁰ and promoting, advocating and defending the culture of gender equality⁵¹ and child's rights⁵² are also part of the human rights mandate of ECOSOCC. The election of Honourable Prof. Wangari Maathai as an interim presiding officer of ECOSOCC is an indication of the enhanced role of women in ECOSOCC.

The setting up of a Gender Cluster Committee is envisioned as a component of operational mechanisms of ECOSOCC with the responsibility of mainstreaming gender within the function of ECOSOCC.⁵³

2.3.3. Capacity building of civil society

The greatest challenge for civil society in ECOSOCC is to claim its legitimacy and demonstrate its ability to the continent by bringing in practical solutions and alternatives to Africa's challenges.⁵⁴ In order for CSOs to accomplish this task, their capacity has to be built and strengthened. The promotion and strengthening of the institutional, human and operational capacities of the African civil society⁵⁵ and fostering and consolidating the partnership between the Union and CSOs through effective public enlightenment, mobilisation and feedback on the activities of the Union⁵⁶ are important aspects of ECOSOCC's mandate with far reaching implications for the promotion and protection of human rights.

2.4. Conclusion

The Chapter highlighted the role of ECOSOCC in the promotion of a culture of human rights which has been emphasised in its Statutes, draft rules of procedure, and strategic plan. It showed the importance of interaction between African civil society and AU

⁴⁹ Art. 4(2).

⁵⁰ Art. 2(2).

⁵¹ Art. 2(6).

⁵² n 50 above.

⁵³ Art. 11(i).

⁵⁴ Mutasa , n 9 (Chapter 1) above.

⁵⁵ Art. 2(7) of the Statutes.

⁵⁶ Art. 7(7).

organs for the promotion and protection of human rights. Having recognised the need for a coherent and consolidated relationship between ECOSOCC and the human rights organs of the AU, the next inquiry is how to go about this difficult task. The next Chapter will examine other regional platforms of civil society's interaction with human rights bodies as a point of insight for the African human rights system.

Chapter 3

Civil society platforms and human rights institutions in the European and Inter-American Systems

3.1. Introduction

The main issue of co-ordination between ECOSOCC and the human rights organs of the AU is neither provided in the legal documents of ECOSOCC which we have seen nor in the Act of the Union. Despite the fact that all are AU organs, Murray¹ notes that there is no co-ordination between the Addis Ababa organs² and the human rights organs of the AU. She says the African Commission for instance, is not well known amongst the Addis Ababa bodies at the AU which includes ECOSOCC. There is a limited flow of information, leave alone co-ordination, between the new organs at the AU and the African Commission. There are neither references to the Commission's resolutions or decisions on particular relevant issues nor has there been any references to the work of the Commission in interpreting the African Charter.

In order to strengthen the African mechanism for the promotion and protection of human rights, Murray continues on and says that the African Commission should lead the developments that have already taken place and enhance interaction and co-ordination with the different organs of the AU, which in our case is ECOSOCC. How the Addis Ababa organs are to relate to the African Commission and the African Court is not clear at all. She reiterates that there is a confusing array of instruments and mechanisms with little sense of each other's contribution and little co-ordination among them. She stresses by saying that this needs to be changed and there should be an examination of how the different bodies should interact with each other. There is a need to have a coherent and consolidated institutional approach to human rights. Having this in mind, this Chapter will look into the practice of other regional human rights systems and see how CSOs are organised, the role they play, their participation and their interaction with other human rights organs of the two regions systems that preceded the African system

¹ R Murray, *Human Rights in Africa: From the OAU to the African Union*, Cambridge University Press, 2004.

² The Addis Ababa bodies which she refers to are the new organs of the AU established by the Constitutive Act under Art. 5.

in human rights promotion and protection. The comparative analysis is believed to be important in that ECOSOCC can, just like the African Commission on Human and Peoples' Rights³, be inspired by the practice of these other regional systems in its establishment and work harder towards the fulfilment of its human rights mandate.

3.2. Civil Society organisations and human rights mechanisms of CoE

The Council of Europe was established in 1949 by eleven Western European states with the aim of promoting human rights, democracy and the rule of law.⁴ Currently it is an international organisation with 46 member states. Its institutions include the Secretary General, the Committee of Ministers (CoM), the Parliamentary Assembly, the Congress, European Court on Human Rights and the Commissioner for Human Rights. The European Convention on Human Rights⁵ which was adopted immediately following the establishment of CoE is an important legal document of the organisation. Membership to the Council is open to all European democracies, which are committed to human rights, rule of law and respect for individual freedoms.

3.2.1. The role and participation of civil society organisations

CSOs are accorded substantial recognition and have been considered an important instrument for the advancement of human rights, democracy and rule of law in the region. Several legal instruments have been adopted to provide the legal and policy framework for an effective participation of CSOs in CoE. The European Convention on the Recognition of the Legal Personality of International Non-governmental Organisations,⁶ the Fundamental Principles on the Status of Non-governmental Organisations in Europe⁷ and the Warsaw Declaration are some of these instruments.⁸

³ It has been suggested that the African Union was modelled on the European system R Murray, *A comparison between the African and European Court of Human Rights* African Human Rights Law Journal; vol. 2. no. 2. 2002.

⁴ M Nowak, *Introduction to the international human rights regime*, Council of Europe, Martinus Nijhoff publishers, 2003.

⁵ Signed by the Members of the CoE on 4 November 1950 in Rome, entered into force on 3 September 1953 with 44 state parties.

⁶ European Convention on the Legal Personality of International NGOs, European Treaty Series No. 124, Strasbourg, 24.IV.1986.

⁷ Fundamental Principles on the Status of NGOs in Europe, Strasbourg, 13 November 2002.

The European Convention on the Recognition of the Legal Personality of International NGOs entered into force following its ratification by three member states of the CoE.⁹ Though the application of the Convention is limited to international NGOs, its provisions regulate associations, foundations and other private institutions, which are not established for profit making purposes.¹⁰ No reservation may also be made on the Convention.¹¹

In the year 2002 member states adopted the Fundamental Principles on the Status of Non-governmental Organisations in Europe with a view to supplementing the Convention with additional rules and norms regulating non-international NGOs. This instrument has a broad application since it applies to both national and international NGOs.¹² It states that NGOs are voluntary self-governing bodies, which include associations, charities, foundations, funds, non-profit corporations, societies and trusts.¹³ An attempt has been made to provide for the harmonisation of principles for granting NGO status at national level by calling on member states to apply the fundamental principles on the status of NGOs in Europe.¹⁴

The Warsaw Summit in 2005 that dealt with broader and diverse thematic issues affecting the role of CSOs in the promotion of human rights in Europe is another indication of enhanced regional effort to strengthen the role of CSOs.¹⁵ Participating states adopted an Action Plan that embraced the promotion of human rights, rule of law and democracy as some of the basic tasks of the Council.¹⁶ The Action Plan reflected the invaluable role of NGOs for the protection of individual rights and freedoms and outlines the need to strengthen the role of civil societies in the functioning of the Council.

There are also other¹⁷ direct measures taken by the Council in order to strengthen the participation of NGOs and CSOs in the work of CoE. Both international

⁸ Warsaw Declaration, Third Summit of Heads of State & Government of the CoE, Warsaw, 16-17 May 2005.

⁹ Art. 6(1) of the EC, n 6 above.

¹⁰ Art. 1a of the EC, n 6 above.

¹¹ Art. 9 of the EC, n 6 above.

¹² Art. 2 of the FP, n 7 above.

¹³ Art. 1 of the FP, n 7 above.

¹⁴ Group of specialists on the legal status of NGOs (CJ-S-ONG), Strasbourg, April 2006.

¹⁵ Warsaw Summit, n 8 above.

¹⁶ Action plan, Warsaw Summit, n 8 above.

¹⁷ The review in the next paras under this sub-heading is drawn from the study Group of specialists, n 14 above.

and national NGOs were granted participatory and partnership status within the Council. Resolution 8(2003)¹⁸ grants participatory status to international NGOs (INGOs) and encourages organs of CoE to involve INGOs enjoying participatory status in the articulation of Council's policies, programmes and actions and in particular by granting observer status to their Liaison Committee and to the NGOs thematic groupings. Other committees in the Council are encouraged to intensify cooperation and facilitate participation of NGOs in their work. The Commissioner for Human Rights is also encouraged to maintain close cooperation with the NGOs enjoying participatory status. The participatory status also allows the NGOs to be invited and provide, through their specific activity or experience, expert advice on the Council's policies, programmes and actions.

Since January 2005, the Conference of INGOs consisting of NGOs with participatory status, Liaison Committee elected by the Conference and the permanent link between the INGOs and organs of the Council and thematic groups with expert representation who provide advice to the various Council bodies were set up with the facilitation of cooperation between NGOs and the Council being their dominant agenda. Individual human rights NGOs were given special observer status with the Steering Committee on Human Rights. Some NGOs were also given observer status with expert committees in their field of specific competencies. It is to be stressed that INGOs are active contributors to the CoE's decision-making process and the implementation of its programmes and the Council has recognised them as one of its pillars and principal organs.

Alongside INGOs, national NGOs have been given partnership status pursuant to Resolution (2003) 9 adopted by the CoM. This resolution seeks to fill the gap identified in the Resolution on INGOs. The partnership status allows national NGOs to be partners in the implementation of the Council's programmes. It also provides them with opportunities to provide expert advice on issues related to their field of expertise. These NGOs are entitled to attend public meetings and conferences of the different organs of the Council

¹⁸ Adopted by the Committee of Ministers on 19 November 2003 at the 861st meeting of the Ministers' Deputies.

and circulate information to their members on the activities and successes of the Council.

3.2.2. Relationship between civil society organisations and CoE human rights mechanisms

Promotional Activity

The Commissioner for Human Rights, which was established by the Council of Europe's Heads of State and Government at their Second Summit in Strasbourg on 10-11 October 1997,¹⁹ is an office of human rights with the task of promoting human rights and freedoms in Europe. On 7 May 1999, the CoM adopted a resolution, which instituted the office of the Commissioner and elaborated the Commissioner's mandate.²⁰

The Commissioner, who is elected by the parliamentary Assembly, is instituted as an impartial, independent and non-judicial organ of the Council with the mandate of promoting human rights.²¹ The Office is complementary with advisory organs established either under the European Convention or other regional human rights instruments. The specific functions of the Commissioner are undertaking human rights education; country visits, providing advice and information; encouraging the establishment of human rights structures among member states; facilitating the activities of national ombudsmen or similar institutions in the field of human rights; identifying possible shortcomings in the law and practice of human rights among member states; and submitting reports to the CoM or the Parliamentary Assembly.²² S/he can also issue or publish reports, opinions or recommendations.²³

¹⁹ Activities of the Commissioner for Human Rights, Mandate, <http://www.coe.int/t/commissioner/default_EN.asp> (accessed 9 October 2006).

²⁰ RESOLUTION (99) 50 on the Council of Europe, Commissioner for Human Rights (Adopted by the Committee of Ministers on 7 May 1999, at its 104th Session, Budapest).

²¹ Art. 1 of the Resolution.

²² Art. 3.

²³ Art. 8.

The Commissioner co-operates with a broad range of international and national institutions and human rights monitoring mechanisms. It works closely with CSOs, particularly religious communities and educational institutions, leading human rights NGOs, universities, etc. for the realisation of its promotional mandate.²⁴ The Commissioner conducts official country missions for a comprehensive evaluation of the human rights situation of a certain country which will include meetings with different organs of the state, leading members of human rights protection institutions, civil society and educational institutions in order to improve the public's awareness of CoE's human rights standards.²⁵ S/he also organises seminars and events on various human rights themes for the promotion and protection of human rights and freedoms.²⁶

The European Committee of Social Rights is another human rights organ with the main responsibility of assessing state's compliance with the European Social Charter (ESC).²⁷ Although the revised ESC has made the monitoring system more flexible from the previous Charter (where monitoring was rigid and ineffective) by creating the independent experts, only few states ratified the Charter.²⁸ Thus, not much can be said about the activities of CSOs in the work of the Committee with regards to state reporting.

Communication Procedure

At present, the European Court of Human Rights (ECHR) is the only organisation with the mandate of hearing communications arising out of the European Convention. But previously, the European Commission of Human Rights, now a defunct part of the CoE, was also endowed with the task of hearing communications from state parties.

The ECHR was established by the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1959. The judges, whose number is equal to the number of state parties, are elected by the CoE. At the beginning, the jurisdiction of the Court was optional for states. This meant that a state party needed to make a declaration indicating its willingness to be bound by the jurisdiction of the Court.

²⁴ Activities, n 19 above.

²⁵ As above.

²⁶ As above.

²⁷ ESC was adopted in Turin in 1961 protecting economic, social and cultural rights of member states of CoE. Revised ESC was adopted in 1996 creating the independent experts and for the first time providing complaints mechanism.

²⁸ Nowak, n 4 above.

The procedure obviously gave too much discretion and priority to states as opposed to individuals. The Court and its judges operated on a part-time basis up until the promulgation of the 11th Additional Protocol, which created a single and permanent Court.

With the coming into force of a single Court and its jurisdiction becoming mandatory on all state parties in the CoE, the individual complaints have substantially increased. This was a major change from the previous arrangement since it opened the gate for individuals and CSOs to directly come before the Court to lodge a complaint. However, there is a 'victim requirement' under such cases. Only people who have been victimised by a state party can lodge a complaint to the Court. And this victim can be a private individual, an NGO or group of individuals.²⁹ This limits the standing or *locus standi* in the Court. CSOs usually represent the interest of different groups in a society and for instance, in the African Commission on Human and Peoples' Rights, which we will see in the next Chapter, there is a doctrine known as *actio popularis* whereby CSOs who are not victims bring cases to the Commission on behalf of individuals. Complaints in the European Court are mostly dismissed if the alleged violation is not to the applicant's personal detriment (no *action popularis*).³⁰ But despite the limitation in the European Court, the Court started to receive great number of individual cases.

Complaints system was for the first time introduced under the revised ESC in 1996. Until that time, there was no individual complaints procedure. The procedure was not however, similar to that found under the ECHR but instead it was collective complaints system for certain NGOs with status before the CoE and management and labour organisations.³¹ Although only few states have recognised this procedure, NGOs participation has been noted in this regard.

Thus, we have seen the activities of CSOs in the CoE with central co-ordination and clearly set platforms. CSOs have been integrated in the promotional activities of the Council although with the ESC, there has been less activity of CSO interaction for lack of the Charter's ratification by state parties. Their participation was better envisaged in the

²⁹ See art. 34 of the ECHR.

³⁰ Nowak, n 4 above.

³¹ As above.

communication procedure of the ESC. Although CSOs have direct access to the European Court, the ECHR narrows the application to only victims creating a minimal role of CSO interaction. We now turn to the other regional system mechanism, the Organisation of American States.

3.3. Civil society organisations and human rights mechanisms of the Organisation of American States

The Organisation of American States (OAS) is a regional organisation established by American States, based on the OAS Charter.³² The substantive norms informing the regional human rights system is provided for under the American Declaration of the Rights and Duties of Man³³ and American Convention on Human Rights (ACHR) which is considered the principal treaty of the OAS on human rights.³⁴ The Convention establishes the Inter-American Commission on Human Rights and later the Inter-American Court on Human Rights.

3.3.1. The role and participation of civil society organisations in the OAS

CSOs and the increasingly important role they play in public life, has been recognised by member states of the OAS.³⁵ Their relevance for the consolidation of democracy for which the organisation is primarily established has been widely noted. The importance of CSOs in the work of its individual organs has also been quite significant. Noting the increased relationship between CSOs and OAS, the General Assembly requested the Secretary-General to develop a roster of all NGOs with which the OAS has working relationship that would be updated periodically.³⁶

The General Assembly through its various resolutions also instructed the Permanent Council (PC) to look into ways and means that will ensure greater

³² Signed at the 9th International American Conference of 30 April 1948, held in Bogotá, Colombia. The treaty came into effect on 13 December.

³³ Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

³⁴ Adopted on 22 November 1969 in San Jose, Costa Rica, 'Pact of San Jose' and entered into force on 18 July 1978.

³⁵ The OAS & Civil Society, OEA/Ser.P, AG/REG.1661 (XXIX-O/99) adopted at the first plenary sess, 7 June 1999.

³⁶ Resolution of the Permanent Council of the Organization of American States on Status of Non-Governmental Organizations in the OAS. CP/RES. 704 (1129/97).

participation of CSOs in the OAS. Particularly, General Assembly resolution ‘The Organisation of American States and Civil Society’³⁷ contained a provision providing a mandate to the Permanent Council to develop guidelines on the role of CSOs in the activities of the OAS. The Permanent Council has undertaken numerous activities in this regard since 1995. A Committee on CSOs Participation in OAS was setup within the Permanent Council with the mandate of developing strategy of enhanced participation by CSOs in the activities of the OAS.³⁸ This required a revision of the standard on cooperative relationship between NGOs and the OAS, which defined the legal status of NGOs within the OAS.³⁹ The Committee, through its Working Group, had undertaken commendable works and prepared a Guideline for Civil Society Participation in OAS Activities which looked at issues such as selection criteria, financing and document dissemination, which was adopted by the Permanent Council.⁴⁰ It was considered that the Guidelines would enormously improve the relationship between CSOs and the OAS, and modernise the work of the OAS.⁴¹ Moreover they would help to streamline and coordinate the efforts of individual organs of the OAS to regulate the relationship between the two entities, that is, organs of OAS and CSOs. Even though the relationship between CSOs and these individual organs were reflected in the various Rules of Procedures of these institutions, a general legal framework for OAS was lacking.

The Guidelines were based on the spirit of the Santiago Plan of Action with respect to civil society.⁴² They assume that the OAS is a forum for the exchange of experience and information in connection to CSOs with the Permanent Council being the main organ for channelling the contributions of CSOs. They are not modifications of already existing Rules of Procedures guiding the activities of the various organs of the OAS but are complementary to them. They provide that the participation of CSOs should be designed in such a way that it enables the OAS and its organs benefit from specialised information and expert advice.⁴³ The cooperation between the OAS and the CSOs shall only further the functions of the OAS and its organ.⁴⁴ In particular the

³⁷ [AG/RES. 1661 (XXIX-O/99)].

³⁸ AG/RES. 1539 (XXVIII-O/98).

³⁹ AG/RES. 57 (I-O/71).

⁴⁰ The Guidelines for the Participation of Civil Society Organisations in the OAS Activities CP/RES. 759 (1217/99).

⁴¹ Para. 2, CP/RES. 759 (1217/99).

⁴² Second Summit of the Americas, Santiago, 1998.

⁴³ Art 4(b) of the Guidelines.

⁴⁴ Art 4(c) the Guidelines.

participation of CSOs shall not be interpreted as a concession on the negotiating power of the states and hence, it shall not transform or change the inter-governmental nature of the OAS.⁴⁵

The Guidelines provide on how organs, agencies and entities of the OAS should conduct themselves with respect to participation by CSOs in their activities. The Guidelines, consistent with the Charter and the various resolutions of the General Assembly, provide that the Permanent Council through its Committee on Civil Society Participation in OAS activities is responsible for monitoring the arrangements established between CSOs and the OAS. It is also mandated to approve the application of CSOs for participation.⁴⁶ The other organs and agencies of the OAS are empowered to govern their relationship with CSOs pursuant to their own governing provisions serving their purposes.

3.3.2. Relationship between civil society organisations and OAS human rights mechanisms

Promotional Activity

The Inter-American Commission on Human Rights (IACHR), based in Washington D.C. was established as an autonomous body in 1959 and became operational in 1960 and one of the principal organs of the OAS in 1967.⁴⁷ The structure, composition and jurisdiction of the Commission emanates from the Charter, the Convention, and its own Statute and Regulations. It is composed of seven independent members who are elected by the General Assembly and who are considered to be persons of high moral character and recognised competence in the field of human rights.⁴⁸ The members undertake their activities in their individual capacity, meaning they do not represent their countries. The

⁴⁵ Art 4(d) of the Guidelines.

⁴⁶ Art 6 of the Guidelines.

⁴⁷ The 1967 Protocol of Buenos Aires came into force in 1970 and by amending the OAS Charter gave the Commission a new status as a principal organ of the OAS.

⁴⁸ Art. 2(1) of the Statute of IACHR, Art. 1(3) of the Rules of IACHR & Art. 34 of the American Convention.

IACHR represents all the 35 member states of the OAS⁴⁹ and performs the task of both promoting and protecting human rights.

The Commission undertakes several activities to implement its mandate. Its principal functions are to promote the observance and defence of human rights and to serve as an advisory body to the Organisation in this area.⁵⁰ It undertakes country-specific and thematic reports⁵¹ on various issues affecting the promotion of human rights within specific member countries and the region as a whole and also undertakes several additional functions most of them relating to its promotional mandate. These include the development of awareness of human rights⁵², request government to provide it with reports on measures they have adopted on human rights issues⁵³ and make recommendations on the adoption of progressive measures in favour of human rights.⁵⁴ And it implements its work by setting up special rapporteur and working groups.⁵⁵

CSOs play a major role within the framework of the mandate of the Commission. When the Commission prepares new instruments on special topics or special reports, it consults with CSOs and receives valuable suggestions.⁵⁶ The CSOs also play a major role by organising courses and seminars and publishing basic documents and jurisprudence in an effort to promote awareness of the rules and doctrines of the Inter-American system.⁵⁷

⁴⁹ Art. 2(2) of the Statute of IACHR, Art. 1(2) of the Rules of IACHR & Art. 35 of the American Convention.

⁵⁰ Art. 1(1) of the Rules of IACHR.

⁵¹ Art. 18(c) of the Statute & Art. 58 of the Rules.

⁵² Art. 18(a) of the Statutes.

⁵³ Art. 18(d) of the Statutes.

⁵⁴ Art. 18(b) of the Statutes.

⁵⁵ Art. 15 of the Rules.

⁵⁶ Background Information on Civil Society Participation in OAS Activities, prepared by the Office of Summits Follow-Up of the OAS at the request of the Chair of the Committee on Civil Society Participation in OAS Activities, Ambassador Patricio Riofrio, Permanent Representative of Ecuador to the OAS, OEA/Ser.G, CP/CSC-3/99, 26 August 1999.

⁵⁷ As above.

Communication Procedure

Under its protective mandate, the Commission hears human rights complaints brought to its attention by individuals and NGOs.⁵⁸ It conducts on-site visits⁵⁹, which will help the Commission gain first hand information on human rights issue of concern in certain areas.

The IACHR handles numerous individual complaints and those brought by NGOs. Any person or group of persons or nongovernmental entity legally recognised in one or more of the member states of the OAS may submit petitions to the Commission, on their own behalf or on behalf of third persons, concerning alleged violations of human rights recognised in any of the legal documents.⁶⁰ Complaints against OAS member states which are not state parties to the ACHR may be filed under the OAS Charter and not the ACHR.⁶¹ If a complaint is filed on a member state party to the ACHR the procedure followed was that of the European system before the coming into force of Protocol 11 to the European Convention in 1998.⁶² The first stage is the consideration of whether or not the petition is admissible and if so, the Commission will try to reach a friendly settlement.⁶³ If this was found to be difficult then, the Commission adopts a report (containing proposals and recommendations) setting forth the facts and its conclusions on the merits and sends it to the state party concerned.⁶⁴ After three months have elapsed from this date, the Commission (or the state party concerned) may submit the case to the Inter-American Court of Human Rights if the state concerned has accepted the Court's jurisdiction through a declaration⁶⁵ or publish the report, as the case maybe. After the case has been sent to the Court, the petitioner will have no standing before the Court.

CSOs have standing before the Commission and this is very important for the promotion and protection of human rights. They are the direct or indirect link between the

⁵⁸ See Art. 18(e) of the Statute with respect of member states of the OAS, Art. 19 with respect to state parties to the American Convention (in addition to Art. 18) and Art. 20 with respect to state parties not members to the American Convention.

⁵⁹ Art. 18(g) of the Statutes.

⁶⁰ Art. 23 of the Rules of IACHR.

⁶¹ Art. 20 of the Statutes and see Nowak, n 4 above.

⁶² Art. 19 of the Statute and Nowak, n 4 above.

⁶³ Nowak, n 4 above & Section 4, Chapter VII of the ACHR.

⁶⁴ As above.

⁶⁵ As above.

victims and the Commission; they provide information as petitioners, request and justify precautionary measures, participate in friendly settlement procedures and monitor the implementation of recommendations made by the Commission to the state.⁶⁶ They also act as advisors to the Commission in a situation where the case has been directed to the Inter-American Court of Human Rights.⁶⁷ CSOs maintain ongoing communication with the Commission in monitoring the human rights situation in countries.⁶⁸ It has been the practice of the Commission to take into account, in addition to its own information, information provided by the principal CSOs, individual members of CSOs and the state when planning on-site visits to countries and during these visits, the Commission normally visits or holds hearings with a number of CSOs.⁶⁹ There have been numerous cases where the Commission used its effective and efficient relationship with CSOs to engage even in issues such as standard setting. A remarkable participation of CSOs was witnessed while the Commission was preparing the then draft American Convention on Forced disappearance.⁷⁰ Committees and open-ended working groups were established to encourage NGOs to elaborate on the draft legal document. Despite the numerous setbacks they faced, NGOs contributed enormously to the development of the Convention.

Besides the IACHR, the Inter-American Court can hear cases if the Commission (or the state party concerned) submit a case to it and if the state concerned has accepted the Court's jurisdiction through a declaration.⁷¹ The Inter-American Court of Human Rights was established in San Jose, Costa Rica in July 1978.⁷² It is a judicial institution, which is mandated to ensure the application and the interpretation of the American Convention on Human Rights (ACHR).⁷³ The Court exercises adjudicatory and advisory functions.⁷⁴ Under its adjudicatory competence, the Court considers and decides upon cases regarding human rights violations.⁷⁵ Through its advisory role, the

⁶⁶ Background Information, n 56 above.

⁶⁷ As above and see also D Padilla, *An African Human Rights Court: Reflections from the perspectives of the Inter-American System*, African Human Rights Law Journal; vol. 2. no. 2. 2002, p.192.

⁶⁸ Background information, n 56 above.

⁶⁹ As above.

⁷⁰ T Wilder, Note on Standard Setting in the Inter-American System of Human Rights, International Council on Human Rights Policy, 2005.

⁷¹ Art. 51(1) of the ACHR.

⁷² ACHR, n 36 above.

⁷³ Art. 1 of the Statute of the Inter-American Court.

⁷⁴ Art. 2 of the Statute of the Court.

⁷⁵ Arts. 61-63 of the Convention and article 2 of the Statute of the Court.

Court issues its opinions on legal matters concerning request on interpretations of legal instruments brought to it by organs of the OAS and member states.⁷⁶

The Court consists of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognised competence in the field of human rights.⁷⁷ It has the optional competence to decide, by means of a binding and final judgement, on those individual complaints which have been directed to it by the Commission⁷⁸ or the state concerned.⁷⁹ In addition to ratifying the Convention, a state party must voluntarily submit to the Court's contentious jurisdiction for it to be competent to hear a case involving that state. Even if a state has accepted the jurisdiction of the Court individuals including CSOs do not have standing before the Court. Because of this optional nature of the Court's jurisdiction, the Court has entertained only few cases.

The adoption of the new Rules of Procedure by the Inter-American Commission in May 2001 can be taken as the right direction towards the protection of individual rights. With the new procedure, individuals are entitled to request the Commission to direct cases, on their behalf, to the Court if it has found a violation.⁸⁰ This can be taken as a stepping stone for the protection of human rights and fundamental freedoms in the OAS and a starting point for the extension of the standing requirement to CSOs. CSOs can also consult the Court in their different areas of expertise and broaden their relationship with the Court.

3.4. Conclusion

Efforts to integrate human rights CSOs in all aspects of human rights work including promotional and communication procedures was witnessed in the two regional systems. Ever since the establishment of the CoE, CSOs played important role in the activities of its organs like in the case of the Commissioner on human rights and although not

⁷⁶ Art. 64 of the Convention and article 2 of the Statute of the Court.

⁷⁷ Art. 4(1) of the Statute of the Court & Art. 52(1) of the ACHR.

⁷⁸ Art. 28 of the Statute of the Court & Art. 57 of the ACHR provide that the Commission shall appear before the Court in cases within the adjudicatory jurisdiction of the Court.

⁷⁹ Art. 61(1) of the ACHR provides that only the Commission and the state party concerned shall have the right to submit a case before the Court.

⁸⁰ Nowak, n 4 above.

significant, in the European Court. The same holds true for the Inter-American system where CSOs played a vital role in the Inter-American Commission and where there has been a major attempt to provide comprehensive and all embracing normative framework that will guide the relationship between CSOs and the various organs of the regional body. Although not an organ of the system, we have seen the minimal role of CSOs before the Inter-American Court.

The specificity of the African system is that ECOSOCC as an organ of the AU has been created with a mandate of integrating a broad range of CSOs and bringing them closer to the AU. The African system, in particular the African Commission, also follows the doctrine of *actio popularis* which strengthens the relationship between NGOs and human rights organs. The next Chapter will inquire what possible co-ordination mechanisms can be utilised taking into account the specificity of the African system and also the practice of these regional systems.

Chapter 4

The relationship between ECOSOCC and human rights organs of the African Union

4.1. Introduction

This Chapter is divided into two main sections. The first section deals with the interaction between CSOs and human rights bodies of the AU prior to the establishment of ECOSOCC. The second section highlights the possible interaction and co-ordination that should exist between ECOSOCC and human rights organs of the AU such as the African Commission, African Court and the Committee of Experts. Such inquiry is relevant given existing co-ordination problems between these two sets of organs.

ECOSOCC is an organ of the AU representing African civil society within the Union. We have seen in the European system organs like the Commissioner for Human Rights and in the Inter-American system organs like the Inter-American Commission work in close collaboration with CSOs. These and more will help us draw modalities of co-ordination for ECOSOCC to effectively implement its human rights mandate while keeping in mind the specificity of the African system.

4.2. African regional human rights bodies and their interaction with civil society organisations prior to the establishment of ECOSOCC

In the past, CSOs and particularly NGOs played an important role in the African regional human rights system. They played a role in the drafting of the African Charter, its adoption by the Organisation of the African Unity (OAU) and its ratification by African states.¹ After the coming into force of the African Charter, although the Charter does not define non-governmental organisations (NGOs) or their status in the regional system, Article 45(1)(a) and (c) of the Charter provide that the functions of the African Commission shall be to promote Human and Peoples' Rights and in particular

¹ A Motala, *Non-Governmental Organisations in the African System* in R Murray and M Evans (eds.) *The African Charter on Human and Peoples' Rights: The system in Practice, 1986-2000*, Cambridge University Press, 2002.

'...encourage national and local institutions concerned with human and peoples' rights'² and 'cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'.³ In addition, Article 45(3) provides that the functions of the Commission shall be to 'interpret all the provisions of the Charter at the request of a state party, an institution of the OAU or an African organisation recognised by the OAU'. However, neither a state party nor an institution of the OAU has sought an opinion of the Commission in the exercise of this duty; it has rather been NGOs that had sought and obtained through draft resolutions, the interpretations of some provisions of the Charter.⁴ Article 55(1) of the Charter also provides that NGOs can submit communications to the Commission by stating 'before each session, the secretary of the Commission shall make a list of the communications other than those of state parties to the present Charter...'. Also the revised Rules of Procedure of the Commission, in its various provisions, provide for the participation of NGOs.⁵ It is believed that the revised Rules are more liberal and allow the participation and consultation of NGOs in a flexible manner showing the interest of the Commission to work closely with NGOs.⁶

The role and participation of NGOs in the ordinary sessions of the African Commission has also shown growth because at the beginning, the role and functioning of the Commission was not well known.⁷ It was only after the ICJ started to organise workshops prior to the ordinary sessions of the Commission aimed at the participation of African NGOs in the Commissions sessions, that NGOs started to actively interact with the Commission.⁸ The workshops served as fora for mutual exchange of ideas by discussing various topics that touch on the effective functioning of the Commission's promotional and protective mandates.⁹

² Art. 45(1)a of the African Charter.

³ Art. 45(1)c of the Charter.

⁴ V Nmehielle, *The African Human Rights System: Its laws, Practice and Institutions*, Martinus Nijhoff Publishers, 2001.

⁵ Amended Rules of Procedure of the African Commission on Human and Peoples' Rights , adopted by the Commission at its 18th Session held in October 1995 in Praia, Cape Verde, ACHPR/RP/XIX.

⁶ F Ouguerouz *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, Martinus Nijhoff Publishers, 2003. See also Rule 75 and 76.

⁷ This is as a result of 'the confidentiality policy applied by the Commission with regards to communications and also failure on the part of the Commission to make public its works during its ordinary sessions' quoted in Motala, n 1 above.

⁸ As above.

⁹ Nmehielle, n 4 above.

NGOs have also been of great help by giving alternate reports (shadow reports) and other sources of information which have increased the knowledge and understanding of the Commission on the human rights situation of a country.¹⁰

NGOs have played a significant role in the drafting of the Protocol to the African Court on Human and Peoples' Rights. It started at the workshop preceding the 14th Ordinary Session of the Commission in December 1993, when the ICJ brought together NGOs and experts for the process of drafting the Protocol to the African Court.¹¹ In order to suggest formulations for the various articles in the draft, prior to each of these meetings, the ICJ arranged a meeting of NGO representatives, judges and other experts to consider the draft Protocol and comments from governments.¹² Adequate representation of women judges, making the decision of the Court binding and implementable through national courts and entitling NGOs and individuals to have access to the Court were some of the ideas that NGOs wanted the Protocol to incorporate in order for it to protect human rights in Africa.¹³ Thus, not only did NGOs draft the Protocol but they also participated in the meetings alongside government experts as invited experts.¹⁴

NGOs also played a crucial role in the holding of the two ministerial conferences¹⁵ on human rights that resulted in Declarations and Plan of Action which forms an important part of AU's work on human rights.¹⁶ Promising as these conferences might be, Murray¹⁷ notes that whether the declarations that have emanated from the conferences have been realised or not is questionable. Although some of the instruments mentioned in both the Grand Bay and Kigali Declarations have come into force, there is still a need to implement most of the recommendations.

¹⁰ V Dankwa, *The Promotional Role of the African Commission on Human and Peoples' Rights*, in R Murray and M Evans (eds.) *The African Charter on Human and Peoples' Rights: The system in Practice, 1986-2000*, Cambridge University Press, 2002.

¹¹ Motala, n 1 above.

¹² As above.

¹³ As above.

¹⁴ As above.

¹⁵ Grand Bay, Mauritius Declaration and Plan of Action, CONF/HRA/Decl(I) and Kigali Declaration, MIN/CONF/HRA/Decl.1(I).

¹⁶ R Murray, *Human Rights in Africa: From the OAU to the African Union*, Cambridge University Press, 2004.

¹⁷ As above.

As seen above, NGOs/CSOs play a great role in the activities of the different human rights organs of the AU. The dramatic increase in the activities of NGOs convey the message that there is a need and determination to respond to the challenges posed by the persistent human rights violations in Africa based from the experiences of other regions of the world.¹⁸ However, Motala¹⁹ points out that with regards to the relationship between the African Commission and NGOs, he says more needs to be done by NGOs to improve their relationship with the Commission and to contribute effectively to the various aspects of its mandate of promotion and protection of human rights in Africa. Thus, what can the newly established ECOSOCC contribute and what additional strategies can be utilised? This will take us to our next heading.

4.3. ECOSOCC and the African Commission on Human and Peoples' Rights

4.3.1. ECOSOCC and the promotional mandate of the African Commission

When we look at the African Charter on Human and Peoples' Rights and the promotional activities of the African Commission, the latter is endowed with the promotion of Human and Peoples' Rights and in particular to 'collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and should the case arise, give its view or make recommendations to Governments'.²⁰ The Commission is also responsible as part of its promotional mandate 'to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations'²¹ and 'cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'.²² The other promotional activity of the Commission is state reporting which is found under Article 62 of the Charter. It is provided that 'each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken

¹⁸ Nmehielle, n 4 above.

¹⁹ Motala, n 1 above.

²⁰ Art.45(1)a of the African Charter.

²¹ Art.45(1)b of the Charter.

²² Art.45(1)c of the Charter.

with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter’.

The revised Rules of Procedure also provide the promotional activities that are to be undertaken by the Commission. Accordingly, the Rules provide that ‘the Commission shall adopt and carry out a programme of action which gives effect to its obligations under the Charter, particularly Article 45(1),²³ ‘it shall carry out other promotional activities in member states and elsewhere on a continuing basis’²⁴ and ‘each member of the Commission shall file a written report on his/her activities at each session including countries visited and organisations contacted.’²⁵ With regards to state reporting, the Rules provide that ‘states parties to the Charter shall submit reports in the form required by the Commission on measures they have taken to give effect to the rights recognised by the Charter and on the progress made with regard to the enjoyment of these rights. The reports should indicate, where possible, the factors and difficulties impeding the implementation of the provisions of the Charter.’²⁶

Pursuant to the Charter and its Rules, the Commission has adopted various Plans of Actions²⁷, established a documentation centre for human rights studies and research in collaboration with NGOs and intergovernmental organisations, organised several lectures, seminars, symposia and conferences aimed at promoting various aspects of human and peoples’ rights, produced and circulated several human rights documents which includes the Charter, its Rules of Procedure, its Annual Activity Reports and Review of the African Commission on Human and Peoples’ Rights.²⁸ A bulletin (replacing its newsletter), compilation of past resolutions²⁹, reports of seminars and conferences, publications of state reports, publications of the decisions of the Commission in communications and reports of protective missions undertaken by the Commission, the report of the Special Rapporteur on Prison Conditions in Africa, series of information sheets and other small pamphlets have recently started being produced.³⁰

²³ Rule 87(1) of the rules of procedure.

²⁴ Rule 87(2) of the rules.

²⁵ Rule 87(3) of the rules.

²⁶ Rule 81(1) of the rules.

²⁷ See First Annual Activity Report, Sixth Annual Activity Report and the Mauritius Plan of Action (Documents of the African Commission).

²⁸ Nmehielle, n 4 above.

²⁹ Dankwa, (n 10 above) said when the human rights situation of a certain country is concerning then, the Commission passes resolutions by stating what has to be done to improve the situation.

³⁰ As above.

In the areas of cooperation, the Commission has granted observer status to several NGOs and has also been cooperating with other human rights institutions in areas relating to the promotion and protection of human rights.³¹ As part of promotional activity, the Commissioners are assigned to a number of member states and while visiting the states, the Commissioners are expected to organise lectures and seminars in collaboration with various institutions.³²

When it comes to state reporting, monitoring the human rights situations in member states through the submission of state reports is another important promotional activity of the Commission. Despite the fact that Article 62 of the Charter obliges state parties to submit reports every two years and despite the repeated appeals from the Commission for compliance, the record of compliance by states has been poor.³³ Therefore, there is a certain amount of pressure that is brought on states when Commissioners make their promotional visits to different member states.³⁴

While undertaking its promotional activities it is very important for the African Commission to work in co-ordination with the other organs of the AU to effectively promote and protect human rights in Africa. As seen above, the work of the Commission with regards to its promotional mandates is to be applauded but more has to be done in order for the Commission to fulfil its promotional mandate as provided in the African Charter. For this to happen, the research proposes that the African Commission should be able to work in conjunction with organs like ECOSOCC. ECOSOCC comprises 150 CSOs from different social³⁵ and professional³⁶ groups. Non-governmental organisations (NGOs), community-based organisations (CBOs), voluntary organisations³⁷ and cultural organisations are also listed as being a part of civil society organisations.³⁸

³¹ Nmehielle, n 4 above.

³² As above and also during these promotional visits, the subject of communications may be taken up with governments mixing up the promotional and protective mandates. A case in point is the 'promotional visit' to Sierra Leone where the subject of the communication was taken up with relevant government officials, F Viljoen, *Introduction to the African Commission and the Regional Human Rights System* in CH Heyns, *International Human Rights Law in Africa*, Vol I, Martinus Nijhoff Publishers, 2004.

³³ Dankwa, n 10 above.

³⁴ As above.

³⁵ Art. 3(2)a of the Statutes of ECOSOCC & see also Chapter 2.

³⁶ Art. 3(2)b of the Statutes & see also Chapter 2.

³⁷ Art. 3(2)c of the Statutes & see also Chapter 2.

³⁸ Art. 3(2)d of the Statutes & see also Chapter 2.

With this broad composition, the Commission can effectively utilise the group in order to carry out its promotional activity. We have said that the Commission organises lectures, seminars, symposia and conferences aimed at promoting various aspects of human and peoples' rights. ECOSOCC is composed of different groups that are experts in various areas and can assist the Commission in this regard. For instance, if the Commission is envisaging of giving a seminar or conference on women then, it can coordinate with ECOSOCC which comprises women's group inside of its social groups. The same goes in cases of particular topics like children, the elderly, youth and the disabled. The Commission can also consult with the professional groups which are so wide and need to be utilised effectively. The same has been applied in the European system where CSOs with participatory and partnership status are consulted so as to give expert advice in their areas of expertise. The Commissioner on human rights, in the European system, also conducts official country visits for a comprehensive evaluation of the human rights situation in a certain country and in doing so s/he meets religious communities, educational institutions, leading human rights organisations, NGOs, universities, etc and organises seminars and events on various human rights themes.³⁹

Like the Inter-American system, these CSOs can also play a major role by organising courses and seminars and publishing basic documents and jurisprudence in an effort to promote awareness of the rules and doctrines of the African Commission. The CSOs should also find ways on how to make the documentations and findings of the Commission more effective⁴⁰ by for instance, printing the materials and distributing it to different segments in their respective countries. This will contribute significantly in the popularisation of the Commission and its work in the areas of human rights. The added value of the African system is in addition to the social and professional groups, the Commission can also work with NGOs, CBOs, voluntary and cultural organisations who are all found under the umbrella of ECOSOCC which is unique to the African system.

In the areas of state reporting, ECOSOCC can significantly contribute to the work of the Commission by giving diversified information on the human rights situation of a country. The Commission can have diversified and credible independent reports from

³⁹ For the Commissioner on Human Rights, see sec 3.2.2., Chapter 3 above.

⁴⁰ Murray, n 16 above posed this as one problem the Commission is facing at present. She says documents of the Commission are distributed at Summit meetings and picked up by the various AU bodies but not referred beyond this.

different social and professional sectors. The social groups can provide information on the situation of women, children, the youth, elderly and the disabled and the professional groups can provide information, to name a few, on the situation of health, media, legal matters including legislation, academia including the curriculum of a country, the situation of workers, etc. As for the credibility of the information and the CSOs themselves, the CSOs that are part of ECOSOCC must fulfil a certain requirement as is provided by the statute to become members.⁴¹ In addition, the credentials committee is endowed with the functions of examining the credentials of members of ECOSOCC and their representatives.⁴² Also, one of the major problems of the Commission is the non-submission of activity reports by NGOs with observer status but under ECOSOCC, CSOs submit reports to the General Assembly for the latter reviews their activities and proposes appropriate actions and recommendations.⁴³ Thus, the same report can be submitted to the Commission after being viewed by the General Assembly.

4.3.2. The role and status of ECOSOCC in the Commission's communications procedure

Like the Inter-American Commission on Human Rights who hears complaints brought to it by individuals and NGOs, the African Commission, pursuant to Article 55(1) of the African Charter which provides '...the Secretary of the Commission shall make a list of the communications other than of state parties to the present Charter and transmit them to the Members of the Commission...' also hears complaints from non-state parties. Chapter XVII of the Rules of Procedure deals with other communications received in conformity with Article 55 of the Charter and Section IV shows us the procedure for consideration of communications. Although the Charter does not specifically state that NGOs can apply, non-state communication has been interpreted as implying individuals and NGOs. As such most of the complaints received by the Commission have been filed by NGOs on behalf of individuals or groups alleging violations of the rights under the Charter.⁴⁴ There is no victim requirement, *action popularis*, and this should continue and strengthen with ECOSOCC now in the picture. In the European system, we have seen applicants before the European Court have to be victims to have access to the Court.

⁴¹ Art. 6 of the Statute.

⁴² Art. 12(2) of the Statutes & rule 18(1) of the draft rules & see also Chapter 2.

⁴³ Art. 9(2)e of the Statutes & see also Chapter 2.

⁴⁴ Motala, n 1 above.

Through the creation of relationship between ECOSOCC and the Commission in the communications procedure, not only NGOs but also CSOs comprising social and professional groups, CBOs, voluntary and cultural organisations will be able to approach the Commission alleging human rights violations under the African Charter. One might argue saying that this will burden the Commission with complaints since, although it has improved, at present there have been some delays in the consideration of complaints by the Commission. This factor should not limit the CSOs from approaching the Commission on top of the already existing limitations, such as exhaustion of local remedies. For delays not to occur, ECOSOCC for instance can assist the Commission in areas of investigation once the case has been considered admissible. Article 46 of the Charter provides that 'the Commission may resort to any appropriate method of investigation; it may hear from the Secretary-General of the OAU or any other person capable of enlightening it'. ECOSOCC can be involved and assist the Commission considerably because the members of ECOSOCC cover a broad range of actors making information easily accessible.

In the Inter-American Commission we have seen that CSOs provide information as petitioners, request and justify precautionary measures and monitor the implementation of recommendations made by the Commission to the state.⁴⁵ ECOSOCC can also assist the Commission in such ways and most importantly, by monitoring the implementations of the Commission's recommendations because this has been one of the major problems of the African Commission. It has been the practice of the IACHR to take into account, in addition to its own information, information provided by the principal CSOs, individual members of CSOs and the state when planning on-site visits to countries and during these visits, the Commission normally visits or holds hearings with a number of CSOs.⁴⁶ The research proposes all this and more can be made applicable in the case of Africa through the strong relationship between ECOSOCC and the African Commission. Although there have been few cases of inter-state communications,⁴⁷ ECOSOCC can, as a CSO platform and also an organ of the AU, be of help by gathering information from the respective countries and thus, assisting the Commission

⁴⁵ For the Inter-American Commission, see sec 3.3.2., Chapter 3 above.

⁴⁶ As above.

⁴⁷ Arts. 47-54 of the African Charter.

considerably. At present, the non-involvement of AU organs in such cases is a concern to the communication procedure.⁴⁸

4.3.3. The relationship between ECOSOCC and civil society organisations with observer status before the Commission

ECOSOCC should be able to reach out to those NGOs who are not its members. There are two important reasons for this. Firstly, there are only few NGOs who are members of ECOSOCC's framework. Secondly, and perhaps importantly the Statutes provides as one of the objectives of ECOSOCC designing and implementing initiatives to build the capacity of African NGOs. Such initiatives effectively fall within the mandate of ECOSOCC to promote the participation and involvement of African CSOs in the work of the African Union.⁴⁹

Currently there are quite a number of NGOs who have observer status at the Commission.⁵⁰ So far the Commission's procedure of granting observer status to NGOs has been transparent, simple and accessible. Consideration on the relationship between the Commission and NGOs has been a permanent agenda of the Commission. These NGOs assist the Commission in fulfilling both its promotional and protective mandate. Article 45(1)(c) of the African Charter provides that the Commission shall co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights. In collaboration with these NGOs, the Commission has so far undertaken several initiatives within the context of its promotional mandate and under its protective mandate, NGOs with observer status have brought human rights communication to the attention of the Commission.

The Commission should, under its agenda on the relationship between the African Commission and the AU⁵¹, consider issues affecting the relationship between the Commission and the AU. This should also highlight the relationship between ECOSOCC and NGOs with observer status before the Commission. Like the European system

⁴⁸ Murray, n 16 above.

⁴⁹ Art. 2(3) of the Statutes.

⁵⁰ The Commission started granting observer status at its third sess in Libreville, Gabon in 1988 and at present there are more than 300 NGOs with observer status.

⁵¹ For agenda of the African Commission, see <<http://www.achpr.org>> (accessed on 13 October 2006).

where NGOs with participatory and partnership status are involved in the articulation of Council's policies, programmes and actions, in the African system also both CSOs within ECOSOCC and NGOs with observer status before the Commission should as much as possible be involved in AU's policies, programmes and actions.⁵² But for this to happen, there need to be change of attitude and adjustments and the CSOs need to be more concerted.⁵³

Another entry point for ECOSOCC would be the bi-annual NGO forum which often precedes the ordinary sessions of the African Commission. There are numerous mechanisms through which ECOSOCC can deepen the utility of this forum as a point of interaction between itself and the numerous NGOs with observer status.

4.3.4. The role of ECOSOCC in the nomination and election of Commissioners

Article 31 of the Charter provides that the Commission shall consist of eleven members, serving in their personal capacity and who are known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights with particular consideration being given to persons having legal experience. These members are to be elected by secret ballot by the Assembly of Heads of State and Government⁵⁴ from a list of persons nominated by the State parties to the Charter.⁵⁵

As such, the appointment of members of the Commission has not always been from those with high reputation in human rights and in order to reduce this from happening, it is important that NGOs and others lobby at the domestic level for the appointment of appropriate members.⁵⁶ There were instances whereby Commissioners used to serve or are still serving in government offices in their respective countries

⁵² Art. 2(3) of the Statutes provide as one objective the participation of African civil society in the *implementation* of the policies and programmes of the Union (emphasis mine).

⁵³ Interview with Dr. Djinmi Adissa, Principle co-ordinator of CIDO (African citizens directorate), 30 August 2006.

⁵⁴ Ouguergouz, n 6 above notes that in the European & Inter-American systems also members are elected by the plenary organs of the regional organisations.

⁵⁵ Art. 33 of the Charter.

⁵⁶ Murray, n 16 above.

before becoming Commissioners.⁵⁷ There is a possibility that this may create a bias on the Commissioner in the exercise of his/her duties with respect to cases involving his/her country. ECOSOCC can be utilised in this regard. As said above, the composition of ECOSOCC covers a broad range of actors who can be helpful by lobbying in their respective fields for an appropriate nominee from among the society. This is very important for the creation of strong relationship between the two organs.

4.4. ECOSOCC and the African Court on Human and Peoples' Rights

4.4.1. ECOSOCC and *locus standi* at the African Court

The issue of *locus standi* is one of the most debated issues of the African Court.⁵⁸ Direct recourse to individuals and NGOs is allowed pursuant to Article 5(3) of the Protocol. However, this jurisdiction of the Court is optional which will come into effect only if States recognise the competence of the Court based on Article 34(6) of the Protocol. The reason behind this was to reserve to states some measure of power based on the notion of sovereignty to decide whether to subject their actions to the review of an international body.⁵⁹ It is unlikely that many states will rush into committing themselves to such kind of declarations, making the efficacy of the Court dependant on the dynamism of the Commission through which communications can be brought to the attention of the Court.⁶⁰ This refers to the second route through which cases brought by NGOs before the African Commission can also be brought before the Court if the Commission decides that such a case shall be referred to the Court.

The Court has a wide material jurisdiction. It can hear all sorts of cases related to provisions of the African Charter and other international human rights instruments to which the state is a party. This means that CSOs found under ECOSOCC working on

⁵⁷ As above and Murray notes that for eg, Andrew Chigovera was, when he was initially appointed to the Commission, also the Attorney-General of Zimbabwe at the time.

⁵⁸ NB Pitjana, *Reflection on the African Court on Human and Peoples Rights*, African Human Rights Law Journal; vol. 4. no. 1. 2004.

⁵⁹ V Nmehielle, *Towards an African Court of Human Rights: structuring and the Court*, Annual Survey of International and Comparative Law, Spring 2000 and M Mutua *The African Human Rights System: A Critical Evaluation* says this is a terrible blow to the standing and reputation of the Court in the eyes of most Africans.

⁶⁰ Information Note on the First Meeting of the African Court on Human and Peoples' Rights, Back Ground Document, July 2006, p.2.

variety of areas can be competent to bring cases. But there is a limitation. It is only NGOs, which have observer status before the African Commission who can submit cases as long as the respondent state has made declarations.⁶¹ Thus, NGO members of ECOSOCC, who also have observer membership at the Commission, can submit cases individually. This is also a strong reason for creating relationship between ECOSOCC and African Commission because it is only those NGOs with observer status before the Commission who have access the Court.

Here one wonders in what ways can organs of the AU, like ECOSOCC utilise the Court. Article 4(1) of the Protocol provides for AU organs like ECOSOCC to seek the advisory opinion of the Court:

at the request of a Member State of the OAU, the OAU, any of its organs or any African organisation recognised by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

This is one possible and important way through which ECOSOCC, as an AU organ, can create an effective relationship with the African Court and the CSOs can benefit from the advisory opinion of the Court on different legal matters affecting them. AU organs should be encouraged to utilise the African Court, once it is operational, by requesting advisory opinions.⁶² Advisory opinions can be helpful in establishing a body of jurisprudence that will have a continental impact⁶³ and could make a very useful contribution to the development of a human rights culture in Africa.⁶⁴ This is only specific to the African system and there is no parallel mechanism in the other systems. In the Inter-American system, only OAS member states and OAS organs⁶⁵ have the right to seek such opinion and in the European system, only the CoM has this power.⁶⁶

⁶¹ Art. 5(3) of the Protocol.

⁶² Padilla, n 67 (Chapter 3) above.

⁶³ As above.

⁶⁴ K Hopkins, *The effect of an African Court on the domestic legal orders of African States*, African Human Rights Law Journal; vol. 2. no. 2. 2002.

⁶⁵ But there is no OAS organ which is established as a CSO platform like ECOSOCC.

⁶⁶ RW Eno, *The jurisdiction of the African Court on Human and Peoples' Rights*, African Human Rights Law Journal; vol. 2. no. 2. 2002.

But the fact remains that with regards to direct access to the Court, there is a limitation pursuant to Article 5(3) of the Protocol and this is very problematic. In the Inter-American system, there is no comparable provision and victims and his/her representatives, often human rights NGOs, have been designated as legal advisors to the Inter-American Commission and thus, the victims together with the Commission actively participate in the litigation process.⁶⁷ The Inter-American Court has also recently allowed victims to make separate arguments.⁶⁸ The European Court receives applications from any person, NGOs or group of individuals as long as they claim to be victims⁶⁹ and most importantly, the Court's jurisdiction is mandatory to all members of the Council of Europe. Although there are limitations on standing because of victim requirement, these are possible modalities that can be taken as a stepping stone for the African Court.

The research recognises the fact that individuals and NGOs are denied direct access to the Court is very problematic for the protection of human rights and recommends a mandatory jurisdiction such as the one followed in the European system. For this to take place there has to be an amendment of Article 34(6) of the Protocol which provides:

At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a state party which has not made such a declaration.

4.4.2. The role of ECOSOCC in the nomination and election of judges

The African Court's judges are elected from member states of the AU.⁷⁰ The Protocol states that due consideration shall be made to the election of female judges.⁷¹ There is no doubt that the election process and the kind of judges to be elected will have an implication for the efficacy of the Court.

⁶⁷ Padilla, n 67 (Chapter 3) above.

⁶⁸ As above.

⁶⁹ Art. 34 of the ECHR.

⁷⁰ Art. 11 of the Protocol.

⁷¹ Art. 12(2) of the Protocol.

ECOSOCC can play a very active role in influencing the process of election of judges. Experience from international institutions such as the establishment and election of judges of the International Criminal Court suggest that CSOs can play a meaningful role in ensuring commitments put in an instrument are kept by states.⁷² The Forum for NGOs, which often holds proceedings twice a year a week before the start of the ordinary session of the African Commission has been an instrumental platform for such activities.⁷³ The African NGO community needs to be proactive to seek out, recommend and promote independent, highly qualified and outstanding African jurists to be judges in the African Court.⁷⁴

4.5. ECOSOCC and the African Committee on the Rights and Welfare of the Child

The African Committee on the Rights and Welfare of the Child composed of eleven members draws its mandate from the African Charter on the Rights and Welfare of the Child (African Children's Charter)⁷⁵. Its mandates include the promotion and protection of the rights enshrined in the Charter and in particular to '...encourage national and local institutions concerned with the rights and welfare of the child...'⁷⁶ and 'cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child'.⁷⁷ In addition 'to interpret the provisions of the Charter at the request of a state party, an institution of the OAU or any other person or institution...' and also 'the Committee may receive communications from any person, group or nongovernmental organisation...'.⁷⁸ These are similar provisions to the African Charter and it is clearly provided that the Committee shall work with NGOs in the promotion and protection of children's rights. More progressive than the African Charter however, is the provision relating to

⁷² The Role of NGO collation on the establishment of the ICC is an example.

⁷³ See the Resolution passed by the NGO Forum during the 36th ordinary session of the African Commission.

⁷⁴ Padilla, n 67 (Chapter 3) above.

⁷⁵ The OAU is the first regional organisation to adopt a binding regional instrument concerned with children's rights. A Lloyd, *A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child*, African Human Rights Law Journal; vol. 2. no. 1. 2002.

⁷⁶ Art. 42(a)i of the Children's Charter.

⁷⁷ Art. 42(a)iii of the Charter.

⁷⁸ Art. 44(1) of the Charter.

communications whereby it is provided that NGOs can play a significant role both in the filing of complaints and in conducting investigations.⁷⁹ The Committee is analogous to the European Committee of Social Rights (ECSR) which is the body responsible for monitoring compliance in the states party to the ESC. The ECSR is composed of 13 independent, impartial members who are elected by the Council of Europe's Committee of Ministers for a period of six years.

During the Committee's first meeting collaboration with other partners such as UN agencies, NGOs, CBOs and other relevant organisations was taken as an important agenda's item.⁸⁰ During its second session, NGOs and other partners were requested to assist the Committee in the popularisation of the Children's Charter.⁸¹ At the third session of the Committee, it was confirmed that NGOs should become active in the promotion of Children's Charter and need to bid for funding to aid the ratification process.⁸² It was stressed that the role of NGOs should be enhanced in children's issues and they could be requested to submit supplementary reports, which could form part of a pre-session forum.⁸³ It was also pointed out that there was a requirement for NGOs and other organisations to be formally granted observer status for participation in the sessions of the Committee.⁸⁴

The Committee has already initiated partnership with NGOs. These organisations actively participated in various key thematic consultative workshops organised under the auspices of the Committee. A partner's forum was also established which seeks to enhance the contribution of the Committee's partners.⁸⁵ The most important relationship between the Committee and NGOs however, is reflected in the Rules of Procedure.⁸⁶ Part Three of the Rules of Procedure discusses the role of non-members to the

⁷⁹ Motala, n 1 above and Lloyd (n 75 above) says being a victim or having an interest in the subject matter are essential to lodge communications under other regional systems.

⁸⁰ A Lloyd, *The first meeting of the African Committee of Experts on the Rights and Welfare of the Child*, African Human Rights Law Journal; vol. 2. no. 2. 2002.

⁸¹ A Lloyd, *The report of the second ordinary session of the African Committee of Experts on the Rights and Welfare of the Child*, African Human Rights Law Journal; vol. 3. no. 2. 2003.

⁸² A Lloyd, *The third ordinary session of the African Committee of Experts on the Rights and Welfare of the Child*, African Human Rights Law Journal; vol. 4. no. 1. 2004.

⁸³ As above.

⁸⁴ As above.

⁸⁵ Report on the African Committee of Experts on the Rights of the Child in Africa, 7th Ordinary Submit of the AU, Libya, 2005.

⁸⁶ According to Motala, n 1 above NGOs have made representations to the OAU regarding the drafting of the Rules of Procedure of the Committee.

committee and that of civil society. The Rules stipulate two key procedures for the involvement of civil society in the work of the Committee: Representation and Consultation. Firstly, through the representation procedure, CSOs/NGOs may be represented in the public sessions of the meetings of the Committee and its subsidiary organs.⁸⁷ Secondly, the Committee may either upon the request by CSOs/NGOs or its own initiatives undertake consultations. Thus, CSOs/NGOs are involved in the activities of the Committee, as they are with the African Commission, and also help the Committee in developing principles and standards related to the rights of the child.⁸⁸ A procedure is already put in place for CSOs/NGOs to be involved in the work of the Committee and ECOSOCC being a platform for CSOs/NGOs can easily coordinate and work with the Committee.

One possible area of cooperation between ECOSOCC and the Committee is designing a strategy for ECOSOCC to have certain legally defined status within the Committee. The Statutes provide as one of the main functions of ECOSOCC to ‘contribute to the promotion of human rights, the rule of law, good governance, democratic principles, gender equality and child’s rights’.⁸⁹ The CSOs working within the framework of ECOSOCC particularly those who work on issues affecting the child can assist the Committee by providing expert advice in their area of expertise. Experience from the Council of Europe suggests that NGOs can be given observer status with expert committees in their field of specific competencies.⁹⁰

By taking into account the procedures available for the participation of CSOs and NGOs, ECOSOCC is well placed to involve in the work of the Committee. Given the experience of the African Commission, the establishment of subsidiary bodies such as working groups can also facilitate engagement with CSOs. With the view to garnering the support of CSOs/NGOs for the Committee, ECOSOCC can create a platform on CSOs/NGOs group for the rights of the child in Africa.⁹¹

⁸⁷ Rule 82 of the Rules of Procedure.

⁸⁸ Motala, n 1 above.

⁸⁹ Art. 7(5) of the Statutes and see also Chapter 2 above.

⁹⁰ Group of Specialists, n 14 (Chapter 3) above.

⁹¹ Similar grouping does exist at the level of the UN Convention on the Rights of the Child.

4.6. Conclusion

Possible modes of co-ordination between ECOSOCC and the human rights bodies were recommended. ECOSOCC's involvement in the promotional and protective roles of the African Commission, possible role of ECOSOCC in the election of commissioners and also its relation with other NGOs with observer status before the Commission were discussed in length. Although the African Court has not yet started work, the need to stretch standing to CSOs/NGOs without state's declaration and the possibility of ECOSOCC creating a relationship with the African Court by utilising the advisory opinions of the Court were also suggested. The advantage of utilising organs like ECOSOCC was discussed in the election of judges. ECOSOCC's involvement in the Experts Committee was elaborated taking into account the existing participation of CSOs/NGOs in the works of the Committee.

The Chapter having recognised the active role of CSOs/NGOs in each human rights body and having further recognised the need of co-ordination between the AU body which is a platform for these CSOs/NGOs and African human rights bodies recommended all these possible modes of co-ordination to be implemented for the fulfilment of ECOSOCC's human rights mandate. The next Chapter will make a final conclusion to the essay supported with concrete recommendations.

Chapter 5

Conclusion and Recommendations

5.1. Conclusion

The structure of ECOSOCC casts a unique feature in the African human rights system where a continental platform for civil society organisations is created within the African Union. This, however, does not mean that other regional human rights systems such as the Inter-American and European human rights systems do not have coherent policy regarding CSOs. Though such policies exist, CSOs are engaged in the activities and processes of continental organisation through committees and similar structures. Despite the fact that the institutional modality for the involvement of CSOs in the work of these institutions is varied, the ultimate aim of such relationship is to bring CSOs closer to the policy and programmes of the respective regions.

Uncertainty regarding the nature of African human rights institutions within the AU undermines the process of developing coherent co-ordination mechanism. There has been vigorous debate and discussion about the place of the African Commission in the AU since it has not been specified in the Act.¹ The same holds true for the Children's Committee.² There is also an ongoing merger between the African Court on Human and Peoples' Rights and the African Court of Justice.³ Based on such uncertain type of configuration and structure of the African system, co-ordination becomes a very crucial matter. Possible means of co-ordination between ECOSOCC and the African human rights organs discussed in the research are not exhaustive at all. These have been suggested taking into account ECOSOCC's organisational structure and the European and Inter-American systems as points of inspiration. ECOSOCC serves as a link to create this co-ordination that has been lacking in the African system. Through efficient

¹ See n 5 (Chapter 1) above.

² However, 'the merger process between the African Court on Human and Peoples' Rights and the African Court of Justice should integrate the mechanisms of the African Committee of Experts on the Rights and Welfare of the Child into the petition procedures of the African Court' cited from, A submission to the AU by The Coalition for an Effective African Court on Human & Peoples' Rights, *Legal & Institutional Issues Arising from the Decision of Heads of State & Government of the AU to Integrate the African Court on Human Rights and Court of Justice of the AU*, October 2004.

³ See n 35 (Chapter 1) above.

CSOs, ECOSOCC and the human rights organs can coordinate and work towards the promotion and protection of human rights. To this end, the research strongly recommends the following points:

5.2. Recommendations

- ECOSOCC should take the establishment of relations with all organs as one important task. For this to materialise, ECOSOCC has to enter into a Memorandum of Understanding (MoU) with each human rights organs that will define its relations with the organs.
- In addition to having an MoU, each organ should define their relationship in their respective Rules of Procedures and Regulations.
- There should be an amendment of Article 34(6) of the Protocol establishing the African Court on Human and Peoples' Rights that deals with state's declaration accepting the competence of the Court to receive petitions under Article 5(3) of the Protocol.
- Concrete steps should be taken by ECOSOCC so as to positively influence processes, which have been initiated to draft a single instrument on the merger between the two courts. It shall in particular attempt to mobilise the voice of CSOs so that mechanisms are created for access to the merged court by individuals and NGOs.
- With the merger of the two Court, if the need arises to amend the Constitutive Act⁴ then, the amended Act should clearly define ECOSOCC's relationship with the African Commission, the African Court and the Committee of Experts.
- There should be a legal arrangement between ECOSOCC and the African Commission regarding the relationship between CSOs within ECOSOCC and NGOs with observer status before the Commission in an effort to work in a coherent manner.
- The thematic groups under ECOSOCC called Sectoral Cluster Committees prepare and submit advisory opinions and reports and thus, the Political Affairs Committee dealing with human rights issues should give advisory opinions and reports on issues

⁴ Opinion from The Coalition for an Effective African Court, n 2 above.

of human rights to the human rights organs thereby creating a mechanism of cooperation.

- CSOs should be entitled to attend public meetings and conferences of the human rights organs and circulate information to their members on the activities of the respective organs.
- Urgent measures should be taken to strengthen the capacity of ECOSOCC's Secretariat. There should be an institutional structure within this secretariat that will supervise and monitor the co-ordination between ECOSOCC and African Union human rights institutions.

Word Count: 17 873 (with footnotes)

BIBLIOGRAPHY

1. PRIMARY SOURCES

1.1. HUMAN RIGHTS INSTRUMENTS

AFRICAN HUMAN RIGHTS SYSTEM

- African Charter on Human and Peoples' Rights (1981/1986).
- African Charter on the Rights and Welfare of the Child, 1999
- Constitutive Act of the African Union (2000/2001).
- Draft Rules of Procedure of the Economic, Social and Cultural Council of the African Union, 2005.
- ECOSOCC Strategic Plan, 2005-2007.
- Grand Bay (Mauritius) Declaration and Plan of Action, 1999.
- Kigali Declaration (1st AU Ministerial Conference on Human Rights), 2003.
- Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights (1998/2004).
- Rules of Procedure of the African Commission on Human and Peoples' Rights, 1995.
- Rules of Procedure of the African Committee of Experts, Cmttee/ACRWC/II.Rev 2.
- Statutes of the Economic, Social and Cultural Council of the African Union, 2004.

COUNCIL OF EUROPE

- Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention), Protocol No. 11, 1994.
- European Convention on the Legal Personality of International NGOs, 1986.
- Fundamental Principles on the Status of NGOs in Europe, 2002.
- Resolution 8 on participatory status, adopted by the Committee of Ministers, 2003.

- Resolution 9 on partnership status, adopted by the Committee of Ministers, 2003.
- Resolution 50, Commissioner for Human Rights, adopted by the Committee of Ministers, 1999.
- Rules of Procedure of the European Court on Human Rights, 2006.
- Warsaw Declaration, Third Summit of Heads of State and Government, 2005.

ORGANISATION OF AMERICAN STATES

- American Convention on Human Rights: 'Pact of San Jose', 1969.
- American Declaration on the Rights & Duties of Man, 1948.
- Committee on CSOs Participation in OAS, Permanent Council AG/RES. 1539 (XXVIII-O/98).
- Rules of Procedure of the Inter-American Commission on Human Rights, 2002.
- Rules of Procedure of the Inter-American Court of Human Rights, 2000.
- Resolution of the Permanent Council of the Organisation of American States on Status of Non-Governmental Organisations in the OAS, CP/RES. 704 (1129/97).
- Statute of the Inter-American Commission on Human Rights, 1979.
- Statute of the Inter-American Court of Human Rights, 1979.
- The Guidelines for the Participation of Civil Society Organisations in the OAS Activities, CP/RES. 759 (1217/99).
- The OAS Charter, 1948.
- The Organisation of American States & Civil Society, OEA/Ser.P, AG/REG.1661 (XXIX-O/99) adopted at the first plenary sess, 7 June 1999.

1.2. OTHER LEGAL MATERIALS

AFRICAN HUMAN RIGHTS SYSTEM

- Assembly Decisions Assembly/AU/Dec.45 (III) and Assembly/AU/Dec.83 (V) Third and Fifth Ordinary Sessions, 4-5 July 2005.
- A submission to the AU by The Coalition for an Effective African Court on Human & Peoples' Rights, Legal & Institutional Issues Arising from the Decision of Heads of State & Government of the AU to Integrate the African Court on Human Rights and Court of Justice of the AU, October 2004.
- Decision of the 14th Annual Activity Report of the African Commission on Human & Peoples' Rights, 37th Ordinary Session of the Assembly of Heads of State & Government, AHG/Dec 162 (XXXVII) para 2.
- Information Note on the First Meeting of the African Court on Human and Peoples' Rights, Back Ground Document, July 2006.
- Mauritius Plan of Action 1996-2001, Documents of the African Commission, 1996.
- Programme of Activities 1987-1988, First Annual Activity Report of the African Commission on Human and Peoples' Rights , ACHPR/RPT/1st, Annex VIII, 1988.
- Programme of Activities 1992-1996, Sixth Annual Activity Report of the African Commission on Human and Peoples' Rights 1992-1993, ACHPR/RPT/6th, Annex VII, 1992.
- Report on the African Committee of Experts on the Rights of the Child in Africa, 7th Ordinary Submit of the AU, Libya, 2005.

COUNCIL OF EUROPE

- Action plan, Third Summit of Heads of State and Government of the Council of Europe, Warsaw, 2005.
- Group of specialists on the legal status of NGOs (CJ-S-ONG), Strasbourg, 2006.

ORGANISATION OF AMERICAN STATES

- Background Information on Civil Society Participation in OAS Activities, prepared by the Office of Summits Follow-Up of the OAS at the request of the Chair of the Committee on Civil Society Participation in OAS Activities, Ambassador Partricio Riofrio, Permanent Representative of Ecuador to the OAS, OEA/Ser.G, CP/CSC-3/99, 26 August 1999.

2. SECONDARY SOURCES

2.1. BOOKS

- Evans, M and Murray, R (2002) *The African Charter on Human and Peoples' Rights: The Systems in Practice, 1986-2000*, Cambridge University Press.
- Heyns, CH (2004) *International Human Rights Law in Africa*, Vol 1, Martinus Nijhoff Publishers.
- Murray, R (2004) *Human Rights in Africa: From the OAU to the African Union*, Cambridge University Press.
- Nowak, M (2003) *Introduction to the International Human Rights Regime*, Martinus Nijhoff Publishers.
- Nmehielle, V (2001) *The African Human Rights System: Its laws, Practice and Institutions*, Martinus Nijhoff Publishers.
- Ouguerouz, F (2003) *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*; The Hague: Martinus Nijhoff Publishers.

2.2. ARTICLES

- Baimu, E *The African Union: Hope for better protection of human rights in Africa?* (2001) *African Human Rights Law Journal*, Vol 1, No 2.

- Dankwa, V *The Promotional Role of the African Commission on Human and Peoples' Rights*, in R Murray and M Evans (eds.) (2002) *The African Charter on Human and Peoples' Rights: The system in Practice, 1986-2000*, Cambridge University Press.
- Elsheikh, I *The future relationship between the African Court and the African Commission* (2002) *African Human Rights Law Journal*; Vol. 2. No. 2.
- Eno, RW *The jurisdiction of the African Court on Human and Peoples' Rights* (2002) *African Human Rights Law Journal*; Vol. 2. No. 2.
- Hopkins, K *The effect of an African Court on the domestic legal orders of African States* (2002) *African Human Rights Law Journal*; Vol. 2. No. 2.
- Lloyd, A *A theoretical analysis of the reality of children's rights in Africa: An introduction to the African Charter on the Rights and Welfare of the Child* (2002) *African Human Rights Law Journal*; Vol. 2. No. 1.
- Lloyd, A *The first meeting of the African Committee of Experts on the Rights and Welfare of the Child* (2002) *African Human Rights Law Journal*; Vol. 2. No. 2.
- Lloyd, A *The Report of the Second Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child* (2003) *African Human Rights Law Journal*; Vol. 3. No. 2.
- Lloyd, A *The Third Ordinary Session of the African Committee of Experts on the Rights and Welfare of the Child* (2004) *African Human Rights Law Journal*; Vol. 4. No. 1.
- Manby, B *The African Union, NEPAD and Human Rights: The Missing Agenda* (2004) The John Hopkins University Press.
- Motala, A *Non- Governmental Organisations in the African System* in Evans, M & Murray, R (eds) (2002) *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2000*, Cambridge University Press, Cambridge.
- Murray, R *A comparison between the African and European Court of Human Rights* (2002) *African Human Rights Law Journal*; Vol. 2. No. 2.

- Mutua, M. *The African Human Rights System: A Critical Evaluation*.
- Nmehielle, V *Towards an African Court of Human Rights: Structuring and the Court* (2000) Annual Survey of International and Comparative Law.
- Padilla, D *An African Human Rights Court: Reflections from the perspectives of the Inter-American System* (2002) African Human Rights Law Journal; Vol. 2. No. 2.
- Pityana, NB *Reflection on the African Court on Human and Peoples Rights* (2004) African Human Rights Law Journal; Vol. 4. No. 1.
- Sturman K. and Cilliers J. *ECOSOCC Bringing people's power to the African Union?* (2003) African Security Review Vol. 12 No. 1.
- Udombana, NJ *Between promise and performance: revisiting states' obligations under the African human rights Charter* (2004) Stanford Journal of International Law, Board of Trustees of the Leland Stanford Junior University.
- Viljoen, F *Introduction to the African Commission and the Regional Human Rights System* in CH Heyns (2004) International Human Rights Law in Africa, Vol I, Martinus Nijhoff Publishers, 2004.
- Wilder, T *Note on Standard Setting in the Inter-American System of Human Rights*, International Council on Human Rights Policy, 2005.

2.3. INTERNET SOURCES

- Activities of the Commissioner for Human Rights, Mandate, <http://www.coe.int/t/commissioner/default_EN.asp> (accessed on 9 October 2006).
- A Voice for Civil Society: <<http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.civil-society.oas.org>> (accessed on 21 September 2006).
- Agenda of the African Commission <<http://www.achpr.org>> (accessed on 13 October 2006).

- Information on Council of Europe <<http://www.coe.int>> (accessed on 13 September 2006).
- Information on European Court <<http://www.echr.coe.int>> (accessed on 13 September 2006).
- Information on Civil Society <http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Civil_society> (accessed on 15 September 2006).
- Information on Organisation of American States <<http://www.oas.org>> (accessed on 21 September 2006).
- Information on Inter-American Court <<http://www.corteidh.or.cr>> (accessed on 21 September 2006).
- Information on Inter-American Commission <<http://www.cidh.oas.org>> (accessed on 21 September 2006).
- Mutasa, C. *Is The African Union ECOSOCC A New Dawn and A New Deal?* (2005) <<http://www.pambazuka.org/en/category/aumonitor/27625>> (accessed 11 March 2006).
- Resolution on the Criteria for Granting and Enjoying observer status to Non-Governmental Organisations Working in the field of Human and Peoples' Rights with the African Commission 1999, <<http://www1.umn.edu/humanrts/index.html>> (accessed on 28 September 2006).
- Resolution on the Co-operation between The African Commission on Human and Peoples' Rights and Non-Governmental Organisations Having Observer Status with the Commission 1998, <<http://www1.umn.edu/humanrts/index.html>> (accessed on 28 September 2006).

- Rules of Procedure of the African Commission on Human and Peoples' Rights adopted on 6 October 1995. <<http://www1.umn.edu/humanrts/index.html>> (accessed 5 October 2006).
- The African Committee of Experts on the Rights and Welfare of the Child; <<http://www.africaninstitute.org/eng/afSystem/child/childcommittee.php>> (accessed on 16 March 2006).