

## THE PAN-AFRICAN PARLIAMENT

### *A Plenary of Parliamentarians*

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Founded on the basis of the 1991 Treaty Establishing the African Economic Community that came into force in May 1994, the Pan-African Parliament (PAP) was inaugurated in Addis Ababa on 18 March 2004. The inauguration followed the ratification by a majority of the 53 African Union (AU) member states of the PAP Protocol that had come into force on 14 December 2003. While it is suggested that the PAP will oversee the AU Executive once the continental parliament has been given legislative power in its second term, the debate on the role that the PAP should play continues to rage. This article enters the debate by giving an overview of the workings of the PAP and makes some concrete proposals on ways in which the continental parliament can contribute to the continent. The article underlines the need for the PAP to develop or seek the capacity to conduct or commission research on pertinent issues for further recommendation to the assembly. It proposes that the continental parliament should send observer missions to countries holding elections on the continent so that it may contribute to the entrenchment of democracy on the continent.

The article also identifies some of the challenges that lie ahead of the continental body, including funding as well as the challenge of maximising the participation of ordinary Africans.

### Introduction

It was obvious that government officials in Pretoria would welcome the decision of the July 2004 African Union Summit that the seat of the Pan-African Parliament would be in South Africa. Support for the South African bid amongst member states of the Union was widespread and the decision a virtual foregone conclusion. Yet decisions to host organs of the African Union are inevitably contentious and, until the members of the Southern African Development Community recently started acting in greater unison, something of a messy



affair with unpredictable results given the complex nature of trade-offs between heads of state during AU Summit meetings. But the decision on the location of the PAP was inevitable following Egypt's eleventh hour withdrawal and the earlier withdrawal of Libya – an unlikely contender given the absence of a national legislature in that country.

Prior to the media focus on the second

session of the Parliament at its interim location at Gallagher Estate in Midrand, Gauteng, there was hardly any public discussion in South Africa on PAP beyond speculation on the associated costs and the 'burden on the taxpayer'.<sup>1</sup> Yet, South Africa's decision to bid to host PAP was the result of sober reflection within government, if not in the public domain. Of the various organs of the African Union established by the Constitutive Act, PAP is clearly the largest and most prestigious, although some may argue that the Court of Justice is perhaps more important.<sup>2</sup> The only other AU structure under consideration without a permanent location is the Economic, Social, and Cultural Council (ECOSOCC) which will be "an advisory organ composed of different social and professional groups of the Member States of the Union"<sup>3</sup>. ECOSOCC is of a different stature to either the PAP or the Court. ECOSOCC will not be established by means of a legally binding Protocol but through the adoption of its statutes by AU Heads of State. It is not surprising, therefore, that Pretoria quickly stepped back from its enthusiasm to host ECOSOCC in favour of PAP.<sup>4</sup> The Protocol establishing PAP entered into force on 14 December 2003, thirty days after ratification by a majority of the 53 AU member states. The Parliament was inaugurated with great fanfare in Addis Ababa on 18 March 2004 where its inaugural session lasted three days. Two hundred and two legislators from 41 countries were sworn in at a ceremony presided over by the then-Chairperson of the Assembly of the African Union, President Joaquim Chissano of Mozambique. This glamorous affair was marked by great pomp and many speeches by the parliamentarians who swore their oath of office or took a solemn declaration in Arabic, English, French or Portuguese. Perhaps the most important event over the three days was the election of the president, Ms Mongella Gertrude Ibengwe from Tanzania who received 166 votes after the withdrawal of two other candidates from Ghana and the Sudan. In line with the informal understanding that a country that offers to host an organ of the Union should not also contend for the leadership position within that body, the then South

African speaker of the national assembly, Frene Ginwala, had earlier withdrawn her bid for the position of president of the PAP. This despite the widespread acclamation for the role that she had played in preceding years in pushing to finalize the Protocol and thereafter in mobilizing support for early signature and ratification.<sup>5</sup>

Four vice-presidents, one from each of Africa's other regions, were also elected, by secret ballot, and sworn in. They are Prof F. Van Dunem Fernando José de França from Angola as 1<sup>st</sup> Vice President (South); Dr Mohammed Lutfi Farhat from Libya as 2<sup>nd</sup> Vice President (North); Ms Loun Ndoadounmge from Chad as 3<sup>rd</sup> Vice-President (Central); Mr Jérôme Sacca Kina Guezere from Benin as 4<sup>th</sup> Vice-President (West).<sup>6</sup> Collectively the president and four vice-presidents constitute the bureau of PAP.

The Parliament then set up three ad hoc committees to prepare the basic texts for the operation of the Parliament, namely a legal affairs committee, a budget committee and a credentials committee, each consisting of three parliamentarians from each of Africa's five regions. After parliamentarians from 36 countries had taken the floor to deliberate various issues, the meeting concluded with announcements regarding the recruitment of parliamentary staff and the working of the ad hoc committees.

The Protocol provides that PAP meet at least twice a year in ordinary sessions and that each session lasts a maximum of one month. As a result, PAP had to convene a second meeting before the end of 2004. Extraordinary sessions are more difficult to authorize and may only be called by two thirds of "Parliamentarians, the Assembly [of AU heads of state] or the Council [of Ministers of Foreign Affairs]".<sup>7</sup>

Forty-six countries were represented during the PAP's second session (16<sup>th</sup> September to 1<sup>st</sup> October 2004) in Midrand that was enlivened by official visits such as that of the Indian President. More substantive than the first, the second session adopted six resolutions and an equal number of recommendations. Beyond expressing thanks to the Republic of South Africa for hosting the Parliament, members flexed their muscle, calling upon the

Government of the Sudan (but not the rebel movements) to fully cooperate with the African Union to put and end to the war in Darfur and to disarm the Janjaweed and other militants in the region.”<sup>8</sup> Parliament also “[d]ecided that a fact-finding mission from PAP visit the region of Darfur to acquaint itself with the realities on the ground and to report to the PAP.”<sup>9</sup> The subsequent mission by six MPs was concluded at the end of November 2004.

Other resolutions included a request to the Committee on Rules, Privileges and Discipline to come up with recommendations on how to maximise the role of the Parliament in respect of human rights, democracy, good governance, transparency, accountability, peace, security, stability, co-operation and development.<sup>10</sup> The Parliament also recommended that the Assembly provide it with a clear term limit of five years for its first term. Following a briefing by Prof. Wiseman Nkuhlu of the NEPAD secretariat, a substantive debate was held on the New Partnership for Africa’s Development and the African Peer Review Mechanism. The Parliament urged Member States to accede to the APRM, requested regular reports on NEPAD and asked that “all peer review reports be tabled in the Pan-African Parliament for debate, observations and recommendations.”<sup>11</sup>

Members of Parliament also recommended to the Assembly that the president of the Parliament be a member of the five person Panel of the Wise<sup>12</sup> and that reports of the Peace and Security Council on conflict resolution efforts of the AU be tabled in PAP for consideration, observations and recommendations.<sup>13</sup> Since these are all necessarily recommendations to the Assembly of the African Union that now meet twice a year in ordinary session (February and July), PAP will have to await the decisions of that body.

Collectively these resolutions reflect a determination by PAP to maximize those powers provided for in its first term and to play more than a ceremonial role. One can, therefore, expect that the 2005 sessions of the Parliament will be substantive in nature during which parliamentarians will start wrestling with the challenges facing Africa.

## PAP as a Check on Executive Power

There are many views on how the African Union has begun its work. South African President Thabo Mbeki likens the recent development of the continental body and its various organs to a “revolution”.<sup>14</sup> His remarks appear to be borne out by a reading of the various documents on the vision, mission and strategy approved at the July 2004 Summit. For example, the AU Guideline Document ‘Africa, Our Common Destiny’ states that: “...political integration should be the *raison-d’être* of the African Union, the objective being to achieve a federation or confederation in the long run.”<sup>15</sup> However, Africa’s modern history is replete with examples of failed and half-hearted integration schemes that have hardly gone beyond political summits. No wonder that the same document speaks, on the previous page, of the need to ensure that “...the [pan-African] integration process should be geared to stimulating or reenergizing the role of states.” The question is: how to marry the political integration of states intent on strengthening their capacity to deliver, increasingly resentful of interference in their domestic matters, with the ambitions of an integrated Africa and a single legislature?

One view of the emerging continental architecture<sup>16</sup> is to classify the various institutions that constitute the African Union as part of a continental executive, potential legislature or judiciary. Article 5 of the AU Constitutive Act thus lists, amongst others, the various executive structures such as the Assembly of Heads of State, the Executive Council of Foreign Ministers, the Permanent Representative Committee of Ambassadors in Addis Ababa, the Commission and various ministerial committees.<sup>17</sup> PAP is obviously the embryonic legislature and the envisaged Courts of Justice/Human and Peoples’ Rights the judiciary, with ECOSOCC serving as a link between these various institutions and ordinary African citizens.

Since ECOSOCC is not established in terms of a separate legal framework and because its function is limited to giving advice, perhaps the most appropriate, and admittedly generous view, to take of ECOSOCC would

be that it could serve to help bridge the chasm that divides many of Africa's leaders and the African people. Taking such a liberal view, one could include ECOSOCC within the broad ambit of the 'good governance' structures within the African Union.

PAP has its origins in the 1991 Treaty Establishing the African Economic Community that entered into force in May 1994.<sup>18</sup> Thereafter little progress was made towards the economic, social and cultural integration of Africa as set out in the Treaty until the Sirté Declaration of 1999. During that Extraordinary Summit of the OAU held in Libya on 9 September 1999, heads of state called for the establishment of an African Union in conformity with the ultimate objectives of the OAU Charter and the provisions of the AEC Treaty – a process culminating in the establishment of the African Union through its Constitutive Act. Hence the Act notes that: "The provisions of this Act shall take precedence over and supersede any inconsistency or contrary provisions of the Treaty establishing the African Economic Community."<sup>19</sup>

According to Article 2(3) of the PAP Protocol: "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. However, until such time that the Member States decide otherwise by an amendment to this Protocol:

- The Pan-African Parliament shall have consultative and advisory powers only; and
- The Members of the Pan-African Parliament shall be appointed..." (i.e. not elected).

Article 2 also states that the parliamentarians represent all the people of Africa and that the five MPs chosen from each country must "reflect the diversity of political opinions in each National Parliament or deliberative organ". The principle of political diversity to guide the appointment of the five parliamentarians from each AU Member State to the PAP is an important attempt to lever a minimum political diversity from the constraints of domestic politics. For this reason, the South African decision to exclude the official opposition, the Democratic Alliance, from its five MPs was regrettable – sending a negative mes-

sage to a continent that had awarded the country the honour of hosting PAP on the basis of the quality of its constitution and the vibrancy of its democracy. Even the Zimbabwean delegation, a country where parliamentary democracy has suffered severe erosion in recent years, includes representatives from the official opposition, the Movement for Democratic Change.

Beyond its composition and modalities around its establishment, the objectives of PAP (listed in Article 3) are to:

1. facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;
2. promote the principles of human rights and democracy in Africa;
3. encourage good governance, transparency and accountability in Member States;
4. familiarize the peoples of Africa with the objectives and policies aimed at integrating the African Continent within the framework of the establishment of the African Union;
5. promote peace, security and stability;
6. contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
7. facilitate cooperation and development in Africa;
8. strengthen Continental solidarity and build a sense of common destiny among the peoples of Africa; and
9. facilitate cooperation among Regional Economic Communities and their Parliamentary fora."

Article 11 on the functions and powers reads as follows:

"The Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, the Pan-African Parliament shall exercise advisory and consultative powers only. In this regard, it may:

- Examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, *inter alia*, matters pertaining to respect of human

rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law.

- Discuss its budget and the budget of the Community and make recommendations thereon prior to its approval by the Assembly.
- Work towards the harmonization or co-ordination of the laws of Member States.
- Make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them.
- Request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties.
- Promote the programmes and objectives of the OAU/AEC, in the constituencies of the Member States.
- Promote the coordination and harmonization of policies, measures, programmes and activities of the Regional Economic Communities and the parliamentary fora of Africa.
- Adopt its Rules of Procedure, elect its own President and propose to the Council and the Assembly the size and nature of the support staff of the Pan-African Parliament.
- Perform such other functions as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.”

During its interim period, the Pan-African Parliament will effectively be an assembly of parliamentarians – not dissimilar to the various regional parliamentary bodies in Southern, Western and Eastern Africa that have been established in recent years. Inevitably, the initial impact of the continental body on the political landscape traditionally dominated by strong men (no women yet) and executive diktat will be limited – but its ability to make an impact will grow. While it is important to appreciate that the PAP can do very little if there is no room for such engagement at the level of AU Heads of State and Government, the establishment of the Parliament itself

reflects the recognition by Heads of State for exactly such a role. The question remains, however: what effect, if any, will a PAP opinion or recommendation have on African Heads of State and Government? This question is even more pertinent considering Ms Ibengwe’s view that the PAP needs to play an oversight role and “hold accountable certain leadership for not doing the right things on the African continent”.<sup>20</sup> Legally, this power configuration is not possible during the current interim period of the parliament. That will only be possible once it has evolved into an institution with real legislative powers. To this end, the Protocol envisions a review conference after five years and then every ten years “...to review the operation and effectiveness of this Protocol, with a view to ensuring that the objectives and purposes ..., as well as the vision underlying the Protocol, are being realized”.<sup>21</sup>

In considering the long road ahead, one should perhaps reflect on the evolution of the European Parliament to place expectations of PAP into context. The first direct elections for the European Parliament were held in 1979, 27 years after it was established in 1952. At the time of writing, it had not achieved the status of a fully-fledged parliament but rather that of a supra-parliament, an additional layer of legislative authority to EU member states, rather than infringing substantively upon that of national assemblies.<sup>22</sup>

There can be little argument about the need for a governance framework that will enable the ordinary African to participate in and shape his/her own future. Nor can there be any doubt about the centrality of democracy in a discussion on African development.

Although the early years of African liberation were heady times, most of the developmental expectations expressed by African leaders rapidly came undone and have remained unfulfilled, often because of misrule and the abuse of executive power. Today 40% of Africans live below the poverty threshold and 33 of the 48 least developed countries are in Africa. Politically, participation in governance is often restricted to a small ethnic, family or business/political elite. It is largely left to exceptions such as Botswana, Mauritius, South

Africa, Ghana and a few others to prove that African development has as much potential as that of other regions.

While development indicators have often been negative, democratization in Africa is a steadily expanding reality. Recent years have seen a significant growth in the number of democracies on the African continent even if few African countries can rightfully claim to be 'substantively democratic'. Much remains to be done, however. Many national parliaments reflect little more than theoretical tolerance for opposition, perform cursory or no oversight over the executive and often do not have the means to do so, even if they had the will.

Perhaps the most serious practical challenge for PAP will eventually be finding a technical and legal consensus amongst Francophone, Anglophone, Lusophone and those African countries with Islamist legal systems. It is one matter to draft general advice on matters of governance and suggested practices but quite another to craft a common, legal approach to human rights, democracy, freedom of speech and so on. Consider the challenges relevant to the Republic of Kenya (with its Westminster heritage), the Democratic Republic of Congo (and its Belgian colonial origins), the Federal Republic of Ethiopia (with its distinct characteristics), Mozambique (following a Lusophone tradition), and the Islamic Republic of Egypt (with its mixture of Islamism and secularism). The extent of this challenge is evident in the amount of time and energy required to draft international protocols and conventions such as the Palermo Convention on Organized Crime. Africa's experience will be no different, but if the European Parliament can muddle its way forward, confronted with much more sophisticated and entrenched legally-binding systems, there is no reason why Africa cannot do so, and probably more rapidly.

### **PAP and Regional Parliaments<sup>23</sup>**

Article 18 of the PAP Protocol stipulates that the PAP "shall work in close collaboration with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative organs of

Member States". It further calls for the PAP to "convene annual consultative fora" with these organs, currently in existence in all regions of Africa with the exception of the North.

The SADC Parliamentary Forum was formally launched in July 1996 and is technically the oldest regional parliamentary structure. However, contrary to the situation in West and East Africa, the mandate of the SADC structure is extremely limited.<sup>24</sup> The Protocol for the Economic Community of West African States (ECOWAS) Parliament was signed in 1994 and entered into force in March 2000, holding its first session in January 2001. Of all the regional organizations only the ECOWAS founding document foresees direct general elections of its parliamentarians – one of PAP's ambitions. In all other instances, and currently in West Africa, members of the various regional parliamentary fora are selected from national parliaments. To complicate West African matters further, a treaty to establish the Parliament of the West African Economic and Monetary Union (UEMOA) was signed in January 2003. All member states of UEMOA<sup>25</sup> are also members of ECOWAS and it is unclear how this arrangement will proceed.

Turning to the greater Horn of Africa, the East Africa Legislative Assembly was inaugurated and held its first sitting in November 2001. This is the second attempt to set up a regional assembly following the collapse of the East African Community in 1977. The East Africa Legislative Assembly is the only regional parliament with any law-making functions, setting itself apart from others such as PAP and ECOWAS and their (current) advisory functions.<sup>26</sup>

The founding protocol of the Inter-Parliamentary Union of the Inter-Governmental Authority on Development (IGAD) Member States was only signed by the speakers of the national parliaments in February 2004 and is currently awaiting ratification. The same applies to the Network of Parliamentarians of the Economic Community of Central African States (ECCAS). Its founding protocol was adopted in 2002 but the grouping is not very active.

The relationship between these fora and the

PAP may appear simple from the point of view of the PAP Protocol, but will inevitably be complex in practice. Writing about the advisory competencies evident in the various regional parliaments, Ulf Terlinden points out that these range from debates, consultations and recommendations to proposals and inquiries. He continues: "Set aside the wording, two questions determine the strength of these advisory rights: Is it obligatory for regional executives and the inter-governmental decision-making bodies (Councils and Summits) to consult the RAs [Regional Assemblies]? and, will their opinion have to be observed?"<sup>27</sup> While PAP may "examine, discuss or express an opinion on any matter ... and make any recommendations it may deem fit"<sup>28</sup>, the continental body's competencies are largely orientated towards its internal procedural requirements (such as discussing its own budget and adopting rules of procedure). Even its budget is a recommendation to the Assembly. PAP's oversight and inquiry role is further circumscribed by the fact that it may only request, but cannot demand or compel officials from the Commission to attend its session or produce documents, leaving most of its functions in the domain of advocacy for the time being. In fact it can be argued that PAP is largely a political project to build legitimacy and support for the larger pan-African integration scheme rather than a serious tool for integration itself.

The relationship between the various sub-regional parliaments and PAP is bound to complicate matters. Is Africa going to have parliaments with concurrent powers at national, regional and continental levels? Or do we foresee the development of specific competencies at each of these levels similar, for example, to the entrenched competencies from local to provincial to national level in a country such as South Africa? These questions are not clearly addressed in the Protocol. It does not follow that having ratified the PAP Protocol, regional or national parliaments will respect the decisions taken at the continental parliament level, especially because: "The structural institutional arrangement remains strikingly undefined."<sup>29</sup> Against this back-

ground, it would be difficult to avoid a series of amendments to harmonize or clarify the increasingly complex continental architecture. For example, the Commission on Human and Peoples' Rights deals with a range of human rights issues on which the PAP may also wish to formulate an opinion. At times the PAP might want to table such opinions before the Court when Article 4(1) prevents OAU/AU Organs to provide an opinion to the Court when the subject of the opinion is "related to a matter being examined by the Commission".<sup>30</sup>

### A Participatory Tool for the Ordinary?

Eventually, once all 53 member states of the Union have ratified the PAP Protocol and dispatched their representatives, Gallagher Estate will be host to 265 parliamentarians from across the continent – each parliamentarian will represent roughly three million Africans.

Not the least of the challenges facing PAP is how to ensure the participation of ordinary Africans in discussions and decision-making on the problems and challenges facing the continent. This, and the role of PAP in advancing democracy and human rights, is repeated at various points in the Protocol. Having described the PAP as a revolution, President Thabo Mbeki observes: "No genuine revolution has ever succeeded by relying on the actions of a revolutionary elite acting outside of the involvement of the masses of the people, or predicated on the demobilisation and immobilisation of the masses."<sup>31</sup>

If the participation of the masses is finally operationalised within the PAP and other AU structures, it would certainly be a quantum leap in the efforts to change the political context in Africa: which is "characterised, in many instances, by an over-centralization of power and impediments to the effective participation of the overwhelming majority of the people in social, political and economic development."<sup>32</sup>

Inevitably, PAP will only succeed in realizing its ambitions towards popular participation through direct elections – a very distant prospect indeed. Until then, the current prac-

tice will probably remain, with each country represented by five members that are “elected or designated by the respective National Parliaments...at least one of whom must be a woman.”<sup>33</sup>

The Protocol also appears to reflect a desire to move beyond the equal number of MPs per country at some point in the future. The use of relative size is currently only used in the ECOWAS parliament – reflecting the fact that Nigerians constitute more than half of the total population of the Community.<sup>34</sup>

Apart from electoral challenges, generating public interest in the affairs of the PAP beyond the initial surge of interest that accompanied the first two sessions will not be easy – by recent admission of the Speaker of the South African national assembly, Baleka Mbete<sup>35</sup> and demonstrated by the low turnout during the 2004 European Parliamentary elections.

### Funding Arrangements

The costs of PAP can be divided into those that will be carried by the Commission as part of the AU budget, those that will be for the account of Member States whose MPs attend sessions and finally, the costs to South Africa as host country.

The host country obviously has the duty to provide “furnished and equipped premises for the PAP.”<sup>36</sup> Days before the second session of PAP in Gallagher Estate, the SA Department of Foreign Affairs indicated that, as from 2005, it would budget an amount of R61 million per year (roughly US\$10 million) for PAP.<sup>37</sup> The host country agreement requires that South Africa provide the venue, office accommodation, IT support, local transport and accommodation for the president.<sup>38</sup> Construction and infrastructure costs aside, it is important to bear in mind that South Africa will draw significant material and other benefits over the longer term. Not only does the influx of parliamentarians present a commercial benefit, there are less tangible benefits such as the related prestige and the role that the Parliament would play as a tool for continental transformation. South Africa will con-

tinue to benefit financially from PAP long after the current concerns about costs have disappeared.

As part of the Commissions’ “vision and mission” consultations, AU Commission chairperson, President Alpha Oumar Konare, presented a strong motivation for an annual budget of US\$571,2 million to AU Heads of State at the July Summit. The 2004 annual budget came to just US\$43 million.<sup>39</sup> Article 15(1) of the PAP protocol stipulates that the PAP budget is an “integral part of the regular budget” of the African Union. The African Union must therefore, as part of its regular budget, cover all other costs related to the running of the Parliament. Hence, the Strategic Plan of the AU that Konare presented included an indicative amount of US\$10 million per annum for PAP.

That the views of the Commission and PAP were separated by a gulf was reflected in PAP’s request for a budget of US\$21 million presented to the Assembly at the same meeting. Given these disparities, the Summit eventually authorized the Permanent Representatives Committee to consider and approve a budget for PAP for the remainder of 2004, and directed the Commission to prepare a more realistic budget for 2005 by, amongst others, reducing the duration of sessions. During the discussion, it also became apparent that a large part of the request from PAP consisted of per diem, sitting and other allowances that were to be paid to MPs from the Commission budget. Hence the Summit also decided that countries must themselves bear the expenses for the participation of their MPs in PAP, including air tickets, per diem, sitting and responsibility allowances, as well as the Solidarity Fund, medical insurance and any other allowances and expenses during the first five years of its existence.<sup>40</sup> In this manner, the Assembly ring-fenced its own financial obligations and placed the onus on Member States to cover the costs of their MPs nominated to attend PAP. This approach made eminent sense since the relevant MPs are already paid in their respective countries, although often not very well. Each country would therefore decide on any additional out of pocket

expenses that it was prepared to cover.

Having been frustrated in their first attempt at securing what was generally perceived to be an excessive budget, PAP had an opportunity to reflect upon these decisions during its second session in September/October 2004. Its subsequent recommendations to the Assembly (due to meet in February 2005) were: to try and remove PAP from the budgetary oversight role of the PRC; to get an indication of the resources available to PAP before budgeting began; to actively participate in the budgeting process; and to explore alternative sources of funding.<sup>41</sup>

A subsequent meeting of the Executive Council during December 2004 eventually agreed on an annual budget of US\$158 million for the Commission for 2005, consisting of an amount of US\$63 million from assessed contributions from member states and US\$95 million from voluntary contributions. These figures included a figure of US\$5,6 million for PAP as part of the 2005 budget of the AU Commission.<sup>42</sup>

### **What Power to PAP?**

Looking to the future, PAP is off to a better start than most observers probably expected. At the same time, the prospect of meaningful legislative powers remains a distant one. It is useful, therefore, to consider a number of measures and initiatives that PAP could begin if it wishes to advance its powers and utility. For example, it could:

Develop the capacity or seek capacity to conduct or commission research on pertinent issues for further recommendation to the Assembly. The Commission in Addis Ababa does not currently have the capacity for independent research and is constrained by the close observation of member states in any expansion of its activities in areas such as governance, human rights and democracy. The Parliament could therefore usefully conduct/commission research and recommend appropriate policy measures for consideration by the Assembly. It is important to underline the fact that the Heads of State are required to consider such recommendations and that they

cannot merely ignore or sweep them under the carpet. Where issues are of an extremely sensitive or highly political nature such as differing views on elections, this could provide a useful alternative vehicle through which to table concerns at Heads of State level.

Send observer missions to countries holding elections on the continent in order to formulate an independent position, to come up with advice on how to effect improvements in the electoral process of AU Member States and thereby contribute to the strengthening of democracy on the continent.

Send assessment teams to African countries experiencing conflict to free the parliament from having to rely on information emanating from other sources. This would also give the parliament a first-hand view of the humanitarian situation on the ground, an important step toward a sense of urgency in decision-making. The mission to Darfur has set an important positive precedent in this regard.

Adopt independent positions on a range of issues (including human rights and governance issues) without being curtailed by positions taken by Heads of State. In this regard, the parliament should be allowed to send fact finding or assessment missions to any country suspected of human rights violations. In the same manner country reports submitted to the Commission for Human and Peoples' Rights may also be submitted to the PAP for discussion and to promote transparency.

Be given the powers to appoint or recommend a short-list of the Commissioners for appointment by the Assembly to the African Commission on Human and People's Rights to the Assembly. The 11 Commissioners are currently elected by Heads of State<sup>43</sup> who do not have the time to deal with changing circumstances on this matter. As a result, active politicians currently serve on the Commission and appointments are often of an intensely political nature – a situation that obviously undermines the legitimacy of the Commission. Involving PAP in the selection process would enhance the integrity and perceived independence of the Commission.

Be empowered to appoint or recommend a

shortlist of judges to the African Court of Justice. Following the entry into force in 2004 of the Protocol on the Court of Justice, the AU Summit decided to integrate this Court with the African Court of Human and Peoples' Rights. The Protocol to establish the latter does not yet have sufficient ratifications to enter into force and the AU Commission is therefore considering how to move ahead (and how to interpret) the decision on integration. The Protocol on the appointment of the 11 judges to the Court of Justice requires that they be elected by the Assembly.<sup>44</sup>

## Conclusion

The Protocol establishing PAP reflects a strong commitment to the promotion of democratic principles and good governance, and the promotion and protection of human and peoples' rights, transparency and accountability in Africa.<sup>45</sup> It is in this domain that PAP could make its greatest contribution. The decision to send a delegation to assess the situation in Western Sudan (Darfur) creates the hope that the parliament will not shy away from practical engagement in continental issues. This and other functions are squarely in line with the view that improvements in governance elsewhere in the region are in the direct interest of each individual African country.

If the continental parliament helps achieve this objective, it would have moved closer to what President Mbeki envisages: a parliament that will help Africans "change their material conditions so that they escape from the jaws of poverty and their countries and continent from the clutches of underdevelopment".<sup>46</sup> This is the vision South Africa holds for the continent and hopes to achieve through, *inter alia*, its hosting of the PAP.

PAP faces a welter of challenges right now though its potential will only be realised in the distant future. But it also presents opportunities and new ways of engaging with Africa's leaders. Such a role will also require a concerted effort by South Africa as host, the African Union and PAP members to work to maintain interest in this new institution.

## Notes

- 1 Only time will tell if the decision to locate PAP in Gauteng reflects a future intention to revive the debate about moving the South African Parliament away from Cape Town.
- 2 The 2004 AU Assembly reversed an earlier decision to separate the African Court on Human and Peoples' Rights from the Court of Justice (Assembly/AU/Dec.45 (III) DECISION ON THE SEATS OF THE AFRICAN UNION) and decided that the two courts should be integrated into a single court. The Assembly requested the Chairperson to work out the modalities on integration of the two courts and to submit a report to the next Ordinary Session that will occur in Abuja at the end of January 2005. Mauritius and Sudan had earlier offered to host the Court of Justice and The Gambia and Lesotho to host the Court on Human and Peoples' Rights.
- 3 Constitutive Act, Article 22 (1)
- 4 Currently ECOSOCC will host its first General Assembly meeting in Abuja early in 2005 and given the role that Nigeria has played in infusing civil society engagement in the African Union is probably best placed to host the Council if the need for a permanent location arises.
- 5 Enthused by Ginwala, the South African Foreign Affairs Portfolio Committee and a special parliamentary committee on PAP had considered and proposed a host of amendments to PAP's rules of procedure.
- 6 The spelling of names differs from that used during the Second Session in South Africa.
- 7 Article 14 (3)
- 8 PAP-Res 002/04, Resolutions and Recommendations, Pan-African Parliament, Second Ordinary Session, 16 September – 1<sup>st</sup> October 2004, Midrand, South Africa, par 2
- 9 *Ibid*, par 5.
- 10 PAP-Res 004/04, par 2 and 6
- 11 PAP-Rec 002/04, par 3
- 12 The Panel of the Wise is constituted under the terms of Article 11 of the PSC Protocol, composed of five highly respected African Personalities drawn from various segments of society. Members are not supposed to hold active political office at the time of their appointment or during their tenure as Panel members. Panel members are nominated by the Chairperson of the Commission after appropriate consultations, on the basis of regional and gender representation and appointed by decision of the Assembly for a period of three years (as apposed to the five-year term of office of PAP), although eligible for reappointment for only one more term. Key task is to advise and assist the Chairperson of the Commission and the PSC in conflict prevention and mediation.
- 13 PAP-Rec 003/04, par 1 and 3
- 14 Thabo Mbeki, *ANC Today*, Vol 4, No. 27, 9-15 July, p.6.

- 15 African Commission, May 2004, p 22.
- 16 Reflected in Article 5 of the AU Constitutive Act.
- 17 The Commission sees itself of the 'engine room of the Union' and Member States 'as the political project managers'. See page 11 of the Commission of the African Union: 2004 – 2007 Strategic Plan, Volume 2.
- 18 See Articles 7 and 14 of the Treaty establishing the African Economic Community.
- 19 In Article 33(2)
- 20 *Sunday Times*, 26 September 2004, p. 18.
- 21 Article 25.
- 22 U. Terlinden, African Regional Parliaments – Engines of Integration and Democratisation?, Bonn, September 2004, p 15.
- 23 This section draws heavily on Terlinden, op cit.
- 24 Lesotho and Namibia (that has offered to host the SADC parliament) are among the leading proponents in support of the transformation of the SADC Parliamentary Forum into a full-fledged regional parliament.
- 25 Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo.
- 26 There is also a second difference between this and other regional parliamentary fora. While MPs at national level nominate representatives to the East Africa Legislative Assembly, they are themselves excluded from candidacy. Terlinden, op cit, p 4.
- 27 Terlinden, op cit, p 6.
- 28 Article 11(1).
- 29 Terlinden, op cit, p 14.
- 30 Protocol to the Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
- 31 Terlinden, op cit, p.6.
- 32 African Charter for Popular Participation in Development and Transformation, Arusha, 1990, p.4.
- 33 Articles 5(1) and 4(2)
- 34 Hence Nigeria has 35 of the 120 ECOWAS Members of Parliament compared to the five to eight each for all other ECOWAS countries.
- 35 *City Press*, 8 August 2004, p.4.
- 36 Decisions of the 5<sup>th</sup> Ordinary Session of the AU Executive Council, Doc. EX.CL/90(V).
- 37 This excludes the construction costs of a permanent venue.
- 38 Department of Foreign Affairs, Press release regarding hosting the Pan-African Parliament, 13 September 2004.
- 39 See Strategic Plan of the Commission of the African Union, Volume 2: 2004-2007 Strategic Framework of the Commission of the African Union, May 2004, p 74. Whilst a number of donors have indicated that they have earmarked significant funds in support of the AU, this will have to be matched by an increase in member state contributions. In recent years the has Union has suffered fluctuating but consistent levels of membership arrears of some US\$12 million.
- 40 The Assembly also decided that members of the Bureau would not reside at the headquarters during the first term of the Parliament. Decision on the Budget of the Pan-African Parliament for the Period July to December 2004, EX.CL/Dec.98(V)
- 41 PAP-Rec 004/04, par 3 and 4.
- 42 At one stage during the July Summit it was proposed that the AU allocates \$500 000 for the remainder of 2004 to serve as an interim budget in the absence of a realistic proviso. See Assembly/AU/Dec.39(III)
- 43 African (Banjul) Charter on Human and Peoples' Rights, Article 33
- 44 Protocol on the Court of Justice of the African Union, Article 7.
- 45 See the preamble, Articles 3, (2), 3(3) and 11(1)
- 46 Thabo Mbeki, Address at the Opening of the Second Session of the Pan-African Parliament in Midrand, South Africa, 16 September 2004.