

## MAKING ECOSOCC WORK: PRESENT CHALLENGES AND FUTURE PROSPECTS

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### ABSTRACT

*It is now widely acknowledged that the civil society is an important feature in a democratic set-up. It makes democracy broad-based and participatory by connecting the citizens' voice with the state's decisional institutions and processes, thereby broadening the social power relations in a state and making the latter to be responsive in its policies to pressing issues of the day. For some long time, Africa has not had a comprehensively coordinated institution providing a platform for CSO participation in continental governance and development. With the advent of the AU in 2002, ECOSOCC was established as one of its statutory organs, with the aim of providing a stage for CSO participation in the workings of the AU. This paper argues that although ECOSOCC has a potential to contribute significantly in the democratisation process of the continent, the pervasive African political culture of shunning CSOs and excluding them from participation in the affairs of the AU and its respective member states will work to undermine its utility. The article argues that there must be a change in political culture on the continent to make ECOSOCC work.*

### 1. Introduction

When former President Thabo Mbeki ascended to the presidency of South Africa in 1999 he made the reformation of the Organisation of African Unity (OAU), which was being referred to as a 'dictators club' in the international media his top priority in his international agenda.<sup>1</sup> His dream was to replace the OAU with a more broad-based, responsive, participatory and

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<sup>1</sup>Thomas Kwasitiekue explaining the clash and accommodation of interests of major actors in the creation of the African union (2004) 103 African Affairs 255.

credible organisation with the capacity to implement democratic reforms and the developmental agenda of the continent.<sup>2</sup> In Mbeki's view, it was imperative to reform the OAU 'so that in its work, it focuses on the strategic objective of the realisation of the African Renaissance'.<sup>3</sup> With Mbeki as its chief midwife, on July 2002, in Durban, South Africa, the successor of the OAU, namely the African Union (AU) was born. Its main objective was to transform and integrate the African continent. The aims and aspirations of the new Union were informed in part by the clarion call from the civil society demanding for greater space of democracy, respect for human rights and the rule of law. Thus pressure was brought to bear on African leaders to establish a Union that was people driven and people centred.

It was also recognised that for the Union to deliver on its lofty aspirations, it was important for it to put to use its rich and diverse 'human and institutional resources at grass roots level'.<sup>4</sup> It was thus imperative to institutionalise the relationship between the various African governments and the segments of society within the respective African states. Thus, through articles 5 and 22 of the Constitutive Act of the African Union<sup>5</sup> the Economic, Social and Cultural Council (ECOSOCC) was established. ECOSOCC provides a platform which the civil society could use to organise themselves and contribute to the workings of the Union. It provides a bridge through which African governments connect with the masses of the people on the ground for the AU to become truly people owed, people-centred and people driven. Presiding over the launch of the First Permanent General Assembly – Dar es Salaam, September 09th 2008, Tanzanian President and then Chairperson of the AU, President Jakaya Mrisho Kikwete, noted in his keynote address that: 'with the establishment of ECOSOCC we are creating a people-oriented, people-centered and people-driven community in the African Union in which all stakeholders are effectively represented'.<sup>6</sup> He added:

'this event today has its uniqueness and significance in the annals of international organizations. This is the first time that an institution such as the African Union that began as an intergovernmental organization is incorporating non-state actors as full partners in the policy making process. In following this path, the African Union has gone beyond the mere processes of consultation that other institutions

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<sup>2</sup> Ibid.

<sup>3</sup> Thabo Mbeki, 'Speech delivered on 11 October 1999 at the launch of the African Renaissance Institute' (Pretoria, 1999), available at: <http://www.polity.org.za/html/govdocs/speeches/1999/>, accessed on 20 May 2013.

<sup>4</sup> See <http://au.int/en/organs/ecosocc>

<sup>5</sup> Accepted in Lome, Togo in July 2000 and entered into force in May 2001.

<sup>6</sup> <http://au.int/en/organs/ecosocc>.

still adhere to. Africa therefore, has given the values of democratization and inclusiveness, a more holistic and enduring meaning and significance.’<sup>7</sup>

This article argues that if properly implemented, ECOSOCC could be an influential forum where views of the diverse membership of the African civil society could be collected and filtered into the decision making processes of the AU. In this way, ECOSOCC has the potential to make a reality the AU’s vision of establishing ‘people-friendly African Union Community based on popular participation and association with all segments of society, particularly women, youth and the private sector, in order to strengthen solidarity and cohesion among our people’ as solemnly proclaimed by the AU’s Constitutive Act.<sup>8</sup> The central claim of this paper is that Africa needs a change its political culture to make ECOSOCC work. This is to say, it needs to inculcate a political culture that embraces CSO as partners in democracy and development. There is need to grow new attitudes and perceptions in terms of which African states will not view CSO as enemies or competitors but as useful partners for democratic reform and development in the continent. As shall be shown in the article, presently, CSOs are denied space for operation both within the AU itself and within the territories of individual AU member states. This political culture of intolerance to CSO bodes ill with all known precepts of democratic governance and will work to undermine development on the continent.

## **2. PRECEDENTS TO ECOSOCC**

Popular participation within Africa at supra-national did not begin with the advent of ECOSOCC. Many years before the conception of ECOSOCC, ‘popular participation’ had become a catch-word within OAU circles. Sturman and Cilliers argue that the conception of popular participation on the African continent gained currency in the early 1990s after the cold war as a direct response to the wave of democratisation that was sweeping across the continent at that time.<sup>9</sup> Reacting to the political waves of political reform of that age, in 1990 African leaders adopted the African Charter for Popular Participation in Development and Transformation in Arusha, Tanzania.<sup>10</sup> In that same year, they also adopted the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes taking

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<sup>7</sup> Ibid.

<sup>8</sup> Para 7 of the AU Constitutive Act

<sup>9</sup> 72.

<sup>10</sup> AHG/Dec. 1 (XXVI).

place in the World.<sup>11</sup> This added impetus for enhanced integration into an African Economic Community (AEC) which was adopted in 1991. The AEC Treaty came into force in 1994 and proclaims that the AEC shall:

establish relations of co-operation with African non-governmental organisations ... [and] with socioeconomic organisations and associations including mainly, producers, transport operators, workers, employers, youth, women, artisans and other professional organisations and associations ...<sup>12</sup>

At the Lusaka Summit of 2001, during inauguration of the AU, it was resolved that:

in view of the establishment of the Economic, Social and Cultural Council in the Constitutive Act of the African Union, as well as of the Specialised Technical Committees that report to the Executive Council of the African Union, the ECOSOCC provided for in the Abuja Treaty will cease to exist at the end of the transition period.<sup>13</sup>

It must be noted in passing that the Commission of the Abuja Treaty is completely different from ECOSOCC established under the auspices of the AU. Under the Abuja Treaty, Commission was operating at political leadership level. It was thus comprised of ministers responsible for economic development planning and integration of each state and participation of representatives of RECs.<sup>14</sup> Sturman and Cilliers correctly observe that the intended goal was 'high-level economic and social policy co-ordination rather than civil society participation'.<sup>15</sup> In instances that the 'Abuja Treaty ECOSOCC' met between 1996 and 1999, it helped set the stage for the preparation of the framework for Protocol on Relations between the AEC and RECs and also came up with recommendations on international trade negotiations with institutions such as European Union, (EU), the World Trade Organisation and the ACP-EU Convention.<sup>16</sup> Although CSOs were originally excluded from participating in the workings of the Commission, the Abuja Treaty paid lip-service for the need by the AEC to establish mechanisms of collaboration or interactions between the AEC and NGOs and socio-economic organisations.<sup>17</sup> This initiative was reflected in the so called Kampala process of the early 1990s that conceived the package of guidelines for the

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<sup>11</sup> AHG/Dec. 1 (XXVI).

<sup>12</sup> The Abuja Treaty still remains in force save in instances where it contradicts the Constitutive Act of the AU.

<sup>13</sup> AHG/Dec. 1 (XXXVII), par 7(b).

<sup>14</sup> Cilliers 73

<sup>15</sup> As above.

<sup>16</sup> As above.

<sup>17</sup> As above

conduct of governance in Africa and the strategic positioning of the OAU in relation to the continent's developmental issues.<sup>18</sup> These guidelines or principles are captured in the Memorandum of Understanding on the 'Conference on Security, Stability, Development, and Co-operation in Africa' (CSSDCA), which cumulated in a Solemn Declaration that OAU Heads of State adopted in Lomé, Togo during 2000.

In this connection, the Lome Declaration encourages the participation and contribution of the civil society in our states to the efforts to bring about further democratisation in our continent,' as part of its action plan.<sup>19</sup> The Lome Solemn Declaration also states that it is necessary for 'African Parliamentarians to make their contributions to the conference through the Pan-African Parliament, while representatives of civil society may forward their views and recommendations to the Standing Conference through the OAU General Secretariat.'<sup>20</sup> In June 2002 at the AU-Civil society Conference which was held in 'Developing partnership between the OAU and the African civil society organisations' a draft memorandum of agreement containing various commitments by African governments was prepared. This draft was adopted by the OAU at the Durban summit in July 2002 during the CSSDCA Standing Conference. This memorandum of understanding speaks of the need for provision of '... appropriate conditions for effective participation at national and continental levels by civil society organisations, in particular women's groups, trade unions, the youth and professional associations as envisaged in the Constitutive Act of the African Union.'<sup>21</sup> The Memorandum contains numerous undertakings on areas of human rights, democracy; the rule of law, which if implemented would see Africa extricating itself from the labyrinth of political and economic problems that are ever-mounting on the continent.

### **3. Architecture and processes of ECOSOCC**

As alluded to above, ECOSOCC is a statutory organ of the AU, established in terms of article Articles 5(1) (i) and 22 of the Union's Constitutive Act. Article 22 thereof explains that ECOSOCC is 'an advisory organ composed of different social and professional groups of different social and professional groups of the Member States of the Union'. It is made up of

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<sup>18</sup>Kwasitioku, above 256

<sup>19</sup> Para 14

<sup>20</sup> Para 15

<sup>21</sup> Part II, sub-par (w).

wide and diverse social and professional groups of members of the Union and social and professional groups representing the Diaspora. It provides an institutional interface between the people of Africa and their governments. As an institutional entity or project, ECOSOCC is managed by a collective of actors. Its main drivers are the elected representatives of Civil Society Organisations (CSOs) who make up the ECOSOCC General Assembly. Naturally CSOs are key players within ECOSOCC. They elect the leadership of the Council. Thus, membership to ECOSOCC General Assembly is tied to CSOs and not individuals.<sup>22</sup> However, the African people are great stakeholders in ECOSOCC processes. Other stakeholders within the ECOSOCC framework include: the AU Commission, especially in its role as secretariat to ECOSOCC; the various policy and executive organs of the AU; Regional Economic Communities (RECs), the member states of the AU, and development partners.<sup>23</sup>

It is reported that apart from the core structures of the AU, ECOSOCC received extensive attention and devotion at the Heads of State Summit in Lusaka, 2001.<sup>24</sup> Through the Lusaka Decision on the Implementation of the AU African leaders requested then secretary-general of the OAU, Amara Essy, to compile and submit a ‘comprehensive report and recommendations’ on formulation and implementation of ECOSOCC to the next meeting of the Council of Ministers of the AU during 2002.<sup>25</sup> Terms of reference for the report were:

- structure, role, scope of commence and relationship of ECOSSOC with other structures of the AU;
- manner, procedures, processes and criteria for selecting office-bearers of ECOSOCC, including their tenure and related terms of office; and
- the manner of relation between ECOSOCC on one hand and African regional non-governmental organisations (NGOs) and professional groups on the other.<sup>26</sup>

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<sup>22</sup> F Ikome

<sup>23</sup> As above.

<sup>24</sup> K Sturman and J Cilliers ECOSOCC *Bringing people’s power to the African Union?* 2003(12) 1 African Security Review 72.

<sup>25</sup> As above.

<sup>26</sup> AHG/Dec. 1 (XXXVII), Decision on the Implementation of the Sirte Summit Decision on the African Union, paragraph 7(a).

In relation to its composition, the groups that constitute ECOSOCC include, but are not limited to:

- a. social associations, such as those advocating for the rights of the elderly, women, children, the youth, and people with disabilities and special needs;
- b. professional associations, such those representing rights and interest of artists, engineers, health practitioners, social scientists, academia, business organisations, national chambers of commerce, workers, employers, industry, agriculture and other private sector interest groups;
- c. non-governmental organisations (NGOs), community-based organisations (CBOs) and other voluntary organisations;
- d. cultural associations;
- e. social and professional groups in the African Diaspora.<sup>27</sup>

On its quest to operationalise ECOSOCC processes, the AU Assembly at its third Ordinary Session held in Addis Ababa, Ethiopia, extending from 4 to 5 July 2004, adopted Decision Assembly/AU/Dec.48 (III) on ECOSOCC which sets out its structural framework and processes.<sup>14</sup> The Assembly also proceeded to adopt the ECOSOCC draft statutes, and requisitioned the AU Commission to take urgent measures to inaugurate the ECOSOCC and get it working.<sup>28</sup> The drafters of the ECOSOCC draft statutes also annexed transitional arrangements to the ECOSOCC statutes to ensure that ECOSOCC structures are put in place.<sup>29</sup> Under the authority of the transitional arrangements, the Commission convened a ‘General civil society conference’ in Addis Ababa on 24 March 2005 that was established as the Interim General Assembly of ECOSOCC.<sup>30</sup> This makeshift Assembly then elected an ‘AU-Civil Society Provisional Working Group’ which was to operate as ECOSOCC’s Interim Standing Committee (ISC).<sup>31</sup> The central mandate of the ISC was to organise

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<sup>27</sup> See ECOSOCC Statutes, Article 3.

<sup>28</sup> Ikome 5.

<sup>29</sup> As above.

<sup>30</sup> As above.

<sup>31</sup> As above.

elections of CSO representatives from the Diaspora, continental, regional and national levels in anticipation of the establishment of a permanent ECOSOCC in the intervening two years.<sup>32</sup>

The ISC produced a strategic plan for ECOSOCC readying to jumpstart its operations. Together with other stakeholders, the ISC also produced ECOSOCC's roadmap, work schedule and a programme for elections during the meeting of the Standing Committee of ECOSOCC that was held in Cairo, Egypt in 2007.<sup>33</sup> Despite initial set-backs, the election of CSOs representatives into the permanent Assembly of ECOSOCC occurred on 31 October 2007 at the seat of the AU at Addis Ababa with eight African CSOs being elected into the Assembly.<sup>34</sup> This was followed by the election of representatives of national CSOs from 25 African countries into the Assembly, as well as the election of representatives of the east, west and southern African regions.<sup>35</sup> Although ECOSOCC's partly constituted permanent Assembly was launched in Dar-es-Salaam, Tanzania, sometime in October 2008, the Diaspora have no elected representatives in it.<sup>36</sup> The only representation enjoyed by the African Diaspora is through the two representatives nominated by the Chairperson of the Commission in consultation with member states in terms of article 4(d) of ECOSOCC Statutes. Towards the end of it all, ECOSOCC can only succeed if it enjoys goodwill from African countries who are its creators. Does it enjoy the goodwill? The answer to this question can be found by first looking at the manner in which African governments deal with CSOs both at national and within the AU structures. Secondly, it is imperative to look at the internal institutional environment of the AU within which ECOSOCC operates and ask whether it is independent to execute its mandate.

#### **4. Taking a snapshot at the treatment of CSOs within the AU**

There can be no dissent that owing to greater popular participation by the citizenry, civil society is highly necessary for political stability and economic growth in Africa. Civil society participation in Africa is important particularly because governance is weak, corruption is

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<sup>32</sup>As above.

<sup>33</sup>As above.

<sup>34</sup>As above.

<sup>35</sup>As above.

<sup>36</sup>As above.



endemic, state institutions are decrepit in a number of countries on the continent. The state is omnipotent and overbearing on fundamental rights of human beings. Political reform is painfully slow and in some places stagnant. Despair and hopelessness have engulfed the African populace in many parts of the continent. Former Secretary General of the United Nations, Kofi Annan has argued that the mention of Africa in other parts of the world evokes images of mounting political and socio-economic problems.<sup>37</sup> The reason of existence for a state is to provide good governance. According to governance expert, Rortbeg, good governance is the ‘the delivery of high quality political goods to citizens’.<sup>38</sup> In Rortbeg’s conception, ‘political goods’ include but are not limited to ‘security and safety, rule of law, participation and human rights, sustainable economic opportunity and human development’.<sup>39</sup> Literature in this era abundantly demonstrates that Africa has failed to deliver ‘political goods to its citizens. Soyinka paints the situation in Africa in a dramatic fashion as follows:

[T]here are moments when I feel that we are trapped in a mammoth factory known as the African continent, where all the machinery appears to have gone out of control all at once. No sooner do you fix the levers than the pistons turn hyperactive in another part of the factory, then the conveyor belt snaps and knocks out the foreman, the boiler erupts and next the whirling blades of the cooling fans lose one of their members which flies off and decapitates the leader of the team of would-be investors — the last hope of resuscitating the works. That, alas, is the story of our human factory on this continent.<sup>40</sup>

In the light of the above, it is argued that for the African continent to take a corner, its leaders must concede sufficient space for democratic engagement between the people and their leaders. CSOs as agents of democratisation must be allowed space to facilitate this engagement. Thus, CSOs are expected to play a key role in the attainment of political reform in contemporary Africa. The oppressive, overbearing and invasive state should be rolled back

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<sup>37</sup>Foreword to UNCTAD Foreign Direct Investment in Africa, New York, 1999 [www.unctad.org/en/doc/poiteiitem1501.pdf](http://www.unctad.org/en/doc/poiteiitem1501.pdf) (accessed 03 June 2013).

<sup>38</sup> R Rotberg ‘Governance and leadership in Africa: Measures, methods and results’ (2009) 62 *Journal of International Affairs* 113.

<sup>39</sup> Ibid.

<sup>40</sup>W Soyinka ‘Constitution and continuity’ *Tempo* 16 March 2000 <http://www.nigerianlaws.com/> as quoted in NJ Udombana ‘The unfinished business: Conflicts, the African Union and the New Partnership for Africa’s Development’ (2003) 35 *George Washington International Law Review* 55.

and in the process made accountable to the people.<sup>41</sup> The role of CSOs in democratisation is captured by Diamond in lapidary fashion, when he states that:

Although the compliance of political leadership must ultimately be obtained for any project of democratization, it cannot be expected that the pressure for regime transformation will come from above. The most likely and most effective initiative will come from below, outside the decrepit, authoritarian state, in civil society. Civil society is a crucially important factor at every stage of democratisation. *The greater the number, size, autonomy, resourcefulness, variety and democratic orientation of popular organisations in civil society, the greater will be the prospects from some kind of movement from rigid authoritarianism, and for subsequent movement towards semi-democracy and democracy* (emphasis supplied).<sup>42</sup>

Despite numerous commitments by African leaders to allow African CSOs to participate in the affairs of the continent, both at national and continental levels as demonstrated above, the praxis of these leaders on the ground has not been consistent with these pro-CSO participation commitments they have undertaken both at national and supra-national levels. We turn to look at the extent of the involvement of CSOs in key issues such as governance within the continent.

#### **4.1 CSOs participation within the AU – is it meaningful?**

The involvement of CSO in the AU is near meaningless. In fact, there is no involvement of CSOs in key structures of the Union that determine the future of the people of Africa. In terms of the Constitutive Act of the AU, it is the AU's vision to establish 'a united and strong Africa... [built] on ... partnership between governments and all segments of the civil society.' In 2001, African leaders adopted the most pioneering development programme for the continent: New Partnership for Africa's Development (NEPAD) to kick-start a revolutionary developmental agenda for Africa. NEPAD's Founding Document states that:

The New Partnership for Africa's Development seeks to build on and celebrate the achievement of the past as well as reflect on the lessons learned through painful experience, so as to establish a partnership that is both credible and capable of implementation. In doing so, the challenge is for the peoples and

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<sup>41</sup> A Fowler, NON-GOVERNMENTAL ORGANIZATIONS AS AGENTS OF DEMOCRATIZATION: AN AFRICAN PERSPECTIVE (1993) 5(3) Journal of International Development 328.

<sup>42</sup>Diamond, L. (1989). 'Beyond autocracy: prospects for democracy in Africa'. Working Paper for the Inaugural Seminar of the Governance Program, in *Beyond Democracy in Africa*. Atlanta, GA: Carter Centre, Emory University p. 25

governments of Africa to understand that development is a process of empowerment and self-reliance. Accordingly Africans must not be wards of benevolent guardians; rather they must be the architects of their own sustained upliftment.<sup>43</sup>

Despite that both the AU Constitutive Act and the NEPAD Founding Document and numerous other instruments speak of the imperativeness of including African people in the workings of the AU, African states have done everything within their power to deprive the CSOs meaningful participation in the affairs of their continent. Ironically, although the NEPAD's Founding Document enunciates the principle of self-reliance and the involvement of African people in the shaping of their destiny, African states excluded civil society from taking part in the drafting of the founding instrument of NEPAD.<sup>44</sup> NEPAD is thus lacking a social government dimension and its words on human and social development ring hollow.<sup>45</sup> CSOs of the continent were only invited to participate in NEPAD in 2002, a year after its formation and when all of its structural building was complete and its vision adopted.<sup>46</sup> This means the people of Africa never had the opportunity to contribute to the outlook and vision of NEPAD and therefore cannot claim ownership over it. Even today, participation of CSO within NEPAD and all its programmes is woefully scanty.<sup>47</sup> According to Hope, NEPAD's failure is attributable in part, *inter alia*, to the exclusion of CSOs in its workings.<sup>48</sup> NEPAD's failure to bring CSOs on board has created it an elitist image and placed it out of keep with the masses of the people on the ground – who are its supposed owners. Olukoshi contends that the alienation of the civil society by NEPAD has worked to undermine its social legitimacy. He delivers himself thus:

No public policy can be considered legitimate only because it is described as being owned by Africa and Africans. It follows that ownership cannot be the exclusive monopoly of the elite; it must necessarily have popular anchorage. In addition, it should have a strong degree of local value added that is linked to local specificities and circumstances and not just seen as a pro forma proclamation that

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<sup>43</sup> The NEPAD Document is available at: [www.nepad.org](http://www.nepad.org) [accessed 25 May 2013].

<sup>44</sup> O Jonas 'The Quest to Achieve African Renaissance: Reflections on NEPAD' (2012) 5(3) Journal of Pan African Studies 95.

<sup>45</sup> Ibid.

<sup>46</sup> H L Ottosen 'NEPAD's contribution to democracy and good governance in Africa' (2010) International Institute for Democracy and Electoral Assistance 8. Available at: [http://www.idea.int/resources/analysis/nepads\\_contribution.cfm](http://www.idea.int/resources/analysis/nepads_contribution.cfm) [accessed 30 May 2013].

<sup>47</sup> Obonye Jonas The role of civil society organisations in the consolidation of democracy: perspectives on Africa Unpublished paper 20

<sup>48</sup> K Hope 'Prospects and Challenges for the New Partnership for the Africa's Development: Addressing Capacity Deficits' (2006) 24/2 Journal of Contemporary African Studies 88.

is important in and of itself. The political democracy and government initiative of the NEPAD document does not offer any such local value added or anchorage in domestic political processes/structures.

CSO participation is also absent in in the much vaunted African Peer Review Mechanism (APRM),<sup>49</sup> a technical aspect of NEPAD.<sup>50</sup> The APRM is an important platform for mutual engagement among African leaders on issues of mutual concern, including governance, the source of most of Africa's problems. Despite that the people of Africa have a direct interest on all the issues discussed at the APRM, its processes are shrouded in smog and placed outside public eye.<sup>51</sup> For instance, the Closed Session of the African Peer Review Forum, where actual peer review among heads of states and government and where the affairs of the continent are conducted, is conducted behind closed doors. The meeting room where peer review is conducted is out of bounds for members of the civil society.<sup>52</sup> Participation at this forum is limited to Heads of States and Governments of Participating States, heads of APRM partner institutions and the APRM team.<sup>53</sup> Within the APRM, the civil society is allowed limited participation only at the preliminary stages of the review process as the country under review undergoes self-assessment which culminates in the production of the Country Self-Assessment Report (CSAR) and the Program of Action (PoA) to address identified shortcomings in governance.<sup>54</sup> Even at this stage, not all CSOs get to be invited. There have been complaints that governments tend to exclude those CSOs that they consider 'hostile' and stack the whole process with compliant ones.<sup>55</sup> It is argued that the exclusion of CSOs in the review sessions of the APRM works to undermine the poor quality of mutual engagement among African leaders.<sup>56</sup> They take advantage of the absence of members of CSOs and the media to exchange banter and refrain from critically engaging one another on issues of governance which have besieged the continent for too long now.

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<sup>49</sup> According to the APRM website, the APRM was 'launched in 2003 by the AU. ... [I]t is a mutually agreed instrument voluntarily acceded to by the Member States of the AU as an African self-monitoring mechanism. See <http://aprm-au.org/> (accessed 2 June 2013).

<sup>50</sup> Jonas, above 96

<sup>51</sup> As above

<sup>52</sup> Ibid.

<sup>53</sup> Ibid.

<sup>54</sup> Jonas, above 96

<sup>55</sup> Ibid.

<sup>56</sup> See O Jonas, A Critical Appraisal of the Mutual Engagement of African States in the African Peer Review and Universal Periodic Review Mechanisms: A Human Rights Perspective (2010), LLM Thesis, University of Pretoria 5.

It is also ironic that the people of Africa know very little or nothing about NEPAD. This lack of knowledge can be accounted by the exclusion of CSOs in its conception, design and implementation. Similar sentiments have been expressed about ECOSOCC, that, just like NEPAD, it is unknown to African people.<sup>57</sup> As Fombad and Kebonang relevantly argue, the founders of NEPAD were ‘so to speak, able to cash in a confidence and trust bonus arising from the declared aims of the blueprint they were selling – interestingly, first abroad before doing so on the ‘home front.’<sup>58</sup> It is a basic fact that development can only be achieved if the energies, skills and talents of the people of the continent are harnessed, not where it is conceived as a top-down enterprise coordinated by states, where the masses of the people are only spectators with no input. By excluding CSOs and the masses of the people from its workings, NEPAD deprived itself the opportunity to tap on the intellectual capital and other potentialities of people of Africa.

In May 2013 the AU adopted the Vision 2063 Agenda.<sup>59</sup> This agenda is expected to serve as a roadmap for the continent’s political reform and socio-economic development for the next half-century. The Agenda will thus focus on the continent’s eight priority areas: Growth and transformation, regional integration, peace and stability, gender equality and agriculture.<sup>60</sup> Through this Vision, Africa leaders have made known their commitment to anchor ‘societies, governments and institutions on respect for the rule of law, human rights and dignity, population, the management of diversity, as well as inclusion and democracy’.<sup>61</sup> The AU also committed itself to ensure that this Vision is engineered by African people at all stages.<sup>62</sup> Ironically, as with many other continental projects, the civil society was excluded from the conception, design and direction of this agenda. The coordinator of the State of the Union, a coalition of African NGOs, Jamillah Mwanjisi, has complained that, ‘[a]s civil

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<sup>57</sup> C Mutasa ‘Revisiting ECOSOCC’ Available at:  
<http://www.pambazuka.org/aumonitor/comments/445/>(accessed 07 June 2013).

<sup>58</sup> See CM Fombad & Z Kebonang ‘AU, NEPAD and the APRM democratisation efforts explored’ (2006) Current African Issues no. 32 Nordiska Afrikainstitutet, UPPSALA 16.

<sup>59</sup> Doc. EX.CL/799(XXIII).

<sup>60</sup> M Kussa ‘AUC says African agenda for 2063 has to be people driven’ (2013) <http://www.ertagov.com/news/index.php/component/k2/item/717-auc-says-african-agenda-for-2063-has-to-be-people-driven> (accessed 28 May 2013).

<sup>61</sup> 50<sup>th</sup> Anniversary Solemn Declaration, adopted 21<sup>st</sup> Ordinary Session of the Assembly of Heads of state and Government, Addis Ababa, 26 May 2013, paraH(vi).

<sup>62</sup> *ibid.* para F.

society we are concerned with the shrinking space especially around this conference which will be setting the agenda for Africa for the next 50 years.’<sup>63</sup>

Only a few AU-affiliated CSOs were allowed attendance to the meeting room where the Vision was being discussed. The majority of CSOs were excluded on ground that they are not affiliated to the AU. Many important CSOs in Africa are not affiliated to the AU but have wide ‘constituencies’ that they are servicing. Therefore, to exclude them from participating in AU affairs on the simplistic and formalistic reasoning that they are not AU-affiliated is unhelpful to the course of democracy on the continent. The few CSOs that are affiliated to the AU that were allowed attendance cannot be said to be sufficiently broad-based to be responsive to problems that the African populace is facing in their diversity. By their very nature, CSOs widen participation by mobilising marginalised groups, such as women and the poor into public life.<sup>64</sup> In the premises, it is simply not possible for the 2063 Vision to be owned and driven by the masses of the people as the Union puts it, when CSOs which are the connectors between the masses of the people and the policy making structures of the Union are excluded from participation in AU decision – making processes as is currently the case. With the exclusion of CSOs from activities of the newly conceptualised Vision for the continent, signs are already in the horizon that it is a false start like many other numerous projects that Africa has conceived before.

#### **4.2. Sampling CSO laws from around Africa**

Not only has the AU eschewed CSOs at continental level, some of its member states have passed dramatic laws to legislatively exclude CSO from public life. For instance, in 2009, Ethiopia passed the Civil Society Organisations Law<sup>65</sup> which stands out as the ‘most restrictive of its kind, [whose] provisions will make most independent human rights work impossible’.<sup>66</sup> This legislation outlaws any works conducted within the areas of human rights

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<sup>63</sup> E Jobson ‘Civil society exclusions dampen mood at the African Union Summit’ (2012) The Guardian <http://www.guardian.co.uk/global-development/2013/may/28/civil-society-exclusions-african-union> (accessed 30 May 2013).

<sup>64</sup> Bratton, above 4.

<sup>65</sup> Proclamation No. 621 of 2009.

<sup>66</sup> For a comprehensive discussion of this law, see Mulatet *al* ‘Sounding the horn: Ethiopia’s civil society law threatens human rights defenders’ (2009) 1–19. Available at: [www.law.northwestern.edu/humanrights/documents/EthiopiaCSOPaper-Nov2009.pdf](http://www.law.northwestern.edu/humanrights/documents/EthiopiaCSOPaper-Nov2009.pdf) (last accessed 25 May 2013).

and governance in Ethiopia carried out by foreign CSOs, including those originating from Africa.<sup>67</sup> Interestingly, it also categorises Ethiopian CSOs that receive more than ten per cent of their budget from foreign donors as ‘foreign’ CSOs and thus barring them from carrying out any work in the prohibited areas.<sup>68</sup> In a nutshell, the Ethiopian CSO law makes the majority of independent CSO work in the country virtually impossible undertake.<sup>69</sup> Similarly, Egypt has enacted the Association and Foundations legislation.<sup>70</sup> This piece of law imposes burdensome registration requirement for CSOs such as financial data, disbursements and resources of the organisation seeking registration.<sup>71</sup> Although this law permits Egyptian CSOs to collaborate with foreign CSOs,<sup>72</sup> the government of that country has in numerous instances proscribed local CSOs working on areas of human rights from receiving external financial assistance and thus undermining their advocacy work.<sup>73</sup> This prohibition also extends to private individuals, including Egyptians living outside Egypt.<sup>74</sup> On 24 February 2012, over fifty people working with CSOs in Egypt were arrested and indicted before an Egyptian court for financially supporting CSOs working in Egypt.<sup>75</sup>

Further, under this law, Egyptian CSOs must obtain authorisation from the relevant Minister before procuring money from external funders.<sup>76</sup> Between January and May 2012, the Egyptian authorities denied over 20 CSOs from foreign financial assistance amounting to over US\$ 3.5 million on the premise that such CSOs could apply to political purposes.<sup>77</sup> The government of Egypt is also directly involved in the management and control all CSOs operating within Egypt. For instance, the relevant Minister has power to call for an

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<sup>67</sup> See article 2 thereof.

<sup>68</sup> Article 8 thereof.

<sup>69</sup> O Jonas Reflections on the practices and experiences of African states in the African peer review mechanism (APRM) and the universal periodic review mechanism (UPR): a human rights perspective (2012) 45(3) *CILSA* 440.

<sup>70</sup> Association and Foundations Law No 84 of 2002.

<sup>71</sup> See article 4 thereof.

<sup>72</sup> Article 12.

<sup>73</sup> E B Faris et al ‘The limitation of the right to freedom of association in selected African countries’ (2012) 3. Available at <http://africlaw.files.wordpress.com/2012/06/limitation-of-the-right-to-freedom-of-association-in-afric.pdf> (accessed 27 May 2013).

<sup>74</sup> *Ibid.*

<sup>75</sup> ‘Egypt to put NGOs workers on trial’ *Aljazeera* 5 February 2012

<sup>76</sup> Section 16 thereof

<sup>77</sup> Faris, abobe 4.

organisations audit report, balance sheet and final accounts of the organisation.<sup>78</sup> All donations and assets of CSOs must be disclosed to the government.<sup>79</sup>

In 2005 the government of Eritrea has also passed the Non-governmental Organisation Administration Proclamation, a Proclamation that is anti-CSOs.<sup>80</sup> Although the government of Eritrea previously encouraged CSO work during its struggle for self-determination in recent history, and also enjoyed their support, it no longer sees the civil society as important in a democracy anymore. The government now falsely accuses CSOs for seeking to undermine government bodies.<sup>81</sup> As a result, the government has systematically disrupted all organised CSO activity, especially in areas of governance and human rights. In terms of article 8(2) of the of this CSO law, all CSOs are required to account to government authorities for all their operations. Like in the Egyptian law, the Eritrean Proclamation requires CSOs to disclose their finances, donations or gifts and all other form of external assistance to the government.<sup>82</sup> The Proclamation also outlaws any contractual relationships between Eritrean CSOs and the United Nations or its agencies and affiliates.<sup>83</sup> All organisations are required to relate with the Eritrean people through the government and no any other entity.<sup>84</sup>

In 2004, the Zimbabwean Parliament adopted the Private Voluntary Organisations (PVO) Bill.<sup>85</sup> The Bill has not been assented to by the president yet. On being signed into law by the President, this Bill is expected to govern the life and operations of all associations other than political parties and trade unions.<sup>86</sup> This Bill vests unbridled powers of control of CSOs in the Minister of Public Service, Labour and Social Welfare and the PVO Board.<sup>87</sup> These powers include, but not limited to acceptance or rejection of application for registration, cancellation of registration and suspension of CSOs indefinitely.<sup>88</sup> Like the cases of Ethiopia and Eritrea, the Bill prohibits CSOs working in ‘issues of governance’ from receiving external financial

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<sup>78</sup>Section 16(2) thereof

<sup>79</sup>Article 17

<sup>80</sup>Proclamation No 145/2005

<sup>81</sup>Fariset al above 5

<sup>82</sup>Article 8(6) thereof

<sup>83</sup>Article 8(5)

<sup>84</sup>Article 9(1).

<sup>85</sup>Act no 6 (1995) (PVO)

<sup>86</sup>Section 17

<sup>87</sup>Section 17(2)

<sup>88</sup>Section 18



assistance.<sup>89</sup> The government of Zimbabwe has also made illegal a number of CSOs in the country on account of their connections with opposition political parties. For instance, it is reported that in 2012 the government of Zimbabwe suspended over 29 CSOs in Masvingo Province purportedly for maintaining political relations with opposition political parties in the country.<sup>90</sup> The government of Zimbabwe is also notorious for deploying its security apparatuses to persecute members of CSOs. On 7 February 2012, the authorities in Zimbabwe arrested and detained the leader of an CSO called Women of Zimbabwe Arise (WOZA) Jenni Williams and 13 other persons for participating in a peaceful demonstration.<sup>91</sup>

Zambia has adopted the Proclamation for the Non-Governmental Organisations' Bill (2009) which when passed into law will close up space of CSOs by tightening rules relating to their registration, management and operation.<sup>92</sup> Nigeria recently adopted a Draft Bill which empowers a government-controlled NGO Council to 'do anything which in its opinion is calculated to facilitate the carrying out of its actions under' the Act.<sup>93</sup> The Bill also empowers the President to ban any CSO that is 'dangerous' to the good government of Nigeria or any part thereof.<sup>94</sup> No criterion is laid down to guide the President in his determination of what should constitute dangerous. All is left to his arbitrary discretion. As the provision stands, it is cast in too general and wide terms that make it susceptible to abuse. The International Federation for Human Rights has criticised the law as seeking to stifle civil society criticism against the government.<sup>95</sup> In Equatorial Guinea, NGOs are prohibited from undertaking work in the spheres of governance and human rights. In addition, CSOs are also required to apply for a permit (which is hardly issued) from government authorities if ten or more of its

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<sup>89</sup> Section 19.

<sup>90</sup> 'Zimbabwe suspends 29 NGOs in latest ZANU-PF crackdown' *Voice of America: Zimbabwe* (25 May February 2013) <http://www.voanews.com/zimbabwe/news/Zimbabwe-Suspends-29-NGOs--139384098.html> (accessed 30 May 2013).

<sup>91</sup> Women of Zimbabwe Arise: Amnesty urgent action *The Guardian* 27 February 2013 <http://www.guardian.co.uk/world/2012/feb/12/amnesty-urgent-action-woza-zimbabwe> (accessed 31 May 2013).

<sup>92</sup> This Bill is still under discussion by the Zambian Parliament. For a comprehensive discussion on this Bill, see MH Mumba and RP Mumba, 'The status of civil society in Zambia: challenges and future prospects', a report commissioned by Zambia Council for Social Development and World Alliance for Citizen Participation (2010) 33, available at: [civicus.org/downloads/CSI/Zambia.pdf](http://civicus.org/downloads/CSI/Zambia.pdf) (accessed 3 June 2013).

<sup>93</sup> For reflections on this law see the website for the International for Not-for –Profit Law: <http://www.icnl.org/research/monitor/nigeria.html> (accessed 30 May 2013).

<sup>94</sup> *Ibid.*

<sup>95</sup> See International Federation for Human Rights, Zambia: A restrictive bill on civil society activities currently under debate in Parliament, 23 July 2007, available at: <http://www.refworld.org/docid/482c5bd92.html> [accessed 4 June 2013].

members seek to gather for advancing civil society interests.<sup>96</sup> In Uganda, before a CSO can publish any material touching on issues of governance and human rights, , it must submit it to government authorities for audit to see to it that is congenial to the interests of government.<sup>97</sup> In 2011 the government of Somalia passed a spectacular CSO law seeks to eliminate CSO work in Somalia. In particular, this law targets those CSOs working in human rights and governance.<sup>98</sup> In terms of Algerian CSO law, foreign donations to local CSOs must be pre-approved by the Minister of Interior.<sup>99</sup>In Angola CSO participation are prohibited in ‘all activities of state organs; electoral processes; and from influencing national policy through the government or parliament.’<sup>100</sup> Under Tanzanian law, local CSOs are proscribed from engaging in any civil work that ‘is likely to cause misunderstanding’ among indigenous or domestic NGOs’.<sup>101</sup> This provision is formulated in imprecise, broad and vague manner that makes it susceptible to manipulation. It concedes infinite discretionary powers to government officials to regulate civil society work. In this connection, the Inter American Commission has urged member countries to refrain from promoting laws and policies regarding the registration of human rights organizations that use vague, imprecise, and broad definitions of the legitimate motives for restricting their establishment and operation.<sup>102</sup> This imprecise and ambiguous language of these laws becomes more menacing when regard is had to the fact that there is no laid down criterion relating to the application of these laws. In the seminal Zimbabwean case of *Law Society of Zimbabwe v Minister of Transport & Communication*<sup>103</sup> the Supreme Court of Zimbabwe stated that where a law confers discretionary powers on government authorities, comprehensive guidelines as to the extent and manner of the exercise of such discretionary powers must be provided to curb abuse of discretionary power and there should be oversight mechanisms or institutions in place to control or limit the exercise of the powers.<sup>104</sup>

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<sup>96</sup> *Defending Civil Society: a Report of the World Movement for Democracy* (February 2008), available at: <http://www.icnl.org/knowledge/news/2008/3-21.htm>.

<sup>97</sup> Ugandan 2009 NGO Act, Article 13.

<sup>98</sup> Disquiet over new NGO law: <http://www.irinnews.org/report/92715/somalia-disquiet-over-new-ngo-law> (accessed 13 May 2013).

<sup>99</sup> Angolan *Law of Association* (14/91 of 11 May 1991), Article 8.

<sup>101</sup> Tanzanian 2002 NGO Act, Article 31(c)(iii).

<sup>102</sup> Inter-American Commission on Human Rights, *Report of the Situation of Human Rights Defenders in the Americas*, Doc: OEA/Ser.L/V/II.124Doc.5rev.1 (March 7, 2006), Recommendation 17.

<sup>103</sup> (2004) AHRLR 292, 298 (ZwSc 2004).

<sup>104</sup> *Ibid* 298.

Although the above survey does not cover all African countries, the legal regime relating to CSOs in Africa are generally similar – oppressive. Many other African countries have enacted laws that are aimed at undermining CSO work. Even in stances where no specific laws have been enacted to specifically control CSO work, adherents or members of the CSO they are viewed as ‘troublesome’ are always subjected to persecution and intimidation in several parts of the African continent. In many other instances, where CSO work is not downright prohibited, it is overtly neutered. The latter trend is ‘characterized by a profound shift from outright repression of democracy, human rights, and civil society activists and groups to more subtle government efforts to restrict the space in which civil society organizations...operate.’<sup>105</sup>

#### **4.3. ECOSOCC-CIDO power politics**

The internal power politics of the AU have also worked against the noble principle of enhancing civil society participation. This manifested in conflict of responsibility between ECOSOCC and The African Citizens Directorate (CIDO). CIDO was established with a mandate of facilitating CSO partnerships with the AU as well as consolidating the ECOSOCC process.<sup>106</sup> However, in some instances CIDO has used its position to encroach upon the core mandate of ECOSOCC of driving civil society engagement with the AU. The Directorate has gone as far as convening and coordinating Diaspora meetings and even circumventing the leadership of ECOSOCC.<sup>107</sup> According to Charles Mutasa, this arrogance displayed by CIDO towards ECOSOCC, have generated conflict and loss of confidence in the AU-CSO interface.<sup>108</sup> To this end, the usurpation of core responsibilities of ECOSOCC by CIDO demonstrates that the former cannot be said to enjoy the goodwill of its creators. Against this backdrop, we are inclined towards Mutasa’s recommendation that ECOSOCC needs to be removed from the AU and be hosted by a member state so that it can discharge its functions independently. To this, we add and reiterate the need for an introspection and change of Africa’s political culture to a culture that embraces civil society as an important partner in the democratisation process.

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<sup>105</sup> The International Centre for Not-for-Profit Law and World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (February 2008), available at : <http://www.icnl.org/knowledge/news/2008/3-21.htm> (accessed 21 May 2013).

<sup>106</sup> Mutasa C A Critical Appraisal of the African Union-ECOSOCC Civil Society Interface: ‘In’ The African Union and its Institutions (2008) Fanele

<sup>107</sup> As above

<sup>108</sup> As above

The preceding analysis presents a paradox of CSO work in Africa: whereas on one hand African states have committed in numerous AU instruments to concede space to CSOs to play a role in the process of democratisation, the same states have legislatively disallowed them any meaningful political role within their territories and also shun them within the AU thereby placing them in periphery of the local public life and continental governance. As indicated above, since the civil society presents the realm of ‘politics of consent’ laws disallowing CSOs participation in the political life of a society such as those sampled above, effectively erode this place and replace it with dictatorship. The present political and legal landscapes both within individual African states and the AU architecture is not conducive for CSO work. The situation is particularly worse within individual member states where, as shown above, dramatic laws have been enacted to emasculate CSOs. The passage of CSO unfriendly laws is at variance with the decision of the African Commission on Human and Peoples rights in the case of *Civil Liberties Organisation (in respect of Bar Association) v Nigeria*<sup>109</sup> where it was held that authorities of member states must not pass laws that arbitrarily undermine associational rights of CSOs.

## **5. Conclusion and way forward**

The above discussion has sought to demonstrate the extent to which the AU and African states engage with CSOs for the development of the continent. The discussion has demonstrated that African states shun CSOs both within the AU and at national level. As shown above, not only do African states shun CSOs within the AU, they also undermine their work within their territories through oppressive laws. For instance, funding of CSOs is capriciously cut or arbitrarily and unjustifiably limited in many African countries; their registration is purposely delayed or frustrated through intentionally dreary bureaucracy.<sup>110</sup> The practices and tendencies of African states clearly show that the political culture and value-system of the continent are not yet permissive of the involvement of CSOs in public life, particularly in the areas of democracy and human rights. African leaders are merely paying lip-service to the desirability of opening space for CSO participation in the continent’s democratisation process. The numerous legal commitments that African states have made in this regard are no more than mere ‘printed futility’. To this end, it is argued that for ECOSSOC to remain

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<sup>109</sup>(2000) AHRLR 186 (ACHPR 1995) para 14

<sup>110</sup>Fact Sheet No. 29: Human Rights Defenders: Protecting the Right to Defend Human Rights, p. 13.

relevant, African states must change their 'attitudes, beliefs and sentiments which give order and meaning [to the Continent's] political process and which provide the underlying assumptions and rules that govern behaviour in [Africa's]political system.' It is foolhardy to expect that African states will accept CSO participation in their affairs when CSOs are in the mold of ECOSSOC when they have shunned them at home and within the AU's decisional processes A degree of independence for ECOSOCC, that is guaranteed by a host member state is needed in order for the organ to effectively mobilise civil society groups from the grassroots. It is hoped that Africa shall before long appreciate the significance of CSOs as agents of democratic transformation. For true democracy to flourish in Africa, it is imperative that civic life must be institutionalised both at national and continental levels and this must be expressed in associational or organisational form.