

them. PAP should also come up with guidelines on monitoring and follow up of implementation of human rights instruments by National Parliaments.

Moreover it can engage in the monitoring and implementation of standards. Many mechanisms exist such as reporting on the human rights and democracy in states. This could be done as suggested through the Committee on Justice and Human rights with reference to the standards in instruments as well as once that it has itself set.²³⁸

The PAP should also strengthen its own organisational capacity. To this end it should establish an effective committee system. This could be done by paying particular attention to the capacities and competences of committees and ensuring that there is sufficient inter-committee coordination. In relation to human rights and democracy, the Committee of Justice and Human rights can take the lead in coordinating the other nine committees.

The PAP should delegate sufficient powers of consultation and oversight to this lead Committee to enable it to work effectively. Committee members should be selected carefully and regularly trained. Until the PAP evolves into a directly elected body and so long as membership of MPs remains tied to their national parliaments, this becomes challenging. This is because the specialised expertise of committee members that are conversant with the issues will be lost when they lose their seats in the national parliaments. This has been identified as one of the major challenges in the work of the Committee.²³⁹ Expectedly this would considerably weaken the Committee and consequently the work of the PAP in human rights and democracy.

Other institutional mechanism that PAP could consider adopting is the establishment of a petitions committee a separate committee or a subcommittee under the Committee on Justice and Human Rights for hearing complaints. The experience of EP suggests that such committee under the PAP could be instrumental in enabling it to reinforce the protection mechanism under the AU.

²³⁸ Ambani & Maindi & Mirugi-Mukundi (n 220 above) 5.

²³⁹ Response by Mr Nassir to questionnaire(n 202 above).

Raising the awareness of MPs should also be emphasised although loss of seats stands to be a problem and requires the continued intervention till members are directly elected with a uniform tenure. Presently however PAP should make an effort to harmonise the electoral calendar of member states as part of its mandate to harmonise laws, and ensure that certain uniformity is maintained in the tenure of parliamentarians in the PAP as a first step towards strengthening its institutional capacity.

4.4.2 PAP as a democratic parliament

In addition to measures to promote these principles PAP should itself meet the standards of a democratic parliament meeting the benchmarks set out in the previous chapter.

Representation of Africans

Representation of the voice of Africans is the proclaimed vision of PAP. This vision and central feature of a parliament is denied to the PAP, which has been made an objective to be achieved sometime in the future.²⁴⁰ Article 4 of the Protocol sets out the composition of parliament.²⁴¹ This article indicates how representative an institution PAP can be as the protocol stands. First membership to PAP is based on equality among member states with each member having five representatives.²⁴² This was contested during drafting where some argued that the parliament was not aimed at representing member states but African peoples and their grass root organizations. Proportional representation based on the population size of member states was proposed as a better alternative.²⁴³

²⁴⁰ Art 2(3) of the Protocol provides 'The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. Until such time as the member states decide otherwise by an amendment to this protocol. ... (ii) The members of the Pan-African Parliament shall be appointed as provided for in art 4. Art 4(3) provides that representation of member states in PAP must represent diversity of political opinion of national parliaments. Art 5 which sets the procedure for election of members explicitly provides in 5(1) that members shall be elected or designated by the respective National Parliaments or any other deliberative Organ

²⁴¹ 1. Member states shall be represented in the Pan-African Parliament by an equal number of parliamentarians
2. Each Member States shall be represented in the Pan-African Parliament by five (5) members, at least one of whom must be a women
3. The representation of each Member States must reflect the diversity of political opinions in each National Parliament or other deliberative organ

²⁴² Art 4(1) & (2) of the Protocol establishing PAP.

²⁴³ The states that supported this notion were Nigeria, Egypt, Ethiopia, Ghana and Mali. Report on the meeting to discuss the draft Protocol establishing PAP (n 35 above).

Furthermore, membership to PAP is closely tied to the national parliaments of member states. This is done in two respects. Firstly the members of parliament or assembly of member states to the Protocol elect members of PAP.²⁴⁴ Secondly, only members of National Parliaments or assemblies are eligible to be elected for the parliament.²⁴⁵ In both instances, members of public are excluded and the process is exclusively limited to the Parliament. This link is maintained through out the term of service of the Parliamentarians and is said to run concurrently with membership in the national parliament.²⁴⁶ Thus loss of seat in National Parliament is one of the grounds for loss of seat in the PAP.²⁴⁷

Although this may be linked to loss of confidence and accountability, this is a serious limitation on the parliamentarians as it allows the sending state to maintain control over delegates in the parliament. This particularly becomes problematic in the work of parliamentarians in human rights and democracy, which are politically sensitive. This might make it for parliamentarians to independently represent the interest of the state and not the people in times when the two do not necessarily go together and are in tension.

No clear prescriptions as to how National Parliaments are to elect representatives to PAP exists. The protocol provides two benchmarks that should be met. These are gender composition and diversity of political views.²⁴⁸ This is in line with the principle that parliaments have to be representative. The protocol provides that at least one of the five delegates has to be a woman. It also requires that all delegates should not be from one party but sufficiently represent the interests in the national assembly. The gender representation requirement seems to have been complied with by member states as evident from the list of parliamentarians and is fairly easy to ascertain.²⁴⁹

²⁴⁴ Art 5(1) Protocol establishing PAP.

²⁴⁵ Art 5(l) of the protocol reads 'The Pan-African Parliamentarians shall be elected or designated by the respective National Parliaments or any other deliberative organs of the Member States, *from among their members*' (my emphasis)

²⁴⁶ Art 5(3) Protocol establishing PAP.

²⁴⁷ Art 5 (4) (e) of the Protocol establishing the PAP. Art 12(2) also provides the same rule of membership being tied to membership in National Assembly for the President and Vice-Presidents of the office

²⁴⁸ Art 4(3) of the Protocol establishing PAP

²⁴⁹ See www.Pan-AfricanParliament.org list of parliamentarians

How far the PAP has attempted to ensure that member states have complied with the second limb in selecting delegates is however not clear. Compliance with this criterion is crucial and needs the oversight of PAP to ensure that it is not yet another forum of representatives of government and not the people. This will also aid PAP to get a balanced and genuine human rights and democratic situation so as to enable it to intervene and contribute toward promoting or facilitating conditions for democracy and protection of human rights in member states.

The second key aspect of the composition of the parliament relates to the process of election of parliamentarians. The protocol provides that members of parliament are to be elected not directly by the people but rather indirectly by the members of the respective national assemblies. Magliveras and Naldi argue that although the basic requirement of representation is met, it is a cause for worry, as most of the elections held in African countries cannot be characterized as being 'free and fair'.²⁵⁰ This provision is even more restrictive in that, candidates are also restricted to members within the assembly.

Transparency

The protocol provides that the sessions of the parliament should be generally open to the public unless required.²⁵¹ This is usually done by allowing the media to be present for its sessions. The PAP has also set up a website where its activities and reports are published. Through this website, it issues media alerts about upcoming activities. The PAP should ensure that the committee sessions are public.

Accountability

The accountability of MPs to the people should also be a goal that PAP should strive for. Currently this is done through the loss of seats in the PAP if members lose their seats in the national parliament. When it evolves into an elected body in the long run the public should have power to recall parliamentarians whom it thinks are not carrying out its will.

Accessibility

In line with the requirement that a parliament must be accessible MPs should be approachable or should approach the electorate. This could be done through

²⁵⁰ Magliveras and Naldi(n 2 above) 226

²⁵¹ Art 14(4) of the Protocol establishing the PAP.

petitions committee that hears grievances. Another is the establishment of a regional ombudsperson that is accountable to the PAP.

Members of public should be allowed to make submissions to the plenary and the concerned committees by televising sessions and allowing for submissions through hotlines, post or email. Parliamentarians should also set aside time to visit and discuss with their constituency issues relating to the continent. This could be organised under the Committee and implemented through the regional caucuses and in coordination with the subregional parliamentary bodies. PAP should also strive for CSO involvement in its plenary and committee work through the creation of CSO forum.

Effectiveness

PAPs power as seen from the previous sections is very much restricted to consultation and issuing recommendations, which could either be ignored or accepted by the AU organs. There is a serious need to enhance its powers at the very least by making its consultative mandate more forceful. It should also be autonomous from the AU in its finances as well as how it conducts its business and control over appointment of parliamentary staff, its own budget and the administration of its own business

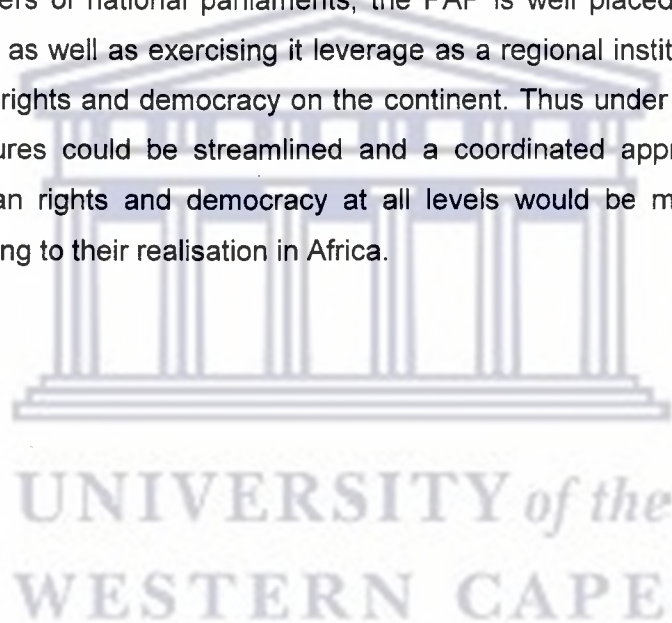
4.4.3 Promotion of principles at subregional level and national levels

The Protocol provides that the PAP will have the function of coordinating and harmonising the policies, measures and programmes and activities of the various regional economic communities (RECs) and their parliamentary assemblies.²⁵² The PAP could thus through this function contribute towards consistent and effective human rights policies and measures at the subregions. This can be done by encouraging the various parliaments to play their role by advocating for increased powers and capacities as well as by adopting various measures within their respective powers as recognised in their treaties.

²⁵² Art 11(1) of the Protocol establishing PAP.

The regional caucuses could be used as vehicles for the adoption of measures of relevance to human right and democracy that are taken by PAP under the coordination of the Committee of Justice and Human rights. The PAP should also aim at working closely with subregional parliaments as they have more experience and hold lessons for the PAP to learn from.

The Protocol also mandates the PAP with the function of coordinating and harmonising the laws of member states.²⁵³ As a parliament whose membership is made up of members of national parliaments, the PAP is well placed to employ a mixture of lobbying as well as exercising its leverage as a regional institution in order to promote human rights and democracy on the continent. Thus under the guidance of the PAP measures could be streamlined and a coordinated approach for the promotion of human rights and democracy at all levels would be made possible ultimately contributing to their realisation in Africa.



²⁵³ Art 11(3) of the Protocol establishing PAP.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

International developments have driven states to more interdependence and the establishment of regional governance structures that are more or less drawing their inspiration from state structures. The Constitutive Act of the AU seems to have set the legal framework for the evolution of the continental body into a form of supranational *trias politicas* government structure.

The PAP is one of the organs that were established. In line with the objective of the AU, PAP has like the other organs the objective to promote human right and democracy in Africa. Its establishment is in itself and important step. It is a recognition of the importance of participation of people in decision-making within the AU framework. More than just a legitimating exercise, it is a commendable move towards ensuring that the AU itself is democratic in its organisation and decision making. As the parliamentary body of the Union, PAP can use its unique position to enhance human right and contribute to democracy at many levels.

However the powers of the PAP are severely constrained. It currently resembles and bears the name of a parliament but has neither the composition nor the power to live up to its name. It is currently composed of members of national parliaments elected by national parliaments from within the national assembly. Its powers are also limited to consultation and advice, issuing resolutions and recommendations and expressing opinions. Provisions have been made for it to make a transition to a fully elected legislative body that can ensure participation of the people. However this is not automatic and no timeframe has clearly been set for this purpose. Within its existing powers however, it still has great potentials which if used can greatly enhance its power and influence.

5.2 Recommendations

Taking lessons from the experience of the EP in its early years as well as its current position, the PAP can expand its powers by innovatively using them while contributing to human right and democracy in its present form. Some of these measures have already been taken but require improvement such as its fact-finding

missions, which require it to formulate solutions rather than urge other AU bodies to do so. Through its consultative powers it can also actively take part in the negotiation and drafting process of international human rights treaties. It can also come up with guidelines and codes of conduct detailing how they can be implemented at national levels. It can by reaching agreements with AU bodies on mechanism of consultation ensure that its advises are taken seriously. This would thus enhance its legislative as well as budgetary influence until such time as evolves into a elected legislative body.

PAP has already assumed an oversight role but has not so far actively engaged in scrutinizing the organs. Institutionally it can create a strong committee on human rights. It has already done so. However its work so far is not visible. It should also create petitions committee that would hear grievances of individuals. Through its function of coordinating the parliamentary assemblies of subregional bodies it can also work towards a uniform and coordinated approach to the protection of human rights and consolidation of democracy.

PAP should however begin doing so by itself reflecting the features of a democratic parliament to the extent that its peculiarities allow it. Thus it should aim being representative, transparent and accountable, accessible and effective.

This in general terms is a fraction of the sum total of criticism and recommendations that can be made regarding the role and functioning. Clearly PAP is limited by problems related to its composition, and modus operandi. Nevertheless it remains a potentially potent instrument for the fulfilment of the promise of human rights and consolidation of democracy at all levels.

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