

REPORT ON THE CIVIL SOCIETY FORUM

**EFFECTIVE ENGAGEMENT WITH THE PAN-AFRICAN
PARLIAMENT**



South Africa
Midrand

8 August 2018



**Centre for
Human Rights**
UNIVERSITY OF PRETORIA



**UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA**

PAN-AFRICAN PARLIAMENT CIVIL SOCIETY FORUM

INTRODUCTION

On 8 August 2018, the Pan-African Parliament (PAP) and the Office University of Pretoria Centre for Human Rights (Centre) hosted a half-day dialogue to discuss effective citizen and civil society engagement with the PAP. Held on the sidelines of the August 2018 Committees Sittings of the PAP, in Midrand, South Africa, the Civil Society Forum, which targeted South Africa-based Civil Society organisations, was designed to start the discussions and lay the grounds for a larger forum, which will be held on the sidelines of the PAP October 2018 Ordinary Session, to be held in Kigali, Rwanda.

Participants in the validation workshop included representatives from the Pan-African Parliament and South Africa-based civil society organizations working with or interested to work with the Pan-African Parliament, including representatives of the Centre for Human Rights of the University of Pretoria. The list of participants is attached to this report as ANNEXURE 2.

The Civil Society Forum was aimed at fostering closer collaboration between and among CSOs and with the PAP for the purpose of advancing and promoting an effective realization of the Pan-African Parliament as a continental Parliament.

To that end, the meeting sought to achieve the following objectives:

- To sensitize civil society organisations on the workings of the Pan-African Parliament and encourage more programming on issues pertaining to the Pan-African Parliament
- To promote active and constructive citizen and civil society engagement with the Pan-African Parliament
- To enable sharing of best practices on effective civil society advocacy, lobbying and with AU institutions, in particular the Pan-African Parliament
- To identify gaps and challenges relating to civil society engagement with AU institutions, especially the Pan-African Parliament and devise common strategies for addressing them.
- To adopt a common approach for sustained civil society engagement with the Pan-African Parliament.



SESSION ONE

OPENING REMRKS

Mr Yusupha Jobe

Acting clerk
Pan-African Parliament



On behalf of the H.E. Hon. Julius Masele First Vice-President of the Pan-African Parliament, Mr Yusupha Jobe, Acting Clerk of the Pan-African Parliament Acting of PAP welcomed all the participants and apologized for the absence of the 1st vice president who was called to attend some other urgent issues. He begun by thanking the University of Pretoria, Center of Human Rights for the fruitful collaboration in convening this important event and acknowledged the presence of all representatives of civil society organizations that came to attend the meeting.

Mr Jobe emphasized the importance, reliance and timeliness of the theme on “Effective Citizen and Civil Society Engagement With the Pan-African Parliament”, which he situated within the mandate of the PAP as defined in Article 17 of the Constitutive Act of the African Union, as a body vested with mandate to ensure full participation of African People in the development and economic integration of the continent.

In particular, he highlighted that the PAP has meaning only when it ensures meaningful participation of the peoples of Africa in the AU policy and decision-making. He then highlighted the objectives of the PAP, which include among others, giving African peoples a voice, promoting human rights and democracy in Africa, the rule of law, accountability and other shared values, place the PAP at the core of the African Union social, political and economic agenda.

Those objectives, he said, cannot be achieved if the PAP, as a continental Parliament, does not make deliberate and concerted efforts to put into place mechanisms through which the views and aspirations of the peoples can be obtained and processed. He emphasized that PAP Rules of Procedure and consistent practice make some provision for citizen participation in the operations of the PAP. He further indicated that those mechanisms, which are aimed at taking the people to Parliament and taking Parliament to the people, were not however fully utilized. That was amongst the reasons why the PAP has resolved to hold Sessions in different regions of Africa and get a firsthand-experience of the realities and needs of the peoples.

Before ending his address, Mr Jobe stressed the importance of Civil Society Organisations to the work of PAP and expressed the wish to see PAP doing much more to strengthen its link with civil society. He also indicated that civil society organizations must also strive to build their legitimacy and engage more constructively with Parliament. He called upon civil society organizations to engage with the PAP more effectively and sustainably as a forum to ensure their cohesion and effectiveness. Such a forum could also provide support or assist the PAP in its campaigns, such as for the ratification, domestication and implementation of the AU legal instruments, particularly the new PAP Protocol. Mr Jobe highlighted some of the challenges facing the PAP and called civil society to contribute. These include limited resources, insufficient technical and research support, quick turn over of MPs, delays in the ratification of the new PAP Protocol. He then concluded by encouraging the forum to continue reach out to civil society beyond South Africa and wished successful deliberations to the participants.

SESSION ONE

OPENING REMRKS

Prof Magnus Killander

Academic Coordinator Human Rights and Deomocractisation
Centre of Human Rights, University of Pretoria



In his remarks, Prof Magnus Killander started by giving a brief overview on the Centre, its mission and objectives. Prof indicated that the Centres primary mission is to educate people on human rights.

Prof Magnus Killander welcomed the participants on behalf of the Centre for Human Rights and thanked PAP for this opportunity to engage on civil society participation in its activities. He highlighted the provision on civil society engagement in the new PAP Protocol that had been distributed to all the participants. Prof Killander highlighted that civil society engagement at the continental level is particularly important considering tightening civil society in many countries on the African continent. However, many AU organs are not sufficiently open to civil society engagement. AU observer status is only available for a minority of civil society organisations and it is clear that ECOSOC, the organ that is supposed to represent civil society organisations is insufficiently representative due to rules such as those related to the origin of funds.

More than 400 NGOs have observer status with the African Commission on Human and Peoples' Rights but the AU Executive Council now want to control which organisations have observer status as illustrated by the debacle over the observer status of the Coalition of African Lesbians which has been taken by the AU policy organs as a pretext to limit the independence of the Commission as the main human rights monitoring body on the continent. Of course this type of backlash which should also be seen in the context of the displeasure of some states with decisions of the Commission is not new as illustrated by the fate of the SADC Tribunal.

At the same time it must be recognised that the civil society forum before each session of the Commission, twice a year for almost 30 years, provides significant possibilities for civil society to engage with the Commission with the view of improving the situation for human rights on the continent. Similar forums have been established in connection with the sessions of the African Children's Rights Committee. The Centre for Human Rights would like to provide civil society organisations to be equally engaged with PAP and is planning a civil society forum in connection with PAP's session in Kigali in October.

The Centre has engaged with PAP on various issues over the years most recently in relation to the Recommendation on older persons and the Resolution on albinism. Of course resolutions are not an end in themselves. Follow up is needed both with PAP and nationally. The role of PAP members as national members of parliament is important in this regard. Other engagements that are possible include working on model laws and engage members of PAP to ask questions to members of the AU policy organs and the AU Commission. As with nationalparliaments, PAP has both a legislative (and at least policy making role in the absence of legislative powers) and oversight role.

Mme Lyn Chiwandamira, who chaired this opening Session thanked Mr Jobe and Prof. Magnus and reminded the participants of the purpose of the meeting. She indicated that the quest for meaningful engagement of CSOs with the PAP started as back as 2013, with several attempts being unsuccessful. She then expressed hope that this attempt will be a new departure for the PAP and civil society to engage effectively as contemplated by the current and the new PAP Protocol. campaigns, such as for the ratification, domestication and implementation of the AU legal instruments, particularly the new PAP Protocol. Mr Jobe highlighted some of the challenges facing the PAP and called civil society to contribute. These include limited resources, insufficient technical and research support, quick turn over of MPs, delays in the ratification of the new PAP Protocol. He then concluded by encouraging the forum to continue reach out to civil society beyond South Africa and wished successful deliberations to the participants.

SESSION TWO

CIVIL SOCIETY AND THE PAN-AFRICAN PARLIAMENT

Prof Michello Hansungule

Role of Civil Society in Africa, by
Centre of Human Rights, University of Pretoria



Prof Hansungule started the presentation with the love story of CSOs in Africa, initially it was a love-hate story between the CSOs and the OAU throughout the period of the existence of the OAU. The OAU Charter did not even make any provisions for CSOs. To illustrate this volatile relationship, the Prof recollected an incident that occurred during the AU Summit in Lusaka 2001, which involved seven heads of African states, whereby these heads of states walked into the committee room in which the meeting was to take place and found CSOs present, they then walked out of the meeting and accused the organisers of the meeting of exposing them to their enemies, indeed CSOs were considered enemies of African states, sometimes extending it politically to say they were enemies of the African people. The main reason for this view was the source of CSO funding, because all funding was purported to be from western countries and as such were seen as advancing interest of the funder and not those of the continent. Also during this period African states were extremely sensitive to criticism, any form of criticism from outside the state was considered as treason.

However, in 2000, when it was decided to convert and adopt the new structure of the AU, CSO involvement was allowed for the first time, even in the legislative process, which led to the Constitutive Act of the AU. The Political Affairs Department of the AU Commission for the first time was, for the first time, allowed to invite CSOs to be part and parcel of the drafters of the Constitutive Act of the AU.

In analysing the Constitutive Act there are fundamental changes from the OAU Charter, wherein in article 4 paragraph 3, 4 and 5 of the Constitutive Act there are references to human rights and the commitment of the AU to ensure implementation of human rights are guaranteed, which were considered taboo and not a subject of discussion certainly not amongst heads of states during the period of the OAU. Also, in the institutional structure of the AU, specific mention of ECOSOCC, which is a body comprising of members from various CSOs, was created, although this body is heavily criticized, technically we have an AU law which recognizes and therefore acknowledges CSOs at the highest level.

This raises several questions about the PAP and about several other AU organs because if CSOs are actually sitting at the highest levels permitted by the main law that created the AU it would therefore follow that it could be expected that CSOs have the same recognition and presence in the organs of the African Union including in this particular case the PAP so it would be a contradiction in terms for the PAP to not officially make provision for the existence of CSOs in its structures.

Therefore we need to look at the rules of procedure of the PAP with the aim to realigned and encapsulate the provisions of the Constitutive Act so that CSOs can actually sit as members of some of the key structures of the PAP, with full membership rights including voting rights because this is what is contemplated in the Constitutive Act, this is why we have ECCOSOC in the Constitutive Act. In other words there is a gap which he has noticed in the structure of the PAP.

He then proceeded to illustrate how CSOs have been universally acknowledged and recognized in global and regional international human rights law, as well as in national law. Explicit references which you can use to identify the recognition of CSOs can be found, at the global level, under article 20 of The Universal Declaration of Human Rights, as well as article 22 of the International Covenant on Civil and Political Rights. At the regional level, article 10 of the African Charter on Human and Peoples rights of 1981, article 8 of the African Youth Charter, article 8 on the Rights and Welfare of the Child and article 29 of the Maputo Protocol all guarantee the right to freedom of association.

He then discussed the new PAP Protocol, specifically paragraph 6 and 7 of the preamble as well as article 3 where clear references to CSO participation are made, which demonstrates that it was contemplated already when the Protocol was drafted that the PAP is not going to operate in isolation of grass-root organizations, grass-root organizations are supposed to have a space in the PAP in order to have a mechanism to relate the views of the people.

In conclusion the Prof emphasized that not only is there a general framework in place but also a specific framework (new PAP Protocol) in place which acknowledges the role of CSOs, we therefore need to discuss on how to operationalize these provisions.

SESSION TWO

THE MANDATE OF THE PAN-AFRICAN-PARLIAMENT AND ENTRY POINTS FOR CITIZEN AND CIVIL SOCIETY ENGAGEMENTS

Mr. Clement Mavungu
Legal Counsel of
Pan-African-Parliament



The Legal Counsel of PAP made a presentation on the entry points of citizen and CSOs for effective engagement with the PAP. He began by stating that indeed the relationship between CSOs and government and intra-governmental institutions is a sensitive one and generally there are problems in this relationship and this is mainly due to misunderstandings.

He then briefly went through the evolution of the PAP as an institution within the AU architecture in which he highlighted, the adoption of the Treaty Establishing the African Economic Community of 1991, where a continental parliament was identified as one of the pillars for African integration. In 2000 when the Constitutive Act of the AU was adopted a continental parliament was listed in article 17 as one of the organs of the African Union and on 2 March 2001, the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (PAP Protocol) was adopted in Sirte and entered into force on 14 December 2003, which enabled the inauguration of the PAP in March 2004. The PAP celebrated its ten years of existence in March 2014, a year which coincided with the adoption, in June 2014, in Malabo, of the Protocol to the Constitutive Act of the African Union relating to the PAP (New PAP Protocol), once in force, the Malabo Protocol will transform the PAP into a quasi-legislative body of the AU, however it has not yet come into force because the required ratifications have not yet been obtained.

As the PAP is currently still operating under the PAP Protocol, article 11 of the PAP Protocol and rules 4 and 5 of the rules of procedure of the PAP provides for the mandate of the PAP and this can be categorized into four powers, namely advisory power which is the authority to discuss, at its own initiative, and express opinion on, any matters relating to the AU, AU organs, RECs or any member state, secondly consultative power which is the authority to discuss and give advice on any matters, at the request of AU organs, RECs or any member state, thirdly oversight power which is the authority to oversee the development and implementation of AU instruments, policies and programmes, and lastly budgetary power which is the authority to

Structurally, the organs of the PAP are the Plenary, the Bureau and the eleven Permanent Committees. There are also five Regional Caucuses, three thematic Caucuses namely; the Youth Caucus, Women Caucus and the PAP Alliance on Food Security and Nutrition and the Secretariat that exists to support and advance the mandate of the PAP.

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Currently one of the activities that the PAP is pushing for is to have the New PAP Protocol be ratified because the new PAP Protocol is more explicit in many ways as far as the powers of the PAP are concerned and also on the engagement with civil society and other actors.

He then proceeded to discuss the opportunities that African citizens and CSOs to engage with the PAP under its current PAP Protocol, distinguishing the statutory from non-statutory opportunities.

STATUTORY OPPORTUNITIES AVAILABLE TO CIVIL SOCIETY ORGANISATIONS

- **Rule 35 which provides for the right to attend proceedings of the PAP, both the Plenary and Committee Meetings open to public. This can possibly lead to the realisation of the right to know, which leads to the right to information or access to information, and it may also lead to the realization of the values such as transparency and accountability.**
- **Rule 72 which provides for the right to address a petition states that any citizen of a member state and any natural or legal person residing or having its registered office in a member state shall have the right to address individually or in association with other citizens, a petition to parliament on the matter which comes within the fields of activity of the African Union or which affects him or her directly. This rule provides a golden opportunity for formal engagement with the PAP.**



NON STATUTORY OPPORTUNITIES AVAILABLE TO CIVIL SOCIETY



Trigger motions under rule 60, as it is possible for them to engage with parliamentarians and sensitise them on specific issues and get them to put questions in this regards to the other AU organs



Use their right to move a collaboration or partnership from example by implementing a joint programme or a project under an MOU or a framework agreement



Participate in a PAP public hearing or consultation



Address the Committees as an expert, at the invitation of the Committee or at the request of the expert



Support one or several activities of the PAP, this support can be technical and or financial, the Legal Officer took this opportunity to acknowledge the support that the PAP has been receiving under the collaboration with many CSOs particularly the Centre of Human Rights and many others that are present.

He then informed that in relation to model law, during the formulation process, it is required that public hearings or consultations be conducted to ensure that the views of the people are mainstreamed in the instruments that is being produced.

The above mentioned are invaluable opportunities that are not taken advantage of and meetings such as these are fundamental to deliberate fully on what the opportunities are and how they can be utilized effectively and this will go a long way in advancing the shared values of the continent.

The Legal Officer concluded by stating that that collaboration with CSOs will go a long way in ensuring that the new PAP Protocol will come into force, and that will lead to more added value by CSOs to the work of the PAP.



SESSION TWO

PLENARY DISCUSSION

ADMISSIBILITY TO PARTICIPATE IN PLENARY

Civil Society Organisations are welcome as observers to the Pan African Parliamentary Sessions to give goodwill speeches at the opening of Plenary and this is based on invitation by PAP. In this regard, CSOs may be able to push the envelope by closing the space through petitions to the PAP as is the case with the issue regarding the DRC and since petitions are critical the PAP and CSOs need to look at them critically as they can be restrictive.

PAP PROTOCOL AND THE RULES OF PROCEDURE

Rule 72(7) provides that decisions of the PAP that are made by the Bureau and CSOs must take cognisance of the fact that the PAP is a political body and not a court of justice. It was also noted that both the New Protocol and the Rules of Procedure need amending, however, opportunities must be taken to gradually amend these for purposes of transparency

PAP'S ENGAGEMENT WITH CIVIL SOCIETY ORGANISATIONS

It was agreed that avenues need to be identified for CSOs to effectively engage the PAP on an ongoing basis. In doing so, there is need to look at the aims and objectives identified in the Concept Note of the meeting as well as the gaps and lessons learnt to come up with recommendations and set milestones. In doing so, PAP should provide their Strategic Plan to the CSOs

ACTIVITIES OF CIVIL SOCIETY ORGANISATIONS

It was noted that overtime CSOs have dwindled as they do not think the PAP is relevant or they are unaware of its existence. CSOs agree to align their objectives with that of the PAP's for proper engagement for meaningful changes within the continent. This way, the PAP will be elevated thereby creating a win/ win situation for Africa as a whole.

An example could be seen through the AU's commitment to making this the year of Combating Corruption which was as a result of the PAP and CSOs act as matchmakers between the AU/ ABC and PAP thus forging a better relationship based on trust. A roadmap was developed and Member States are to implement some of the instruments and an agreement was reached to amend the AU/ABC which is a key achievement for best practices. Thus as a way forward, CSOs must continue to engage and raise awareness by indentifying three thematic areas and adopting a common approach.

Thematic Areas Identified for the way paving a way forward



Advocacy for the ratification of the New Protocol as CSOs will benefit from this by having their voices heard



Campaign to bring back our money and the issue of illicit financial flows through the Mbeki Panel Report and what the AU is doing in this regard

Track it!
STOP IT! Get it!®



Illicit Financial Flows



Look at a way forward on the issue of sustainability and the turn-over of Parliamentarians of the PAP and come up with a way forward

GOING FORWARD, THE PARTICIPANTS AGREED THAT:

1. CSOs should engage the PAP and be ready to break the door so that space can be made for them
2. CSOs should utilise the PAP as their partners by offering technical support to PAP. It is noted that most CSOs have not engaged with the PAP and where they have, it has been on a problem basis.
3. CSOs should engage the PAP on the sidelines at their Session to be held in Kigali in October to:
 - Look at problematic approaches and give them some consideration
 - Come up with broader systemic and strategic issues on the Malabo Protocol, and how CSOs can jump on the band wagon for its ratification and identifying their role in the ratification process.
 - Identify loopholes in the Rules of Procedure for discussion. The PAP will arrange for the Rules of Procedure to be made available to the CSOs for their participation in the amendment process. A manual for model law making is in the process of being finalised and it is hoped to be before the Rules committee by October or March next year and civil society will have to be proactive and come up with areas that need improvement.
 - On the illicit financial flows, the PAP is interested in it and they are working with ATTA for resource mobilisation. The PAP has also engaged with the Mo Ibrahim Foundation to fund it and are presently involved with four organisations including the Centre for Human Rights and are looking to engage more partners to kick start it in Rwanda as this is the year of Combating Corruption, thus CSOs are invited to collaborate as the Concept Note is in the process of being finalised. The expected outcome is to come up

Mr. J Grey Johnson will provide the Bolaji Report to participants and it is anticipated that the PAP can come up with a Model Law on the issue of illicit financial flows and assets recovery in Africa.

The participants also recommended that :

1. The PAP should share its strategic plan to the participants to enable them identify areas for possible engagement and support;
2. The PAP should develop and share a strategy paper on the Malabo Protocol, to enable CSOs to better strategise on supporting its ratification by the AU Member States;
3. The PAP should provide an opportunity for CSO consultation in the process of amendment of its Rules of Procedure and other subsequent steps;
4. The PAP should send out invitations to the CSOs for participation in the CSOs Forum, at own cost, in the October Session, to be held in Kigali, Rwanda from 18 October – 4 November
5. Meeting to be held in December 2018 between PAP and CSOs to finalise on issues and to agree on quarterly meetings through brown bag luncheons.



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