



Transformation of the Pan-African Parliament

A path to a legislative body?

INTRODUCTION

In Africa, perceptions of parliaments and their capacity to further democracy are generally far from positive. Parliaments are commonly seen to be ineffective, powerless, useless, often redundant, or just talk-shops.¹ The history of African parliaments, from the early years of independence to the post-independence period, is one riddled with institutional weaknesses and limited decision-making roles in the face of strong executives.² But since the resumption of multiparty elections in many countries and the inculcation of democratic values across the continent, there has been a revival of belief in parliaments as potential agents of democratic change.³

The Pan-African Parliament (PAP) was created in 2001 to promote popular participation and representation of African peoples in decision-making, good governance, oversight, accountability and transparency. Its creation was possibly a result of renewed confidence in the ability of parliaments to uphold good political governance and, as the representative structure within the continental governance system, it is against this belief that the PAP must be appraised.

The launch of the AU and the inauguration of the Pan-African Parliament reflected a commitment to strengthening democratic values and principles on the continent. Indeed, an institution such as the PAP is expected to be at the centre of such a process. Despite these expectations, however, doubts remain about the ability of the PAP to play meaningful, effective role in making this vision a reality.

The record of the PAP during its first five years shows that it still faces many obstacles. Among its most critical disadvantages is that it does not have the capacity to enforce any of its decisions; rather, its influence is limited to consultative and advisory powers. In addition to this, PAP members are not directly elected, but nominated from the national parliaments. This compromises the parliament's independence, as members may be recalled at any moment for a number of reasons. For democratic

accountability to be enhanced, policy-making organs of the AU need to cede more power to the PAP and to increase the institution's autonomy. To some observers, this remains unlikely as the prevailing political culture on the continent favours overly powerful presidencies to the detriment of parliamentary power. There are thus doubts about the likelihood of the PAP being transformed into a full legislative body as envisioned by the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (hereinafter the PAP Protocol).⁴

Inaugurated on 18 March 2004 in Addis Ababa, the PAP will mark the end of its first term in 2009.⁵ At the time of its launch, the institution's potential as an effective body was criticised, and many have remained sceptical about its ability to discharge its mandate.⁶ Whether or not these critics have been proved correct depends largely on the framework used to assess the PAP.⁷

The PAP's influence can be assessed according to a number of criteria. It may be evaluated on the basis of the role it is expected to play or has played since it was launched,⁸ or it may be assessed within the parameters of the African Union's continental and governance framework,⁹ or on the basis of its contribution to the emerging African Peace and Security Architecture. Such a thorough assessment would assume that there is sufficient data to analyse systematically the impact of such a young institution. But, practically in its embryonic phase, the PAP cannot be expected to have done much and a great deal of energy should still be concentrated on strengthening its institutional capacity.¹⁰

The present study seeks to understand the direction in which the PAP is headed. At the end of its first term, what are the PAP's prospects for transformation into a full legislative body? And if it is transformed, what are some of the likely paths along which the transformation could take place?

The first part of this paper reflects on the PAP's mandate, and looks briefly at the way in which the body

has operated during its first term. It will also reflect on the current arrangements relating to the PAP and their implications for the hoped-for transformation of the institution into a legislative body. This paper also provides a critical analysis of the PAP Protocol itself to ascertain the practicality of such a transformation.

The second part of the paper undertakes a comparative analysis of similar institutions, such as the European Parliament (EP) and the East African Legislative Assembly (EALA). The EP shares certain commonalities with the PAP, particularly as a supranational body, while the EALA is the only regional parliament in Africa that has obtained some legislative and supervisory powers, despite being a relatively young institution.

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Finally, the third part of this paper looks at the different paths leading to the PAP's possible transformation into a legislative assembly. It examines the speed with which this transformation should take place, and identifies which specific powers the parliament should be granted if the transformation is to be successful.

THE PAP'S MANDATE AND ACTIVITIES

The vision and purpose of the PAP can be traced directly to the Pan-African ideals of cooperation and unity among African states, leading ultimately to the establishment of an African Economic Community (AEC). These ideals inspired the signing of the Treaty Establishing the African Economic Community (the Abuja Treaty) on 3 June 1991, and the adoption of the Sirte Declaration of 1999. The latter called for speedy establishment of the institutions provided for in the Abuja Treaty, and the PAP was envisioned as a platform from which the African peoples, and not states or leaders, could be represented in the decision-making processes affecting the continent.¹¹ Indeed, the PAP Protocol enjoins the new institution, among other things, to facilitate effective implementation of the AU's policies and objectives.

Accordingly, Article 3 of the PAP Protocol outlines some of the key objectives for which the PAP is responsible. These objectives are, *inter alia*, to promote human rights, democracy, peace and security; to

facilitate cooperation and development on the continent; to strengthen continental solidarity and build a common destiny among Africa's peoples; to encourage good governance, transparency and accountability in member states. Equally important is the objective of 'familiarizing the peoples of Africa with the objectives and policies aimed at integrating the African continent within the framework of the African Union'. These objectives theoretically combine to place the PAP at the centre of key processes relating to the emerging political, governance and economic architecture of the African continent.

Article 11 of the PAP Protocol outlines the functions and responsibilities of the PAP, which include the exercise of 'advisory and consultative powers'. In this regard, the protocol specifically provides that the PAP may 'examine, discuss or express an opinion on any matter' and 'make any recommendations it may deem fit'. Furthermore, the PAP is empowered to 'request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties'. Theoretically, the parliament seems to have enough room for manoeuvre to shape and drive its own agenda on key issues affecting the continent. And as it is also empowered to request briefings and reports from AU organs, a key component of oversight and accountability for any parliamentary body, it appears that the PAP may have enough authority to make a substantive contribution towards the realisation of its mandate and vision.

The membership of the PAP is drawn directly from national parliaments, which each nominate five members. The nominees are chosen according to certain criteria: two must be from the opposition and two of the members must be women. The PAP Protocol has been signed and ratified by 45 state parties, a high figure for a new institution. This brings the membership of the PAP to around 225. The large membership reflects the confidence many member states have in the parliament; however, it also means logistical and many other administrative problems for the new body, especially during its first term. A high turnover of members has been observed (new members are being sworn in at each session), and other challenges faced by the new body include disorganised committee meetings and lack of proper procedural advice and support to members. Bearing this in mind, is it practical to expect much from the PAP? What do expectations of the institution mean for its development and future progress?

In line with the Rules of Procedure¹² and Article 14 of the PAP Protocol, the parliament is required to hold ordinary sessions at least twice a year. So far it has held ten ordinary sessions, during which the members have debated a variety of issues, including reports, recommendations and resolutions. As with other legislative

bodies, the substantive work of the PAP is carried out at by committees. Thus, on the basis of Rule 22 (1) of the Rules of Procedure, the PAP has established ten permanent committees to carry out its work, including the following:

- Committee on Cooperation, International Relations and Conflict Resolution
- Committee on Justice and Human Rights
- Committee on Education, Culture, Tourism and Human Resources
- Committee on Health, Labour and Social Affairs
- Committee on Gender, Family, Youth and People with Disabilities
- Committee on Monetary and Financial Affairs
- Committee on Transport, Industry, Communications, Energy, Science and Technology
- Committee on Trade, Customs and Immigration Matters
- Committee on Rural Economy, Agriculture, Natural Resources and Environment

The PAP has also sent out numerous fact-finding missions and election-observation missions across the continent, and these, combined with the sessions and the committees' work, facilitate implementation of the PAP's Strategic Plan and attainment of AU and PAP prescripts and objectives.

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Fact-finding missions aim to gather first-hand information by engaging directly with involved parties and assessing a situation on the ground. The PAP fact-finding missions have been aimed at examining issues such as education, environment, and gender and human rights in African countries such as Rwanda, Sierra Leone and Côte d'Ivoire.

Election-observation is probably one of the PAP's more significant and productive activities. The parliament has dispatched numerous delegations to the

Democratic Republic of Congo (DRC) (2006), Kenya (2007), Zimbabwe (2008) and Angola (2008). The delegations prepare reports and draw up recommendations and resolutions based on their observations, and these are submitted for debate and adoption by the full parliament. When recommendations and resolutions are voted in, the Bureau of the PAP is mandated to forward such decisions to the relevant bodies, principally the AU Summits of Heads of State and Government, the Commission, the Peace and Security Council (PSC) and even international organisations, such as the UN. In this specific activity, the PAP has stood head and shoulders over others.¹³

However, many challenges remain. It has been noted that, because of its lack of legislative powers and its weak decision-making role within the AU governance architecture, maybe also because of its location in South Africa, the PAP remains less effective than it could be and occupies a marginal position in the policy-making process of the continent.

CURRENT ARRANGEMENTS

The PAP forms part of the ambitious process of strengthening the institutional framework for achieving Africa's political and economic integration. Informed by the creation of the AEC, the ultimate aim of this vision is a Union Government of Africa. The Union Government is regarded by the AU as 'a political transitory arrangement towards the United States of Africa', meaning a full continental political union.¹⁴ In terms of the Lagos Plan of Action, Final Lagos Act and the Protocol to the Abuja Treaty, the PAP is regarded to be among the key pillars of progress towards the creation of the African Economic Community (AEC). Specifically, the PAP has been set up with the express aim of providing African peoples with a common participatory platform and a representative forum.

Article 2 (3) of the PAP Protocol, signed in 2001, envisions the transformation of the parliament into a legislative body. The protocol clearly stipulates that it is the 'ultimate aim' for the PAP 'to evolve' into a legislative body, with members elected by universal suffrage. The wording used is instructive, as it indicates an aim to which to aspire, rather than providing a definite objective to be achieved within a specific timeframe. Instead, the protocol provides that the first step towards this vision remains with member states of the AU, who are charged with amending the PAP Protocol. The protocol stipulates that:

Five years after the entry into force of this Protocol, a Conference of the States Parties to this Protocol shall be held to review the operation and effectiveness of this Protocol, with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision underlying the Protocol, are being realised and that the Protocol meets with the evolving needs of the African Continent.¹⁵

The protocol is vague about the timeframe and the process of the PAP's transformation, but it anticipates that a conference will 'review the operation and effectiveness' of the protocol. It is clear that the wording contained in Article 25 (1) regarding such a conference should be read to include an assessment of the PAP as an institution, particularly to evaluate its work, its effectiveness, and whether it has acquitted itself well enough during its first term to warrant increased power. Currently the PAP has only advisory and consultative functions. This means that its 'decisions', principally its resolutions and recommendations, are merely advisory to the AU and structures mandated to make policy decisions on behalf of the continent. The problem with this is that the consultative and advisory functions are not mandatory; the AU policy-making institutions are not obliged to consult with the PAP or seek its input in the decision-making processes. Indeed, recommendations and opinions, by their very nature, have no binding force.¹⁶

Since its establishment in 2004, the PAP has adopted numerous recommendations and resolutions on a variety of issues, including critical issues such as peace and security on the continent. Despite these valiant efforts, there is little evidence that the policy-making structures of the AU have taken the parliament's decisions into consideration. In addition, the PAP has no capacity to enforce, or formally follow up on any of its decisions sent to the AU's Assembly, Commission or PSC, or any other policy organ. This state of affairs could be improved if the consultative function is made obligatory and there is closer cooperation between the PAP and AU policy-making organs.

At the time of writing, it is still not clear when, or even if, member states will in fact hold a conference to review the PAP Protocol as provided for in Article 25. As noted above, the PAP seems convinced that the conference and review will take place. To this end, it is forging ahead by forming a Sub-Committee on the Transformation of the PAP, whose mandate it is to seek out suggestions and ideas to inform its contribution. Despite the PAP's optimism, many questions remain unanswered at this stage: who is supposed to take the lead in initiating the process? Will it be the individual state parties that ratified the PAP Protocol, or the AU (and if so, which organ within the AU)? It is also not clear how the conference will be convened and, ultimately, how the review will be done.

REVIEWING THE PAP PROTOCOL

As noted earlier, the PAP Protocol clearly articulates its ultimate vision: that of the parliament becoming an institution with full legislative powers and members that are elected on continent-wide universal suffrage.

This provision must be read together with Articles 6 (f) (iv) and 14 (2) of the Abuja Treaty, which also envision universal suffrage for the election of members and call for the powers of the new body to be clearly defined. In terms of Article 25 of the PAP Protocol, after the end of its first term, which is likely to be in March 2009,¹⁷ a conference of the state parties to the protocol must be convened to review its operation and effectiveness, with a view to ensuring that the objectives, purpose and vision underlying the protocol are realised. This means that there will be no automatic transformation of, or granting of legislative powers to, the PAP. Rather, the state parties (those that sign and ratify the protocol, most likely at the AU Summit of the Heads of State and Government) will consider the extent to which the protocol's provisions, and particularly its objectives, purpose and vision, have been attained. If the review process is initiated and driven in this way by the AU or any other organ, a potential problem is that it will include AU member states that are not signatories to the PAP Protocol; and besides, the role of the PAP in the process is not specified.

It is clear that the member states will not only be responsible for reviewing the protocol but will also be required to reflect on the work and assess the impact of the PAP since its launch. The focus on the work and the effectiveness of the PAP must address the following:

- Has the PAP discharged its mandate and responsibilities fully and competently in line with the objectives and vision of the protocol?
- Has the PAP achieved its objectives, fulfilled its functions and realised its vision?
- What challenges has the PAP faced and how has it addressed these challenges?
- Which areas of competence should ordinarily reside with the PAP and which should be shared with other AU organs?
- How should the PAP formally link or interface with the AU and its organs?¹⁸

The outcome of the Review Conference will of necessity herald a new era, both for the PAP and for the continent. It will indicate how and when the PAP will be granted legislative powers, turning it into a significant role-player in the continental governance system. The implications are quite immense and may be far-reaching for both the AU and the PAP. If the transformation does take place, it may become necessary for the member states to review the protocols of other AU organs in order to facilitate cooperation and practical interface between these various institutions.

Indeed, any review or assessment towards the transformation of the PAP must necessarily encompass the review and transformation of other related AU

governance institutions too. This means that if the PAP is transformed into a legislative body, there will be a need for an executive and a judiciary to complement the PAP. For instance, in exercising its functions and powers, as stipulated in Article 11, the PAP shares its objectives with other critical institutions of the AU, and the Economic, Social and Cultural Council (ECOSOCC), as well as various regional economic communities (RECS) – among others, the Southern African Development Community (SADC), the East Africa Community (EAC) and the Economic Community of West African States (ECOWAS). RECs are seen as important pillars that can facilitate political and economic integration at the national, regional and subregional level.¹⁹ What is not clear is how the PAP should, or will, share its responsibilities with regional parliaments or assemblies.

Similarly, the mandate of the African Court of Justice, as the future judicial branch, should be reviewed and its role enhanced so that it can adjudicate fully and effectively any matter, and provide interpretation, application or validity of any treaties of the AU. The African Court of Justice will thus serve as an arbiter in cases of dispute between various organs of the AU, provide clarity and ensure compliance in the interpretation and application of founding treaties, and provide legal force to decisions. This is precisely how the EP's decisions have carried weight, as they have often been backed by the Court of Justice of the European Communities.

In considering the PAP's proposed transformation, it is imperative to look at the evolution of the EP and the critical steps that led to its present position

Any significant change in the powers and role of the PAP will also require changes in the legal framework of the AU and other organs, specifically the Assembly of Heads of State and Government, the Commission, and the Executive Council of Ministers of the AU. It is unimaginable to have a supranational legislative body, with basic powers, that is out of line with other important branches of government, or is unsupported because relevant arms of government are not in place.

To determine whether the PAP will ever graduate from its marginal position and become a significant or

central player in the policy and decision-making processes of the continent, we have to look elsewhere for best practice models.

LESSONS FROM THE EUROPEAN PARLIAMENT

The European Parliament (EP) provides by far the best example of a comparative supranational legislative body from which the PAP could learn and upon which it could model itself. Therefore, in considering the PAP's proposed transformation, it is imperative to look at the evolution of the EP and the critical steps that led to its present position.

The EP has two vital characteristics that the PAP should ideally develop: it possesses legislative powers and its members are elected by universal suffrage. Furthermore, it plays an important role within the EU governance processes and it has equal weighting with the Council of the European Union (the Council) with regard to budget and laws. The EP also has the power to approve the appointment of the Commission President and, through a vote of censure, it may force the College of Commissioners to resign. The EP also participates in EU foreign policy by exercising powers of assent over any international treaty the EU signs. How did the EP acquire all of these prerogatives so successfully, albeit over a long period of time and through a fair amount of struggle?

The EP was formally launched in 1958 after the 'constituent meeting' of the European Parliament Assembly. When it was formed, the EP was an advisory and consultative body and had no legislative powers. It was initially composed of 142 members representing the six founding members²⁰ of the European Coal and Steel Community (ECSC), who were delegated by their national parliaments. Membership of the EP increased with the expansion of the ECSC, which started to take place in 1973.²¹ By 2008, the membership of the EP had increased to 27 member states and 785 Members of the European Parliament (MEPs), representing a total population of 495 million.²²

The first direct elections to the EP were held in June 1979, 21 years after the parliament's creation. Since then, elections have been held every five years. The next elections for the European Parliament are slated for June 2009 across the 27 member states.

EP legislative powers

The EP did not gain legislative powers overnight. These were assigned gradually over a period of time. The first time that the EP's powers were enhanced was in 1987 when the Single European Act (SEA) came into force. The EP then gradually and incrementally gained real legislative

powers, first through the Maastricht Treaty, which came into force in 1993, and then through the Amsterdam Treaty of 1999. The successive treaties have thrust the role and power of the parliament to the fore and have propelled it to a key role in law-making within the EU.

The EP presently shares legislative power equally with Council of the EU, particularly in the areas of budget and law making. When considering the future of the PAP against the EP, it is critical to look at these powers and to reflect how they have transformed the role and position of the EP within the EU governance processes.

The PAP is still in its embryonic stage. It took the EP approximately 29 years to acquire any significant extra powers

Prior to the SEA, the EP was only a consultative body.²³ It offered only non-binding opinions on proposals made by the Commission, and final decisions were taken by the Council of Ministers. The PAP's current power allocation is similar, indicating its marginal position in the decision-making processes within the AU. This marginal position is highlighted further by the fact that, prior to the SEA, EP members were already elected directly, giving more weight to their claim to be the voice of the people.

After the SEA came into force, 29 years after the EP was established, the parliament attained more powers, principally under the *cooperation* and *assent* procedures.²⁴ Under the cooperation procedure, the EP was entitled to a second reading of European Commission proposals. The commission was required to examine and take into account any amendments made by the EP; only a unanimous council resolution could overturn a rejection of any decision or proposal by the parliament. However, under the assent procedure, a rejection by the parliament could not be overturned. Crombez has pointed out that these new powers were essentially additional stages in the consultation process.²⁵ Yet these additional procedures/powers significantly enhanced the EP's role within the European Community.

The Maastricht Treaty of 1991 further enhanced the position and powers of the EP within the EU. Under this treaty, the parliament was granted co-decision powers, meaning that both the Council of the European Union and the EP have 'equal legislative rights'. According to Hage and Kaeding, the reasoning behind the co-decision procedure was to increase the legitimacy of EU decision-

making.²⁶ Another important addition under the co-decision procedure was the conciliation committee. Under the process followed, the Council and the EP are required to consider the other's amendments to a Commission proposal in the first two readings. If there is no agreement in the first stages, the matter is referred to a conciliation committee composed of representatives from the two institutions. The joint text has to be endorsed by the two representatives in the third reading. As many observers have pointed out, the EP gained more control and involvement in the legislative process through the implementation of the co-decision procedure.²⁷

The Amsterdam Treaty, which came into force in 1999, is said to have brought about significant changes to the co-decision procedure of the EP, and thereby further increased the EP's influence. Maurer states that the Amsterdam Treaty not only extended the co-decision procedure, but also simplified it.²⁸ The co-decision procedure as introduced by the Maastricht Treaty, which required three readings, was criticised for making the process complex, lengthy and protracted. According to Maurer, the Amsterdam Treaty simplified the co-decision procedure by providing for adoption of legislation at first reading if the Council and EP agree.²⁹ If the parliament votes to reject the common position, the legislation fails. The third reading, whereby the Council could re-propose its common position after conciliation failed (the so-called 'take-it-or-leave-it'), was dropped; and if conciliation does not produce an agreement, the proposal fails. The effect of this change implies 'a balanced set of veto powers' between the Council of the European Union and the parliament. As a result, the two bodies share responsibility for the adoption or failure of any proposed legislation.³⁰

In this way the EP has progressed from holding little more than consultative powers to wielding significant legislative powers in a wide range of areas (but not in foreign affairs) and has gradually and incrementally gained in importance and relevance within EU governance structures. A number of comparative lessons arise from a study of this development, which any assessment or potential review of the PAP and its ultimate transformation would do well to take into account.

Firstly, the PAP is still in its embryonic stage. It took the EP approximately 29 years (until 1987) to acquire any significant extra powers. So, while it is self-evident that the PAP has not done enough, to demonstrate its readiness to acquire legislative powers, is it realistic and practical to expect that the parliament should be transformed into a full legislative body after only five years? It is possible to argue that, between its establishment and its gaining of legislative powers, the EP focused on building its institutional capacities and strengthening its role.

Secondly, the EP's evolution from consultative to legislative power was gradual, taking place from 1958

(when it was constituted with only consultative powers) to 1999 (when it obtained equal legislative powers). It took the EP 21 years for its members to be elected directly and 41 years to reach the milestone of being a full legislative body. Should the PAP's transformation process follow a similarly gradual course, with powers being granted incrementally, or not? Indeed, the African continent is already engaging in similar debates relating to the Union Government: the 'Grand Debate on the Union Government' (see the Eighth Ordinary Session of the African Union, Addis Ababa held on 29–30 January 2007 and the Ninth Ordinary Session of the African Union held in Accra, Ghana on 1–3 July 2007).³¹ Surely if we are debating what the prospective executive governance structure is supposed to look like, it would be equally prudent to consider the powers and role of the prospective continental legislative assembly.

Thirdly, the evolution of the EP did not happen in a vacuum; rather, it fell under the broader development of the whole of the European Community, which then evolved in 1993 into the European Union through the Maastricht Treaty. Scully rightly points out that the Maastricht Treaty 'brought about significant changes to the institutional structures of the EU'.³² The changes that enhanced the EP's powers relative to other governing institutions also included changes in the structure of other institutions (particularly the Commission and Council).

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In this respect, one should anticipate that any substantial changes in the legal framework of the PAP, including the protocol relating to the PAP, will necessitate similar changes in the structure of, and links with, other AU governing institutions. This may require that the Constitutive Act of the African Union (2000), as the founding document, be amended to reflect the changes and formalise the responsibilities of other organs to the PAP. Currently, the links between the PAP and other AU organs (for example the PSC) are dealt with separately by those institutions' respective protocols. As an example,

the Protocol Relating to the Establishment of the Peace and Security Council of the African Union (2002) outlines the relationship between the mechanism and the PAP, yet it remains unclear how this process is going to be implemented or operationalised.³³

There is a lesson the PAP cannot learn from the EP, and this relates to the biggest difference between the AU and EU. Whereas the integration process of the EU occurred in concentric circles, beginning with a small number of states and creating conditions for other states to join (bottom-up), the AU integration process is rather a top-down process. By virtue of their physical presence on the continent and regardless of their political, economic, social, cultural and development conditions, all African states are declared members of the AU.

Whereas the EU started as a community (an inter-governmental organisation), which gradually evolved into a union (a supranational body with powers that transcend national laws), the AU started as a union and is now in the process of creating a community of common values and institutions. The most important issue that the AU will have to address in the heated debates about the Union Government is the degree to which member states are willing and ready to transfer significant aspects of their sovereignty to the AU.³⁴ The answer to this question will impact on the nature and the powers of institutions such as the PAP, the AU Commission and the African Court of Justice.³⁵

As noted earlier, there is currently no formal institutional mechanism that links the PAP processes and the processes taking place at the AU level. There is no follow-up mechanism to ensure that the decisions or advice from the PAP are filtering through to the AU governing institutions such as the Commission, the PRC and the PSC.³⁶ The current advisory and consultative role of the PAP is rather inconsequential to the decisions or policies made by other AU organs, even though the parliament is considered a legislative organ of the AU. The AU Audit Report of 2007 recommended that 'the PAP should put in place policy guidelines on its relationships with other Organs of the Union subject to the concurrence of the other Organs of the Union and the approval of the Assembly'.³⁷ However, it seems that the major preoccupation of the PAP, particularly on the subject of transformation, is to gain legislative powers. There is very little in the discussions within the PAP about how to strengthen its institutional capacities or address the challenges that it faces.

THE CASE OF THE EAST AFRICAN LEGISLATIVE ASSEMBLY

There are numerous regional legislative bodies on the continent that are supposed to anchor and facilitate the process of regional integration. Of these regional

assemblies, only the East African Legislative Assembly (EALA) stands out as having significant legislative powers. This makes the EALA an important body to review for the purposes of this study. The EALA is a fairly new institution. It was established in 1999 after the signing of the Treaty for the Establishment of the East African Community, but was inaugurated on 29 November 2001. Indeed, the assembly only started serving its second five-year term when its members were sworn in on 5 June 2007.

Members of the EALA are drawn from the five member states of the East African Community: Kenya, Tanzania, Uganda, Burundi and Rwanda. There are currently 52 members, nine members from each member state and seven ex-officio members.³⁸ Yet, as in almost all regional legislative institutions, the EALA's members are not elected directly. Rather, their respective national assemblies vote them into their positions, though they are not necessarily from the ranks of those assemblies. Furthermore, there are issues concerning adequate representation. These centre around consideration of factors such as population size and density, which should determine the creation of constituencies and the number of seats each member holds (as in the EP).³⁹

No regional assembly in Africa is directly elected, but the membership is either elected indirectly or nominated by national legislatures, their members are often subject to recall

Under the treaty, the EALA is mandated with the legislative function of the East African Community (EAC). Its powers include approving the budget of the EAC, considering annual reports, audit reports and any other reports referred to it by the Council of Ministers, and discussing all matters related to the EAC, making any recommendation it deems necessary. The EALA exercises oversight over all the work of the EAC, which means wide responsibilities. The assembly has passed numerous pieces of legislation such as the East African Legislative Assembly (Powers and Privileges) Act, 2004, the East African Community Customs Management Act, 2004, and the Community Emblems Act, 2004. However, Ongwenyi is critical of a number of areas that seem to compromise the assembly's independence, particularly with regard to

the principle of separation of powers, as the EALA shares legislative powers with the Council of Ministers.⁴⁰

As with other legislative bodies, the bulk of the EALA's activities are carried out within the committees. These are set up according to the Rules of Procedure of the EALA. There are presently seven standing committees, which are responsible for specific areas (Accounts; House Business; Regional Affairs and Conflict Resolution; General Purpose; Agriculture, Tourism and Natural Resources; Legal, Rules and Privileges; and Communication, Trade and Investments). The general responsibilities of the standing committees include examining, discussing and making recommendations on all bills before the assembly, initiating any bills within their respective mandates, assessing and evaluating the activities of the EAC, and examining the EAC's recurrent and capital budget estimates, among other things.

It appears that, by comparison with the PAP or even other regional legislative bodies, the EALA has significant powers and far-reaching responsibilities.⁴¹ This makes the EALA an important object for any comparative study intended to show how the PAP may attain and exercise legislative powers over critical functional areas.

Despite the EALA's legislative powers, however, a number of issues need to be taken into account when considering regional parliamentary assemblies, as they are currently constituted. One is that no regional assembly in Africa is directly elected, but the membership is either elected indirectly or nominated by national legislatures. This makes it difficult for regional assemblies to be independent, and their members are often subject to recall by national parliaments.

A second issue relates to the powers allocated to the regional assemblies, including the power to discuss and approve the budget of the regional community, as in the case of the EALA.⁴² It has been observed that the power to discuss and approve the budget does not necessarily entitle the legislative body to draw up, initiate or revise the said budget. What happens when the assembly does not approve the budget? The heads of state still retain a right of veto and can approve the budget, despite the EALA's rejection of it. Thus it is possible that, even with such powers, a legislative assembly may potentially become nothing more than a mere rubber stamp for decisions made by executive bodies.⁴³ Related to this is the concern regarding the institutional capacity of legislative bodies to meaningfully fulfil their role, reflecting the perceptions about the 'institutional weakness and limited decision-making role of these bodies in Africa'.⁴⁴ One of the challenges facing the EALA relates to a lack of clarity about the role and responsibility of the Secretariat and the Committee of House Business.⁴⁵ This problem, it has been noted, has had the effect of raising competition and tensions between the Secretariat and politicians.

Many concerns regarding the regional legislative assemblies as currently constituted in Africa have arisen. It has been asked:

- Whether they can effectively exercise the oversight and control functions at their disposal
- To what extent the limited (advisory and consultative) powers most of these assemblies currently possess undermine their position, or perpetually subordinate them to strong executive structures
- Whether the democratic culture and political will exists in Africa in order for legislative bodies to be granted 'equal power' (amounting to a veto) alongside the executive structures⁴⁶

Despite these concerns, there are still important lessons from which the PAP can draw as it seeks to shape its next term and ultimately move towards transformation.

A number of issues have arisen relating to the EALA's efficacy in deepening cooperation within the EAC, and its ability to be a forbearer of a parliament for the envisaged Federal State of East Africa. Most important is the fact that the EALA depends too much on the Council and Summit of Heads of State, which gives the impression that these two latter bodies unduly control the agenda of the EALA.

Secondly, the issue around the control over the budget remains a challenge. Although the EALA is vested with the power to ensure that the resources of the EAC are properly used, through debating and approving the budget, the assembly does not have the power to initiate or be involved in the preparatory phase of the budget.⁴⁷ This has the effect of reducing the EALA's influence to mere rubber-stamping of proposals prepared by the Council and Summit. In spite of formally having powers to approve the budget, the EALA thus shares an unfortunate situation with the PAP – both bodies have the authority to discuss the budget but lack the power to ensure that their recommendations are included in the final budget.

The most important lesson that both the PAP and EALA can learn from the EP when it comes to legislative and other powers, is to become an effective watchdog. Ongwenyi proposes the following three types of powers for a parliament, especially at the regional and sub-regional levels:

- Decisional powers (the ability to influence the decision-making processes by legal means)
- Participatory powers (which guarantee involvement of the parliament in decision-making processes)
- Political means of influence not based on the treaty or protocol

Whatever the outcome of the process leading to the transformation of the PAP, it is critical that practical

lessons be drawn from the EALA, especially regarding the vesting of legislative powers, which alone do not guarantee an effective parliament. What seems to be critical is the binding force of the decisions of the parliament, its active involvement in decision-making processes, and the need for political will and 'informal' political networks of influence.

PROBABLE PATHS TO PAP TRANSFORMATION

It remains highly unlikely that state parties (particularly the heads of state) will consider transforming the PAP or grant it significant legislative powers in the absence of a demonstrable state of readiness on the part of the AU, the member states themselves, RECs, and other entities.⁴⁸ They may also be held back by doubts about how well the PAP has lived up to its objectives, vision and mandate. Among the issues they may need to consider is whether the PAP has developed sufficient technical and institutional capacities to handle the responsibilities that would come with the transformation. This presupposes that many of the leaders have the political will to ensure that transformation takes place, thus a concern may be raised as to whether African leaders have indeed overcome the political culture in which the powerful executive is often not subject to oversight by legislative bodies.

The PAP faces many challenges, and there are strong reasons why it should not be vested with significant legislative powers in the short and possibly even the medium term. Yet the very same factors used to diminish the PAP's readiness for legislative power can equally be used to make a credible case for why the PAP should in fact be transformed, with more substantial powers, if it is to become an institution that effectively discharges and realises the objectives, mandate and vision expressed in the PAP Protocol, the AU Constitutive Act, and the Abuja Treaty. Some of the challenges facing the PAP, which it needs to address before it can realistically aim at substantial powers and a prominent role, are discussed below.

The PAP's lack of enforcement powers, in other words, its inability to ensure that its decisions (recommendations and resolutions) are enforced or binding, is most significant and should be the first area to be addressed. As part of the transformation process, the PAP should be vested with mandatory powers, especially if it is granted supervisory and/or assent functions and competencies. The present study has sought to show that where a legislative body's decisions carry legal force, this often enhances the role and impact of the institution. The case of the EP, and to a lesser extent that of the EALA, shows how binding decisions can go a long way in strengthening the generally poor position that parliaments often occupy in Africa relative to the executive branch.

Another critical challenge facing the PAP's development is its weak institutional capacity. This relates to, among other things, the lack of independent financial resources, and specifically the lack of control over its own budget. Presently the budget of the PAP forms part of the regular budget of the AU, meaning that the PAP can neither initiate, draw up, nor amend its own budget based on its assessed needs. This arrangement severely constrains the capacity of the PAP as it cannot prioritise issues and activities, or even carry out its plans independently. The PAP Fund was established to address some of these challenges but it is still relatively small and depends on the contribution of funders. Equally critical is the need for the PAP to clearly define and strengthen its financial management and monitoring and accountability systems.

Without control over its own budget, the PAP clearly remains powerless and subservient to the institutions that make the final decision on the allocation of resources

The PAP faces a further challenge in building a professional parliamentary service of its own. There is a critical need to address the issue of human resources regarding the recruitment of skilled personnel and support staff needed to facilitate parliamentary work (such as adequate research support, qualified committee clerks and procedural officers). Presently, the PAP continues to depend on support from, and collaboration with, outside service providers, a situation that may create dependency or, at worst, the potential for external influence. The PAP needs to build its own professional support service, but to do this it needs to increase and develop its own resources. This may appear an insignificant issue, but for the PAP to have any impact or be taken seriously it is imperative that it develops proper infrastructure. This means that the PAP must have adequate office space and effective and efficient information technology, among others. Infrastructure like this is necessary for creating an adequate working environment that is conducive to productivity and benefits both the support staff and members.

Finally, the lack of a proper oversight and control mechanism compromises one of the most central

responsibilities of an effective legislative body. Article 11 of the PAP Protocol provides that the PAP 'can examine, discuss or express an opinion on any matter; make any recommendations it may deem fit; request officials to attend its sessions, produce reports or assist it; or perform such other functions as it deems appropriate to advance the objectives of the Protocol', yet there is very little evidence that this has happened.⁴⁹

Whilst these challenges remain significant, a closer look at Article 11 of the PAP Protocol shows that there is indeed enough scope for the institution to manoeuvre and assume a number of functions and responsibilities, if only it could interpret and use the current provisions innovatively to expand its formally recognised powers.⁵⁰ In the absence of clear indications of how the PAP is to attain legislative powers, or to what extent it will be transformed, creative utilisation of its current arrangements remains best in the interim.

To this end, the first step towards transformation of the PAP is enabling it to engage in functional cooperation with other AU organs. This means practical cooperation and regularised engagement with AU institutions responsible for specific common areas – for example, the Committee on Cooperation, International Relations and Conflict Resolution, the mandate of which concerns issues of peace and security on the continent, should liaise and regularly hold briefings with, or receive reports from, officials of the Commission and the PSC.⁵¹ Other committees need to work closely with AU commissions working on similar areas. This would require a formal reporting mechanism, joint briefings and the submission of reports, among others, in order to facilitate genuine information sharing. Such an exercise would be consistent with Article 11 (5) of the PAP Protocol. This could be replicated across other PAP committees and include inter-parliamentary engagement with regional legislative bodies and national parliaments.

The second step towards transformation relates to the issue of budgetary control and powers. Article 11 (2) calls for the PAP to 'discuss its budget and the budget of the Community and make recommendations thereon'. Without control over its own budget, the PAP clearly remains powerless and subservient to the institutions that make the final decision on the allocation of resources, even if it can exercise advisory powers on the budget of the AU. Budgetary control by the PAP would ensure its autonomy. To this end, the PAP should demand that it is provided with an opportunity and responsibility not only to discuss its own budget, but to discuss and review the budget of the whole AU. Such an opportunity will give the PAP scope for influencing budgetary allocations, questioning any reduction or denial of its proposals. Added to this, the PAP would be in a better position to make a case for strengthening its institutional capacity and improve its

own human resources. In addition, it would also increase the parliament's visibility within the AU.

The PAP needs to improve on its professionalism and to recruit staff with requisite skills, particularly in order to provide necessary support services to the committees. In this regard, it could begin by establishing its own information services, for example, its own professional documentation section, library and research unit, as well as improving its overall parliamentary support services (such as its own interpreters and translators). It has been observed that some member states provide their PAP members with support staff, whereas others do not, creating an imbalance in terms of capacity. In the EP, the practice is that MEPs have their political support staff (generally from their own home countries) in addition to having access to the parliamentary support services provided by the EP.⁵² The PAP relies on the Secretariat, particularly committee clerks supporting the ten committees, but this support is often sourced from external service providers, and that increases the risk of dependency or outside influence.

The third step should be development and improvement of the oversight and control function of the PAP. Although the PAP recognised the importance of the oversight function by passing a Resolution on Oversight (PAP-Res 004/04, 2004), no formal oversight mechanism for the PAP and its committees has been established.⁵³

The PAP seems ready to assume a bigger role and responsibilities as a full legislative body

This is precisely how the PAP can do most to hold leaders and officials accountable. Oversight is considered one of the key functions of any effective legislature, and if the PAP hopes to gain any legitimacy and credibility, it needs to have an effective system for holding officials accountable and of reviewing decisions of policy-makers, etc. The fourth step, and a critical one, towards the PAP's evolution into a more effective institution is the direct election of members, based on universal suffrage. This is an important step towards further establishing the legitimacy the PAP and its members. The current process, whereby members of the PAP are nominated from their respective national parliaments, may potentially undermine the independence of members, as they will be beholden to their principals and are thus likely to pursue national interests or agendas instead of continental representation. The PAP suffers from a democratic

deficit and risks being viewed as under-representative of the peoples of Africa. Equally important is the current rapid turnover of members, probably due to national elections, appointments or cooption into senior government positions, or loss of favour with leadership in their home countries. Direct elections would provide members with security of tenure and legitimacy and improve the stability and institutional memory of the PAP.

THE WAY FORWARD

The PAP is at a crossroads. On the one hand, a five-yearly conference of state parties is due to be held in order to review the protocol and consider the transformation of the parliament into a legislative body. On the other hand, it is not self-evident that the PAP will automatically acquire significant powers, and if it does not, it will remain in its subordinate position. But the PAP seems ready to assume a bigger role and responsibilities as a full legislative body. To this end, a sub-committee on the PAP's transformation into a full legislative organ of the AU has been set up to evaluate the process of transformation, propose a 'road-map', and make proposals on amendments to the Rules of Procedure and the PAP Protocol.⁵⁴

The sub-committee has started its work and has already proposed a road-map that includes lobbying of 'certain Heads of State' and the Commission, drawing up proposals for amendment to the protocol, holding an Evaluation Conference in which the PAP will participate, inviting national parliaments to elect new members, and convening the inaugural session of the second parliament.⁵⁵ Most encouraging from the PAP's perspective is the fact that the current chairman of the AU, President of Tanzania, Jakaya Kikwete, during his address to the Tenth Ordinary Session of the PAP, offered tacit support to the PAP on the issue of reviewing the protocol to overcome structural constraints.⁵⁶ A similar message of support for the PAP in its perseverance towards becoming a directly elected legislative body came from Hans-Gert Pöttering, President of the European Parliament.⁵⁷

The report by the Technical Committee of the Sub-Committee on Rules on the Transformation of the PAP, however, raises a number of problematic issues. The Technical Committee concludes that the PAP has accomplished the functions assigned to it by the basic documents, but it also states that, regarding 'the grievances labelled against [the Pan African Parliament], the causes cannot be fundamentally attributed to the [institution]'.⁵⁸

The committee thus seeks to absolve the PAP of any responsibility relating to the institutional problems and issues facing the parliament, many of which are largely attributable to the institution. Among these, we can point to the ongoing competition between the Bureau

(the President and four the Vice-Presidents) and the Secretariat, the lack of role clarification between the political and administrative arms, and issues arising from the controversy on financial management and allowances (resulting in the AU Executive Council's Decision 98 (v) and the freezing of the PAP Trust Fund). Whereas the AU organs might have contributed to some of the challenges facing the parliament, much of the responsibility must also be borne by the PAP itself. Apart from developing the Strategic Plan 2006–2010, it is not clear if the PAP has developed any other plans of action to implement the PAP's vision and mandate. This failure cannot be laid at the door of the AU, even though the financial resources allocated to the PAP come from the AU budget.

There is a need to develop a clear mechanism formally linking the PAP with the governance architecture of the AU

Another curious conclusion by the Technical Committee is that the 'PAP is now capable of assuming full legislative powers'.⁵⁹ This creates the impression that the PAP has systems and processes in place that justify giving it more responsibilities. Yet, as indicated previously, the PAP is faced with a number of challenges. One of its most critical disadvantages is its inadequate institutional capacity, which may negatively impact on future prospects. Even if – as hypothesised by the Technical Committee – there is an extension of the transition period or the current term of the PAP, it is not self-evident that the PAP is institutionally or substantively ready to assume an expanded role.⁶⁰ Neither is it clear when the review will take place and what its outcomes are likely to be. What is the way forward?

Whilst waiting for the review conference, the PAP needs to address some of the most pressing issues facing it and develop the necessary capacity required for it to evolve into a legislative body with requisite powers. As previously noted, the PAP needs to address its institutional capacity weaknesses as a matter of urgency. This should happen before it assumes any expanded responsibilities, such as legislative powers. A decisive step in that direction would be to draw up clear and practical action plans for the Secretariat and the committees. These would articulate a coherent set of activities, objectives, outputs and measurable outcomes; setting realistic goals, informed by reasonable expectations. It seems that

most of the current institutional challenges have arisen because clear targets and proper planning are lacking.

A second and related step is the improvement of the parliament's capacity to implement the abovementioned plans. In this regard, the PAP needs to strengthen its human resources capacity. This requires recruitment of qualified personnel and the institutionalisation of professionalism. Another important area that requires special attention is development of the PAP's own resources, but this must be coupled with the establishment of proper financial management controls, reporting and accountability. The financial management of the PAP should be under the accounting officer; ordinarily it would be the office of the Clerk, which reports to the Bureau and the Committee on Finance.

Following the argument made throughout this paper, there is also a need to develop a clear mechanism formally linking the PAP with the governance architecture of the AU. This requires clarification on how the PAP should be consulted prior to decisions being made by the AU. Equally important is the need for the parliament to develop an effective oversight mechanism, to work in tandem with the consultative procedure.

For the PAP to truly fulfil its mandate as the representative of the people of Africa, it needs to enhance its visibility. For this purpose, the PAP and its committees should, inter alia, engage with more civil society organisations, hold meetings or sittings in areas of interest, and engage regional and national parliaments more actively.⁶¹ In the absence of direct elections, this will facilitate the recognition and legitimacy of the PAP.

CONCLUSION

Parliaments are increasingly becoming key actors in facilitating the entrenchment of democracy and its values. They are critical for a number of purposes, among which are the following: to represent the majority of people in decision-making processes; to serve as platforms for debate and engagement; to hold leaders accountable; and to scrutinise policies and decisions. There is a history of scepticism about the effectiveness of legislative assemblies in Africa, but the PAP was nonetheless launched as part of an ambitious quest to bring to fruition a vision of the continent as one progressing towards political and economic integration. Its envisaged role is to provide a common platform from which African people could become more involved in discussions and decision-making. In addition, the PAP is meant to promote democratic principles and popular participation, and consolidate democracy and good governance.

The PAP Protocol creates the impression that the PAP will be transformed and gain more powers after its first term. This paper has looked at the PAP's mandate

and examined what progress it has made in carrying out this mandate. It has also analysed current arrangements concerning the PAP's powers and how these have contributed to, or impeded, its ability to realise its mission and mandate. The conclusion drawn from the review of the PAP's mandate, its performance to date and its institutional capacity, is that it is an institution facing critical structural and capacity challenges. It is difficult to conceive a situation whereby the PAP will be transformed into a body with legislative powers unless these challenges are addressed.

However, if the plans to transform the PAP are carried out and a conference to review the PAP Protocol does take place, this paper proposes a practical way of pursuing the path to transformation. Looking at supra-national assemblies, particularly the EP, which provide important lessons for the PAP as it explores different paths to gaining legislative powers and direct elections, this paper has examined what the best options would be for the PAP given the highlighted structural challenges. Regarding the numerous institutional challenges, this paper proposes that the transformation of the PAP, whilst necessary, can only take place if the process is well planned and gradual. However, this paper also recognises that a number of practical steps must be taken in the short and medium terms in order to facilitate meaningful rather than symbolic transformation. Significantly, the transformation of the PAP will necessitate a similar process to review, amend or even transform key governing structures within the AU, specifically those that will constitute a future executive, such as the Commission and Summit.

NOTES

- 1 LN Nijzink, Shaheen Mozaffar and Elisabete Azevedo, Parliaments and the enhancement of democracy on the African Continent: an analysis of institutional capacity and public perceptions, *Journal of Legislative Studies* 12 (3–4) (2006) 311–35.
- 2 M Bratton and Nicolas van de Walle, *Democratic Experiments in Africa: Regime transitions in comparative perspectives*, Cambridge University Press, 1997, 61–89.
- 3 Perspectives on the processes towards democratisation in Africa since 1990 and the factors that have contributed to the chequered record of its institutionalisation differ. See M Bratton and Nicolas van de Walle, *Democratic Experiments in Africa*.
- 4 G Hugo, The Pan African Parliament: is the glass half-full or half-empty? in *ISS Paper* 168 (2008) and P Mashele, The 3rd Pan-African Parliament Session: utility or futility? *African Security Review*, 14(2) (2005), 107–10.
- 5 There is confusion on when the PAP term began and will end. Did it start when the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African

Parliament, which was signed on 2 March 2001, entered into force in December 2003? Or did it start at the inauguration of the PAP in 2004? This issue is critical if we are to understand some of the important issues relating to transformation of the PAP.

- 6 See Jakkie Cilliers and Prince Mashele, The Pan-African Parliament: a plenary of parliamentarians, *African Security Review*, 13(4) (2004), 73–83. See also Hugo, The Pan African Parliament, and Mashele, The 3rd Pan-African Parliament Session.
- 7 Frank M Hage and Michael Kaeding, Reconsidering the European Parliament's legislative influence: formal vs. informal procedures, *European Integration* 29(3) (2007), 341–61.
- 8 Cilliers and Mashele, The Pan-African Parliament: a plenary of parliamentarians, 73–83. Cilliers and Mashele reflect this type of assessment of the emerging continental body, referring to the role that the PAP was meant to play.
- 9 The best exposition of this type of assessment is the recent review of the PAP within the African Union governance system contained in the report of the *Audit of the African Union* (December 2007).
- 10 Dick Toornstra, Office for the Promotion of Parliamentary Democracy, European Parliament, Personal interview, Brussels, September 2008.
- 11 This is precisely the justification invoked by the PAP in calling for significant powers, making it obligatory for the AU policy-making organs to engage with the parliament before making decisions.
- 12 Rules of Procedure of the Pan-African Parliament, adopted by the Pan-African Parliament on 21 November 2004, in Midrand, South Africa.
- 13 This was underscored by the comments of the Hon. L Morgantini, Vice-President and Member of the European Parliament, and leader of the EP's election-observation mission to Angola, during discussions of the Joint Meeting of the European Parliament-Pan-African Parliament, Ad hoc Committee for Relations with the European Parliament, 11 September 2008, Brussels.
- 14 African Union's Committee of Seven Heads of State and Government on the Union Government, Study on an African Union Government: towards the United States of Africa (2006) ([www.africa-union.org/Doc/study on AUGovernment june 2006.pdf](http://www.africa-union.org/Doc/study%20on%20AUGovernment%20june%202006.pdf)) (accessed 26 November 2008). See also the Pan-African Parliament Contribution to the Grand Debate on the African Union Government, submitted to the Ninth Ordinary Session of the African Union Summit held in Accra, Ghana 1–3 July 2007 (Ref: PAP/P.7/WP/52/07).
- 15 Article 25 (1) of the PAP Protocol.
- 16 Other decision-making processes, such as regulations, directives and decisions, are generally considered as binding, creating enforceable rights and obligations. It is important to note that the learning process of African states implementing AU's decisions will be long. Except in ECOWAS, where the emergence of community law is noticeable, other African regions and states pose a real challenge to the AU as regards their willingness to abide by its regulations. In that sense, the non-binding character of the PAP's decisions is less a genuine weakness of the institution itself than a weakness of the states that constitute the AU.

- 17 The PAP is of the opinion that the evaluation conference should have taken place in December 2008 since the PAP Protocol entered into force in December 2003, see the Pan-African Parliament, *Report of the Committee on Rules on the Transformation of the Pan-African Parliament* (2008), PAP/C.9/CRPD/RPT/37/08.
- 18 Some of the issues have been highlighted in the PAP's *Report of the Committee on Rules on the Transformation of the Pan-African Parliament*.
- 19 The African Union recognises eight RECs: the Economic Community Of West African States ECOWAS, the East African Community (EAC), the Common Market for Eastern and Southern Africa (COMESA), the Southern African Development Community (SADC), the Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CEN-SAD), the Economic Community of Central African States (ECCAS) and the Inter-Governmental Authority on Development (IGAD). However, over the years these RECs have increased in number, resulting in overlapping membership and, in some cases, duplication, highlighting the need for rationalisation, harmonisation and coordination. This responsibility has been left to, among others, the Pan-African Parliament and the AU. Unfortunately they often lack the necessary capacity, legal framework and/or power to realise this objective. See, for example, the OAU Protocol on Relations between the African Economic Community and the Regional Economic Communities of 1998.
- 20 The founding member states were Germany, France, Italy, the Netherlands, Belgium and Luxembourg, who, in 1951, established the European Coal and Steel Community (ECSC) based on the Treaty of Paris. The ECSC was the predecessor of the European Economic Community (EEC) and later the European Union.
- 21 The first enlargement saw Denmark, Ireland and the United Kingdom joining the EEC. Other countries joined later: Greece (1981); Spain and Portugal (1986); Austria, Finland and Sweden (1995); the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2004); and Bulgaria and Romania (2007).
- 22 See Eurostat Newsrelease 119/2008, Population projections 2008–2060, 26 August 2008, (http://epp.eurostat.ec.europa.eu/pls/portal/docs/PAGE/PGP_PRD_CAT_PREREL/PGE_CAT...YEAR.../3-26082008-EN-AP.PDF (accessed 6 November 2008)).
- 23 C Crombez, Legislative procedure in the European Community, *British Journal of Political Science* 26(2) (1996), 199–228.
- 24 Ibid.
- 25 Ibid.
- 26 Hage and Kaeding, Reconsidering the European Parliament's legislative influence, 342.
- 27 A Maurer, The legislative powers and impact of the European Parliament, *Journal of Common Market Studies* 41(2) (2003), 227–47.
- 28 Ibid.
- 29 Ibid.
- 30 Maurer, The legislative powers and impact of the European Parliament, 230.
- 31 See the Accra Declaration on the Union Government of Africa, adopted in Accra, Ghana, 3 July 2007.
- 32 Roger M Scully, The European Parliament and the co-decision procedure: a reassessment, *The Journal of Legislative Studies* 3(3) (1997), 60.
- 33 According to officials at the African Union, the Peace and Security Council and the Commission instituted a study on the issue of operationalisation, but there has been little progress. Dr Admore Kambudzi, Peace and Security Council, Personal interview, Addis Ababa, 2 October 2007.
- 34 See Kathryn Sturman, New growth on deep roots: prospects for an African Union Government, *ISS Paper* 146 (2007).
- 35 See Godfrey M Musila, United States of Africa: positioning the Pan-African Parliament and Court in the political union debate, *ISS Paper* 142 (2007).
- 36 A Member of the PAP has recently made the point during the debates on Peace and Security at the Pan-African Parliament's Tenth Ordinary Session, held in Midrand, South Africa from 27 October to 7 November 2008.
- 37 African Union, *Audit of the African Union*, 81.
- 38 The ex-officio members are the ministers responsible for cooperation in each of the five member states, the Secretary General and the Counsel of the EAC.
- 39 See Morara Henry Ongwenyi, Inauguration of the East African Legislative Assembly: time to rejoice?, *Mambo! French Institute for Research in Africa* II(1) (2001).
- 40 Ibid.
- 41 It is noteworthy that neither the Southern African Development Community's Parliamentary Forum (SADC-PF) nor the ECOWAS Parliament, probably two of the most advanced regional economic communities on the continent, have powers and responsibilities over their regional governing structures such as the EALA does.
- 42 See also Ongwenyi, Inauguration of the East African Legislative Assembly, 2.
- 43 See discussions in the report on the *Roundtable on the Interface between Regional Parliamentary Assemblies and the Pan-African Parliament*, organised by the SADC Parliamentary Forum in collaboration with the Friedrich Ebert Stiftung, Lusaka, 8–9 August 2005.
- 44 See Nijzink, Mozaffar and Azevedo, Parliaments and the enhancement of democracy on the African Continent, 312, 314–26. The authors highlight important methodology for assessment of the effectiveness of parliaments in Africa to advance democracy; although they focus on national legislatures, their methodology applies equally to the regional and continental legislative bodies. The key variables include institutional capacity (referring to issues of resources, powers, and autonomy), relative powers of parliaments compared to the executive structures, and representation (in other words, linkages between representatives and the public, as well as public opinion).
- 45 Interview with Mrs Algresia Akwi Ogojo, Project Coordinator, East African Legislative Assembly, 15 February 2008, Arusha, Tanzania.
- 46 See P Mashele and S Mpanyane, The Pan-African Parliament: how far so far?, paper presented at a conference on Governance

Challenges Confronting the Inter-African System hosted by the Centre for Policy Studies, Johannesburg, 24 June 2008.

- 47 Ongwenyi, Inauguration of the East African Legislative Assembly, 4.
- 48 Mashele and Mpanyane, *The Pan-African Parliament*, 1.
- 49 Discussions with senior officials at the AU Commission and PSC during 2007 revealed a lack of knowledge of, and even interest in, the work of the PAP. Officials in Addis Ababa indicated to the author during interviews that they had not seen any of the recommendations and/or resolutions passed by the PAP and were not aware of their transmission to the AU, even though they worked on common issues of peace and security on the continent. Mr Geoffrey Mugumya, Director, Peace and Security Department, AU Commission, Mr, Okechukwu Emmanuel Ibe, Coordinator ISC, Bureau of the Chairperson, AU Commission, and Dr Admore Kambudzi, Peace and Security Council, Personal interviews, Addis Ababa, 1–3 October 2007.
- 50 Sehen Hirpo, *The Pan-African Parliament: its promise for human rights and democracy in Africa*, Unpublished dissertation towards LL.M degree, University of Pretoria, Pretoria, 2006, 36–7.
- 51 Rule 75 of the Rules of Procedure only states that annual reports and other reports of the AU shall be submitted to parliament and these will be referred to the permanent committees. Yet it is not specified just how this process will take place, who is responsible and where the onus lies if this does not happen. Similarly, Rule 76, outlining the relationship between PAP and the assembly, only states that ‘the President shall present to the Assembly the resolutions and reports of Parliament’; this does not help either, for some of the resolutions and reports of the PAP are addressed to other organs of the AU. Since there is no clear mechanism for this communication to be effected, the PAP is at a serious disadvantage in assessing whether its decisions are being taken into account or how they impact on policy decisions.
- 52 In the EP, the Policy Department of the Directorate General for External Policies is responsible for providing the president, the committees, interparliamentary assemblies and delegations with specialist information, analysis and advice. The committees, especially the chairs and rapporteurs, are provided with background material, reference documents and draft texts.
- 53 In recognition of this gap, a joint Institute for Security Studies/Pan African Parliament Workshop was organised on ‘Strengthening the Capacity of the Pan-African Parliament to Exercise Effective Oversight’, Johannesburg, 18 October 2007.
- 54 The Pan-African Parliament Committee on Rules, Privileges and Discipline, Draft concept note for the meeting of the sub-committee for April 27–28, 2007, Midrand, South Africa, 2007.
- 55 Pan-African Parliament, *Report of the Committee on Rules on the Transformation of the Pan-African Parliament*.
- 56 Address by HE Jakaya Mrisho Kikwete, President of United Republic of Tanzania and Chairman of the African Union to the Pan-African Parliament, Midrand, South Africa, 27 October 2008.
- 57 Address by Hans-Gert Pottering, President of the European Parliament, during the Opening of the Tenth Ordinary Session of the Pan-African Parliament, Midrand, South Africa, 27 October 2008.
- 58 Hans-Gert Pottering, President of the European Parliament, address during the Opening of the Tenth Ordinary Session of the Pan-African Parliament, 14.
- 59 Hans-Gert Pottering, President of the European Parliament, address during the Opening of the Tenth Ordinary Session of the Pan-African Parliament, 16.
- 60 Hans-Gert Pottering, President of the European Parliament, address during the Opening of the Tenth Ordinary Session of the Pan-African Parliament, 17. Matters that are being proposed as areas in which the PAP can have compulsory and joint decision-making powers include defining norms of transactional means of communication; definition and harmonisation of telecommunication and interconnection; interconnection of energy networks; citizenship of the AU; currency; definition of trade, banking, stock exchange, economic and financial standards applicable in the continent.
- 61 K Neunreither, *The European Parliament and national parliaments: conflict or cooperation?*, *Journal of Legislative Studies* 11(3) (2005), 466–89. On ways in which the PAP and other parliaments within the continent, namely national and regional parliaments, can facilitate cooperation and engagement, one can draw from the experience of the EP and national parliaments.



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ABOUT THIS PAPER

The inauguration of the Pan-African Parliament reflects a commitment towards enhancing and deepening democratic values and principles on the continent. The PAP forms part of the ambitious process of deepening the institutional framework for achieving Africa's political and economic integration, a vision informed by the creation of the AEC, the ultimate aim being the Union Government of Africa. However, doubts remain about the ability of the PAP to realize this objective and vision. In fact the record of the PAP during the first five years shows that it still faces many challenges and disadvantages. Among its most critical disadvantages is that the PAP does not have any enforcement capacity for its decisions; instead it only has consultative and advisory powers. Another challenge is that its members are not directly elected, but nominated. Thus, there are doubts about the likelihood of the PAP being transformed into a full legislative body as envisioned by the Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament. The present study seeks to understand where the PAP is going. At the end of its first term, what are the prospects for transformation of the PAP into a full legislative body? And if and when it is transformed, what are some of the likely paths that may be followed?

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FUNDER

This paper was published with the support of the Government of Germany.



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Published by the Institute for Security Studies,
P O Box 1787, Brooklyn Square 0075
Tshwane (Pretoria), South Africa
Tel: (27-12) 346 9500 Fax: (27-12) 460 0998
iss@issafrica.org

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