

**THE ROLE OF HUMAN RIGHTS NON-GOVERNMENTAL ORGANISATIONS IN THE  
AFRICAN UNION AND THE NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT**

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

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'Across the world, NGOs, parliamentarians, the media, and the public at large alert the international community to imminent or unfolding human rights tragedies. In many cases, this watchdog capacity has proven the key to the mobilisation of opposition to the perpetrators of abuses and of support to their victims.

Our partnership with NGOs in the field is particularly important to the success of our work in support of human rights. The information and expertise of the specialised NGOs reinforce promotional and educational programmes and promote a culture of human rights as part of wider efforts to foster democratic and peaceful change in countries throughout the world.'

*(UN Secretary General Kofi A. Anan, Alfredsson et al (eds), International Human Rights Monitoring Mechanisms, 2001, 15)*

## DEDICATION

To my parents,

Great appreciation for your encouragement and support.

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## ABBREVIATIONS

AEC	African Economic Community
APRM	African Peer Review Mechanism
AU	African Union
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CHR	Commission on Human Rights
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council of the United Nations
ECOSOCC	Economic, Social and Cultural Council of the African Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ILO	International Labour Organisation
INGOs	International-Non-Governmental Organisations
NEPAD	New Partnership for Africa's Development
NGOs	Non- Governmental Organisations
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
PAP	The Pan-African Parliament
PRI	Penal Reform International
PSC	Peace and Security Council of the AU
UDHR	Universal Declaration of Human Rights
UN	United Nations

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# CHAPTER 1

## INTRODUCTION

### 1.1 INTRODUCTION

The beginning of the new millennium was marked with a considerable change in the field of human rights. The grounds for this change have been attributed to certain factors. The first factor has been the erosion of the concept of State sovereignty. In the context of human rights, this has meant that States can no longer stay behind the protection of domestic jurisdiction as they abuse the rights of their citizens.<sup>1</sup> Human rights are part of International Law. While only States are legally obliged to protect human rights, international institutions, (like the intergovernmental organisations) especially as they are largely comprised of States, also have obligations to protect human rights.<sup>2</sup> The second factor is the technological revolution in communications, which was coincided with other factors such as the end of the Cold War, in which Africa particularly lost the strategic value it had to the world superpowers and thus became increasingly marginalized both politically and economically.<sup>3</sup> In light of this, it has become apparent that African States cannot face the above marginalisation as single political entities. The solution sought is a politically and economically united Africa. In this regard, it has been recognised that economic and social development cannot be achieved without observance and protection of human rights. In light of all these developments, the African Union (AU) was established with the objectives of promotion and protection of human rights.

The Constitutive Act of the African Union (AU Act) recognises in article 4(c), as one of its principles: 'participation of the people in the activities of the Union'.<sup>4</sup> This principle could be implemented through, among others, the involvement of non-governmental organisations (NGOs) in the activities of the AU. This study submits that NGOs will play a meaningful role in ensuring the promotion and protection of human rights by the AU and its institutions. The New Partnership for Africa's Development (NEPAD) is an economic programme of the AU. The NEPAD document outlines among other things the promotion and protection of human rights

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<sup>1</sup> Lawson, E *Encyclopedia of Human Rights* (1996) xix .

<sup>2</sup> Mccorquodal, R 'Globalisation and Human Rights' (1999) 21 *Human Rights Quarterly* 740.

<sup>3</sup> Baimu, E 'The African Union: Hope for better protection of human rights in Africa?' (2001) 2 *African Human Rights Law Journal* 300.

<sup>4</sup> The Constitutive Act of the African Union was adopted on 11 July 2000 in Lomé, Togo.



as a necessary precondition for the success of NEPAD.<sup>5</sup> Therefore, a lot of NGO input is needed for the effective implementation of NEPAD's human rights objective as well.

The above submission has largely been inspired by the fact that, NGOs have participated in the process of shaping human rights at the universal and regional level. They contributed to the progress and efficiency of human rights systems.<sup>6</sup> The ways in which NGOs can play a role in the functioning of the AU needs to be emphasised. NGOs have provided crucial support in strengthening the work of the African Commission on Human and Peoples' Rights (the African Commission) and in improving its efficiency.<sup>7</sup> At the global level, NGOs have played a meaningful role in the functioning of the United Nations (UN) particularly within the context of its Economic and Social Council (ECOSOC) where some NGOs enjoy a consultative status.<sup>8</sup> Generally, in the human rights field, it has been the pressure of NGOs that has largely been responsible for the advancement of the international human rights system to its current state.<sup>9</sup>

Taking the above regional and global experience into consideration, one could comprehend the need for extension or a spill over of NGO participation in the African Commission and the UN to the main organs and institutions of the AU and NEPAD. The successful cooperation between the African Commission, the UN and NGOs could serve as a model for a future framework of interaction between NGOs and the AU for the purpose of promotion and protection of human rights in Africa.<sup>10</sup>

## 1.2 CONCEPTUAL FRAMEWORK AND PROBLEM OF DEFINITION

This study explores the feasible role of human rights NGOs within the AU and NEPAD. The key term used here is 'NGOs'. Other relevant terms like 'human rights defenders' and 'civil society' are also seldom used. Therefore, some emphasis is needed to establish the meanings and the link between these terms. In this regard, although many diverse types of bodies are described as NGOs, there is no generally accepted definition of NGOs.<sup>11</sup> The term 'NGO' is used in the context of international law, political science and human rights activism.

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<sup>5</sup> NEPAD base document, (October 2001) Para 51. The NEPAD document is available on the Internet at <[www.nepad.org](http://www.nepad.org)> (accessed 15/7/2003).

<sup>6</sup> Olz, M 'Non-Governmental Organisations in Regional Human Rights Systems' (1997) *Colombia Human Rights Law Review* 3.

<sup>7</sup> Motala, A 'Non- Governmental Organisations in the African System' in Evans, M & Murray, R (eds) *The African Charter on Human and Peoples' Rights- The System in Practice 1986-2000*, (2002) 246.

<sup>8</sup> Article 71 of the Charter of the United Nations.

<sup>9</sup> Lawson, E (n 1 above) xx.

<sup>10</sup> Olz, M (n 6 above) 24.

<sup>11</sup> Nowrot, K 'Legal Consequences of Globalisation: The Status of Non-Governmental Organisations under International Law' (1999) 6 *Indiana Journal of Global Legal Studies* 14.

Therefore, the definition of 'NGO' varies, depending on who is using the term and in what context. The UN Charter is the first document of international law that recognises and refers to NGOs. Article 71 of the UN Charter provides:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. Such arrangements may be made with international organisations and, where appropriate, with national organisations after consultation with the Member of the United Nations concerned.

The numerous definitions offered in scholarly literature, normally borrow from the interpretation of article 71 of the UN Charter that is contained in various resolutions of ECOSOC relating to the consultative relation between ECOSOC and NGOs.<sup>12</sup> However, NGOs played a part in the international and human rights affairs long before the UN Charter, as discussed in chapter four of this study.

It is generally recognised that NGOs are characterised negatively by the fact that they are not established by States. They are formed on the initiative of private, natural, or juridical persons based on a contract governed by domestic civil law.<sup>13</sup> These characteristics can be found in the definition offered by the Encyclopedia of Public International Law, which defines NGOs as follows:

Non-governmental organisations (NGOs) are private organisations (associations, federations, unions, institutions, groups) not established by a government or by an international agreement, which are capable of playing a role in international affairs by virtue of their activities, and whose members enjoy independent voting rights. The members of an NGO may be individuals (private citizens) or bodies corporate. Where the Organisations membership or activity is limited to a specific state, one speaks of a national NGO and where they go beyond, of an international NGO.<sup>14</sup>

The above definition covers NGOs generally. More classifiably, 'a human rights NGO is a private association whose *raison d'être* derives from the promotion and/or protection of one or more internationally recognized human rights'.<sup>15</sup> In dealing with NGOs one will definitely come across the term 'human rights defenders' which is defined by the Encyclopedia of Human Rights as follows:

Human rights NGOs are typically led by human rights activists or human rights defenders, that is, individuals who make a major commitment to, and openly take up, the defense and protection of human

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<sup>12</sup> For example, ECOSOC Resolution 1996/31 states as pre requirements for NGOs applying for consultative status with ECOSOC that, the NGO must not be part or supported by government and that any financial contribution or other support from the government has to be openly declared and fully recorded in the financial record of the of the NGO in question. (This is elaborated further in chapter four of this study).

<sup>13</sup> Nowrot, K (n 11 above).

<sup>14</sup> *Encyclopedia of Public International Law*, Vol 3 (1997) 612.

<sup>15</sup> Lawson, E (n 1 above) xxv.

rights of others. Human rights defenders need not, however, be formally associated with an organisation: They may be lawyers, journalists, writers, religious leaders, trade unionists, health workers, or teachers; frequently they are associated with broad-based 'peoples' organisation' of peasants, workers, slum dwellers, indigenous peoples, or women. They are individuals who champion the human rights of others, often at great risk to their own lives and safety.<sup>16</sup>

Human rights NGOs form a crucial part of civil society. They are integral to civil society.<sup>17</sup> To clarify the relation or the linkage between NGOs and civil society, it is therefore, necessary to define the term 'civil society' as well. There is no agreement as to the definition of civil society but obviously it has a broader meaning than that of NGO as shown below:

Civil society, consists just of what is not part of the state but also of all who may have become powerless or disenfranchised: not just villagers, fishermen, nomads, members of different age groups, village councillors or slum dwellers, but also professionals, politicians, priests, mullahs, intellectuals, and all others who are, or feel they are, without access to the state.<sup>18</sup>

From the above, NGOs comprise a diverse and dynamic sub-set of civil society, and there are common characteristics between civil society and NGOs that make the separation of the two institutions difficult.<sup>19</sup> However, there are certain requirements for NGOs: they must be founded by private individuals; be independent of States; be oriented towards the rule of law; pursue public rather than private interests as an objective; demonstrate a transactional scope of activities; and possess a minimal organisational structure.<sup>20</sup> These clarifications are significant for this study for the reason that the AU and NEPAD documents tend to use the term civil society, NGOs and in certain cases human rights defenders in their various documents, declarations and resolutions. Therefore, it is inevitable to use these terms in the context of this study, which is concerned with NGOs that are involved with human rights issues in accordance with the above clarifications.

### 1.3 METHODOLOGY

The research is based on primary sources, being the declarations and decisions of the African Union and Organisation of African Unity (OAU) and all the documents establishing the AU and NEPAD, and also on secondary sources, such as, publications, articles, books, international journals and other relevant materials. The research tools are mainly the Internet and the library.

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<sup>16</sup> Lawson, E ( as above).

<sup>17</sup> Bayefsky, A *The UN Human Rights Treaty System in the 21<sup>st</sup> Century* (2000) 44.

<sup>18</sup> Zafarullah, H 'Human Rights, Civil Society and Non governmental Organisations: The Nexus in Bangladesh' (2002) 24 *Human Rights Quarterly* 1015.

<sup>19</sup> Zafarullah, H (as above) 1017.

<sup>20</sup> Hobe,S 'Global Challenges to Statehood: The Increasing Important Role of Non-Governmental Organizations' (1997) 5 *Indiana Journal of Global Legal Studies* 195.

#### **1.4 THE OBJECTIVES AND SIGNIFICANCE OF THE STUDY**

This study is directed at NGOs that successfully contribute to the enhancement of the protection and promotion of human rights at the international and regional level. Despite this fact, the OAU provided no role for NGOs. Therefore, with the establishment of the AU, the study significantly elaborates on the role of NGOs provided for by the AU Act and the NEPAD document which provides for the participation of NGOs and civil society in their activities. In view of the fact that this cooperation is relatively at the stage of formation, the study investigates the AU Act and the NEPAD document relevant to the involvement of human rights NGOs. The improvement of protection of human rights in Africa in general needs collaboration between NGOs and the different organs of the AU as recommended by this study, taking into account the extensive experience of NGOs in the promotion and protection of human rights in the UN and the African Commission.

The objectives of this study are:

- a) To identify the involvement of NGOs in the AU and NEPAD by looking at the legal basis and human rights policies of the AU and its institutions.
- b) To examine the cooperation between NGOs and UN system on the one hand, and the African Commission on the other, and the possibility of extension or a spill-over of this NGOs participation to the main organs and institutions of the AU.
- c) To put forward recommendations geared towards effective participation and close cooperation between NGOs, the AU and NEPAD for enhancing promotion and protection of human rights in Africa.

#### **1.5 RESEARCH QUESTIONS**

The following questions are dealt with in this study:

- Through the legal documents establishing AU and NEPAD, is there any room for NGOs in the AU and NEPAD?
- What are the characteristics of the involvement of NGOs within the UN and the African Commission?
- What lessons can be drawn and recommended from the involvement of NGOs in the activities of other Inter-governmental organisations, particularly the UN and the African Commission?

#### **1.6 LITERATURE REVIEW**

The literature available in relation to this study can be divided into the following categories: books, articles and web sites dealing with the role of Human Rights NGOs in the promotion

and protection of human rights. Most publications examine the role of NGOs in the UN context, and in the framework of the African Commission, as evidenced by the works of Olz,<sup>21</sup> Clapham,<sup>22</sup> and Motala.<sup>23</sup> One of the writers who are concerned with the role of NGOs in Africa is Claude Welch.<sup>24</sup> He focuses on 4 countries in Western Sahara Africa and not Africa as a whole. The role of NGOs in the promotion and protection of human rights in Africa has been measured in his book as successful in the cooperation with the African Commission. None of those writers examined the importance of involvement of NGOs in the OAU (before the establishment of the AU) or even point out the need of that involvement for the purpose of extending the protection and promotion of human rights in Africa. An exception to the above could be Olz, who only mentioned in his conclusion that it is essential to extend the cooperation between NGOs and the African Commission to the main organs of the OAU/AU.

Upon the transformation of the OAU into the AU, the focus has been on the Constitutive Act of the AU, especially those articles relevant to the promotion and protection of human rights.<sup>25</sup> For example, there is an article written by Udombana, in which he looked at the AU Act and the state of human rights in Africa.<sup>26</sup> Another article was written by Baimu, in which he examined the human rights agenda of the AU.<sup>27</sup> In all these articles, no attention has been paid to the role of NGOs in the AU and NEPAD. This study will therefore contribute in filling this gap by addressing the potential role of human rights NGOs in the context of AU and NEPAD.

## 1.7 LIMITATIONS OF THE STUDY

The study is limited by the availability of data. The subject under consideration is relatively new. The AU was established less than two years ago and its predecessor, the OAU, provided no role for NGOs. As a result there is not much literature available. In any case, the institutional framework of the participation of NGOs in the AU, the ECOSOCC, is yet to be put in place. Therefore, the traditional response to the above research questions is to seek inspiration from the experience of already established organisations to inform or advise on the future cooperation between AU, NEPAD and NGOs.

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<sup>21</sup> Olz, M (n 6 above) 1997.

<sup>22</sup> Clapham, A 'Defining the Role of Non-Governmental Organisations with Regard to the UN Human Rights Treaty Bodies' in Bayefsky, A (ed) *The UN Human Rights Treaty System in the 21<sup>st</sup> Century* (2000).

<sup>23</sup> Motala, A (n 7 above) 2002.

<sup>24</sup> Welch, C *Protecting Human Rights in Africa: Strategies and Roles of Non-Governmental Organisations* (1995).

<sup>25</sup> Maluwa, T 'Reimagining African Unity: Some Preliminary Reflections on the Constitutive Act of the African Union' (2001) 9 *African Year Book of International Law*.

<sup>26</sup> Udombana, N 'Can the Leopold change its spot?' (2002) 17 *American University International Law Review* (2002) 1177.

<sup>27</sup> Baimu, E (n 3 above) 298.

## **1.8 OVERVIEW OF THE CHAPTERS**

In addition to this introductory chapter, the study continues along the following outlines: The second chapter examines the legal basis and institutional framework of the African Union relating to human rights and the possibility of cooperation between NGOs and the different organs of the AU and NEPAD. Chapter three addresses the mandate of the African Commission for protection and promotion of human rights in Africa with the view of investigating what lessons can be learnt from this cooperation. This chapter focuses on the extent to which NGOs have contributed to the enhancement of the work of the African Commission. Chapter four highlights the role of NGOs in the UN system regarding the protection and promotion of human rights, with the view of drawing some inspirations and making recommendations of this experience to the AU. Chapter five sums up the general conclusions made in the study and makes some recommendations.

## CHAPTER 2

### THE INVOLVEMENT OF NGOs IN THE AFRICAN UNION AND NEPAD

#### 2.1 INTRODUCTION

This chapter examines the possible cooperation of NGOs with the different organs of the AU and NEPAD. In order to clarify this cooperation, reference is made to the legal basis and institutional framework of the AU relating to human rights. The chapter starts with the OAU to show that there was a clear tendency on the part of the OAU in the late nineties to work closely with NGOs. The objectives of the AU came in line with this tendency. The chapter is divided into two parts: The first part examines human rights in the AU and the role of NGOs. The second part is on the human rights agenda in NEPAD and also how NGOs could relate and cooperate with this institution.

#### 2.2 HUMAN RIGHTS UNDER THE OAU AND THE ROLE OF NGOS

The protection of human rights was not one of the principal objectives of the OAU.<sup>1</sup> Instead the 1963 Charter of the OAU only made reference to the 1945 Charter of the United Nations and the 1948 Universal Declaration of Human Rights.<sup>2</sup> However, the reference in the OAU Charter to the Universal Declaration of Human Rights reinforced the resistance to the policies of colonialism and apartheid, If we accept that the struggle for dignity, equality and social justice lies at the heart of human rights, it follows that the struggle of a people to free themselves from colonial domination and all its forms is a human right struggle.<sup>3</sup> The OAU dealt with problems like the right to self-determination, the fight against apartheid and racial discrimination, economic development and the situation of refugees. In addition to that, the OAU has taken concrete measures to improve the protection of human rights through the adoption of various treaties.<sup>4</sup> Examples are: The adoption of the OAU Convention Governing the Specific Aspect of Refugee Problems in Africa 1969, the 1981 African Charter on Human and Peoples' Rights (the African Charter) and the 1990 African Charter on the Rights and Welfare of the Child.

The OAU has granted observer status to a few Africa-oriented international NGOs, among them, the Arab Organisation for Human Rights and Amnesty International which is a member

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<sup>1</sup> Naldi, G 'Future trends in human rights in Africa: the increased role of the OAU' in Evans & Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice 1986- 2000* (2002) 1.

<sup>2</sup> Article 2(1) (e) of the OAU Charter <[www.au2003.gov.mz](http://www.au2003.gov.mz)> (accessed 14/8/2003).

<sup>3</sup> Onyango, J 'Human Rights and Sustainable Development in Contemporary Africa: A new Dawn, or Retreating Horizons?'(2000) 6 *Buffalo Human Rights Law Review* 48.

<sup>4</sup> Naldi, G (n 1 above) 5.

of the OAU Bureau for Refugees, Displaced Persons and Humanitarian Affairs.<sup>5</sup> It was only in the late 1990s that the OAU started to realise that cooperation with NGOs would be of great value to the organisation in enhancing its work. In 1997, the OAU Secretary-General Salim Ahmed Salim had proposed the need for the OAU to collaborate with African civil society and NGOs to the Meeting of the Council of Ministers in Harare – Zimbabwe.<sup>6</sup> In line with this proposal came the first OAU Ministerial Conference on Human Rights in Africa, which was held in 1999, in which the Grand Bay (Mauritius) Declaration was adopted.<sup>7</sup> The Declaration is significant in a number of ways. It seeks to integrate human rights policies throughout the activities of the OAU. The Declaration recognises in its preamble ‘the contribution made by African non-governmental organisations to the promotion and protection of human rights in Africa’. The Declaration further calls upon:

All international organisations - governmental, intergovernmental and non governmental, to cooperate and harmonise their initiatives with the OAU and its relevant organs as well as the various sub-regional bodies within Africa for a more coordinated approach to the implementation of human rights in Africa and for maximum effect of such programmes and initiatives.<sup>8</sup>

The above Declaration recognised the importance of promoting an African civil society, particularly NGOs, rooted in the realities of the African continent and called on African governments to offer their constructive assistance with the aim of consolidating democracy and durable development.<sup>9</sup> This suggests that, by that time, the OAU had already recognised the role and importance of NGOs in ensuring human rights protection within the continent, with the clear intention to get them involved in the activities of the OAU and its organs.

### **2.3 TRANSFORMATION OF THE OAU INTO THE AU**

The African leaders realised that the continent would be stronger, and the collective voice of the African nations would also be more effective, if all Africans were involved in the establishment of a community of people. This holds out the promise of a role for NGOs and popular participation in the construction of the new continental organisation and in advancing Africa’s economic and political integration.<sup>10</sup>

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<sup>5</sup> Olz, M ‘Non-Governmental Organisations in Regional Human Rights Systems’ (1997) 28 *Colombia Human Rights Law Review* 212.

<sup>6</sup> Cilliers, J & Sturman, K ‘ECOSOCC: Bringing Peoples’ Power to the African Union?’ (2003) 12 *African Security Review* 74.

<sup>7</sup> OAU document, EAHG/Draft/ Decl. (IV) Rev, <www.iss.co.za> (accessed 20/8/2003).

<sup>8</sup> Para 18 of the Grand Bay Declaration.

<sup>9</sup> Para 17 of the Grand Bay Declaration.

<sup>10</sup> Maluwa, T ‘Reimagining African Unity: Some Preliminary Reflections on the Constitutive Act of the African Union’ (2001) 9 *African Year Book of International Law* 13.



During the fourth extraordinary summit of the OAU in Libya from 8 to 9 September 1999, the African leaders were convinced that the OAU 'needs to be revitalised in order to be able to play a more active role and continue to be relevant to the needs of African people and responsive to the demands of the prevailing circumstances'.<sup>11</sup> It can also be a response to the challenges posed by globalisation where the continent is suffering a great deal of marginalisation.<sup>12</sup> The Summit resulted in the adoption of the Sirte Declaration which called for the establishment of the African Union.<sup>13</sup> The AU is made up to be in conformity with the objectives of the Treaty establishing the African Economic Community (AEC), which is known as Abuja Treaty.<sup>14</sup> Accordingly, all the institutions provided for in the Abuja Treaty should also be established under the umbrella of the AU.<sup>15</sup>

The OAU legal unit drafted the AU Act. The draft of this Act was debated in a meeting of legal experts and parliamentarians and later, at a ministerial conference held in Tripoli from 31 May to June 2000. The OAU Assembly had requested the involvement of African parliamentarians in the elaboration of the AU Act.<sup>16</sup> The rationale for this decision was to ensure that the Union becomes more closely connected with the people since the people directly elect parliamentarians<sup>17</sup>. The AU Act was adopted in Lomé, Togo on 10 July 2000.<sup>18</sup>

## 2.4 HUMAN RIGHTS UNDER THE AU AND THE ROLE OF NGOS

The AU Act provides as a priority, protection and promotion of human rights both in its preamble and its substantive provisions. Article 3 and 4 of the AU Act deal with the objectives and principles on which the AU is founded and therefore, they constitute the most important provisions of the AU Act for the reason that, the objectives are generally used to interpret the rest of the provisions in a treaty.<sup>19</sup> Two of the objectives and principles, particularly incorporate the promotion and protection of human rights and participation of the people in the activities of

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<sup>11</sup> Para 6 Sirte Declaration.

<sup>12</sup> Maluwa, T (n 9 above).

<sup>13</sup> Sirte Declaration 1999, reprinted in (1999) 7 *African year book of international law* 411.

<sup>14</sup> Para 8 (I) Sirte Declaration.

<sup>15</sup> 1994 Abuja Treaty reprinted in (1991) 3 *African Journal of International and Comparative law* 792. Under article 7 of the treaty, the organs of the Treaty are: The Assembly of Heads of State and Government, Council of Ministers, the Pan African Parliament, the Economic and Social Commission, the Court of Justice, the General Secretariat and the Specialised Technical Committees.

<sup>16</sup> Para 8 (iii) Sirte Declaration.

<sup>17</sup> Baimu, E 'From the OAU to the AU: Taking stock of 40 Years of human rights protection in a regional institutional framework and charting the future'. An unpublished paper (2003) 6.

<sup>18</sup> Para 3 Decision on the Establishment of the African Union and the Pan African Parliament OAU Doc AHG/ Dec.143 (XXXVI). <[www.au2003.gov.mz](http://www.au2003.gov.mz)>(accessed 14/8/2003).

<sup>19</sup> Article 31(1) of the Vienna Convention on the Law of Treaties 1969.

the Union<sup>20</sup> In this sense the objectives of the AU go beyond the objectives and purposes of article II of the 1963 OAU Charter.<sup>21</sup> In this regard the AU Act adds, the promotion of peace, security and stability of the continent, the promotion of democratic principles and institutions, popular participation and good governance, the promotion and protection of human rights and peoples' rights in accordance with the African Charter and other relevant instruments.<sup>22</sup>

The AU principles, with its human rights component, relate to the participation of the African peoples in the activities of the Union; the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity; promotion of gender equality; respect for democratic principles, human rights, the rule of law and good governance; promotion of social justice to ensure balanced economic development; respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities; condemnation and rejection of unconstitutional changes of governments.<sup>23</sup>

There is clear trend towards making the new organisation more people-centred. The AU has the objective of promoting popular participation and operates on the basis of the principle of participation of the African peoples in the activities of the Union.<sup>24</sup> In line with this objective, the AU organised its first ministerial conference on human rights which ended up with the adoption of the Kigali Declaration.<sup>25</sup> The conference not only recognised the importance of NGOs, it called for their protection in the following statement:

[The Assembly] recognises the important role of civil society organisations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa, calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for CSOs to be independent and transparent.<sup>26</sup>

It is therefore apparent that the objectives of the AU embrace the protection and promotion of human rights. It is submitted that, these objectives cannot be realised effectively and come into life fully, without the involvement of NGOs and civil society in the activities of the AU.<sup>27</sup> In

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<sup>20</sup> Article 3 (h) and article 4 (c) of the AU Act, reprinted in (2000) 12 *African Journal of International and Comparative law* 629.

<sup>21</sup> The OAU Charter < [www.au2003.gov.mz/other\\_docs](http://www.au2003.gov.mz/other_docs)> (accessed 14/8/2003).

<sup>22</sup> Article 3 of the AU Act.

<sup>23</sup> Article 4 of the AU Act.

<sup>24</sup> Baimu, E (n 17 above).

<sup>25</sup> The 1<sup>st</sup> AU Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 in Kigali, Rwanda, adopted the Kigali Declaration.

<sup>26</sup> Para 28 of Kigali Declaration.

<sup>27</sup> The Declaration adopted by the meeting of African Parliaments on the Pan African Parliament, 30 June - 01 July 2003, Cape Town, South Africa, reaffirmed the same principle.

this regard, the implementation of a treaty or a convention aimed at protecting and promoting human rights has always been a challenge. The international experience in this respect, as explained in chapter four of this study, shows that the UN, which remains an inter-governmental organisation would not have been able to monitor the implementation of the various human rights treaties by member States without the involvement and expertise of NGOs. The practice of the African Commission presents another example in this regard as illustrated in chapter three of this study as well.

## **2.5 THE INVOLVEMENT OF NGOS WITHIN THE ORGANS OF THE AU**

The AU Act makes provisions for various organs of the AU, each with a different composition, power, sphere of operation, origin and voting procedure. They are, the Assembly of the Union, the Executive Council, the Pan- African Parliament, the Court of Justice, the Commission of the AU, the Permanent Representative Council, the Specialized Technical Committees, the Economic, Social and Cultural Council (ECOSOCC), and the Financial Institutions. This list of organs is not conclusive. Article 5(b) of the AU Act provides that the AU organs include other organs that the Assembly may decide to establish. As an example, a decision was taken to incorporate the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution as one of the organs of the AU, to become the Peace and Security Council (PSC) of the AU.<sup>28</sup> Initially, the Assembly of the AU failed to incorporate the African Commission and the African Committee of Experts on the Rights of the Child among the AU organs. Subsequently, in the Durban Summit in July 2002, the AU incorporated the two institutions in addition to the African Court on Human and Peoples Rights, which is yet to be established, into the AU framework. For the purpose of this chapter, and as far as NGOs are concerned, the examination will cover the Pan African Parliament, the Court of Justice, the Peace and Security Council and the ECOSOCC.

### **2.5.1 THE PAN-AFRICAN PARLIAMENT**

The Pan-African Parliament (PAP) is a political organ of the AU. Its objective is to ensure the full participation of African peoples in the development and economic integration of the continent and to be more involved in discussions and decision-making on the problems and challenges facing the continent. Article 17 of the AU Act establishes the PAP under the Protocol to the Treaty Establishing the African Economic Community relating to the Pan African Parliament (PAP Protocol), which is yet to come into force. The OAU Charter did not provide for PAP. It is one of the organs provided for under the Abuja Treaty.<sup>29</sup> The Sirte Declaration called for the speedy establishment of all the institutions provided for in the Abuja

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<sup>28</sup> The Protocol on the Establishment of the Peace and Security Council is adopted by the Assembly of the AU in its first ordinary session (9-10 July 2002) in Durban-South Africa.

<sup>29</sup> The PAP is one of the organs provided for under chapter III of the Abuja Treaty.

Treaty, such as the PAP.<sup>30</sup> The aim of the establishment of this Parliament is to provide a common platform for the African peoples and their grass-root organisations to be more involved in discussions and decision-making on the problems and challenges facing the continent.

According to article 11 of the PAP Protocol, the PAP is vested with the legislative power, which means that, it has the power to examine matters pertaining to the respect of human rights. The protection and promotion of human rights is among its objectives. One of the criticisms against the Protocol of the PAP is its failure to give a role to NGOs in the PAP, with the result that PAP will be made up of only politicians. The PAP Protocol could be broadened and amended to include clearly the participation of NGOs.<sup>31</sup> This cooperation could be achieved through establishing mechanisms for NGOs participation in the proceedings of the PAP on human rights issues.<sup>32</sup>

### **2.5.2 THE COURT OF JUSTICE**

The Court of Justice of the Union (the AU Court) is provided for under article 18 of the AU Act. It is the judicial counterpart of the political organs (like the Assembly) and the economic and social organs (like ECOSOCC) of the AU. The AU Court shall be seized with matters of interpretation arising from the application or implementation of the AU Act.<sup>33</sup> The composition and functions of the AU Court are defined by a separate protocol.<sup>34</sup> The Assembly of the AU in its second ordinary session has adopted the Protocol Establishing the Court of Justice.<sup>35</sup> The AU Court can play a significant role in the enforcement of human rights obligations, like its European counterpart. The European Court of justice has played a major role in the development of human rights in Europe.<sup>36</sup>

Article 18 of the Protocol of the AU Court, identified certain persons eligible to submit cases before the Court, including for instance, state parties to the Protocol, organs of the Union, the AU Commission, and third parties under conditions to be determined by the Assembly and with the consent of the state party concerned. The Protocol does not mention eligibility of NGOs to submit cases before the Court. However, the reference in the Protocol to 'third

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<sup>30</sup> Para 8(b) of Sirte Declaration.

<sup>31</sup> Udombana, N 'The Institutional Structure of the African Union: A legal analysis' (2002) 33 *California Western international Law Journal* 245.

<sup>32</sup> Report of the meeting of African Parliaments on 27 to 28 (2002) in Cape Town- South Africa.

<sup>33</sup> Article 26 of the AU Act.

<sup>34</sup> Article 18 (2) of the AU Act.

<sup>35</sup> Dec. EX / CL / 59 (III) Decision in the Draft Protocol of the Court of Justice of the African Union by the Assembly of the African Union in its second ordinary session in Maputo- Mozambique – 10 – 12 2003.

<sup>36</sup> Baimu. E, 'The African Union: Hope for better protection of human rights in Africa?' (2001) 2 *African Human Rights Law Journal* 313.

parties' could be interpreted to include NGOs but it can be subject to the limitations and approval of the Assembly.

### **2.5.3 THE ECONOMIC, SOCIAL AND CULTURAL COUNCIL**

The ECOSOCC is possibly the most important specialised organ in respect of all activities relating, directly or indirectly, to the intended establishment of the AU. This is one organ that will most likely provide for the participation of NGOs.<sup>37</sup> It is established as an advisory body composed of different social and professional groups of member States. Its functions, powers, composition and organisation will be determined by a separate protocol<sup>38</sup>. In this context, an expert meeting that was held in Addis Ababa during this year has laid Draft Statutes of the ECOSOCC.<sup>39</sup> The draft sets out the objectives of ECOSOCC, which involves the promotion of democratic principles and institutions, popular participation, good governance, human rights and freedoms, and social justice.<sup>40</sup>

In order to give ECOSOCC power, it can be linked to the reporting system of the Africa Commission. Generally, the African Commission submits reports directly to the Assembly of the AU. Requiring these reports to go through ECOSOC would open them to greater transparency and public scrutiny in the politically sensitive area of human rights violations.<sup>41</sup> ECOSOCC can benefit from the long experience of NGOs with the African Commission in considering state reports. Several meetings were held between NGOs, civil society and the AU aimed at shaping the future engagement of NGOs, the ECOSOC and other AU organs.<sup>42</sup> The AU ECOSOCC was based on the example of the UN Economic and Social Council.<sup>43</sup> It can therefore benefit from the UN ECOSOC relating to the role of NGOs. NGOs granted observer or consultative status with the UN ECOSOC play an important role in monitoring how the UN ECOSOC discharges its obligations of furthering the protection and promotion of

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<sup>37</sup> Udombana, N (n 31 above) 19.

<sup>38</sup> Article 22 of the AU Act.

<sup>39</sup> Exp/ Draft/ ECOSOCC Statutes/ Rev.2. Expert Meeting on Statutes of the ECOSOCC, 12 –14May 2003 Addis Ababa – Ethiopia.

<sup>40</sup> Article 3 (4) Statutes of ECOSOCC.

<sup>41</sup> Cilliers, J & Sturman, K (n 6 above) 77.

<sup>42</sup> For example, meetings of OAU with civil society in Addis Ababa: the 1<sup>st</sup> OAU- Conference was held between 11 – 15 June 2001. The subject was: Building partnership for promoting peace and development in Africa. At the 74<sup>th</sup> ordinary session of the OAU Council of Ministers, held in Lusaka, Zambia, in July 2001, a framework for co-operation between the OAU and NGOs and civil society was adopted, taking the decision to establish a desk within the General Secretariat. The 2<sup>nd</sup> AU-Civil Society conference was held between 11 – 14 June 2002, its subject was Developing Partnership between the OAU and the African civil society organisations.

<sup>43</sup> Report of the conference held on 24 - 26 November 2002, Pretoria, South Africa titled; NGOs engagement in African peer review relating to human security <[www.iss.co.za/Pubs/CReports/PeerReviewReport.html](http://www.iss.co.za/Pubs/CReports/PeerReviewReport.html)> (accessed 26/8/2003).

human rights.<sup>44</sup> UN consults with international, regional and national NGOs. These organisations are allowed to send observers to the high level session and submit written statement to ECOSOC.<sup>45</sup>

Other issues regarding the ways in which NGOs will be engaged with ECOSOCC and the criteria of granting observer status is yet to be determined. It is the NGOs themselves to take steps to shape their future engagements with the AU, and in so doing they can take into consideration other regional or international comparative models. The Statutes set out certain requirements for civil society to satisfy before granting them the membership to ECOSOCC. For instance, civil society must be a national or a transactional, or an African Diaspora, have aims and objectives that are in harmony with the aims and objectives of the AU, and other requirements as to registration and status of civil society.

#### **2.5.4 PEACE AND SECURITY COUNCIL**

The PSC has the objective to promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, respect for the sanctity of human life and international humanitarian law, all aimed at preventing conflicts.<sup>46</sup> The PSC will establish a relation with the African Commission, the PSC Protocol provides that the Council 'shall seek close co-operation' with the African Commission in all matters relevant to its mandate and objectives. The African Commission has to bring to the attention of the Council any cases of systematic violation of human rights. The information provided by the African Commission will constitute the basis of a recommendation by the PSC to the AU Assembly for humanitarian intervention. In this respect, the role of NGOs is of great value. In the past, NGOs had on several occasions brought to the attention of the African Commission the existence of systematic violations of human rights in different African regions. The African Commission was not able to take any action. An example here can obviously be the events that led to the genocide in Rwanda in 1994. Neither the African Commission nor the OAU were able to do any thing by that time. The PSC Protocol now gives a role to NGOs to participate in the activities of the PSC. This participation can take the form of informal consultation with the PSC. Article 20 of the PSC Protocol states, 'the Peace and Security Council shall encourage NGOs, Community based and civil organisations to participate in its activity'.

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<sup>44</sup> Kindiki, K 'The Normative and Constitutional Framework of the African Union Relating to the Protection of Human Rights and the Maintenance of International Peace and Security: A Critical Appraisal' (2003) 3 *African Human Rights Law Journal* 102.

<sup>45</sup> Cilliers, J & Sturman, K 'ECOSOCC bringing people's power to the African Union' (2003) 12 *African Security Review* 75.

<sup>46</sup> Articles 6 & 7 of the PSC Protocol.

## 2.6 NEPAD'S AGENDA FOR HUMAN RIGHTS AND THE ROLE OF NGOS

NEPAD is a project of the AU. It is a pledge by African leaders that they have a pressing duty to eradicate poverty and place their countries on a path of sustainable growth and development and also participate actively in the world economy. The programme is a new framework of interaction with the rest of the world. It is based on the agenda set by 'African peoples through their own initiatives'.<sup>47</sup> The objectives of NEPAD include among others, promotion and protection of democracy and human rights.<sup>48</sup>

NEPAD is pleading to the peoples of Africa to get involved in the process and implementation of NEPAD and it further emphasised the importance of civil society in the process of NEPAD by stating that NEPAD will only be successful if the African peoples get involved in its activities.<sup>49</sup> However, civil society has been critical to the establishment of NEPAD in a number of ways, including the fact that NEPAD is a top down project, came into existence without consulting or involving NGOs or civil society into the initial formation process and that its commitment to human rights and good governance is only for the purpose of attracting external support.<sup>50</sup> As a response to these criticisms, the NEPAD Secretariat organised a number of forums with civil society and NGOs. This subsequent interaction between NEPAD and civil society shows potential cooperation between the two in the future.<sup>51</sup>

It has now been widely accepted that respect for human rights does not harm economic development, but on the contrary, might promote and reinforce it.<sup>52</sup> It might therefore be necessary to the NEPAD partners to ensure that their initiative is rooted in human rights principles. However, some argue that NEPAD does not sufficiently address the indispensable indivisibility of all rights, including economic and social rights.<sup>53</sup> Consequently, one reason for the successful implementation and realisation of these objectives would be cooperation between NEPAD and NGOs. Despite the statement in NEPAD base document that, NEPAD will only be successful if it is owned by the people, many countries and peoples do not know about NEPAD and its projects.<sup>54</sup> In this context, civil society and NGOs can play a significant role in informing the African peoples about NEPAD and its role in protecting human rights,

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<sup>47</sup> NEPAD base document (October 2001) para 48, <[www.nepad.org](http://www.nepad.org)> (accessed 15/7/2003).

<sup>48</sup> Para 49 of the NEPAD base document.

<sup>49</sup> Para 51 of the NEPAD base document.

<sup>50</sup> African Civil Society Declaration on NEPAD, 8 July 2002.

<sup>51</sup> There have been four forums between civil society and NEPAD, two in Ghana, one in Senegal and one in Mozambique.

<sup>52</sup> International Federation for Human Rights 'NEPAD and human rights' (2002) <[www.fidh.org](http://www.fidh.org)> (accessed 15/8/2003).

<sup>53</sup> (As above).

<sup>54</sup> (As above).

making use of their cooperation with the African Commission regarding its promotion of human rights in Africa where NGOs play a crucial role in supporting and enhancing its promotional mandate. This engagement of NGOs can also be clarified by referring to the African Peer Review Mechanism, as elaborated on in the following section.

### **2.6.1 THE AFRICAN PEER REVIEW MECHANISM**

The African Peer Review Mechanism (APRM) has been described as the most innovative aspect of NEPAD.<sup>55</sup> The APRM is an instrument to which member States of the AU can voluntarily acceded. The APRM is an African self-monitoring mechanism.<sup>56</sup> The mandate of the APRM is to ensure that the policies and practices of participating States conform to the agreed political, economic and corporate governance codes contained in the Declaration on Democracy, Political, Economic and Corporate Governance.<sup>57</sup> The practice of peer review at the international level is conducted by several international organisations including UN bodies. In considering these international organisations, one can draw some inspirations for the APRM particularly the role-played by NGOs in the peer review process. One example is the experience of peer review that is found at the Organisation for Economic Co-operation and Development (OECD), where NGOs at some stage of the review are given the opportunity to influence the discussion by submitting papers and documents.<sup>58</sup>

There are five stages to the APRM process. These stages include, the country visits by peer review mission teams. Mission teams will consult and extensively interview relevant government officials, opposition parties and representatives of civil society groups and NGOs.<sup>59</sup> In this regard, NGOs can be encouraged to prepare alternative reports for the APRM using their experiences within the African Commission concerning state reporting mechanism.<sup>60</sup> In this respect, the African Commission was criticised for failing to make any recommendations at the end of the examination of state reports. However, the decision at the

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<sup>55</sup> Cilliers, J 'NEPAD's Peer Review Mechanism' Institute for Security Studies (2002)< [www.iss.co.za](http://www.iss.co.za)> (accessed 10 /7/ 2003).

<sup>56</sup> Document AHG/235 (XXXVIII) will be referred to as APRM base document. The APRM was approved in The 38<sup>th</sup> Ordinary Session of The Assembly of Heads of State and Government of the OAU - 8 July 2002 Durban South Africa.

<sup>57</sup> The Declaration on democracy, political, economic and corporate governance was approved by the African Union in the AU Summit in July 2002.<[www.iss.co.za](http://www.iss.co.za)> (accessed 14/8/2003)

<sup>58</sup> The United Nations Economic Commission for Africa, 'The African Peer Review Mechanism: Process and Procedures' (2002) 11 *African Security Review* 8 – 9.

<sup>59</sup> Para 18 of the APRM document.

<sup>60</sup> Under article 62 Of the African Charter on Human and Peoples' Rights, states are under obligations to submit report every two years on the legislative measures taken with a view to give effect to the rights, freedoms and duties recognised by the Charter.



African Commission's 29th Session to adopt concluding observations on four state reports which were examined, is commendable<sup>61</sup>

## **2.7 CONCLUDING REMARKS**

This chapter has dealt with the question of the involvement of NGOs in the AU and NEPAD. The aim was to find out if there is any space for NGOs in these institutions. The above examination has revealed that there is an apparent trend even before the transformation of the OAU into the AU to work closely with NGOs. After the adoption of the AU Act, this trend manifests itself in the objectives, principles and the various provisions of the AU Act, encouraging the participation of NGOs in the different organs of the AU. The question that remains is how to improve the future cooperation between AU institutions and NGOs especially with regard to the ways in which NGOs will relate to these institutions? The subsequent chapters will show the experiences of the African Commission and the UN's cooperation with NGOs in order to get some insights for the AU and NEPAD in working with NGOs.

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<sup>61</sup> Evans, M & Murray, R 'The Reporting Mechanism of the African Charter on Human and Peoples' Rights ' in Evans & Murray (eds) *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2000 (2002)* 56.

## CHAPTER 3

# THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS AND NGOS

### 3.1 INTRODUCTION

The aim of this chapter is to show the extent to which NGOs have contributed to enhance the mandate and jurisprudence of the African Commission through different ways of cooperation, both formal and informal. NGOs throughout their collaboration with the African Commission have participated extensively in the activities of the Commission regarding the protection of human rights by using the communication procedure where most of the complaints are submitted by NGOs or through the promotion of human rights by providing technical and in certain instances financial support. As starting point, this chapter also provides background to the involvement of NGOs in the adoption of the African Charter and the establishment of the African Commission.

### 3.2 THE ROLE OF NGOS IN THE ADOPTION OF THE AFRICAN CHARTER

The idea of having a regional system for the protection and promotion of human rights in Africa was first discussed in 1967 at a conference of jurists held in Dakar, which was organised by the *Association Senagalaise d'Etudes et de Recherches Juristiques* and the International Commission of Jurists (ICJ). The participants in this conference adopted the "Dakar Declaration" in which they requested the ICJ in cooperation with the component African organisations, to study the feasibility of creating a regional system for the protection of human rights in Africa and proposed that an African Commission, with consultative jurisdiction and the power to make recommendations, might be the first element in such a system.<sup>1</sup>

The Dakar Declaration was followed by conferences and seminars between the above-mentioned associations and other participants from the continent in cooperation with the UN Human Rights Commission. All of them discussed the importance of having an African instrument on human rights and an African Commission for the promotion and protection of human rights in Africa. It was only at Banjul in the Gambia from 9 to 15 June 1980 that the first Ministerial Conference was held to consider a draft Charter. The final text of the African Charter on Human and Peoples' Rights (African Charter) was adopted by the Assembly of Heads of State and Government in Nairobi-Kenya on 27 June 1981. It entered into force on 21

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<sup>1</sup> Ougergouz, F *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) 47- 48.

October 1986. There is no doubt that the African Charter is a fruit of consistent efforts, at an early stage, of a number of NGOs.

### **3.3 THE MANDATE OF THE AFRICAN COMMISSION**

The African Commission was established under Part II of the African Charter.<sup>2</sup> The mandate of the Commission covers, promotional activities such as conducting researches, organising seminars, conferences, as well as protection activities such as examining state reports on implementation measures submitted under article 62 of the African Charter and receiving communications of States and other individuals including NGOs, in addition to the interpretation of the provisions of the African Charter.<sup>3</sup>

### **3.4 NGOS AND THE AFRICAN COMMISSION**

The African human rights system does not restrict access to the African Commission to a particular type of organisation. It is open to contribution from local, national and international institutions as long as they are committed to the promotion and protection of human rights as laid down in the African Charter.<sup>4</sup> Despite this fact non-African INGOs often take the lead, like ICJ and Amnesty International. It is in view of this that, at the opening session of the Fourteenth Ordinary Session of the African Commission, the Secretary General recommended that 'the Commission shall draw on indigenous non-governmental human rights organisations and assist them in their respective countries'.<sup>5</sup> Due to the lack of resources, infrastructure and political freedom, the number of African human rights organisations has always been lower than in the western world.<sup>6</sup>

The African Commission's obligation to interact with NGOs' is provided for under Article 45, which deals with the mandate of the Commission, authorising the Commission to promote and protect human rights and in particular 'co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'. One of the reasons for the recognition of NGOs participation in the African system might be the fact that NGOs were strongly involved in the drafting process of the African Charter.

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<sup>2</sup> This part covers articles 30 – 63 of the African Charter.

<sup>3</sup> The mandate of the African Commission is provided for under article 45 of the African Charter.

<sup>4</sup> If we look at the African Charter and the Rules of Procedures of the African Commission, there is no restriction on NGOs' access to the African Commission.

<sup>5</sup> The Session was held in Addis Ababa from 1 – 10 December 1993.

<sup>6</sup> Olz, M 'Non- Governmental Organisations in Regional Human Rights Systems' (1997) 28 *Columbia Human Rights Law Review* 21.

In addition to that, the practice of other human rights systems clearly showed the benefit of NGO contribution.<sup>7</sup> On the other hand, the Commission made express provisions on the status of NGOs in its rules of procedure.<sup>8</sup> For example, article 74 of these Rules of Procedures provides that, 'representatives of Inter-Governmental Organisations to which the Organisation of African Unity has granted permanent observer status and other organisations recognised by the Commission, may participate, without voting rights, in the deliberations of the Commission on issues falling within the framework of the activities of these organisations'. NGOs have formal and informal relations with the Commission depending on whether or not the specific NGO obtained observer status within the Commission.

### **3.4.1 GRANTING OF OBSERVER STATUS TO NGOS**

Observer status is a position whereby a specific NGO enjoy certain rights and have certain responsibilities regarding the ways in which this NGO will relate to the African Commission. The granting of observer status is normally regulated by specific rules or criteria laying down the conditions and procedure of application. Initially, the African Commission started granting observer status to many NGOs without careful examination of the information provided by those NGOs, there was no stringent conditions for granting NGOs observer status. Many NGOs with observer status do not fulfil their obligation to cooperate with the Commission by submitting their annual activity report. In its report to the 27th Session on the status of the submission of NGOs' activity reports, the Secretariat presented a long list of NGOs that had failed to submit reports of their activities once every two years as required by the Commission.<sup>9</sup> This failure on the part of NGOs resulted in the Assembly of the OAU requesting the African Commission to review its criteria for granting observer status and to suspend further granting of observer status until the adoption of the new criteria. Subsequently, the Commission adopted the revised criteria without prior consultations with NGOs, despite a request from NGOs to do so.<sup>10</sup>

The new criteria for granting observer status within the Commission are divided into four chapters. The first chapter deals with the requirements and conditions of application, which include among others, proof of registration of the organisation, (which was not required before). The second chapter deals with the participation of the observers in the proceedings of

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<sup>7</sup> For example, the Inter-American and European Human Rights Systems clearly show that.

<sup>8</sup> Articles 74 and 75 of the amended Rules of Procedure of the African Commission on Human and Peoples' Rights adopted on 6 October 1995. <[www1.umn.edu/humanrts/index.html](http://www1.umn.edu/humanrts/index.html)> (accessed on 14/7/2003).

<sup>9</sup> The status of submission of NGOs Activity Reports (as at March 1999) according to the Twenty fifth ordinary Session, Bujumbura from 26 April – 5 May 1999 is that, among the 231 NGOs with observer status only 25 have submitted all their due reports.

<sup>10</sup> The African Commission on Human Peoples' Rights adopted the amended criteria in its 25<sup>th</sup> Ordinary Session, held in Bujumbura, Burundi, from 26 April - 5 May 1999.

the African Commission. NGOs can be invited to the opening or closing sessions of the Commission. Chapter three explains the relations between the African Commission and observers, where the observers must have a close cooperation with the Commission and shall present their activity report to the Commission every two years. Chapter four provides for sanctions against NGOs that do not fulfil their obligations including, exclusion from participation in the sessions, denial of documents and information, denial of the opportunity to propose items to be included on the agenda. The total number of NGOs granted observer status with the African Commission is three hundred (300) as at May 2003.<sup>11</sup>

### **3.4.2 FORMAL COOPERATION BETWEEN THE AFRICAN COMMISSION AND NGOS**

#### **3.4.2.1 PARTICIPATION OF NGOS IN THE SESSIONS OF THE AFRICAN COMMISSION**

The African Commission has a formal relation with NGOs. Once a specific NGO enjoys observer status, it will be entitled to participate in the public sessions of the Commission and the Commission can invite such NGOs for consultations.<sup>12</sup> NGOs with observer status are entitled to receive information on the time, location and agenda of the ordinary sessions of the Commission. NGOs can request the African Commission to include specific subjects on the agenda and can present oral statements at its meetings. For example, at the 26<sup>th</sup> Session in November 1999 in Rwanda, Amnesty International, Human Rights Watch, Interights and representatives of the Sierra Leone Bar Association, after suggesting certain items for the agenda of that meeting including the situation of human rights in Sierra Leone, those NGOs cooperated together to present information to the Commission on the serious human rights situation in Sierra Leone. In addition, NGOs often make suggestions to the African Commission on measures it could adopt to investigate the specific country's situation or violations.<sup>13</sup> The African Commission's Sessions presents a valuable opportunity for NGOs to exchange and share their information with the Commissioners, government representatives and other NGOs.<sup>14</sup>

#### **3.4.2.2 COMPLAINTS MECHANISM**

The complaints mechanism is one of the procedures used by the African Commission to monitor compliance by States to the African Charter. In accordance with this mechanism, States, individuals and NGOs are allowed to submit complaints to the African Commission

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<sup>11</sup> Sixteenth Annual Activity Report of the African Commission 2002 – 2003, Para 66.

<sup>12</sup> Rule 75, 76 of the Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted 6 October 1995.

<sup>13</sup> Motala, A 'Non – Governmental Organisations in the African System' in Evans & Murray (eds) *The African Charter on Human and Peoples' Rights: The system in practice, 1986- 2000* (2002) 254.

<sup>14</sup> Motala, A (as above) 255.

concerning violations of human rights. Various names are used for the complaints, like the term 'petition' which is used by the UN Special Committee Against Apartheid and the term 'communication' that is used by the UN ECOSOC and also by the African Commission. The African Charter does not expressly mention that communications can be submitted to the African Commission by NGOs. However, article 55 of the African Charter could be understood to include communications by NGOs. This can be seen from the practice of the African Commission which shows that the majority of cases have been submitted by NGOs on behalf of individuals or groups alleging violations of their rights under the African Charter. In some instances NGOs submitted cases in accordance with Article 58 of the African Charter, where there are a series of serious or massive violations of human rights; as an example to this, the communication filed by Lawyers Committee for Human Rights against Zaire/DRC. In this communication, the African Commission held Zaire/DRC responsible for serious and massive violations of the African Charter.<sup>15</sup> NGOs have made considerable contribution to the jurisprudence of the African Commission in relation to almost every substantive provision of the Charter.<sup>16</sup>

The practice of the African Commission to allow complainants to present their case orally during its private sessions has been welcomed by NGOs, as it has enabled them to present arguments, which can assist the Commission to reach a reasoned decision. This practice has enabled NGOs to present witness testimony to the African Commission and for Commissioners to raise questions directly with the victims of human rights violations. An important effect of the oral presentation of a case has been an increase in the number of governments willing to participate in the proceedings. The challenge for these decisions has been the non-compliance of State parties with the recommendations adopted on communications by the Commission. Despite this participation, many NGOs have been hesitant to communicate with the Commission. The reasons for this hesitancy are attributed to the lack of confidence in the mechanism, the lack of an enforcement mechanism and the failure of the OAU Assembly of Heads of State and Government, to which the African Commission reports, to do anything beyond the adoption of the Commission's report.

### **3.4.2.3 STATE REPORTING MECHANISM**

The reporting mechanism is common implementation machinery provided for in most human rights instruments, according to which State parties report on measures taken to secure respect for human rights enumerated in the provisions of the specific instrument. It has been stated that in order for a supervisory organ to examine reports effectively, it is necessary for

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<sup>15</sup> Communication 47/90, *Lawyer Committee for Human Rights /Zaire*. 17<sup>th</sup> Annual Activity Report of the African Commission 1993 – 1994.

<sup>16</sup> Motala, A (n 13 above) 257.

that organ to have independent information of a country's situation. In this regard, the role of NGOs is vital. Various treaty bodies have benefited from independent information supplied by NGOs which either verify or contradict information provided by States.<sup>17</sup> Under Article 62 of the African Charter, member States are under an obligation to submit periodic reports every two years to the African Commission on the legislative or other measures taken by them to give effect to the provisions of the African Charter. In practice only a small number of States have discharged their obligations by submitting their reports and sending representatives to respond to the African Commission's questions on their reports.

Taking into account the expertise and knowledge of human rights situation in the various State parties to the African Charter, NGOs have been a reliable source of information which the Commission can rely upon to verify some aspects of state reports. NGOs with observer status are allowed to prepare alternate or shadow reports about their countries and submit them to the African Commission.<sup>18</sup> For instance, during the Fourteenth Ordinary Session in 1993, when the first report of Ghana was examined, a representative of the Ghana Committee on Human and Peoples' Rights presented an alternate report which was more detailed and accurate than the report presented by the Government of Ghana.

However, NGOs have not made full use of their potential to exercise influence on the examination procedure. NGOs attending sessions of the Commission do not collect in advance the reports that are scheduled to be examined at a given session and they have not taken the opportunity to lobby members of the African Commission to influence human rights practice in a given country.<sup>19</sup> The process of state reports will improve if the NGOs fulfilled their role to supply information to the African Commission on a regular basis and took the initiative to prepare shadow reports.

#### **3.4.2.4 NGOS INVOLVEMENT WITH SPECIAL RAPORTEURS**

The Special Rapporteurs mechanism is another monitoring method used by international institutions such as the United Nations, for the purpose of studying or investigating the situation of human rights in a specific case or country. Like the United Nations and other regional human rights systems, the African Commission has appointed three Special Rapporteurs: one on extra judicial executions, one on prisons and other conditions of

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<sup>17</sup> As an example to this, the UN Committee Against Torture and the Committee on Economic, Social and Cultural Rights have formal rules to invite certain NGOs to submit written information having relevance to the work of the expert bodies.

<sup>18</sup> Guidelines for National Periodic Reports, adopted by the Commission in its Forth-Ordinary Session in Cairo- Egypt from 17 – 26 October 1986. Reprinted in (1993) 5 *African Journal of International and Comparative Law* 885.

<sup>19</sup> Ankumah, E *The African Commission on Human and Peoples' Rights; Practice and Procedures* (1996) 95

detention and one on women's rights. The decision to appoint these three Special Rapporteurs has come as a result of a combination of NGO lobbying.<sup>20</sup> The Special Rapporteur on extra judicial and summary executions was appointed upon the recommendation of Amnesty International which has requested the African Commission to investigate the killings in Rwanda and in other countries through the establishment of the mechanism of Special Rapporteur.<sup>21</sup> The African Commission considered this recommendation seriously and appointed a Special Rapporteur on extrajudicial, summary or arbitrary execution. NGOs, such as the Institute of Human Rights and Development, provided all sorts of support to the Special Rapporteur after his appointment.<sup>22</sup> However, NGOs claimed that this mechanism does not achieve much success, due to the lack of the political will on the part of the Special Rapporteur and the lack of adequate resources to carry out its functions efficiently.<sup>23</sup>

In 1995, the Penal Reform International (PRI) suggested the establishment of a mechanism to investigate prisons and conditions of detention in Africa. Subsequently, the African Commission appointed a Special Rapporteur on prisons and conditions of detention in Africa in 1996. PRI provided financial and administrative support to the Special Rapporteur. This support has in fact led to the success of the Special Rapporteurs on prisons in carrying out its mandate.<sup>24</sup>

On the other hand, as a result of recommendations made by the participants of the seminar on women's rights, which was organised by NGOs in cooperation with the African Commission in 1995, the African Commission appointed a Special Rapporteur on women's rights in 1998. The first report of the Special Rapporteur on women's rights reveals that some NGOs provided information and support to the mandate of the Special Rapporteur.

### **3.4.3 INFORMAL COOPERATION BETWEEN THE AFRICAN COMMISSION AND NGOS**

Since the first Plan of Action of the African Commission in 1988, it has been willing to engage in cooperative activities with NGOs. In order to maintain and strengthen its cooperation with NGOs, the African Commission in the Mauritius Plan of Action 1996 – 2001 reiterated its

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<sup>20</sup> Evans, M & Murray, R 'The Special Rapporteurs in the African System' in Evans & Murray (eds) *The African Charter on Human and Peoples' Rights: The System in Practice 1986 – 2000* (2002) 281.

<sup>21</sup> Amnesty International recommended the establishment of special Rapporteur as an urgent issue in order to investigate the mass killings that took place in Rwanda 1994.

<sup>22</sup> The Institute for Human Rights and Development is an NGO based in the Gambia.

<sup>23</sup> Motala, A (n 13 above) 269.

<sup>24</sup> Evans, M& Murray, R (n 20 above) 300.



willingness to cooperate with NGOs in the promotion and protection of human rights.<sup>25</sup> The most successful form of cooperation was a series of workshops organised by the ICJ, the African Center for Democracy and Human Rights Studies and the African Commission. These workshops have been held prior to annual sessions of the African Commission, with attendance of African and international NGOs, representatives of the African Commission, the UN, the OAU/AU and occasionally of members of governments of state parties to the African Charter. These meetings aimed at effective cooperation between the African Commission and NGOs.<sup>26</sup> The importance of these workshops is that they serve as fora for mutual exchange of ideas between the African Commission and NGOs which enriches the work of the Commission.

The African Commission and NGOs usually identify human rights issues which need further discussion in seminars and workshops. The African usually lack resources to organise such kind of seminars, therefore it encourages the participation of NGOs in organising such seminars. Occasionally, the outcome of these seminars is either, adoption of declarations by the Commission or Plan of Action to deal with specific human rights violation. The African Commission has relied noticeably on NGOs to support it in the elaboration of principles and standards that give content to the provisions of the African Charter. For instance, the African Commission considered a proposal by Amnesty International to define the right to a fair trial in Article 7 of the African Charter in accordance with other international standards such as those in the International Covenant on Civil and Political Rights. The Commission adopted the Resolution on the right to recourse and a fair trial that gave content to the right to a fair trial by recognising the right to be presumed innocent, the right to defence and the right to appeal to a higher tribunal as part of the right to a fair trial. The African Commission also adopted a resolution in which it decided to establish a working group that included NGO representatives to draft principles and guidelines on the right to a fair trial.<sup>27</sup> The draft principles were submitted to the African Commission in 2001. The African Commission adopted the Guidelines on the Right to Fair Trial and Legal Aid in Africa at its 33<sup>rd</sup> Ordinary Session.

In addition to the workshops, NGOs organise seminars in coordination with the African Commission before each session. For example, in 1995 a seminar was organised by the African Commission in collaboration with Women in Law and Development in Africa (WILDAF) before its 17<sup>th</sup> Session. The Seminar was on the African Charter on Human and Peoples' Rights and the rights of women in Africa. The participants recommended the drafting of a

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<sup>25</sup> The Plan of Action 1996 – 2001 carried the same objectives as the previous one of 1988. Reprinted in Murray, R & Evans, M (eds) *Documents of the African Commission on Human and Peoples' Rights*. (2001).

<sup>26</sup> Olz, M (n 6 above) 21.

<sup>27</sup> Resolution on the Right to Recourse Procedure and a Fair Trial. Fifth Annual Activity Report 1991 – 1992.

protocol on women's rights. The African Commission proposed to the OAU that a protocol on women's rights be drafted, the OAU in turn endorsed the proposal.<sup>28</sup> The draft was prepared and negotiated by several NGOs and Commissioners, and was then submitted to the OAU Secretariat.<sup>29</sup> The Protocol has now been adopted by the Assembly of the AU and will enter into force as soon as the required number of ratifications is submitted by member States.<sup>30</sup> This shows that NGOs are not only making recommendations to the African Commission, they are heavily engaged in the whole process of drafting and follow up until the adoption of the Protocol.

Other examples of informal cooperation with NGOs and the African Commission include the fact-finding missions concluded by the Commission or by a single Commissioner in accordance with Article 46 of the African Charter, which permit the Commission to resort to any method of investigation in fulfilling its mandate. This open authority has enabled the African Commission to undertake missions after receiving several complains from NGOs concerning a particular country. NGOs play an important role in assisting the African Commission with its preparations for its missions, whether investigative or promotional. Human rights organisations can arrange meetings with Commissioners and provide them with information and assistance in fulfilling their functions. This is especially important when countries visited by members of the Commission refuse to cooperate.<sup>31</sup>

International and regional NGOs always consider it necessary for the Commissioners to meet with credible local NGOs during the mission and therefore make an effort to provide the Secretariat with details of such NGOs.<sup>32</sup> In 2000, the NGOs convinced the African Commission of the need to investigate the serious human rights violations in Sierra Leone to seek information and engage in dialogue with the authorities.<sup>33</sup> NGOs provided the Commissioners who were delegated to undertake the mission with information about the human rights situations and suggestions regarding the conduct of the investigations.<sup>34</sup>

### **3.5 CHALLENGES OF NGOS' COOPERATION WITH THE AFRICAN COMMISSION**

It is important to note that not all NGO endeavours support the work of the African Commission and that certain actions by NGOs may have undermined the effectiveness of the

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<sup>28</sup> Motala, A (n 13 above) 266.

<sup>29</sup> Examples, ICJ, representatives of African NGOs and other independent experts.

<sup>30</sup> The Protocol was adopted by the Assembly of the AU in its second ordinary session held in Maputo – Mozambique from 10-12 July. Decision 19(II).

<sup>31</sup> Olz, M (no 6 above) 21.

<sup>32</sup> Motala, A (n 13 above) 263.

<sup>33</sup> Resolution on human rights situation in Africa, Thirteenth Annual Activity Report 1999 – 2000, Annex IV

<sup>34</sup> Motala, A (no 13 above) 264.

Commission.<sup>35</sup> Firstly, at the 16th Session in 1994, the African Commission adopted a resolution on Algeria submitted to it by the NGO workshop preceding the session. At the 17th Session in 1995, Algeria sent a representative to object to the resolution on grounds that the facts alleged were untrue. The Commission withdrew the resolution without debate, as it had no independent knowledge of the facts alleged in the resolution. It seems that the African Commission does not learn from its experiences because at the same session, it adopted other resolutions drafted by NGOs without consulting independent sources of information. Secondly, some NGOs have been very critical of the African Commission. Certain NGOs have been waiting for the African Commission to do any mistake to criticise, without aiming at or suggesting any ways of improving the work of the African Commission. This could negatively effect the cooperation between them. It is important that the criticisms are constructive rather than opportunistic. Therefore, criticisms of the weaknesses of the Commission must be substantive and well substantiated and aimed at improving the work of the African Commission.<sup>36</sup>

The second challenge is the limited participation of African NGOs. Participation of African NGOs has been very limited in comparison to International NGOs. For instance, of the 231 NGOs who have been granted observer status, only 119 are African NGOs. With regard to African NGOs, the African Commission intends to start consultations for the establishment of an exchange and communication network, thereby creating an appropriate mechanism for promotional and protective activities in Africa.<sup>37</sup> Due to the lack of resources, many NGOs are not able to coordinate with the African Commission or with other NGOs. Therefore, it has been suggested by the participants in a workshop organised by the ICJ, the African Commission and the African Center for Democracy and Human Rights Studies that, NGOs with observer status together with the African Commission should create a Coordinating Committee whose functions should include the establishment of a voluntary fund to assist African NGOs to maximize their contributions to the work of the African Commission.<sup>38</sup>

### **3.6 CONCLUDING REMARKS**

This chapter highlighted the role of NGOs within the African Commission. Without any doubt, the functioning and expertise of the Commission has been enhanced by its close cooperation with NGOs either through formal or informal cooperation depending on whether or not the NGO has observer status. This is significant, since it allows a large number of African NGOs

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<sup>35</sup> Ankumah, E (n 19 above) 188.

<sup>36</sup> Ankumah, E (as above) 190.

<sup>37</sup> The African Commission Plan of Action 1996 – 2001 (as n 25 above).

<sup>38</sup> African Legal Materials, Workshop on NGO Participation in the Work of the African Commission, held in Banjul, The Gambia from 5 -7 October 1991. Reprinted in (1993) 5 *African Journal of International and Comparative Law* 885.

regardless of their limited or lack of resources which might hamper them from cooperating formally with the African Commission. The relation between the Commission and NGOs is seen as a unique one. It has contributed to the improvement of the work and jurisprudence of the Commission in particular, and to the enhancement of the promotion and protection of human rights in Africa in general. In this regard, it could be said that there is a need to extend this relation to the AU and its organs, NGOs with their expertise from the long cooperation with the Commission can play an important role in shaping the future of human rights in Africa if they are given an opportunity to work closely with the AU and its organs.

## CHAPTER 4

# PARTICIPATION OF NGOS IN THE UNITED NATIONS HUMAN RIGHTS SYSTEM

### 4.1 INTRODUCTION

This chapter highlights the role of NGOs in the United Nations' (UN) system regarding the protection and promotion of human rights, with the view of drawing some lessons from its experience to the AU. The UN chain of authority for human rights runs from the General Assembly, the Economic and Social Council (ECOSOC), the UN Commission on human rights, up to the Sub Commission on the Protection and Promotion of Human Rights. NGOs have contributed to the drafting of the International Bill of Rights and are currently monitoring the implementation of the obligations contained thereof. This international organisation opens its doors to NGOs and calls for their protection, because it realises that their contributions are indispensable for the promotion and protection of human rights. The aim of this chapter is to show how NGOs play a role in inter-governmental organisations at the international level, and the possibility of copying the same by other intergovernmental organisations.

### 4.2 HUMAN RIGHTS UNDER THE UN AND THE ROLE OF NGOS

Human rights are one of the essential principles and purposes of the UN. Human rights are mentioned in different articles of the UN Charter, including its preamble.<sup>1</sup> The member States of the UN are under an obligation to promote universal respect for human rights.<sup>2</sup> There is no express obligation for States to protect human rights under the UN Charter. However, the UN Commission on Human Rights (CHR) was established to promote and protect human rights under the UN system.<sup>3</sup> The UN Commission on Human Rights drafted the Universal Declaration of Human Rights (UDHR), which was adopted by the General Assembly in 1948, the International Covenant on Civil and Political Rights 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR). These three international instruments together form the International Bill of Rights.<sup>4</sup> The UN has developed the standards

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<sup>1</sup> Articles 1(3) 8, 13, 55, 56, 62, 68 and 76 of the United Nations Charter. The Charter of the UN was signed on 26 June 1945 and came into force on 24 October 1945, reprinted in Melander, G et al (eds) *Raoul Wallenberg Compilation of Human Rights Instruments* (1997) 1.

<sup>2</sup> Article 56 of the UN Charter.

<sup>3</sup> The UN Commission on Human Rights was established by the UN ECOSOC in 1948.

<sup>4</sup> The General Assembly at its first session in 1946 (Resolution 43(1)) assigned the Commission on Human Rights the task of preparing an 'international bill of rights'. Now, the International Bill of Rights is regarded as consisting of the UDHR, the ICESCR and the ICCPR and its two Optional Protocols.

contained in the UDHR through a combination of declarations and treaties.<sup>5</sup> This means that human rights under the UN are promoted either by bodies which are directly established under the authority of the UN or bodies that are specifically created by UN human rights treaties, to which member States may become a party.

The achievements of human rights NGOs within the UN started even before the adoption of the UN Charter. Article 71 of the UN Charter has codified the custom of NGO participation in the League of Nations.<sup>6</sup> After the adoption of the UN Charter, for instance in the 1950s, thirty NGOs took part in the conference for NGOs interested in the eradication of prejudice and discrimination. In 1956, NGOs participated in the UN conference on the Supplementary Convention on the Abolition of Slavery. Representatives from NGOs like, Anti-Slavery Society and the Liaison Committee of Women's International Organisations made oral presentations at the Conference. Occasionally, the UN system has asked NGOs to take specific action. For example, in 1950, the UN Security Council adopted a resolution requesting INGOs to provide aid to refugees in Korea.<sup>7</sup> NGOs were also influential in drafting the two human rights covenants approved by the General Assembly in 1966. In the 1990s contribution of NGOs to the UN system is expanded to include, as mentioned above, regional and national NGOs.

From the above, it is clear that the involvement of NGOs within the UN is embedded in the system. The pattern of NGO access set by the UN has been copied to different degrees by the subsequent inter-governmental organisations with competence in the field of human rights, such as the Council of Europe and the OAU. In this regard, NGOs with observer status with the OAU were not able to make effective use of their status for the promotion and protection of human rights. One of the reasons might be the lack of human rights mandate within the OAU itself by that time before its transformation into the AU.

### **4.3 THE INVOLVEMENT OF NGOS IN THE CHARTER BASED BODIES**

The human rights work of intergovernmental organisations is important, but their willingness to address difficult issues and their success in carrying out monitoring activities is to a large extent

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<sup>5</sup> Examples of principal declarations are, Declaration on the Rights of the Child 1959, Declaration on the Elimination of All Forms of Racial Discrimination 1963 and Declaration on the Elimination of Discrimination Against Women. Examples of the principal treaties are Convention for the Prevention and Punishment of the Crime of Genocide 1948, Convention on the Elimination of All Forms of Racial Discrimination 1965, Convention on Elimination of All Forms of Discrimination Against Women 1979, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 and Convention on the Rights of the Child 1989.

<sup>6</sup> Charnovitz, S 'Two Centuries of Participation: NGOs and International Governance' (1997) 18 *Michigan Journal of International Law* 696.

<sup>7</sup> Charnovitz, S (as above) 712.

dependent upon contributions from NGOs.<sup>8</sup> NGOs submit much of the information available on human rights violations, provide technical assistance and training, promote human rights awareness and carry out monitoring activities of their own. This can be elaborated on by reference to some of the UN organs that are mandated to protect human rights, mainly the Charter based bodies, which comprise of the ECOSOC and the Commission on Human Rights (CHR) which have been tasked under the UN Charter with the implementation of human rights. Therefore, the discussion below will cover only the ECOSOC and the CHR regarding the participation of NGOs in their mandate.

#### **4.3.1 THE ECONOMIC AND SOCIAL COUNCIL (ECOSOC)**

The UN Charter established the ECOSOC as the principal organ to coordinate the economic, social, and related work of the United Nations and the specialised agencies and institutions (such as the ILO and UNESCO). It is responsible for the promotion and co-ordination of the UN human rights activities.<sup>9</sup> ECOSOC examines the CHR reports as well as reports on related questions from other functional commissions, like the Commission on the Status of Women, the Commission on Crime Prevention, and the Commission on Sustainable Development. ECOSOC is also responsible for awarding consultative status to NGOs. Article 71 of the UN Charter mandates ECOSOC to grant consultative status to NGOs which allows them to participate in, speak at and submit documents at a wide range of UN meetings, including many of the human rights gatherings.

In implementing article 71, ECOSOC adopted Resolution 1296 to regulate the granting of consultative and observer status to certain NGOs. Since 1968, rules and procedures concerning NGO consultative status with ECOSOC and its subsidiary bodies have been governed by the provisions of ECOSOC Resolution 1296 (XLIV).<sup>10</sup> This Resolution provided for the kinds of NGOs that could obtain consultative status, which by that time was only limited to international organisations.<sup>11</sup> National organisations had to present their views through INGOs.<sup>12</sup> It also stated the rights and obligations of NGOs with consultative status, procedures for the withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the UN Secretariat in supporting the consultative relationship.

NGOs have developed expertise, which in a number of areas, have become vital to the work of the UN, both at the policy and operational levels. National NGOs' emergence at the international

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<sup>8</sup> Alfredsson, G 'The United Nations and Human Rights' (1925) 25 *International Journal of Legal Information* 9.

<sup>9</sup> Article 62(2) of the UN Charter.

<sup>10</sup> ECOSOC Resolution 1296 (XLIV) < [www.un.org](http://www.un.org) > (accessed 12 /9/ 2003).

<sup>11</sup> Resolution 1296 (XLIV), Para 4, 7.

<sup>12</sup> Resolution 1296 (XLIV), Para 9.

level has enriched and added depth to the work of NGOs at the UN, while the emergence of NGOs based in developing countries, and their active participation in international meetings and conferences, has made NGO presence as a whole more representative of civil societies worldwide. In light of these and other developments, ECOSOC adopted Resolution (1996/31) updating the ECOSOC Resolution 1296. Under this amended Resolution, national, sub regional and regional NGOs including national affiliates of INGOs, are allowed to accede to consultative status.<sup>13</sup>

The new resolution in its preamble confirms the need to take into account the full diversity of NGOs at national, regional and international levels and acknowledges 'the breadth of expertise' of NGOs and their capacity to support the work of the UN. It also takes into account 'changes in the NGO sector, including the emergence of large numbers of national and regional organisations.' To be eligible for consultative status, an NGO must have an established headquarters, a democratically adopted constitution, authority to speak for its members, a representative structure, appropriate mechanisms of accountability and democratic and transparent decision-making processes. Organisations established by governments or intergovernmental agreements will not be considered as NGOs. The basic resources of the organisation shall be derived in the main part from contributions of the national affiliates or other components or from individual members.

Under the new Resolution 1996/31, NGOs are placed into three categories. Organisations in general consultative status (category I) are those concerned with most of the activities of ECOSOC. Organisations in special consultative status (category II) are those which have a special concern for only a few of the fields of activity covered by ECOSOC, and which are internationally known within those selected fields. Category III is comprised of other organisations, which have to be included in the so-called 'Roster'. There is a fundamental distinction between NGOs with consultative status and those on the ECOSOC roster. NGOs with consultative status have a political relationship with ECOSOC and therefore have rights and obligations, while NGOs on the roster can contribute only upon invitation. NGOs with general and special consultative status have the right, among other things, to designate authorised representatives to be present at public meetings, submit written statements, and make oral presentations. In addition, NGOs with general status have the right to propose items for the agenda of ECOSOC and its subsidiary bodies. These NGOs also have the right to address ECOSOC. NGOs with special consultative status can only address ECOSOC in the absence of a subsidiary body dealing with the same topic. No provision is made for NGOs on

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<sup>13</sup> Para 5 of Resolution 1996/31, < [www.un.org](http://www.un.org) > (accessed 12 /9/ 2003).



the roster to address ECOSOC. Through the Council Committee on NGOs, UN ECOSOC consults with 2379 registered NGOs with consultative status in the three different categories.<sup>14</sup>

#### 4.3.2 THE UN COMMISSION ON HUMAN RIGHTS (CHR)

The CHR was established by ECOSOC.<sup>15</sup> The CHR started considering human rights violations in 1960s, when the General Assembly in 1966 requested the Commission to give urgent attention to ways and means of improving the capacity of the UN to stop violations of human rights wherever they may occur. Accordingly, ECOSOC adopted Resolution 1235 (XLII) under which these violations could be examined. Subsequently, ECOSOC Resolution 1503 (XLVIII) was adopted which provided for a procedure of a confidential nature, in situations that reveal 'a consistent pattern of gross and reliably attested violations of human rights'. Under the same agenda of dealing with violations of human rights, the CHR established the mechanism of special rapporteurs. Throughout the years, the attendance in the CHR has increased, and the number of NGO delegations are growing, often composed of national defenders of human rights that come to lobby and testify before the Commission about violations of human rights that have been committed by the national authorities of their countries.<sup>16</sup> Despite the fact that it is open to any one to provide reliable information of gross and systematic violations of human rights, most information in practice comes from NGOs.<sup>17</sup>

The CHR requests NGOs to have consultative status with ECOSOC if they are to participate in its deliberations. The CHR began accepting comments by NGOs in 1964. In 1980s, NGOs were allowed to name country violators in their comments to the Commission.<sup>18</sup> NGOs with consultative status participate in the various governmental meetings of the CHR. In these meetings, NGOs are able to raise human rights issues, and where the focus is on a specific country, media are also involved in their mobilisation of shame.<sup>19</sup> NGOs play a vital role in the work of the Commission, and overtime many of them have become increasingly sophisticated in their approach. Amnesty International, ICJ, Human Rights Watch, women organisations, organisations representing indigenous peoples and organisations working to enhance respect for the rights of the child have been among the most successful.<sup>20</sup>

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<sup>14</sup> This statistic is as of August 2003, < [www.un.org/esa/coordinational/ngo/](http://www.un.org/esa/coordinational/ngo/) > (accessed 12 /9/2003).

<sup>15</sup> Article 68 of the UN Charter.

<sup>16</sup> Pennegard, A 'Overview over human rights, the regime of the UN' in Alfredsson, G et al (eds) *International Human Rights Monitoring Mechanisms* (2001) 65.

<sup>17</sup> Brett, R 'Role of NGOs: An Overview' in Alfredsson, G et al (eds) (as above) 853.

<sup>18</sup> Charnovitz, S (n 6 above) 711.

<sup>19</sup> Brett, R (n 17 above) 853.

<sup>20</sup> Pennegard, A (n 16 above) 65.

#### 4.4 PARTICIPATION OF NGOS IN THE UN TREATY BODIES

The principal human rights treaty-based bodies are: The Human Rights Committee, Committee on the Elimination of Racial Discrimination, Human Rights Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee Against Torture, and Committee on the Rights of the Child. In the treaties establishing the above committees, human rights obligations are undertaken by States, the method of monitoring is designed by States, and the casting and selection of the expert monitors is reserved for States.<sup>21</sup> The human rights treaties make few or no reference to the role of NGOs in their work. After the adoption of these treaties it was realised that a treaty monitoring system set up by States will be state-centred. Therefore, NGOs were needed to present independent opinion on the actual human rights situation in those countries, otherwise the examinations risk being seen as of inter-state diplomacy rather than examination by independent experts.<sup>22</sup>

These committees examine reports submitted pursuant to the treaties' requirements by parties thereto and are authorised to make general comments or recommendations. They themselves report to the General Assembly. Although theoretically independent of the UN's political organs, the committees (with the exception of the Economic and Social Rights Committee, which is established by and remains a subsidiary body of ECOSOC) depend on the UN for logistical support. The committees have different reporting procedures since their mandates are different.<sup>23</sup> The committees established under the ICCPR and CERD have authority to review petitions from citizens of States that have adhered to optional protocols allowing individual complaints.

##### 4.4.1 NGOS AND STATE REPORTING PROCEDURES

Member States to the treaty bodies are under an obligation to report on the situation of human rights in their respective countries every two years.<sup>24</sup> States rarely report honestly on the domestic human rights situation, even if they are fully aware of it. To enable serious consideration of the human rights situation, information from other sources is required to supplement, interpret or challenge a state report. Although members of the human rights treaty bodies are independent and experienced, they could never have expertise on every country in the world at the level of detail required to cover all relevant law and practice in relation to the

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<sup>21</sup> For the list of these treaties see n 5 above.

<sup>22</sup> Clapham, A 'Defining the Role of Non-Governmental Organisations with regard to the UN Human Rights Treaty Bodies' in Bayefsky, A (ed) *The UN Human Rights Treaty System in the 21<sup>st</sup> Century* (2000) 183.

<sup>23</sup> Roberts, A & Kingsbury, B *United Nations, Divided World: The UN's Role in the International Relations* (1993) 264.

<sup>24</sup> For example, article 9 of the (ICERD), article 18 of (CEDAW), article 19 of (CAT) and article 44 of (CRC).

specific treaty.<sup>25</sup> Despite the lack of formally defined roles between the treaty bodies and NGOs, human rights organisations have managed to develop a role within the treaty bodies regarding the States reports procedure.<sup>26</sup>

In 1992, the chairpersons of the human rights treaty bodies encouraged the involvement of NGOs by urging both the national and international NGOs to provide information on a systematic and timely basis.<sup>27</sup> The treaty bodies that allow participation of NGOs do not require them to have UN consultative status. The most effective way of approaching a treaty body is to submit to it systematic information such as, 'counter – reports', 'shadow reports' or 'alternative reports' as they have become known in the NGO terminology. These reports address the issues relevant to the treaty under consideration or react to the official report submitted by governments. They can be produced by INGO, individual national NGO or as joint efforts of several national NGOs. The interest of the non-state sector forces the government to make the report available to the domestic public and thereby expose it to scrutiny and debate.<sup>28</sup>

It is obvious that at the international level there is a tendency to focus on the role of NGOs in enhancing the process of state reports. In this respect, although INGOs have had the opportunity to develop their role within the treaty bodies and are able to contribute effectively to the system, national NGOs are nevertheless crucial in this process. The treaty bodies have encouraged governments to make their reports available to national NGOs for study and comments.<sup>29</sup> The reporting process could be used to define a new role for NGOs in relation to their governments at the national level; and at the international level, national human rights NGOs have started to use the reporting process to enhance international accountability for their governments' human rights records.<sup>30</sup> NGOs may publicise the examination of state report where this could lead to improvements in the human rights situations.

#### **4.4.2 THE COMPLAINTS PROCEDURE**

Most of the existing procedures do not allow NGOs to lodge complaints unless they themselves are claiming to be victims of the violation or are the authorised representatives of the victim, for example, the procedures in the First Optional Protocol to the International Covenant on Civil and Political Rights, Convention Against Torture and Convention on the Elimination of Racial Discrimination. In such circumstances, the role of NGOs could be in ensuring that potential victims know about the complaints procedures and how to access them unless they are

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<sup>25</sup> Brett, R (n 17 above) 849.

<sup>26</sup> Clapham, A (n 22 above) 185.

<sup>27</sup> Brett, R (n 17 above) 849.

<sup>28</sup> Dimitrijevic, V 'State Reports' in Alfredsson, G et al (eds) (n 16 above) 196.

<sup>29</sup> Clapham, A (n 22 above) 186.

<sup>30</sup> Clapham, A (n 22 above) 187.

specialise in assisting them.<sup>31</sup> The procedure within the UN as mentioned above is different from that of the African Human Rights System where NGOs are able to play a meaningful role through these complaints procedures as discussed in chapter 3. In terms of enforcement through the reporting and individual complaints, it can be realised that the African Commission has proven more accessible to human rights NGOs than have the UN treaty bodies.<sup>32</sup>

NGOs can play an important role in situations where the complaint is not based on the status of an individual victim or group of victims, but addresses systematic wide scale violations. NGOs can raise such issues directly to the relevant committee. For example, article 20 of the CAT, empowers the Committee Against Torture to investigate if it receives 'reliable information of torture' being systematically practiced by a state party to the Convention. The Committee can invite NGOs with consultative status with ECOSOC to submit to it information relevant to the committee's activities under the Convention Against Torture. Amnesty International has used the procedure under article 20, whereby it made submissions on Turkey, and has been joined by other NGOs in making submissions on Egypt. The procedure makes no reference to a continuing role for NGOs beyond the submission of their original complaints. Nevertheless, NGOs have followed these investigations very closely.<sup>33</sup> Both complaints led to investigation by the Committee and the results of the procedure were published in the annual reports of the Committee Against Torture to the General Assembly.<sup>34</sup>

With regard to the mentioned committees, NGOs are discouraged from becoming properly involved in the complaints procedures because, there is no provision for hearings before the committees, and the increasing amount of cases means that the time between the original submission and publication of the views of the relevant committee makes it impractical for many NGOs to use these procedures effectively. Therefore, they are unable to use the communications procedure to suggest ways in which the committees might develop their jurisprudence. Given these factors, it seems likely that NGOs will concentrate their efforts on cases in national courts and regional treaty bodies procedure, such as those established under the European Convention on Human Rights, the Inter-American Convention and the African Charter on Human and Peoples' Rights.<sup>35</sup>

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<sup>31</sup> Brett (n 17 above) 852.

<sup>32</sup> Welch, C *Protecting Human Rights in Africa: Strategies and Roles of Non-Governmental Organisations* (1995) 59.

<sup>33</sup> Clapham, A (n 22 above) 189.

<sup>34</sup> Report of the Committee Against Torture to the Forty-eighth Session of the General Assembly: Supplement No. 44 (A/48/44) United Nations New York (1993) and, Report of the Committee Against Torture to the Fifty-first Session of the General Assembly: Supplement No. 44 (A/51/44) (1996).

<sup>35</sup> Clapham, A (n 22 above) 188.

#### 4.5 PROTECTION OF HUMAN RIGHTS NGOS

NGOs around the world have always suffered different forms of repression perpetrated by state machineries and some times harassment by business and financial institutions, as a result of their human rights activities. For example, Asia-Pacific has records of disappearances, torture, illegal arrest and detention, extra-judicial killing and other forms of human rights violations forced upon people who work on human rights.<sup>36</sup> Many human rights defenders are being subject to human rights violations in many African countries. Tension certainly exists between African governments and NGOs. Governments try to control the activities of NGOs.<sup>37</sup> Some NGOs have been banned from functioning in their respective countries, like Tunisia.<sup>38</sup> In recognising these factors that restrict the effective promotion and protection of human rights on the one hand, and directly affect the rights of human rights defenders on the other, a working group of the UN CHR has prepared a declaration on the rights and responsibilities of human rights defenders which was adopted by the General Assembly on 9 December 1998.<sup>39</sup>

The above declaration was followed by the 'Paris Declaration', which was drafted during the Human Rights Defenders' Summit held in Paris on 10 December 1998, a day after the adoption of the above declaration. The Paris Declaration provides that:

We denounce in particular the fact that human rights defenders are a target of those regimes whose practices they condemn; and that, because of their commitment, they are among the victims of summary execution, enforced disappearances, torture, arbitrary detention, violations of the right to a fair trial, freedom of opinion, expression, association, assembly, demonstration, movement, the right to privacy, the right to employment and employment rights, the right to housing, health, education and culture and that they are increasingly forced to into exile or enforced displacement, or to live in inhuman or degrading conditions.

Some of the major provisions that support human rights defenders (NGOs) that can be drawn from the two documents are as follows:

- Working for human rights is a right and responsibility
- The state has the primary obligation to protect human rights defenders.

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<sup>36</sup> HURIGHTS OSAKA, 'Human Rights Defenders: Two documents <[www.hurights.or.jp/asia\\_pacific/index](http://www.hurights.or.jp/asia_pacific/index)> (accessed 20/9/2003).

<sup>37</sup> Welch, C (n 32 above) 47.

<sup>38</sup> Udombana, N 'Can the Leopold Change its Spots? The African Union Treaty and Human Rights' (2002) 17 *American University International Law Review* 1229.

<sup>39</sup> Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. (General Assembly Resolution 53/44).

- National and international mechanisms are needed to ensure protection of the rights of those who work in the field of human rights.

#### **4.6 CONCLUDING REMARKS**

It is clear from the discussion above that the role of NGOs in the enhancement of the promotion and protection of human rights cannot be overemphasised. This chapter shows that the importance of regional and national human rights NGOs is no less than the international NGOs. This is obvious from the amended ECOSOC Resolution (1996/31), stating that the role of regional and national NGOs is vital to the work of the UN. The examination of the role of NGOs within the UN treaty bodies reveals that although the UN treaty bodies are keen to cooperate and listen to the contribution of NGOs in their process, NGOs contributions nevertheless proved to be limited, especially if one explores the inputs of NGOs within the regional human rights system, particularly the African Commission. The AU, like its predecessor (the OAU), can reproduce the engagements of NGOs in the UN system through ECOSOC as recommended in chapter 5 of this study.

## CHAPTER 5

# CONCLUSION AND RECOMMENDATIONS

### 5.1 CONCLUSION

The establishment of the AU holds the promise of an economically and politically united Africa wherein human rights are respected. The protection and promotion of human rights are among the objectives and principles of the AU. The promotion and protection of human rights are also among the objectives of NEPAD. The hypothesis in this study is that, these objectives cannot fully be achieved without the involvement of human rights NGOs. This assumption is inspired by the fact that, the importance of human rights NGOs in monitoring the implementation of human rights at the international and regional level is now widely recognised.

The examination of the AU Act and the NEPAD document revealed that, the two institutions encourage the participation of NGOs in their activities. In this respect, the AU is in fact building a process started by the OAU. Although human rights were not among the objectives of the OAU, the late 1990s witnessed a significant shift in the agenda of the OAU regarding human rights and the role of NGOs in monitoring the implementation of human rights. This shift is justified by the fact that human rights hold an outstanding place in the international agenda. The role of NGOs, among other factors, has largely been responsible for the evolution of the international human rights system to its current status.

At the international level the practice of the UN regarding the involvement of NGOs in work of the organisation had started with a limited space for NGOs to participate in the activities of the UN. That space was only allocated for INGOs. Shortly after that, the UN realised that the role of NGOs is crucial for the work of the organisation regarding the protection and promotion of human rights. NGOs contributed to the improvement of the monitoring system in the UN. Consequently, the space was broadened to include regional and national NGOs. On the other hand, at the regional level, the achievements recorded by the African Commission in the promotion and protection of human rights is due to its cooperation with human rights NGOs. The relationship between the African Commission and NGOs has contributed to the improvement of the work and jurisprudence of the African Commission in particular, and to the enhancement of the promotion and protection of human rights in Africa in general.

Therefore, it is clear from the above that, the importance of NGOs in monitoring the implementation of human rights objectives and policies of the AU and NEPAD cannot be over elaborated. The regional and international practices present guidance for the AU and NEPAD

to reproduce NGOs' engagement for the purpose of enhancing the protection and promotion of human rights throughout the continent. To this end, the following recommendations are made:

## **5.2 RECOMMENDATIONS**

### **5.2.1 ADJUSTMENTS AND IMPROVEMENTS**

- The PAP Protocol does not refer to NGOs. The Protocol of PAP needs to be amended to include NGOs, and should provide a clear role for NGOs and the ways in which they will relate to the PAP. Provisions for human rights NGOs participation, consultation with the PAP should be added to the PAP Protocol.
- It is clear from the examination of ECOSOCC in chapter two that, in the ECOSOCC draft Statutes, reference is only made to civil society and there is no specific reference to participation of NGOs in particular. Therefore, the Statutes of ECOSOCC should be amended before their adoption by the AU General Assembly. ECOSOCC needs to identify a specific role for NGOs. NGOs should participate in the process of amending these statutes and in shaping their future engagement with the ECOSOCC.
- In granting observers status to NGOs, ECOSOCC should benefit from the experience of the African Commission and the UN ECOSOC. The criteria for granting observer status should be broad in order to allow wider participation of INGOs, regional and national NGOs. It recommended that, NGOs in the process of registration, and before getting the final observer status could also be given the opportunity to participate. The AU ECOSOCC can get some lessons from the UN ECOSOC where this category is allowed to participate in the system and it is known as the 'Roster' and from the African Commission in its informal cooperation with NGOs.
- It is recommended that an independent and partial committee should conduct the granting of observer status. The NGOs Committee of the UN ECOSOC can be an example in this regard. The fact that the method of monitoring, experts, rules and regulations are designed by the States or states representatives could represent a challenge for ECOSOCC in cooperating with NGOs. The reason is that, due to the tension between Governments and NGOs in general, Certain NGOs, particularly those engaged in the more sensitive areas such as advocacy to support anti-corruption and the advance of democracy and human rights could be marginalized by those regulations. This means closing their ability to obtain observer status to other AU organs that deal with human rights issues.



## **5.2.2 THE CHALLENGE OF RESOURCES AND THE PROTECTION OF HUMAN RIGHTS DEFENDERS**

- The AU should assist the indigenous and national human rights NGOs and in their respective countries and should work closely with them. These NGOs can be under threat from their governments regarding their activities in monitoring human rights. The international and regional experiences show that, these organisations are of great help in providing information concerning the specific situation of human rights at the grassroots level.
- The AU should increase the participation of African human rights NGOs, and take into account the constraints posed by limited resources in their participation and involvement in the activities of the AU. It is recommended that the AU should assist NGOs in allocating specific resources and facilitating their fund raising from international sources, like the European Union, to enhance their capacities and proficiency in promoting and protecting human rights in Africa.
- The AU should take into consideration the fact that most African governments are hostile to human rights NGOs. Members of NGOs are harassed and tortured by governments, as has been the case in different parts of the globe. The AU can respond to this in the same way as the UN by adopting a declaration aimed at protecting human rights activists and in this context, the AU can follow the trend initiated by the Grand Bay declaration which calls for the protection of human rights defenders. AU should consider the appointment of Special Rapporteur to investigate the situation of human rights defenders as well.

## **5.2.3 NEPAD AND ITS APRM**

- It is recommended that APRM should look at the practice of peer review mechanisms that are conducted by other organisations, like the OECD, and should give NGOs the opportunity to submit papers and documents and attend meetings. As discussed in chapter two, the APRM has five stages in conducting its Peer review, one of the stages is the sending of missions to the specific country. In this regard, APRM can benefit from the experience of NGOs, and therefore it would be advisable to consult with national NGOs regarding the situation of human rights in their respective countries.

## **5.2.4 MASSIVE VIOLATION OF HUMAN RIGHTS**

- Regarding massive and gross violations of human rights, the role of the African Commission in applying and enforcing article 58 of the African Charter has been a challenge since the final decision lies within the General Assembly of the OAU who failed to play any role in this respect. Now with the establishment of the PSC, the council will

handle the issue of massive violations of human rights in collaboration with the African Commission. To ensure more protection of human rights, the PSC is authorised even to intervene in certain cases. The role of NGOs in this respect is vital. Therefore, the PSC should open its doors to participation of NGOs at all levels INGOs, regional and national NGOs.

It is hoped that this study has contributed to shed the light on the curtail role that NGOs can play in monitoring the implementation of human rights in the AU and NEPAD for the purpose of enhancing the promotion and protection of human rights in Africa.

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