
Regional Parliaments and African Economic Integration

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Abstract

This article analyses the parliamentarization of regional organizations through the lens of African economic integration. Following successful independence movements, regional integration in Africa has evolved rapidly with many regional organizations envisaging a form of parliamentary cooperation. This is only sparsely accounted for in the literature. We know little about the underlying factors that inspire African regional parliamentarization and how problems associated with democracy consolidation, poverty elimination and the maintenance of peace have influenced this process. These questions are investigated through a comparative study of four regional parliamentary bodies that cover Africa's major integration projects – the Pan-African Parliament, the East African Legislative Assembly, the Economic Community of West African States Parliament, and the Southern African Development Community Parliamentary Forum. Insights from Latin America, the Association of Southeast Asian Nations, the European Union and North America are also selectively given to provide a comparative and contextual perspective. The analysis of African regional parliaments begins with an assessment of the narratives informing their institutionalization by examining their proclaimed objectives and motives, followed by an appraisal of their structure, powers and functions. On this basis, the article queries the benefits and constraints of regional parliamentary action. The inquiry concludes with a critical evaluation of regional parliamentary blueprints and discusses the dynamics shaping the evolution of transnational democracy.

1 Introduction

Economic interdependence, the strive for the peaceful resolution of conflicts, the competition between powerful polities in exporting their domestic values and the need for joint action to address shared challenges and achieve common goals have all led to the globalization of rule making and a parallel genesis of institutional forms to channel it. Consequently, classic interstate diplomacy, characterized by relations between

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executives, became complemented by the agency of non-state actors, including civil society organizations¹ and, notably, a whole array of parliamentary actors.²

What emerged towards the end of the 19th century as an international coming together of parliaments under the aegis of the Inter-Parliamentary Union was strongly accelerated after World War II and the Cold War and led to the establishment of dozens of international parliamentary institutions (IPIs).³ For decades, global law and politics have been witnessing a continuous proliferation of international forums for parliamentary cooperation.⁴ An incipient scholarly focus on international parliamentarism and parliamentary diplomacy has thus far primarily produced commentary seeking to systematize and categorize legislatures' involvement in policy-making beyond the nation-state.⁵ These works have helped us to make sense of the different types of IPIs. They have shown that although IPIs can operate as language-based gatherings or as sector-oriented associations focused on distinct policy areas such as the environment, health protection, poverty elimination or nuclear disarmament, the most important category consists of geographically delineated regional groupings.⁶ The most powerful among the latter are those IPIs that serve as organs of regional organizations. The strong institutional bond with the other organs of a given regional organization provides such IPIs with entitlements to act in ways that are more likely to exert a governmental response than when this structural link is weaker. Regional parliamentarization, understood in this article as the process of establishing and institutionalizing parliamentary activities at the level of regional integration, therefore constitutes a central component of the overarching concept of parliamentary diplomacy.⁷

Theoretically, the parliamentarization of regional organizations around the world has been explained by a combination of two key factors. On the one hand, the phenomenon is viewed as a corollary of the erosion of state sovereignty and the development of post-national governance characterized by multi-level and pluralist modes

¹ D. Armstrong et al. (eds), *Civil Society and International Governance: The Role of Non-State Actors in Global and Regional Regulatory Frameworks* (2011).

² Cutler, 'The Emergence of International Parliamentary Institutions: New Networks of Influence in World Society', in D. Wolfish and G.S. Smith (eds), *Who Is Afraid of the State?: Canada in a World of Multiple Centers of Power* (2011) 201.

³ See their evolution in Klebes, 'The Development of International Parliamentary Institutions', 159 *Constitutional and Parliamentary Information* (Review of the Association of Secretaries General of Parliaments) (1990) 77; De Puig, 'International Parliamentarism: An Introduction to Its History', 24 *Parliaments, Estates and Representation* (2004) 13; Šabič, 'Building Democratic and Responsible Global Governance: The Role of International Parliamentary Institutions', 61 *Parliamentary Affairs* (2008) 255.

⁴ O. Costa, C. Dri and S. Stavridis (eds), *Parliamentary Dimensions of Regionalization and Globalization: The Role of Inter-Parliamentary Institutions* (2013).

⁵ A. Cofelice, *Parliamentary Institutions in Regional and International Governance: Functions and Powers* (2018); Kissling, 'The Legal and Political Status of International Parliamentary Institutions', in L. Levi, G. Finizio and N. Vallinoto (eds), *The Democratization of International Institutions: First International Democracy Report* (2014) 25; Alger and Kille, 'How Are Parliamentarians of States Involved in Global Governance, and How Should They Be', 5 *Journal of International Organisations Studies* (2014) 71.

⁶ S. Stavridis and D. Jančić (eds), *Parliamentary Diplomacy in European and Global Governance* (2017).

⁷ Malamud and Stavridis, 'Parliaments and Parliamentarians as International Actors', in B. Reinalda (ed.), *The Ashgate Research Companion to Non-State Actors* (2016) 101, at 101, 106.

of international cooperation.⁸ On the other hand, it was an institutional response to concerns about the legitimacy, democratic control, transparency and public participation in transnational policy-making. Since regional organizations adopt decisions that may directly impact the personal and professional lives of citizens, elected representatives are prompted to incorporate outward-looking agendas surpassing the remits of their constituencies into their daily work.⁹

The most influential practices of parliamentary diplomacy have developed in the European Union (EU). The European Parliament (EP) has become a diplomatic powerhouse conducting independent relations with third countries, regional organizations and non-state entities through its own specialized delegations and multilateral assemblies.¹⁰ Nevertheless, elected representatives have, with variable success, sought to engage in dialogue and exchange in other regions of the world too. In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has had an Inter-Parliamentary Organization since 1977. This body was transformed into an Inter-Parliamentary Assembly in 2007 but continued to be merely an associated entity of ASEAN as opposed to an organ of it and retained purely consultative powers.¹¹

In Latin America, a range of regional parliaments came into being and faced challenges of their own. The Southern Common Market (Mercosur) has had a Joint Parliamentary Committee since 1994, which was upgraded in 2005 into a directly elected Mercosur Parliament (Parlasur) with advisory and supervisory competences. Yet notwithstanding repeated attempts at reform, Parlasur's direct electoral mandate has neither enhanced its representativeness nor enabled it to have a greater say in Mercosur's decision-making processes.¹² The Central American Parliament (Parlacen) and the Parliament of the Andean Community (Parlandino) are also directly elected, but both have undergone episodes of disempowerment. While Parlacen has eventually gained certain decision-making powers, such as being able to propose integration-related legislation and swear in regional executive nominees, its evolution was rather thorny. It was created in 1991 as a rump parliament due to Costa Rica's objections and had its size, competences and funding reduced in 1997. It then suffered Panama's

⁸ Jančić, 'Transnational Parliamentarism and Global Governance: The New Practice of Democracy', in E. Fahey (ed.), *The Actors of Postnational Rulemaking: Contemporary Challenges of European and International Law* (2015) 113; Jančić, 'Globalizing Representative Democracy: The Emergence of Multilayered International Parliamentarism', 38 *Hastings International and Comparative Law Review* (2015) 197.

⁹ Kraft-Kasack, 'Transnational Parliamentary Assemblies: A Remedy for the Democratic Deficit of International Governance?', 31 *West European Politics* (2008) 534.

¹⁰ S. Stavridis and D. Irrera, *The European Parliament and Its International Relations* (2015); Cofelice and Stavridis, 'The European Parliament as an International Parliamentary Institution (IPI)', 19 *European Foreign Affairs Review* (2014) 145.

¹¹ Rüländ, 'Participation without Democratization: The ASEAN Inter-Parliamentary Assembly (AIPA) and ASEAN's Regional Corporatism', in O. Costa, C. Dri and S. Stavridis (eds), *Parliamentary Dimensions of Regionalization and Globalization: The Role of Inter-Parliamentary Institutions* (2013) 166.

¹² Medeiros, Mota and Meunier, 'Modernization without Change: Decision-Making Process in the Mercosur Parliament', 10 *Brazilian Political Science Review* (2016) 1; Papanagnou, Kingah and Van Langenhove, 'Democracy Building in the Regional Context: Insights from the European Parliament and Beyond', International Institute for Democracy and Electoral Assistance (IDEA) and United Nations University (UNU) on Comparative Regional Integration Studies (CRIS) Discussion Paper, 1 May 2014, at 37.

withdrawal from 2009 to 2012, which was only reversed thanks to the intervention of the Panamanian Supreme Court.¹³ Similarly, in 2013, the Andean Community leaders proposed the dissolution of Parlandino. Although the institution continued to operate, since 2014, it has no longer been directly elected in all of its member states because, due to recurring electoral irregularities, the Colombian government has decided to revert to appointing parliamentary delegates.¹⁴ Hence, direct elections are no guarantee of institutional power or influence.

With the exception of the EP, the influence of parliaments within regional organizations has been minimal despite their increasing international activism.¹⁵ Their regional engagement is typically characterized by the absence of the kind of legislative, controlling and representative competences that they enjoy at the national level. Regional parliaments' influence may also be diluted by the differences between the histories, political cultures, socio-ethnic identities and levels of economic and democratic development of the member states of a given regional organization. However, despite the growing number of IPAs and an increasing frequency of interparliamentary relations worldwide, we still know little about the leitmotif that informs their creation, the politico-legal dynamics that structure them and whether and how they shape global and regional governance.

This article grapples with these questions by analysing the parliamentarization of regional organizations through the lens of African economic integration. This choice has been made because, following successful independence movements, regional integration on this continent has rapidly evolved with many regional organizations envisaging a form of parliamentary cooperation. The latter dimension, however, has only sparsely been accounted for in the literature, and we have insufficient insight into the underlying factors that inspire African regional parliamentarism and the manner in which widespread problems with democratic consolidation, poverty elimination and the maintenance of peace have affected parliamentary participation in regional organizations.¹⁶ The aim is therefore to contribute to a deeper understanding of the nature of regional parliaments. This is carried out through a comparative study of their institutionalization observed in terms of their proclaimed objectives, functions, the benefits of their operation and the constraints they are facing in fulfilling their agendas.

¹³ Papageorgiou, 'Central American Integration System', in L. Levi, G. Finizio and N. Vallinoto (eds), *The Democratization of International Organizations: First International Democracy Report* (2014) 296, at 297, 301–302.

¹⁴ Mariano, Bressan and Luciano, 'A Comparative Reassessment of Regional Parliaments in Latin America: Parlasur, Parlandino and Parlatino', 60 *Revista Brasileira de Política Internacional* (2017) 1, at 5–6.

¹⁵ Malamud and de Sousa, 'Regional Parliaments in Europe and Latin America: Between Empowerment and Irrelevance', in A. Ribeiro Hoffmann and A. van der Vleuten (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional International Organizations* (2007) 85.

¹⁶ See helpful existing studies in Ogonnaya and Ogujiuba, 'Regional Parliamentary Assemblies in Africa: Challenges of Legitimacy of Authority and Status of Operation', 21 *Journal of Legislative Studies* (2015) 553; Navarro, 'The Creation and Transformation of Regional Parliamentary Assemblies: Lessons from the Pan-African Parliament', 16 *Journal of Legislative Studies* (2010) 195; Terlinden, 'African Regional Parliaments: Engines of Integration and Democratisation', in *Afrika Hintergrundinformationen aus der internationalen Entwicklungszusammenarbeit* (2004).

These elements will be assessed with respect to the parliamentary bodies of the African Union (AU), the East African Community (EAC), the Economic Community of the West African States (ECOWAS), and the Southern African Development Community (SADC). These organizations are selected to provide an illustrative sample that encompasses a continental organization (AU) and several regional economic communities recognized by the AU (ECOWAS, the SADC and the EAC), thus covering Africa's major economic integration projects with parliamentary aspirations. A further channel through which regional integration develops will be demonstrated with an analysis of key bilateral interregional forms of parliamentary cooperation, in which the EU plays a significant role.

The article argues that African regional parliamentarization is a product of a specific set of politico-historical and socio-economic circumstances that are shaped by the post-colonial pursuit of a collective pan-African identity, the assertion of sovereignty and the recurring problems of maintaining peace and eliminating poverty. The analysis also exhibits an enduring tension between the ambition and continuing effort towards the institutional empowerment of regional parliaments and their actual disempowerment in political practice owing to the executive monopolization of regional cooperation agendas. To demonstrate these assertions, the following sections assess the narratives inspiring the parliamentarization of regional organizations by examining their missions and motives. Analysis then moves to institutionalization in order to inspect the structure, powers and functions of these parliamentary institutions. The next two sections query the benefits of parliamentary action in regional integration and the constraints that may limit its effectiveness. The article concludes by elucidating the potential for regional parliaments to contribute to the evolution of transnational democracy.

2 Narratives, Aspirations and Ambitions

Since the end of colonialism, the 1970s saw a mushrooming of regional integration movements in Africa. This was accompanied by the development of regional IPIs at both the continental and regional levels.

A Continental Level

The idea of 'a larger unity transcending ethnic and national differences' was born with the establishment of the Organisation of African Unity (OAU) in 1963.¹⁷ This first continental association of states in Africa did not foresee any role for parliamentary institutions. Its strongly intergovernmental setup stems from its primary focus on finalizing African emancipation from foreign rule through the assertion of sovereignty, territorial integrity, pan-African solidarity and brotherhood. While the OAU had no legislative function, its modest output of some 15 treaties adopted under its auspices testifies to a rudimentary law-making capacity. These treaties, dealing with

¹⁷ Charter of the Organisation of African Unity 1963, available at https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf, preamble.

matters such as the protection of the environment and natural resources and the safeguarding of refugee rights, were predominantly adopted to ‘regionalize’ general international law.¹⁸ The OAU thus became a forum for interstate interactions that could generate law with repercussions for domestic legal systems.¹⁹ It was also a deliberative venue for governmental discussions of common African foreign policy goals and, albeit with limited success, for diffusing tensions between African states through mediation, conciliation and arbitration.²⁰

Prompted by the sharp decline of economic growth and exploding external debt of the newly independent African states, an impetus for the continent’s economic recovery through self-reliance and self-sufficiency was made by the 1980 Lagos Plan of Action.²¹ It was a move away from globalization, which was based on interdependence rather than on dependence.²² Even though this plan did not mandate the creation of any legislative bodies, it mandated the drawing up of national development programmes that were to effect legislative change above all to ensure food security and eliminate poverty.

Ten years later, the realization that economic and developmental goals cannot be achieved in isolation from the people had reached its climax. In order to counterbalance the negative consequences of over-centralization of power at the national level, a number of people’s organizations, non-governmental organizations (NGOs), governments and United Nations (UN) agencies adopted the African Charter for Popular Participation in Development and Transformation in 1990.²³ This charter emphasized the importance of ‘democratic development’, which should be accomplished through wider public participation in legitimizing, formulating, implementing and evaluating economic policy-making. This was a cry for citizen empowerment, a sign that the economic crisis was also a legal and socio-political crisis. Importantly, it was a criticism of domestic governments and not of regional organizations. Yet, no mention was made of parliamentary means to attain these objectives. This was a result of strong executive dominance over legislatures and the latter’s corresponding institutional weakness.

The following year, 1991, saw the adoption of the Abuja Treaty,²⁴ which lay the foundations for a gradual six-stage establishment of an African Economic Community

¹⁸ Maluwa, ‘International Law-Making in Post-Colonial Africa: The Role of the Organization of African Unity’, 49 *Netherlands International Law Review* (2002) 81, at 88.

¹⁹ *Ibid.*, at 100.

²⁰ Legum, ‘The Organisation of African Unity – Success or Failure?’, 51 *International Affairs* (1975) 208, at 211–212.

²¹ Lagos Plan of Action for the Economic Development of Africa 1980–2000, 1980, available at www.merit.unu.edu/wp-content/uploads/2015/01/Lagos-Plan-of-Action.pdf. See generally D’Sa, ‘The Lagos Plan of Action-Legal Mechanisms for Co-operation between the Organisation of African Unity and the United Nations Economic Commission for Africa’, 27 *Journal of African Law* (1983) 4.

²² Adupa, ‘Lagos Plan of Action’, in F.A. Irele and B. Jeyifo (eds), *The Oxford Encyclopedia of African Thought* (2010), vol. 1, at 47.

²³ African Charter for Popular Participation in Development and Transformation 1990, available at <https://repository.uneca.org/bitstream/handle/10855/5673/Bib-44787.pdf?sequence=1>.

²⁴ Treaty Establishing the African Economic Community 1991, available at https://au.int/sites/default/files/treaties/7775-treaty-0016_-_treaty_establishing_the_african_economic_community_e.pdf.

based on eight already existing regional economic communities that serve as its pillars. This treaty proclaimed accountability, economic justice and popular participation in development among its core principles and foresaw the setting up of a Pan-African Parliament (PAP) that would be elected by continental universal suffrage.²⁵ A decade after, a follow-up to the Lagos Plan of Action was agreed. The 2001 New Partnership for Africa's Development added a political dimension to the strictly economic aspirations by including a Declaration on Democracy, Political, Economic and Corporate Governance in 2002.²⁶ This declaration placed democracy and good governance at the centre of African economic regeneration. It was an expression of the awareness of ubiquitous and deep democratic deficits across the continent and a commitment to accountable and inclusive governance.

In particular, democracy promotion by the AU and its action against unconstitutional changes of government and electoral monitoring efforts were particularly supported. The 'effective functioning of parliaments' and their committees was explicitly cited as being paramount to good governance.²⁷ These objectives were partially to be met through the African Peer Review Mechanism, a voluntary exchange of experiences and best practices in implementing policies needed to ensure domestic political stability and overall economic prosperity.²⁸ The second stage of this mechanism involves a review team's visit to the participating country for consultations with a wide range of stakeholders including parliamentarians and political parties, whereas the final, fifth, stage takes place with the tabling of the peer review report in the PAP and other relevant organs of the AU.²⁹ Although the New Partnership for Africa's Development has been criticized as ineffective, the African Peer Review Mechanism, despite its many flaws and meagre outcomes, has been praised as an innovative platform for political debate in the broader context of advancing African regional integration. As such, the mechanism has modestly contributed to the strengthening of the democratic culture in Africa.³⁰ Even so, this did not extinguish the problem of most African legislatures being effectively the rubber-stampers of decisions of the ruling political party without much sense of the separation of powers.³¹

²⁵ *Ibid.*, Arts 6(2)(f)(iv), 7, 14.

²⁶ New Partnership for Africa's Development 2001, available at www.nepad.org/; Declaration on Democracy, Political, Economic and Corporate Governance (Declaration on Democracy) 2002, available at www.un.org/en/africa/osaa/pdf/aprm-declaration.pdf. See a useful overview in Hope, 'From Crisis to Renewal: Towards a Successful Implementation of the New Partnership for Africa's Development', 101 *African Affairs* (2002) 387.

²⁷ Declaration on Democracy, *supra* note 26, Point 14.

²⁸ Memorandum of Understanding on the African Peer Review Mechanism 2003, available at www1.unece.org/Portals/nepad/Documents/MOU-on-APRM.pdf, Recital 8.

²⁹ Mangu, 'The African Union and the Promotion of Democracy and Good Political Governance under the African Peer-Review Mechanism: 10 Years On', 6 *Africa Review* (2014) 59, at 64.

³⁰ Ottosen, 'NEPAD's Contribution to Democracy and Good Governance in Africa', International IDEA Discussion Paper no. 16 (2010), at 9, available at www.idea.int/sites/default/files/publications/chapters/the-role-of-the-european-union-in-democracy-building/eu-democracy-building-discussion-paper-16.pdf.

³¹ Mangu, *supra* note 29, at 69.

The New Partnership for Africa's Development and the accompanying Declaration on Democracy, Political, Economic and Corporate Governance coincided with the transformation of the OAU into the AU in July 2002.³² The latter's Constitutive Act and the accompanying Protocol on the PAP, which was adopted in March 2001, led to the formal inauguration of the PAP in March 2004, thereby realizing the Abuja Treaty's prescription.³³ The fledgling continental parliament was erected on the shoulders of liberal democratic reforms that swept across Africa in the early 1990s. This democratic awakening eroded the autocratic and military regimes' monopoly over state power in favour of electoral and multi-party systems. Although it evolved unevenly and with significant retrogressive illiberal impulses,³⁴ the ensuing democratic transition was a milestone for both domestic politics and the future architecture of regional governance. The PAP itself was a product of external and internal pressures. Namely, while Western financial donors supported greater parliamentary involvement in the AU, domestic and regional actors in Africa viewed the PAP more as a way to overcome the OAU's impotency than as a means to increase the efficiency of AU decision-making proper.³⁵

B Regional Level

In parallel with continental ambitions and because of the limited achievements of the OAU, a series of economic integration initiatives were taken at the regional level. An important ingredient of the newly emerging regional blocs was parliamentarization. Taking the EP as a model, this process, like those in Latin America and ASEAN,³⁶ was largely driven by institutional mimicry. However, the EU can serve as no more than an aspiration because, except for regional powerhouses like South Africa and Nigeria, most states lack the capacity for complex regional institution building.³⁷

Despite this, African regionalism embarked on a long and incremental process of regional parliamentarization to provide a degree of counterweight to executive power. The EAC, which was founded in 1967, foresaw the establishment of the East African Legislative Assembly (EALA) as the legislative organ of the community.³⁸ After the

³² The required ratification by members of the Organisation of African Unity (OAU) was completed in May 2001, after which there was a transition period. See also note 33 below.

³³ Protocol on the Pan-African Parliament (2001 PAP Protocol) 2001, available at https://au.int/sites/default/files/treaties/7780-treaty-0022_-_protocol_to_the_treaty_establishing_the_african_economic_community_relating_to_the_pan-african_parliament_e.pdf; Constitutive Act of the African Union 2002 (inaugurated at the first session of the AU Assembly on 9 July 2002), available at https://au.int/sites/default/files/treaties/7758-treaty-0021_-_constitutive_act_of_the_african_union_e.pdf.

³⁴ See various accounts in S. Adejumo (ed.), *National Democratic Reforms in Africa: Changes and Challenges* (2015); Lynch and Crawford, 'Democratization in Africa 1990–2010: An Assessment', 18 *Democratization* (2011) 275; Nwosu, 'Tracks of the Third Wave: Democracy Theory, Democratisation and the Dilemma of Political Succession in Africa', 39 *Review of African Political Economy* (2012) 11.

³⁵ Navarro, *supra* note 16, at 197, 201.

³⁶ Dri, 'Limits of the Institutional Mimesis of the European Union: The Case of the Mercosur Parliament', 1 *Latin American Policy* (2010) 52; Rüländ and Bechle, 'Defending State-Centric Regionalism through Mimicry and Localization: Regional Parliamentary Bodies in the Association of Southeast Asian Nations (ASEAN) and Mercosur', 17 *Journal of International Relations and Development* (2014) 61.

³⁷ Draper, 'Breaking Free from Europe: Why Africa Needs Another Model of Regional Integration', 47 *International Spectator: Italian Journal of International Affairs* (2012) 67, at 79.

³⁸ Treaty for the Establishment of the East African Community (EAC Treaty) 1999, available at www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf, Arts 56–60.

EAC's collapse in 1977 and its revival in 2000,³⁹ the EALA was finally instituted and began its work in November 2001. In ECOWAS, which was founded in 1975, Parliament was initially envisaged under the revised ECOWAS Treaty of 1993 and in an accompanying Protocol of 1994. This protocol entered into force in 2000 but was later amended by the Supplementary Protocol of 2006 and then superseded by the Supplementary Act of 2016.⁴⁰ Within the SADC, which was founded in 1992, a Parliamentary Forum was set up in 1997, but it had a different status; it was not an organ of the SADC but was an independent association of parliamentarians.

Therefore, the predominant ideas driving the parliamentarization of African regional organizations are pan-Africanism and democratization.⁴¹ African IPIs are, to a large extent, the institutional outcome of the search for peace and shared struggle for post-colonial emancipation from foreign rule. This is to be achieved through interstate solidarity, the mutualization of economic interests, and a sustainable uprooting of authoritarianism. The overarching narratives are therefore those of domestic empowerment and external recognition through transnational cooperative instruments. However, like in ASEAN, the ostensible enthusiasm about integration was tempered by the assertions of statehood and fears of diluting hard-won sovereignty.⁴²

3 Institutionalization

A Structure, Powers and Functions

1 The PAP

At the continental level, the PAP's competences are laid down in a revised protocol adopted in June 2014.⁴³ While this document provides for Parliament to be directly

³⁹ Hazlewood, 'The End of the East African Community: What Are the Lessons for Regional Integration Schemes?', 18 *Journal of Common Market Studies* (1979) 40.

⁴⁰ Treaty Establishing the Economic Community of West African States (ECOWAS Treaty) 1993 (the original version signed and provisionally entered into force on 28 May 1975 with subsequent ratifications extending for another month), available at www.refworld.org/docid/492174c2.html; the revised version signed on 24 July 1994, entered into force on 23 August 1995, available at www.ecowas.int/wp-content/uploads/2015/01/Revised-treaty.pdf; Protocol A/P.2/8/94 Relating to the Community Parliament (1994 ECOWAS Protocol) 1994, available at http://documentation.ecowas.int/download/en/legal_documents/protocols/Protocol%20Relating%20to%20the%20Community%20Parliament.pdf; Supplementary Protocol A/SP.3/06/06 Amending Protocol A/P.2/8/94 Relating to the Community Parliament (2006 Supplementary Protocol) 2006, available at http://documentation.ecowas.int/download/en/legal_documents/protocols/Supplementary%20Protocol%20Amending%20the%20Protocol%20Relating%20to%20the%20Community%20Parliament.pdf; Supplementary Act no. A/SA.1/12/16 Relating to the Enhancement of the Powers of the ECOWAS Parliament (2016 Supplementary Act) 2016, available at <http://parl.ecowas.int/wp-content/uploads/2017/02/ENG-Supplementary-Act-on-Enhancement-Parliament-Feb-2017.pdf>.

⁴¹ See Forere, 'Is Discussion of the "United States of Africa" Premature? Analysis of ECOWAS and SADC Integration Efforts', 56 *Journal of African Law* (2012) 29.

⁴² Narine, 'State Sovereignty, Political Legitimacy and Regional Institutionalism in the Asia-Pacific', 17 *Pacific Review* (2004) 423.

⁴³ Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament (2014 PAP Protocol) 2014 (not yet in force), available at https://au.int/sites/default/files/treaties/7806-treaty-0047_-_protocol_to_the_constitutive_act_of_the_african_union_relating_to_the_pan-african_parliament_e.pdf. See general overviews in Magliveras and Naldi, 'The Pan-African Parliament of the African Union: An Overview', 3 *African Human Rights Law Journal* (2003) 222; Mbete, 'The Pan-African Parliament: Progress and Prospects', in J. Akokpari, A. Ndinga-Muvumba and T. Murithi (eds), *The African Union and Its Institutions* (2008) 307.

electd by universal suffrage and for it to exercise legislative power, this is but an aspiration, because by September 2018, of the 28 ratifications needed for it to enter into force, it had only been signed by 19 states and ratified by nine.⁴⁴ Until this process is completed, the PAP will continue to be governed by the 2001 PAP Protocol.⁴⁵ The PAP's 250 members are therefore still appointed ('elected or designated') by national parliaments from among their members, and their membership is tied to, and dependent on, their domestic electoral mandate.⁴⁶ Insistence on the inclusion of women is a positive aspect of AU governance, given that the five-member national delegations sent to the PAP must comprise at least one female parliamentarian. The Parliament meets at least twice a year in plenary, while its daily work is carried out by 10 committees.

The PAP remains a consultative and advisory body. Its key role is to facilitate domestic legislative harmonization, while the 2014 PAP Protocol entitles it to propose draft model laws for the AU Assembly's approval. It may issue non-binding opinions, recommendations and resolutions as well as discuss the AU's budget before it is adopted by the AU Assembly. All of this is aimed at increasing the representation of 'all the peoples of Africa' and their grassroots organizations 'in discussions and decision making on the problems and challenges facing the Continent' and in the latter's 'economic development and integration'.⁴⁷ To these ends, apart from promoting democratic and good governance principles and human rights protection,⁴⁸ the PAP should also strive to familiarize African peoples with AU policies and build a sense of common destiny among them. This is particularly important due to the gaping disconnect between the African citizenry and AU institutions.⁴⁹

The currently moribund 2014 PAP Protocol makes two important changes: it increases the representation of women parliamentarians to two per delegation,⁵⁰ and it requires that, until rules on direct elections are devised, members be elected by national parliaments 'from outside [their] membership'.⁵¹ The latter could break the double mandate problem that has hamstrung the effectiveness of the EP and

⁴⁴ The states that have completed ratification are: Benin, Cameroon, Mali, Madagascar, Sierra Leone, Somalia, the Gambia, Togo and Sahrawi Arab Democratic Republic. See the latest available data published on 9 August 2018, available at <https://au.int/en/treaties>.

⁴⁵ 2001 PAP Protocol, *supra* note 33.

⁴⁶ The latest available data retrieved from 'Pan-African Parliament', *African Union*, available at <https://au.int/en/organs/pap>. The Pan-African Parliament (PAP) membership can vary over time depending on the number of ratifications of the protocol and on whether any sanctions have been imposed against a member state. The maximum number of members of the PAP is 275.

⁴⁷ 2014 PAP Protocol, *supra* note 43, preamble, Art. 2.

⁴⁸ Dinokopila, 'The Pan-African Parliament and African Union Human Rights Actors, Civil Society and National Human Rights Institutions: The Importance of Collaboration', 13 *African Human Rights Law Journal* (2013) 302.

⁴⁹ Appiah and Ansaaku, 'Towards a People Friendly Pan-African Parliament: Lessons from the European Parliament', 5 *Journal of African Union Studies* (2016) 5, at 15; Houghton, 'Challenges of the Pan-African Parliament', 11 *South African Journal of International Affairs* (2004) 71.

⁵⁰ See more in Bauer, "'Let There Be a Balance": Women in African Parliaments', 10 *Political Studies Review* (2012) 370.

⁵¹ 2014 PAP Protocol, *supra* note 43, Arts 4(3), 5(1).

added to the pressure for its direct election. However, as the aforesaid experience of Latin American regional parliaments shows, this will not be a panacea. The PAP may also organize consultative fora with national parliaments and the parliaments of the regional economic communities. One detailed study of the PAP suggests that precisely this kind of parliamentary diplomacy and inter-institutional advocacy are vital for its empowerment.⁵² Most studies nonetheless conclude that the PAP has thus far been ineffective and has failed to influence AU policy-making.

2 The EALA

The status of the EALA is laid down in the Treaty for the Establishment of the East African Community (EAC Treaty). Since the two enlargements – when Kenya, Tanzania and Uganda were joined by Burundi and Rwanda in 2007 and by South Sudan in 2016 – the Assembly has been composed of 62 members. Of them, 54 are elected by national parliaments from outside their membership (nine per delegation) and eight are non-voting members appointed *ex officio*: six national ministers in charge of regional cooperation and the secretary general and the Counsel to the EAC.⁵³ Since member states with different population sizes send the same number of delegates to the EALA, citizen representativeness is unequal.

The EALA has had to overcome significant challenges to assert its institutional independence from domestic politics and strengthen its input legitimacy. The battle for these two causes was fought in the EAC Court of Justice. Namely, in 2006, this Court adopted an interim ruling in the *Nyong'o* case, striking down Kenyan legislation on the election of members to the EALA on the grounds of the government holding fictitious elections. The Kenyan government took swift action and, in cooperation with Tanzania and Uganda, amended the EAC Treaty before the Court was able to reach a final decision.⁵⁴ Attempting to put pressure on the judges to accept the Kenyan government's position, these treaty amendments substantially overhauled the Court: an appellate division was created, new grounds for removing or suspending judges were introduced and private litigants' rights of access were limited. Only 11 days after the disputed treaty amendments, the Court handed down a judgment admonishing these amendments but fell short of invalidating them, opting instead for prospective annulment.⁵⁵

⁵² O.I. Nzewi, 'The Role of the Pan African Parliament in African Regionalism (2004–2006): An Institutional Perspective' (2008) (PhD thesis on file at the University of Pretoria), at 283.

⁵³ EAC Treaty, *supra* note 38, Art. 50.

⁵⁴ EAC Court of Justice, *Prof. Peter Anyang' Nyong'o and Others v. Attorney General of Kenya and Others*, interim ruling, 27 November 2006; first instance decision, Reference no. 1 (2006); appeal dismissed, 31 July 2010. See EAC Treaty, *supra* note 38, Arts 26, 27(1), 30(3); see also Onoria, 'Botched-Up Elections, Treaty Amendments and Judicial Independence in the East African Community', 54 *Journal of African Law* (2010) 74; Oluoch, 'Legitimacy of the East African Community', 53 *Journal of African Law* (2009) 194, at 207–208.

⁵⁵ EAC Court of Justice, *East African Law Society v. Attorney General of Kenya and Others*, Reference no. 3 (2007). See further on the concept of prospective annulment in van der Mei, 'Regional Integration: The Contribution of the Court of Justice of the East African Community', 69 *Heidelberg Journal of International Law* (2009) 403, at 418.

Several authors described the Court's response as a 'rhetorical judicial pushback but a substantive acquiescence to a political *fait accompli*'.⁵⁶ Despite effectively accepting the treaty amendments, the Court's final decision in *Nyong'o* confirmed that the Kenyan EALA election procedure was incompatible with the EAC Treaty. Eventually, after half a year of governmental resistance, the Kenyan Parliament amended the legislation in question and held a fresh election to the EALA, thereby ending this forceful attack on the authority of both the legislative and judicial institutions of the EAC.

When it comes to its functions, the EALA, as the 'legislative organ' of the EAC, acts on proposals by the Council or on motions by its members to pass bills on any EAC matter.⁵⁷ Yet, here too, interinstitutional muscle flexing prompted the EAC Court to intervene and protect the separation of powers. This happened in the first case it ever handed down, when, although again only prospectively, it prohibited the Council from unilaterally withdrawing a private members' bill tabled in the Assembly.⁵⁸ Furthermore, bills only become community acts when they receive assent by the heads of state gathered in the unaccountable EAC Summit.⁵⁹ If assent is withheld, the Assembly may reconsider and resubmit the bill, but it definitively lapses if rejected again by at least one head of state. This executive check on the EALA seriously curtails its powers because the decision ultimately rests with the heads of state. Yet, once assent is granted, community acts take precedence over national law, and, upon accession to EAC, member states are required to pass legislation to enable such precedence.⁶⁰ Other acts, such as regulations, directives and decisions, are adopted by the Council and are binding on the member states.⁶¹ Outside its annual plenary meeting, the EALA works in six standing committees. Apart from the legislative function, the EALA also approves the EAC's budget, considers annual and audit reports on EAC activities and maintains liaison with national parliaments thus ensuring mutual information flow.⁶² Thus, despite normative institutional strength, the EALA suffers from significant risks of structural democratic deficits capable of affecting its input and output legitimacy. Even so, the EALA still exercises somewhat more influence on regional politics than its counterparts in West and Southern Africa.

3 ECOWAS Parliament

The ECOWAS Parliament's role used to be defined in the 1994 ECOWAS Protocol and in the 2006 Supplementary Protocol. However, these were repealed in 2016 by a Supplementary Act, which enhanced the Parliament's powers.⁶³ The 115 seats in the

⁵⁶ Alter, Gathii and Helfer, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences', 27 *European Journal of International Law* (2016) 293, at 305 (emphasis in original).

⁵⁷ On private members' bills, see Rules of Procedure of the East African Legislative Assembly 2015, available at www.eala.org/uploads/EALA_Rules_Final_document_-_26.02.2015_1.pdf, Art. 64.

⁵⁸ EAC Court of Justice, *Calist Andrew Mwatela and Two Others v. East African Community*, Reference no. 5 (2005); see also Oluoch, *supra* note 54, at 210.

⁵⁹ EAC Treaty, *supra* note 38, Arts 62–63.

⁶⁰ *Ibid.*, Arts 8(2), (4).

⁶¹ *Ibid.*, Arts 14(3)(d), 16.

⁶² *Ibid.*, Arts 49, 65, 132(2).

⁶³ 1994 ECOWAS Protocol, *supra* note 40; 2006 Supplementary Protocol, *supra* note 40; 2016 Supplementary Act, *supra* note 40.

ECOWAS Parliament are allocated so that each of the 15 member states is guaranteed five representatives, while the remaining seats are distributed proportionately to the size of the population. This means that Nigeria is by far the most represented with 35 members, followed by Ghana with eight and Ivory Coast with seven members, with the rest of the member states having either six or five members.⁶⁴

The ECOWAS Parliament was initially only a 'forum for dialogue, consultation and consensus' with the primary objective of promoting integration.⁶⁵ Its advisory function has been to adopt non-binding recommendations and opinions, particularly on human rights and fundamental freedoms, interconnection between telecommunications, media and energy networks and policies relating to public health, education and research, youth and sports, the environment, ECOWAS citizenship and social integration and treaty review.⁶⁶ But the 2006 amendment called for the ECOWAS Parliament to be endowed with a law-making role. This process, however, has been a bumpy road and has depended on the Parliament's own willingness to act, which has been questionable at times, especially when, towards the end of the first legislature, the Commission replied to the Parliament's resolution demanding greater involvement that the latter had 'never addressed recommendations to the other ECOWAS institutions'.⁶⁷

An important step was made in December 2014, when the Authority of Heads of State and Government (ECOWAS Authority) agreed to grant Parliament a degree of budgetary, legislative and oversight powers.⁶⁸ However, this initiative failed because the ECOWAS Authority did not eventually sign the 2014 Supplementary Act.⁶⁹ Another push towards empowerment, this time successful, ensued in December 2016, when the ECOWAS Authority signed another Supplementary Act implementing these enhancements.⁷⁰ In particular, the ECOWAS Parliament was given consultative budgetary power insofar it is called upon to issue a non-binding and non-suspensory opinion on the Community budget, which is otherwise adopted by the Council.⁷¹ The Parliament is also tasked with overseeing the work of programme-implementing Community bodies in the form of resolutions and may establish committees of inquiry.⁷²

⁶⁴ Discussions on Morocco's accession to the Economic Community of West African States (ECOWAS) are presently ongoing, and if this country were to join, the seat distribution in the ECOWAS Parliament would change with Morocco likely becoming the second largest delegation after Nigeria.

⁶⁵ 1994 ECOWAS Protocol, *supra* note 40, preamble.

⁶⁶ 2006 Supplementary Protocol, *supra* note 40, Art. 6.

⁶⁷ C.M. Nwankwo, 'Legitimation of the Economic Community of West African States (ECOWAS): A Normative and Institutional Inquiry' (2008) (PhD thesis on file at Brunel University London), at 201.

⁶⁸ Supplementary Act on the Enhancement of the Powers of the ECOWAS Parliament, 15 December 2014 (never entered into force); Boré and Henkel, 'Disturbing a Cosy Balance? The ECOWAS Parliament's Rocky Road to Co-Decision', Friedrich Ebert Stiftung, International Policy Analysis, January 2015.

⁶⁹ 'I Am Happy with Our Accomplishments', *ECOWAS Parliament*, 4 February 2016, available at <http://parl.ecowas.int/en/i-am-happy-with-our-accomplishments-ekweremadu>.

⁷⁰ 2016 Supplementary Act, *supra* note 40, Art. 7.

⁷¹ *Ibid.*, Art. 17.

⁷² *Ibid.*, Arts 7(c), 36.

The most significant novelty, however, is the right for Parliament to co-legislate with the Council on matters of economic and monetary integration, which encompasses policies relating to trade, customs, free movement of persons, goods and services, infrastructure, monetary cooperation, industry and mining, the private sector and investment promotion. The Parliament's legislative power is exercised in the form of mandatory assent, given by means of a resolution. Such assent is also required for the revision of the ECOWAS Treaty and for the promotion and protection of human rights and fundamental freedoms.⁷³ The Parliament may also indirectly initiate model and uniform laws by requesting the Council to submit such proposals.⁷⁴

Importantly, members of the ECOWAS Parliament are henceforth to be elected by direct universal suffrage, with a minimum 30 per cent threshold of female representation in each member state delegation and with the requirement for delegations to reflect national political configuration as much as possible.⁷⁵ This goes hand in hand with the strategic plan adopted in June 2010 that aimed to transform the organization from an 'ECOWAS of States' to an 'ECOWAS of People'.⁷⁶ Until preparations for ECOWAS Parliament elections are completed, members will continue to be elected by national parliaments. In terms of its functioning, the ECOWAS Parliament is elected for a period of four years and convenes twice a year in ordinary sessions lasting a maximum of one month, and, when necessary, in extraordinary sessions lasting no longer than seven days.⁷⁷ The Parliament's 13 committees ensure a wide coverage of policy areas. Relations with other ECOWAS institutions are governed by allowances for the ECOWAS Authority to make an address before the Parliament, for the Council to present an annual report, for the Commission to present its strategic plan after being appointed and for all of these institutions to answer questions posed by Parliament members. Yet neither interaction may be followed by a vote, which eliminates any meaningful democratic control.⁷⁸

Parliamentary diplomacy is furthermore an explicit function of the ECOWAS Parliament, to which end it is called upon to maintain relations with national and regional parliaments, IPIs, international organizations and third states.⁷⁹ It may also set up inter-parliamentary networks.⁸⁰ The Parliament has indeed engaged in a range of integration-supporting activities. To wit, based on the right of the Parliament Bureau to authorize fact-finding and study missions abroad,⁸¹ Parliament has actively engaged in peace building and conflict resolution,⁸² notably by brokering peace in

⁷³ ECOWAS Treaty, *supra* note 40.

⁷⁴ *Ibid.*, Arts 7(f), 37, 40(2).

⁷⁵ *Ibid.*, Art. 18.

⁷⁶ ECOWAS, 'ECOWAS Vision 2020: Towards a Democratic and Prosperous Community', June 2010.

⁷⁷ 2016 Supplementary Act, *supra* note 40, Arts 5, 27.

⁷⁸ Rules of Procedure of the ECOWAS Parliament (ECOWAS Rules of Procedure) 2016, available at <http://parl.ecowas.int/en/rules-of-procedures/>, Rules 84, 85, 87.

⁷⁹ 2016 Supplementary Act, *supra* note 40, Art. 40.

⁸⁰ ECOWAS Rules of Procedure, *supra* note 78, Rules 90–91.

⁸¹ *Ibid.*, Rule 24.

⁸² N.S. Yakubu, 'The ECOWAS Parliament as a Tool for Conflict Prevention in West Africa' (2015) (PhD thesis on file at University of East Anglia).

Liberia's Mano River region, Sierra Leone and Guinea. It has been estimated that these endeavours were 'crucial in preventing the escalation of crisis and were eventually decisive in resolving the conflicts'.⁸³ Road maps resulting from the Parliament's reconciliatory visits have, for instance, been utilized by the ECOWAS Authority in conflict mediation during the Liberian crisis. In this and a number of other countries, such as Nigeria, Ghana, Benin, Togo and the Gambia, the Parliament has also organized election observation missions.⁸⁴ This is in line with the commitment to the 'empowerment and strengthening of parliaments' envisaged in the 2001 ECOWAS Protocol on Democracy and Good Governance.⁸⁵

Hence, the ECOWAS Parliament is presently undergoing a transition from a merely consultative body, characterized by internal institutional inertia rooted in the lack of decision-making powers, towards a more assertive directly elected Community legislature with a measure of legislative power.

4 SADC Parliamentary Forum

Unlike the regional parliaments examined above, the SADC Parliamentary Forum is not an organ of the 16-member SADC. It is an autonomous international organization with its own legal personality, which is merely linked to the SADC but has no formal relationship with its institutions.⁸⁶ The forum will remain an independent entity for the foreseeable future because a proposal made in November 2016 to transform the forum into a regional parliament was rejected by the SADC Summit of the Heads of State and Government.⁸⁷

The SADC Parliamentary Forum consists of the presiding officers of the SADC national parliaments and up to five other parliamentarians elected by the 14 participating parliaments.⁸⁸ The forum has an advisory role, which it performs by issuing

⁸³ Nwankwo, *supra* note 67, at 204.

⁸⁴ Magbagbeola and Onoja, 'Democratic Regionalisation in West Africa: Evidence from the ECOWAS Parliament', 2 *Regional Integration Observer* (Publication of the Centre for European Integration Studies of the University of Bonn) (2008) 1, at 3.

⁸⁵ Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security 2001, available at www.internationaldemocracywatch.org/attachments/350_ECOWAS%20Protocol%20on%20Democracy%20and%20Good%20Governance.pdf.

⁸⁶ This, however, is dubious because the South African Development Community (SADC) Parliamentary Forum Constitution (SADC Parliamentary Forum Constitution) 1995, available at <https://new.sadcpf.org/index.php/resources/strategic-documents/constitution/send/5-constitution/1-sadc-parliamentary-forum-constitution>, which was officially approved by the SADC Summit, lays down in Art. 3(2) that it was created in accordance with Art. 9(2) or 10(6) of the Treaty of the Southern African Development Community (SADC Treaty) 1992, available at www.sadc.int/files/5314/4559/5701/Consolidated_Text_of_the_SADC_Treaty_-_scanned_21_October_2015.pdf, both of which enable the establishment of new SADC institutions or organs.

⁸⁷ Report of the 40th Plenary Assembly Session of SADC Parliamentary Forum, 3–15 November 2016, Harare, Zimbabwe, point 5, available at <http://nationalassembly.sc/index.php/2016/12/01/4326>. See a detailed account of this matter in Musavengana, *The Proposed SADC Parliament: Old Wine in New Bottles or an Ideal Whose Time Has Come?*, Monograph no. 181 of the Institute for Security Studies (Pretoria) (2011).

⁸⁸ Madagascar is a member of the SADC but not of the SADC Parliamentary Forum. Also, the Comoros joined the SADC in August 2017 but not (yet) the forum. See Communiqué of the 37th Summit of the SADC Heads of State and Government, 19–20 August 2017, point 29.

non-binding recommendations to the SADC institutions. The plenary meets at least twice a year, and its work is complemented by that of the five standing committees.⁸⁹ While its constitutive act, which its drafters have named the ‘Constitution’, contains a sweeping list of objectives – ranging from support for the domestic implementation of SADC policies, to the promotion of democratic values, to interparliamentary networking and economic development – the SADC Parliamentary Forum has established a particular reputation for SADC-wide support for free and fair elections and the role of women in politics.

When it comes to its electoral work, the SADC Parliamentary Forum has organized no less than 41 election observation missions between 1999 and 2017.⁹⁰ However, this was not without obstacles, and the 2002 presidential election in Zimbabwe is a case in point. The controversy arose from the fact that the two missions – sent separately by the SADC and the SADC Parliamentary Forum – reached different conclusions on the validity of the election process. While the former mission endorsed the election, the latter was reluctant to do so. As a result, when the Zimbabwean Parliament was up for election in 2005, the Zimbabwean government only invited the SADC to send an observation mission but not the forum.⁹¹ Meanwhile, in 2004, the SADC adopted the Principles and Guidelines Governing Democratic Elections, while the SADC Parliamentary Forum had already compiled the Norms and Standards for Elections in the SADC Region in 2001.⁹²

In relation to women’s parliamentary engagement, the SADC Parliamentary Forum has an internal body especially dedicated to the promotion of this goal – the Regional Women’s Parliamentary Caucus. This caucus monitors the observance of the forum’s rule that requires each national delegation to the forum to ensure equitable representation of women and that the chairperson of each National Women’s Parliamentary Caucus be included in elections for delegation

⁸⁹ Under Rule 37(2) of the Rules of Procedure of the SADC Parliamentary Forum 2014, available at <https://new.sadcpf.org/index.php/resources/strategic-documents/rules-and-procedure/send/6-rules-and-procedure/2-sadc-parliamentary-forum-rules-of-procedure>, these committees were in charge of: (i) gender equality, women advancement and youth development; (ii) trade, industry, finance and infrastructure; (iii) food, agriculture and natural resources; (iv) democratization, governance and human rights and (v) human and social development and special programmes.

⁹⁰ SADC Parliamentary Forum, Interim Mission Statement: Election Observation Mission to the 2017 Lesotho National Assembly Elections, available at www.sadcpf.org/index.php?option=com_content&view=article&id=192%3Ainterim-mission-statement-election-observation-mission-to-the-2017-lesotho-national-assembly-elections&catid=125%3Anews-a-events&Itemid=1.

⁹¹ Johnston, ‘Regional Parliamentary Peacebuilding and Engagement with International Organizations’, in M. O’Brien, R. Stapenhurst and N. Johnston (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries* (2008) 201, at 209.

⁹² Principles and Guidelines Governing Democratic Elections 2004 (revised in 2015), www.eisa.org.za/pdf/sadc2015principles.pdf; Norms and Standards for Elections in the SADC Region 2001, www.eisa.org.za/pdf/sadcpf.pdf.

membership.⁹³ The SADC Parliamentary Forum is hence, above all, a deliberative and capacity-building body. It does not exercise any law-making and controlling functions and is focused on debating and mobilizing political attention for the most pressing policy issues of common regional interest, such as, notably, the elimination of HIV/AIDS.⁹⁴

Therefore, as Table 1 shows, while the EALA and, partially, the ECOWAS Parliament enjoy legislative functions, regional parliaments in Africa do not possess the law-making powers that would enable them to wield authority comparable to that of the EP or national parliaments.⁹⁵ The oversight competences rely on predominantly discursive instruments of control that cannot compel executive behaviour. Yet, as demonstrated above, even the EALA's legislative role is fragile, and its check on the executive actors is limited. This subordination of parliamentary bodies at the regional level stems not only from their institutional design but also from the politico-constitutional incapacities imported from the national level and the weaknesses of regional courts. African regional parliaments consequently operate in the shadow of executive omnipotence.

The paradoxical survival and perpetuation of parliamentary institutions in regional governance despite their subjugation are sustained through the intertwining of internal and external dynamics. Apart from the earlier-mentioned pan-African and democratic ideals, the donors of development funds, such as the EU, as well as domestic executive branches across the African regions may have an interest in creating ineffectual regional forums on which they can project their own policy preferences and to which they can export political disputes in search of influence without suffering any serious backlash. Regional parliaments may therefore serve as extended arenas for power struggles and the legitimation and mainstreaming of policy debates.

B *Interregional Parliamentary Relations*

The marginality of regional parliaments in the politico-institutional frameworks of regional organizations in Africa brings to the fore the question of the contribution of external actors to their solidification. Although constantly morphing due to changing priorities, a sense of tutelage and the influence of the 'emerging' powers – inter-regional relations between Africa and the EU have played a notable role in discussing preferential trade agreements, developing good governance, sharing best practice in human rights protection and increasing the democratic capacity of

⁹³ SADC Parliamentary Forum Constitution, *supra* note 86, Art. 6(3).

⁹⁴ Monyae, 'The SADC Parliamentary Forum's Role in Building Democracy', Democracy Works Foundation Policy Brief no. 13, 24 February 2017.

⁹⁵ Salih, 'African Regional Parliaments: Legislatures without Legislative Powers', in O. Costa, C. Dri and S. Stavridis (eds), *Parliamentary Dimensions of Regionalization and Globalization: The Role of Inter-Parliamentary Institutions* (2013) 149.

Table 1: Regional Parliaments in Africa Analysed in This Study

Name of the IPI	Year of establishment of the regional organization / year of establishment of the IPI	Member states participating in the IPI	Powers (nominal areas)	Number of delegates
Pan-African Parliament	2002 / 2004	50 out of a total of 55 AU member states (note that Morocco was readmitted to the AU in January 2017)	Consultative/advisory Budgetary (debating) Oversight	250 (5 per member state; the maximum being 275 members)
East African Legislative Assembly	1967 / 2001	Burundi, Kenya, Rwanda, Tanzania, Uganda, South Sudan	Legislative budgetary (approval) Oversight	62 (9 per member state + 8 <i>ex officio</i>)
ECOWAS Parliament	1975 / 2000	Nigeria (35 representatives) Ghana (8) Cote d'Ivoire (7) Burkina Faso, Guinea, Mali, Niger, Senegal (6) Benin, Cape Verde, Guinea Bissau, Gambia, Liberia, Sierra Leone, Togo (5) (note that Mauritania withdrew in 2000; Morocco's accession discussed since its application in February 2017) ⁹⁶	Legislative Budgetary (opinion) Oversight	115 (5 per member state, rest proportional to population size)
SADC Parliamentary Forum	1992 / 1997	Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Tanzania, Zambia, Zimbabwe (note that Madagascar is a member of SADC but not of SADC Parliamentary Forum; the Comoros joined the SADC in August 2017 but not (yet) the SADC Parliamentary Forum; Burundi's accession to the SADC has been discussed since its application in February 2017) ⁹⁷	Consultative/advisory (note Maximum 90 that it is independent of the presiding officers of member parliaments + up to 5 per member parliament) SADC	

Source: Author's own compilation based on official documents, parliamentary websites, literature and personal correspondence (data up to date as of 16 August 2018).

⁹⁶ Fabbiani, 'Morocco's Difficult Path to ECOWAS Membership', Carnegie Endowment for International Peace, 28 March 2018, available at <http://carnegieendowment.org/sada/75926>; see also see note 64 above.

⁹⁷ 'SADC Puts Burundi's Membership Application on Hold', *The Economist* (6 March 2017), available at <http://country.eiu.com/article.aspx?articleid=1555187339&Country=Burundi&topic=Politics&subtopic=Forecast&subsubtopic=International+relations&u=1&pid=1637027947&oid=1637027947&uid=1>.

African legislatures.⁹⁸ As with EU relations with Mercosur and ASEAN,⁹⁹ inter-regionalism has been an important dimension of African regional parliamentarization.¹⁰⁰

At the Lisbon summit in 2007,¹⁰¹ the EU and Africa agreed to a strategic partnership in the form of the Joint Africa–EU Strategy.¹⁰² This strategy foresees regular EP–PAP cooperation, spearheaded by meetings between their presidents, in order to provide political guidance, support African national parliaments and review the progress of the partnership by means of reports on the implementation of joint policies and through the organization of joint hearings.¹⁰³ The EU high representative, Federica Mogherini, confirmed these democracy-support commitments in May 2017 in advance of the fifth summit, advocating the initiation of a joint AU–EU high-level conference on electoral processes, democracy and governance in Africa and Europe, which would involve numerous stakeholders, including the EP and the PAP.¹⁰⁴ Furthermore, the EU has been funding a series of investment, infrastructural, peace and institution-building projects in Africa. For example, within its Development Cooperation Instrument (DCI) is the Pan-African Programme established in 2014 as the first continental financing initiative with the budget of €845 million for the period 2014–2020. Among other things, this programme provides financial support for the institutional development of the PAP (especially its Secretariat), its human rights action and its liaison with the civil society.¹⁰⁵ In 2015, for example, the PAP received a direct grant of €1,800,000.¹⁰⁶

⁹⁸ See generally Söderbaum, 'African Regionalism and EU-African Interregionalism', in M. Telò (ed.), *European Union and New Regionalism: Regional Actors and Global Governance in a Post-Hegemonic Era* (2007) 185; M. Carbone (ed.), *The European Union in Africa: Incoherent Policies, Asymmetrical Partnership, Declining Relevance* (2013).

⁹⁹ Vandewalle, European Parliament In-Depth Analysis 'The ASEAN Inter-Parliamentary Assembly (AIPA): A Privileged Interlocutor for the European Parliament in South East Asia', August 2015; Mattheis and Wunderlich, 'Regional Actorness and Interregional Relations: ASEAN, the EU and Mercosur', 39 *Journal of European Integration* (2017) 723.

¹⁰⁰ Kingah and Cofelice, 'The European Parliament and the Engagement with African Regional Parliaments', in S. Stavridis and D. Irrera (eds), *The European Parliament and Its International Relations* (2015) 145; Kingah and Cofelice, 'EU's Engagement with African (Sub)Regional Parliaments of ECOWAS, SADC, the EAC and the AU', UNU-CRIS Working Paper 2012/8 (2012), at 11ff; F. Söderbaum, *Rethinking Regionalism* (2016), at 189; Costa and Dri, 'How Does the European Parliament Contribute to the Construction of the EU's Interregional Dialogue', in F. Baert, T. Scaramagli and F. Söderbaum (eds), *Intersecting Interregionalism: Regions, Global Governance and the EU* (2014) 129, at 132.

¹⁰¹ The summit is only held every three years.

¹⁰² Africa–EU Strategic Partnership: A Joint Africa–EU Strategy 2007, available at www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/97496.pdf.

¹⁰³ *Ibid.*, points 33, 34, 96, 104, 110, 117.

¹⁰⁴ High Representative of the Union for Foreign and Security Policy, 'Joint Communication to the European Parliament and the Council for a renewed impetus of the Africa-EU Partnership', 4 May 2017, at 11.

¹⁰⁵ 'Pan African Programme 2014–2020: Multiannual Indicative Programme 2014–2017' (2014), at 17, 20, 48, 53.

¹⁰⁶ Commission Implementing Decision on the Annual Action Programme 2015 of the Development Cooperation Instrument Pan-African Programme, 'Action Document for Strengthening the African Human Rights System' (2015), Annex 2, at 18.

To implement its Africa strategy and strengthen inter-parliamentary ties, the EP has established three delegations: one each for relations with South Africa (established in 1994), the Maghreb countries (established in 1979) and the PAP (established in 2006); and two inter-parliamentary assemblies: the African, Caribbean and Pacific–EU Joint Parliamentary Assembly (ACP–EU JPA) (established in 2000) and the Parliamentary Assembly of the Union for the Mediterranean (established in 2010),¹⁰⁷ in which several north African states are participating. Apart from regular meetings, the EP and the PAP also customarily organize ‘parliamentary summits’ on the margins of the EU–Africa summit. It has been argued that inter-regional EU–Africa relations have boosted the legitimacy and profile of the PAP.¹⁰⁸ Even so, the nature of the EP–PAP relationship has largely failed to transform beyond that of a donor and recipient and has had a negligible influence on the democratization of Africa’s governance systems, mainly owing to insufficient clarity as to the target results, the lack of mechanisms to assess outcomes and poor cooperation with national parliaments.¹⁰⁹ Similarly, while the ACP–EU JPA has been a valuable asset in promoting democratic values, its work has suffered due to asymmetries in the institutional capacities of the two sides, the lack of continuity in the assembly’s membership and, significantly, its dependence on the participating national parliaments for the supervision over and implementation of the Cotonou Agreement.¹¹⁰

Furthermore, the EU established a separate strategic partnership with South Africa in 2006, which was supplemented with the Joint Action Plan in 2007.¹¹¹ The latter document places emphasis on the mutual understanding of their respective positions on matters of common concern and of their democratic systems and calls for the formalization of bilateral inter-parliamentary relations, the continuation of visits and greater interaction between sectoral parliamentary committees. The 1999 EU–South Africa Trade, Development and Cooperation Agreement had already encouraged inter-parliamentary contacts.¹¹² Yet, even though the strategic partnership is undergoing a

¹⁰⁷ The Parliamentary Assembly of the Union for the Mediterranean superseded the Euro-Mediterranean Parliamentary Assembly (inaugurated in 2004) and its predecessor the Euro-Mediterranean Parliamentary Forum (1998–2002). See Parliamentary Assembly of the Union for the Mediterranean, ‘History’, available at <https://paufm.org/history/>.

¹⁰⁸ Navarro, *supra* note 16, at 198.

¹⁰⁹ Kisiangani, ‘The European Union and the Pan-African Parliament: Adding Value to the Partnership’, International IDEA Discussion Paper no. 34 (2010), at 7, available at www.idea.int/sites/default/files/publications/chapters/the-role-of-the-european-union-in-democracy-building/eu-democracy-building-discussion-paper-34.pdf.

¹¹⁰ Delputte, ‘The ACP-EU Joint Parliamentary Assembly Seen by Its Members: Empowering the Voice of People’s Representatives?’, 17 *European Foreign Affairs Review* (2012) 241, at 250. Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part, Doc. ACP/CE/en123, 23 June 2000.

¹¹¹ See generally Fioramonti and Kotsopoulos, ‘The Evolution of EU–South Africa Relations: What Influence on Africa?’, 22 *South African Journal of International Affairs* (2015) 463. South Africa-European Union Strategic Partnership Joint Action Plan 2007, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209650%202007%20INIT>.

¹¹² Agreement on Trade, Development and Cooperation between the European Community and Its Member States, of the One Part, and the Republic of South Africa, of the Other Part, OJ 1999 L 311/3, Art. 97(4).

number of challenges due to changing economic and security circumstances,¹¹³ these programmatic declarations in favour of parliamentary exchanges reflect a persisting mutual interest in ensuring democratic oversight over common foreign policy goals. In practice, however, the impact of the EP and the PAP on EU–Africa relations has been very modest. The two institutions’ contribution to the implementation of the Joint Africa–EU Strategy has been ‘slow to manifest itself, thus raising the question of democratic deficit of the whole process’.¹¹⁴

These formal inter-regional parliamentary channels operate in parallel with more informal ones, among which the Association of European Parliamentarians with Africa (AWEPA) stands out. AWEPA was set up in 1984 to support the abolition of apartheid. In 1993, when this goal was achieved, the association’s focus shifted towards democratic capacity building, peace and human rights promotion.¹¹⁵ Membership in this strictly non-partisan association counts over 1,900 current and former parliamentarians, and it has a total of 11 offices (nine in Africa and two in Europe). AWEPA has also assisted African parliaments in meeting the UN Sustainable Development Goals.

Apart from the EU, other bilateral relations of relevance to African regional parliamentarization have developed simultaneously. These include parliamentary interactions within the African Region Branch of the Commonwealth Parliamentary Association as well as between certain African parliamentary institutions and national parliaments of third countries. North American legislatures are particularly active in this respect. The Parliament of Canada has had a Canada–Africa Parliamentary Association since 2003, whose activities involve visits to the PAP and individual African countries.¹¹⁶ Since January 2017, the US Congress and the PAP have been negotiating a memorandum of understanding on ways to mobilize African diaspora in the USA to advance the causes of mutual interest, not least through the Congressional Black Caucus.¹¹⁷ The PAP also has engaged in lobbying directly with the US Congress, for instance, by dispatching a mission in September–October 2017 to advocate against the imposition of sanctions against Sudan.¹¹⁸

¹¹³ See essays in L. Masters and L. Hierro (eds), ‘Reviewing the First Decade of the EU–South Africa Strategic Partnership’, 24 (Special Issue) *South African Journal of International Affairs* (2017).

¹¹⁴ Mangala, ‘Africa–EU Strategic Partnership: Historical Background, Institutional Architecture, and Theoretical Frameworks’, in J. Mangala (ed.), *Africa and the European Union: A Strategic Partnership* (2013) 15, at 35.

¹¹⁵ AWEPA’s original name ‘Association of West European Parliamentarians for Action against Apartheid’ was changed in 1993 into ‘Association of European Parliamentarians for Africa’ and, in 2010, to ‘Association of European Parliamentarians with Africa’.

¹¹⁶ See Parliament of Canada, ‘Canada–Africa Parliamentary Association’, available at www.parl.ca/IIA/Association.aspx?DCId=4&DTId=6&Language=E&ORGId=10790&P=overview.

¹¹⁷ PAP, ‘African Diaspora Pledges Support to PAP Amidst Bilateral Uncertainty between Africa and USA’, 11 May 2017, available at www.panafricanparliament.org/news/267-african-diaspora-pledges-support-to-pap-amidst-bilateral-uncertainty-between-africa-and-usa.

¹¹⁸ African Union, press release, 6 October 2017, available at https://au.int/sites/default/files/pressreleases/33121-pr_the_president_and_parliamentarians_of_the_pan_african_parliament_pap_undertook_a_working_visit_to_the_united_states_of_america_washington_dc-11.pdf.

4 Benefits of African Regional Parliamentarization

While some regional parliaments may draft model laws to facilitate the implementation of Community policies, most regional parliaments are devoid of significant legislative and oversight powers. Instead, the benefits of their actorness are of a different nature and correspond to the main challenges facing the continent. They are manifested in two key ways: capacity building and the maintenance of peace and security.

A Capacity Building

A common trait among many African regional parliaments is the insufficient institutional capacity in terms of resources, experience and knowledge needed to perform their functions effectively. One of the most pressing problems relates to the conduct of presidential and parliamentary elections. In 2007, the AU adopted the African Charter of Democracy, Elections and Governance.¹¹⁹ Seeking to reinforce the rule of law, free elections and control over processes of governmental change, this charter called for election observation missions to be carried out, *inter alia*, by representatives of the PAP and national legislatures.¹²⁰ The PAP has indeed conducted fact-finding missions on issues ranging from education to environment protection to gender and human rights (for example, in Rwanda, Sierra Leone and Ivory Coast); while its role as observer of national elections (for example, in the Democratic Republic of Congo, Kenya, Zimbabwe and Angola) has been touted as one of its ‘more significant and productive activities’.¹²¹ The charter also called for an enhancement of the capacity, functioning and effectiveness of parliaments in general.¹²² Yet the charter’s practical impact is still limited given that out of the 15 ratifications required, only 10 states have signed and ratified it.¹²³ Most regional parliaments in Africa nonetheless engage in election observation missions in one way or another, which, in the case of irregularities, can lead to the public shaming of the authorities concerned.

The other key dimension of capacity building refers to enhancing parliamentary infrastructures that shape their potential for influencing policy-making processes. This is aimed at providing parliamentarians with sector-specific training and developing their interest and expertise in often complex policy matters, such as the fight against infectious diseases or the management of natural resources. Both national and regional African parliaments also receive technical support with a view to increasing the availability and utilization of research evidence in day-to-day parliamentary business as an essential component of efficient scrutiny over governmental action.

¹¹⁹ African Charter of Democracy, Elections and Governance (African Charter of Democracy) 2007, available at www.achpr.org/instruments/charter-democracy/.

¹²⁰ *Ibid.*, Art. 21(2). See similarly Cilliers and Mashele, ‘The Pan-African Parliament: A Plenary of Parliamentarians’, 13 *African Security Review* (2004) 72.

¹²¹ Mpanyane, ‘The Transformation of the Pan-African Parliament: A Path to Legislative Body?’, Institute for Security Studies (Tshwane) Paper no. 181 (2009), at 3.

¹²² African Charter of Democracy, *supra* note 119, Arts 27(1), 32(2).

¹²³ See African Commission on Human and Peoples’ Rights, ‘Ratification Table’, available at www.achpr.org/instruments/charter-democracy/ratification.

To these ends, visits between groups of parliamentarians are organized in order not only to maximize peer learning and exchange insights from political practice but also to understand the specificities and limitations of foreign models of parliamentary actorness.

There exist a series of institutionalized networks, projects or centres that support parliamentary capacity building in Africa. For example, the Africa i-Parliaments Action Plan, a seven-year initiative (2005–2013) that is worth over US\$ 6 million, funded by the UN Department for Economic and Social Affairs, has established the African Parliamentary Knowledge Network and produced Legislative Drafting Guidelines for Africa with the help of the French Senate, the United Kingdom's House of Lords, the Portuguese Assembly and the Egyptian Parliament.¹²⁴ The African Parliamentary Union, established in 1976, brings together 40 parliaments to engage in dialogue through thematic conferences and to promote technical assistance to parliaments. African parliaments have also been the beneficiaries of the programmes offered by the African Capacity Building Foundation (for example, for the Parliament of Sierra Leone to recover from the 1991–2002 civil war). Additional skill development bodies have been created, such as the SADC Parliamentary Leadership Centre and the East African Parliamentary Institute.

B Peace and Security

Whether rooted in territorial disputes, religious or ethnic strife, battles over natural resources or sheer electoral power grabs, conflicts involving the use of force are no longer the exclusive domain of state diplomacy and intervention.¹²⁵ Both national and regional parliaments nowadays take an active part in the processes of conflict prevention, peace building and post-conflict recovery.¹²⁶ This is particularly the case in Africa, where the PAP, regional and sub-regional parliaments as a rule incorporate the maintenance of peace and security among their principal objectives. They also have dedicated standing committees that oversee the conflict-related work of their regional organizations.¹²⁷

The manner in which regional parliaments exercise influence in this sphere of diplomacy is manifold. First, they dispatch fact-finding and goodwill missions, whose goal is to collect, analyse and disseminate first-hand information and become better

¹²⁴ Legislative Drafting Guidelines for Africa 2012, available at <http://sites.bu.edu/dome/files/2016/02/Legislative-Drafting-Guidelines-for-Africa.pdf>.

¹²⁵ M. O'Brien, R. Staphenurst and N. Johnston (eds), *Parliaments as Peacebuilders in Conflict-Affected Countries* (2008).

¹²⁶ United Nations Development Programme (UNDP), *Parliaments, Crisis Prevention and Recovery: Guidelines for the International Community* (2006), at 6.

¹²⁷ These are the PAP Committee on Cooperation, International Relations, and Conflict Resolution; the ECOWAS Committee on Political Affairs, Peace and Security Affairs, and Peer Review Mechanism; the SADC Parliamentary Forum Committee on Democratisation, Governance and Gender Equality, which aims, *inter alia*, to advance peace, mitigate conflict and carry out peace and conflict vulnerability assessments and the East African Legislative Assembly (EALA) Committee on Regional Affairs and Conflict Resolution.

equipped to pronounce on peace-building efforts. Second, they engage in various types of mediation and dialogue, endeavouring to build trust between the warring parties, help them overcome their prejudices and hold conciliatory talks in search of consensus. These can constitute significant first steps in resolving a conflict where states have no official diplomatic contact. Third, parliaments can assist in brokering the adoption of legal instruments addressing the conflict by organizing meetings and hearings with stakeholders, mobilizing civil society and putting pressure on executives through resolutions and recommendations.

Political practice offers numerous examples that show that, despite challenges in making their voice known, regional parliaments have a role to play in security affairs. In North Africa, the PAP, for example, vocally condemned the utilization of the 'Responsibility to Protect' in the Libyan conflict in 2001 that resulted in 'the military aggression of NATO forces in bombing of public facilities, infrastructure and residential sites and the targeted assassination of national leaders', favouring instead action by the AU.¹²⁸ It also sent a fact-finding mission to Tripoli and Benghazi and a further goodwill mission to Tunisia and Egypt.¹²⁹ In Western Africa, the ECOWAS Parliament has performed countless formal and informal activities to prevent conflicts in Liberia, Sierra Leone and Ivory Coast spilling over to neighbouring Guinea and to assist post-conflict recovery in Sierra Leone.¹³⁰ East Africa demonstrates that peace-building parliamentary diplomacy may also develop in less formalized parliamentary networks, such as the Great Lakes Parliamentary Forum on Peace, known as the Amani Forum. Established in 1999, this forum is a voluntary organization that does not belong to any regional organization. It has served as an active promotor of the peaceful resolution of the conflict in the Great Lakes Region.¹³¹ The Amani Forum has sent a number of fact-finding missions (for example, to northern and southern Sudan and northern Uganda), election observation missions (for example, Kenya, Tanzania, Rwanda and Uganda) and contributed to the adoption in 2006 of a legally binding, albeit not particularly consequential, Pact on Security, Stability and Development.¹³² In Southern Africa, except for the Angolan Civil War (1975–2002), there have been no major armed conflicts after the establishment of the SADC Parliamentary Forum. The latter has therefore focused its peace-related agenda on election observation missions and greater gender balance in regional politics.¹³³

¹²⁸ Stavridis and Kingah, 'The European Parliament and Interregional Dialogue: The Case of Responsibility to Protect', in M. Telò, L. Fawcett and F. Ponjaert (eds), *Interregionalism and the European Union: A Post-Revisionist Approach to Europe's Place in a Changing World* (2015) 285, at 297.

¹²⁹ Magliveras and Huliaras, 'Understanding Success and Failure in the Quest for Peace: The Pan-African Parliament and the Amani Forum', in S. Stavridis and D. Jančić (eds), *Parliamentary Diplomacy in European and Global Governance* (2017) 327, at 336.

¹³⁰ Yakubu, *supra* note 82, chs 6, 7.

¹³¹ See background in G.M. Khadiagala (ed.), *War and Peace in Africa's Great Lakes Region* (2017).

¹³² Magliveras and Huliaras, *supra* note 129, at 338. Pact on Security, Stability and Development in the Great Lakes Region 2006, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/061215_PactonSecurityStabilityDevelopmentGreatLakes.pdf.

¹³³ Johnston, *supra* note 91, at 210.

However, regional parliamentarians acting as peacemakers also face palpable obstacles. These include the unwillingness of the executive to cooperate, accusations by the latter of parliamentarians' interference in internal affairs and the lack of implementation of political undertakings. Similarly, the adoption by national parliaments of ill-considered legislation on sensitive and delicate matters, such as the allocation of natural resources or national languages, can 'cement societal cleavages and even exacerbate conflict' between opposing societal groups.¹³⁴ Finally, peace building has a capacity-building dimension too. The ECOWAS Parliament, for instance, has received training on this from the Canadian NGO, Parliamentary Centre, thanks to funding from the Canadian International Development Agency.¹³⁵

5 Constraints Facing African Regional Parliamentarization

A Democracy and Rule-of-Law Constraints

One of the key deficiencies constraining the democratic legitimacy of African regional parliaments concerns national electoral freedom and representativeness.¹³⁶ Several studies illustrate this powerfully. According to a 2019 report by the Economist Intelligence Unit, Mauritius is the only 'full democracy' in Africa. Conversely, out of the 167 states and territories analysed, and a total of 53 'authoritarian regimes' in the world, half of them (26) are in Africa.¹³⁷ In these states, there is no political pluralism, or it is heavily circumscribed; elections are either not held or are not free and fair; civil liberties are abused; the media are often censored or state controlled and the judiciary is not independent. The remaining states fall under a variation of a hybrid regime, where liberal democracy coexists with neo-patrimonialism and illiberal, authoritarian rule. Freedom House also estimated in 2018 that in Sub-Saharan Africa, only 18 per cent of the states are considered 'free' in terms of political rights and civil liberties, while only 1 per cent have a free press.¹³⁸

These fundamental electoral problems are then transmitted to the regional and continental levels. While some organizations (for example, the EALA) do not provide for direct elections to their regional parliaments and do not ensure any degree of proportional representation, for those that do (for example, the PAP and the ECOWAS Parliament), this is still a fairly distant plan. In the absence of direct elections, democracy in African regional organizations is primarily designed to safeguard sovereign

¹³⁴ UNDP, *supra* note 126 at 5.

¹³⁵ See Parliamentary Centre, 'Project Directory', available at www.parlcent.org/en/what-we-do/our-achievements/project-directory.

¹³⁶ Van de Walle, 'Electoral Authoritarianism and Multi-Party Politics', in N. Cheeseman, D.M. Anderson and A. Scheibler (eds), *Routledge Handbook of African Politics* (2013) 227.

¹³⁷ Economist Intelligence Unit, *Democracy Index 2018: Me Too? Political Participation, Protest and Democracy* (2019), at 28–29, 32.

¹³⁸ Freedom House, *Freedom in the World 2018* (2018), at 19; see also 'Sub-Saharan Africa', *Freedom House*, <https://freedomhouse.org/regions/sub-saharan-africa>.

equality rather than citizen representation. As such, regional democracy is vulnerable to executive monopolies over the nomination and appointment of delegates to regional parliaments. The actual practice of elections to regional parliaments has indeed had a feeble record. The case of the EALA is telling because its membership is ‘determined entirely by political parties’, while the assembly acts as ‘a political dumping ground, a safe haven for failed national political careers or a reservoir for rewarding political supporters and sycophants’.¹³⁹ As long as the above flaws endure, elections at both the national and regional levels will remain incapable of epitomizing the collective choice of the electorate.¹⁴⁰

At the same time, the development of representative democracy has been shaped by executive hegemony and the fusion of powers, which have suppressed parliamentary institutions, reduced their autonomy and stifled their ability to effect political accountability.¹⁴¹ A number of African leaders were or have been in power well over three decades whether as prime ministers or presidents: in 2018, Cameroon’s Paul Biya had reigned for 43 years, Equatorial Guinea’s Teodoro Mbasogo for 39, Angola’s José Eduardo dos Santos for 38, Zimbabwe’s Robert Mugabe for 37, and Uganda’s Yoweri Museveni for 32 years. While strong executives have at times produced durable party political systems, the main cleavages tend to occur based on ethnic, religious or tribal affiliation rather than political ideology. The formation of governments of national unity further blurs the distinction between opposition and government and frustrates the operation of political conflict and contestation.¹⁴² These circumstances, in turn, complicate cross-border political alignment and the formulation of common transnational political platforms.¹⁴³

This is exacerbated by corruption and inequitable wealth distribution, the latter of which was one of the leading causes of the disintegration of the EAC in 1977. A regional remedy to these problems was sought in the establishment in 1999 of the African Parliamentarians’ Network against Corruption, whose main goal is to strengthen parliamentary oversight over the management of public funds. One of its successes includes lobbying against the constitutional and legislative changes proposed by the Kenyan government in relation to the reinstatement of the Kenyan Anti-Corruption Authority and amnesty for certain economic crimes.¹⁴⁴ Regional

¹³⁹ Oluoch, *supra* note 54, at 210. See, however, the nudge towards direct elections to the EALA in ‘EAC Mulls Direct Vote for Regional Assembly’, *The East African* (Kenyan weekly newspaper) (30 June 2017), available at www.theeastafrican.co.ke/news/EAC-mulls-direct-vote-for-regional-assembly/2558-3993238-pt0jge/index.html.

¹⁴⁰ Adebani and Obadare, ‘The Abrogation of the Electorate: An Emergent African Phenomenon’, 18 *Democratization* (2011) 311, at 312.

¹⁴¹ See more in R.B. Riedl, *Authoritarian Origins of Democratic Party Systems in Africa* (2014); M. Salih (ed.), *African Parliaments: Between Governance and Government* (2005); Cranenburgh, ‘Democracy Promotion in Africa: The Institutional Context’, 18 *Democratization* (2011) 443.

¹⁴² Cheeseman, ‘The Internal Dynamics of Power-Sharing in Africa’, 18 *Democratization* (2011) 336.

¹⁴³ Demeke, ‘The New Pan-African Parliament: Prospects and Challenges in View of the Experience of the European Parliament’, 4 *African Human Rights Law Journal* (2004) 53, at 65.

¹⁴⁴ ‘The African Parliamentarians Network against Corruption (APNAC)’, *Transparency International Kenya*, available at <http://tikenya.org/the-african-parliamentarians-network-against-corruption-apnac>; see also Davies, ‘Parliamentarians and Corruption in Africa: The Challenge of Leadership and the Practice of Politics’, report on behalf of the African Parliamentarians’ Network against Corruption and the Parliamentary Centre of Canada (2009).

parliamentarization is furthermore hampered by the lack of a public sphere. The scarcity of regional and national debate on the activities of regional parliaments leaves citizens unaware of their activities and prevents public opinion formation about regional integration. For instance, the March 2017 Afrobarometer survey of 36 states shows that some three-quarters of the citizens think that their members of parliament (MP) 'never' or 'only sometimes' listen to what they have to say, while 45 per cent approve of their MP's job performance,¹⁴⁵ a score that has been known to be higher in the case of presidential ratings.¹⁴⁶ Equally, while the citizens tend to have a mildly positive view of regional organizations, three out of ten lack knowledge about them.¹⁴⁷

B *Functional Constraints*

Not unlike in other continents – especially Europe and Latin America – the African continent is marked by a multitude of overlapping memberships in regional organizations. It has been argued that this harms the integration and harmonization efforts of their participants by diluting the resources, generating unnecessary competition between regional policies and causing market fragmentation.¹⁴⁸ While this may provide increased opportunities for parliamentary advocacy towards Africa's external partners, the internal effects of this 'bifurcated regionalism' are not particularly conducive to the amplification of democratic voices in supranational governance.¹⁴⁹ Effective parliamentary input in regional integration is further thwarted by the occurrence of armed conflicts. These events divert parliaments' attention and their already very limited resources away from the core democratic roles of scrutinizing decision-making processes and convert parliamentarians into diplomatic envoys seeking to achieve peace and stability instead.

In terms of governance, regional parliaments are also constrained by the negative consequences of symbolic and rhetoric regionalism that permeates the continent's integration endeavours.¹⁵⁰ The latter phenomenon captures the widespread practice of African leaders earnestly engaging in region building without a genuine commitment to implementing the outcomes of this process. Instead, regionalism is utilized to solidify state sovereignty, cement authoritarian rule and boost personal political image. As a result, poor implementation and the enforcement of regional policies, which should be at the heart of regional parliaments,¹⁵¹ erode the otherwise scant democratic legitimacy of regional organizations.

¹⁴⁵ Afrobarometer, 'Highlights of Round 6', 20 March 2017, at 17.

¹⁴⁶ Nijzink, Mozaffar and Azevedo, 'Parliaments and the Enhancement of Democracy on the African Continent: An Analysis of Institutional Capacity and Public Perceptions', 12 *Journal of Legislative Studies* (2006) 311, at 328.

¹⁴⁷ Afrobarometer, *supra* note 145, at 11.

¹⁴⁸ Tavares and Tang, 'Regional Economic Integration in Africa: Impediments to Progress', in E. Fanta, T.M. Shaw and V.T. Tang (eds), *Comparative Regionalisms for Development in the 21st Century: Insights from the Global South* (2016) 209, at 219.

¹⁴⁹ Mattheis, 'Towards Bifurcated Regionalism: The Production of Regional Overlaps in Central Africa', in U. Engel *et al.* (eds), *The New Politics of Regionalism: Perspectives from Africa, Latin America and Asia-Pacific* (2017) 37.

¹⁵⁰ F. Söderbaum, *Rethinking Regionalism* (2016), at 90–91.

¹⁵¹ R.F. Oppong, *Legal Aspects of Economic Integration in Africa* (2011), at 169.

Closely related to this is the fact that the direction and level of regional integration is highly contingent on the political will of powerful regional states, like Nigeria in ECOWAS or South Africa in the SADC.¹⁵² The degree of their engagement, which varies from inertia to benevolent and coercive leadership, significantly impacts the institutionalization and functioning of regional parliaments. In a similar vein, the actorness of influential national parliaments in democracy promotion and regional integration, like that of the South African Parliament or the Nigerian National Assembly, tends to be driven by domestic foreign policy and commercial interests.¹⁵³ The constraints surveyed above demonstrate that regional parliamentarization in Africa suffers from deficits that stem from the continent's evolutionary trajectories in search of stable security structures, economic prosperity and democratic governance.

6 Concluding Remarks

Regional parliamentarization in Africa is deeply informed by its political and economic history. Colonialism has entrenched a culture of regionalism that shields state sovereignty and executive preponderance, while conflicts and poverty have placed accent on economic development. It is in these circumstances that regional parliaments have evolved as institutional appendices to interstate cooperation. The following findings cast a shadow over their effectiveness in ensuring the democratic legitimacy of Africa's regional integration projects.

First, there is a striking mismatch between the normative framework and the practical functioning of regional parliaments. The latter wield little democratic authority across the continent. Regional democracy is mostly nominal, and transnational political interactions as a rule replicate domestic power patterns. However, one should not hurry to condemn this, as it took almost six decades for the EP to gain near-full legislative equality with the Council of the EU and this was in more favourable economic and historical circumstances.

Second, African regional parliamentarization follows in the footsteps of IPIs in other regions of the globe by espousing soft institutionalization. With decision-making power concentrated at the national level and inspired by strong *étatisme*, regional parliaments have a negligible influence on domestic law and policy and a low potential to shape collective decisions, regional governance and institutional architecture. This is coherent with the argument that soft law mechanisms require less sovereignty delegation than integration pursued through forms of hard law.¹⁵⁴ In turn, regional

¹⁵² Hulse, 'Regional Powers and Leadership in Regional Institutions: Nigeria in ECOWAS and South Africa in SADC', KFG Working Paper no. 76, November 2016.

¹⁵³ Khadiagala and Nganje, 'The Evolution of South Africa's Democracy Promotion in Africa: From Idealism to Pragmatism', 29 *Cambridge Review of International Affairs* (2016) 1561, at 1576; Masters, 'South Africa's Emerging Parliamentary Diplomacy and Soft Power', 37 *Strategic Review for Southern Africa* (2015) 74, at 85; Orji, 'National Legislative Assemblies and African Regional Integration: The Role of the Nigerian Parliament in ECOWAS', paper presented at the Council for the Development of Social Science Research in Africa, 14th General Assembly, 8–12 June 2015, at 9.

¹⁵⁴ Abbott and Snidal, 'Hard and Soft Law in International Governance', 54 *International Organization* (IO) (2000) 421, at 436.

integration has emphasized the non-legislative parliamentary functions of conflict resolution and mediation, capacity building and human rights promotion.

Third, like most regional parliaments, African regional parliaments fare poorly when it comes to input, throughput and output legitimacy.¹⁵⁵ This flows from the weaknesses inherent in the intergovernmental nature of regional institutional designs: the lack of decision-making powers; shortcomings in democratic representativeness as expressed through electoral and appointment processes; inadequacies in ensuring political accountability and insufficient linkages with national parliaments. Yet, to expect regional parliaments to address democratic deficits of regional governance, while their own mandates import structural and operative constitutional drawbacks from the national level, is to put the cart before the horse.

Fourth, despite these limitations, deliberative advantages of regional parliamentary dialogue may contribute to the fostering of regional identity formation through political socialization. Accusations of parliamentary tourism and the dismissal of international parliamentary forums as mere talking shops risk ignoring the positive impact of socialization. An insightful study carried out some 40 years ago on the effect of the participation of US senators and congressmen in international inter-parliamentary meetings shows that this had a significant effect on their foreign policy attitudes and voting behaviour. In the international arena, parliamentarians experience cognitive dissonance concerning foreign policy through exposure to new information and opinions expressed by foreign parliamentarians. The psychological tension and pressure that this can cause may then be alleviated through a change in voting behaviour.¹⁵⁶ Other methods through which parliamentary interplay can have effect is through mainstreaming, which seeks to prioritize certain policy issues on regional policy-making agendas. In this way, regional parliamentarization can exercise micro-influence by affecting opinion shaping at the personal level. Institutionalizing the identification of common problems and solutions may thus gradually set in motion the creation of democratic value chains capable of mediating popular preferences concerning regional governance.¹⁵⁷ This could in turn engender rudimentary elements of transnational political contestation over the management of public goods.

Writ large, the added value of African regional parliaments and IPIs in general lies in the mutualization of costs and benefits of joint parliamentary action. Creating discursive clubs increases the cost of friction and, even more so, conflict. If conflicts do arise, institutionalized cooperation may facilitate their resolution. Understanding regional parliamentarization from this perspective helps to explain the incessant process of their expansion around the globe.

Finally, one ought to be cautious, and any optimism must be moderated. Like in many other regions, such as Latin America, Southeast Asia and, to a lesser extent,

¹⁵⁵ Duina and Lenz, 'Do Regional Economic Organisations Suffer from a Democratic Legitimacy Deficit? Evidence from Europe, Asia, Africa, and the Americas', 6 *International Sociology Association e-Symposium for Sociology* (2016) 1, at 9.

¹⁵⁶ Karns, 'The Effect of Interparliamentary Meetings on the Foreign Policy Attitudes of United States Congressmen', 31 *IO* (1977) 497, at 501, 504.

¹⁵⁷ See in this respect Puig, *supra* note 3.

Europe, intensive regional parliamentarization in Africa has hitherto had a rather minor impact on the stabilization of systems of attachment and on the level of citizen ownership of integration. The success of cross-border parliamentary processes and their wider societal and political contributions hinge not only on formal empowerment and the loosening of the executive grip over regionalization but also on the functioning of democratic transmission belts. The latter is crucial to ensure that regional outcomes trickle down to the domestic political and legal spheres, which is a considerable challenge not only in most African states but also in other regions. This is made worse by the questionable profile of some of the parliamentarians populating regional assemblies worldwide, who have been described as ‘second-rate national politicians in search of a sinecure on the way to retirement’.¹⁵⁸ In such circumstances, any parliamentary supranationalization will require multi-pronged reforms in the domains of both law and political culture.

¹⁵⁸ Papageorgiou, *supra* note 13, at 301.