



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

PAPER ON PLAN OF ACTION TO ACHIEVE LEGISLATIVE POWERS

PRESENTED AT THE 2016 CONFERENCE OF AFRICAN SPEAKERS

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1.0 INTRODUCTION

H.E Hon. Roger Nkodo Dang, President of the Pan-African Parliament

Speakers of the various Parliaments/National/Regional Assemblies

Hon. Members of Pan African Parliament

High ranking Government officials present

Your Excellencies Ambassadors and High Commissioners

Distinguished ladies and gentlemen:

I convey to you very warm greetings from the East African Legislative Assembly, and thank you for the invitation and for the warm reception so far accorded to my delegation and I, which points to the very cordial relations between both Parliaments.

I am pleased, humbled and honoured to participate in the 2016 Annual Conference of African Speakers here in Midrand, South Africa. I take the opportunity to sincerely thank the President of PAP, H.E. Hon. Roger Nkodo Dang, and the PAP for putting together this important Conference – which is a hallmark in the calendar of activities.

Excellencies

The Annual Speakers' Conference is in line with the Protocol of PAP which calls for constant and close collaboration as well as engaging in consultative fora with National/REC Parliaments/Assemblies.

The theme; **from Adoption to ratification of the African Union Treaties in Particular the New Protocol of the PAP: What are the advantages for Africa?** is fundamental and could not have come at a better point in time.

At the outset, let me throw a spanner in the works and in so doing, state that whereas **Africa generally realises the benefits of integration and the opportunities therein, why should the Continent thus procrastinate and delay implementation of various Treaties and Protocols?**

This statement is based on the premise that whereas, the continent has adopted 60 Treaties, the rate of ratification of the instruments and deposit of the same remain low – the fairly good attempts to do so notwithstanding. Politically, Africa seems keen to exit the International Criminal Court (ICC) en masse. But what options exist for Africa? Given the fact the State(s) against which complaints are been lodged must have recognised the competency of the Court to receive such communications and have made a declaration under Article 5(3). To date, just about 8 countries in the continent have made the declaration (Burkina Faso, Ghana, Mali, Malawi, Cote d'Ivoire, Rwanda, Benin and Tanzania).

The Protocol to the Constitutive Act relating to PAP is another such Treaty. A Communique released at the 2015 Speakers' Conference, urged Governments to speed up the ratification process towards the realisation of 28 ratifications to enable the Protocol to come into force. In the same vein, PAP also established an Advocacy Strategy pegged on "28 ratifications in the year 2016".

I am informed as at May 16th, 2016, 10 countries had already signed the amended Protocol, three had ratified, with only two depositing the Instrument. It is important to state that Africa is at a crucial time in its development and thus strengthening of AU institutions such as PAP, will improve integration of the continent. It is important to reflect on this as I make few comments on my presentation entitled: **Plan of Action for PAP to Achieve Legislative powers**. I want to state that this paper is not **prescriptive** in nature – but rather, one that is **exploratory** and hopefully, provokes further conversations.

2.0 Let me get into the thrust of the presentation by asking **Why should PAP strive for Legislative Powers?**

Legislative powers are by and large, the *Raison d'etre* for any Parliament /Assembly. It is the core to the existence of an Assembly. Without sounding too academic, legislature by definition is the power that makes the laws. Legislatures have ultimate possibility to regulate on behalf of the people, the rights and obligations of citizens in accordance with constitutional provisions.

Montesquieu (1689-1755), in his celebrated book, the **Spirit of Laws**, proposes the necessity that functions of the State should be divided between different powers (Legislative, Executive and Judicial), so that through such arrangements, there are power controls and any exigencies of power or tyranny are checked. The **Latimer** Principles in the Commonwealth set up, also articulate the need to govern issues such as the harmonious balancing of power and the interaction between the three arms in democratic societies.

In my view thus, any regional, national or even county Assembly should and can enjoy that definition.

The laws of EALA are such that they supersede that of the Partner States on similar matters of purview within the EAC Community and mandate Partner/Member States to amend their national laws in conformance. This matter points to the Independence of the Assembly.

Having said that, we are grateful to the framers of the EAC who deemed it fit to give the Assembly legislative powers from the outset. Such powers must be guarded and jealously so.

Our experience as the Legislative Organ of the EAC, tells of an interesting story. The current five-year mandate of which I serve as Speaker, runs up to June 4th 2017. Our Assembly established in 2001 and headquartered in Arusha, Tanzania, passes Bills on matters within the purview of the Community. To date, EALA has passed close to 70 Bills. EALA also has a rigorous yet enviable task of legislation, oversight and representation for the over 150 million citizens of the EAC region.

Experience has shown that for regional integration to succeed, policies must be people-centred and any results must be tangible, felt and seen. One of the causes of the collapse of the previous EAC (1967-77), was the low level of involvement of stakeholders in their activities. This is why the new arrangement emphasises popular participation of all stakeholders.

3.0 The Present Scenario

In the case of PAP, I have taken a cursory look at the Revised Protocol and found out that while it is a vast improvement of the 2001 Protocol, it still does not grant PAP **full** legislative powers. Article 8 suggests that PAP shall initiate model laws. These laws have no binding legal force and are subject to the approval of policy organs especially the AU Assembly of Heads of State.

Three issues stand out

- a) That PAP is evolving from an Advisory/consultative Parliament to one that has powers (limited at this point). This is a positive step.
- b) Secondly, if PAP were to receive full Legislative powers, how would it ensure enforcement of legislation it passes? This aspect requires careful reflection.

- c) On the reverse side of the coin, when exactly shall PAP realise full separation of powers? This is key in any Parliamentary setting as the author, Montesquieu alludes.

However, given the dispensation, I propose two salient points in the Plan of action.

a) **Strengthening Research capacity**

Model Laws as stated severally, have no binding effect but can be a useful tool in guiding law makers. Therefore, it is vital for PAP to:

- i. Invest in and strengthen research and adequate staffing capacities.
- ii. Build capacities of legislators of PAP in the quest to develop excellent model laws to spur change/create spark in national and regional legislations.
- iii. PAP should remain at the cutting edge in guiding the region to embrace **relevant policy** matters.

b) **Advocacy for uptake of the model laws**

As PAP works towards the attainment of full legislative powers for the betterment of the continent, it should fully engage with the Civil Society and Private Sector and other stakeholders, to generate more work, advocate for wider acceptance.

4.0 Streamline the Models of Introducing legislation

At EALA, the introduction of Bills is a co-shared Principle of legislation either through a Private Members Bill or the Council Bill. The Assembly has remained fully engaged with the citizenry and this continues to spur the introduction of more Private Members' Bills as opposed to Council Bills. Once enacted through the stages of the House (Westminster model), the Assent process takes place in line with Article 63 **of the Treaty for the Establishment of the EAC.**

Once again, Article 8 of PAP **would do better with more clarity**. On the one hand, the said Article allows Members of PAP or the Assembly to formulate the laws. On the other hand, the *Proviso* pegs that in event PAP formulates the said laws, it needs the approval of the AU Assembly. From experience, such is a set-up for challenges that may/could erode the independence and autonomy of the Assembly.

In essence, PAP should have leeway to make model legislation that meet the needs for the continent, are well researched and for all purposes, assuage yet compel the AU Assembly to uptake the same.

Within the EAC Treaty, Assent of Bills is a preserve of the Summit of EAC Heads of State. However, the Assembly **independently consults from within and or/externally with stakeholders** with regards to proposed legislation that it passes. To a large extent about 90% of the Bills passed by EALA, receive assent or are in the process of assent.

In summary, clarity on the said Article is of absolute necessity. The **Independence** and **autonomy** of the Assembly likewise, need to be guaranteed.

5.0 Claim your space

There is emphasis that PAP should prove its existence before the AU, and the citizens of the continent as the Peoples' Assembly. The Revised Protocol provides for at least two Ordinary Sessions in a year and Extra-Ordinary Sessions which may be requested by two-thirds majority and submitted to the President.

Theoretically, if PAP held all (two Ordinary Sessions and say, two Extra-Ordinary sessions), that would arithmetically account for about 3 months in a year.

Perhaps, the PAP should/could devise/revise its annual calendar in event of proposals to strengthen Committees and oversight programmes. At the moment, the Committees hold two statutory meetings with a possibility of extra-ordinary meetings. Are these enough to deliver the work-load? Incidentally, at EALA, such activities of Committees from our perspective, generate loads and lots of work for legislation. In fact, when not in Session (we have six for a period of two weeks), the Committees work all year around (balance of 35-40 weeks)

However, there are two fundamental points here that need further clarity:

- The PAP should work towards control of its budget to give it the freedom to prepare its independent work plans and undertake oversight functions.
- The lack of budgetary oversight of the AU may demonstrate the limits to the effectiveness and efficiency of the PAP (Article 16) given that the Appropriation Bill is probably the most piece a legislature passes.

6.0 Entry into force of the Protocol

As alluded to earlier, achieving a critical mass required to set the revised Protocol into force remains a challenge. PAP has embarked on advocacy to Governments and diplomats towards ratification of the Protocol. There is substantial work on the part of civil society coalescing around the AU to push for entry into force of the Protocol. Such include the State of the Union Coalition (SOTU) and the Pan African Lawyers Union among others.

I urge PAP to similarly consider working with the regional and national Parliaments as well for the push.

EALA for example, continues to root for an effective continental Assembly. In December, 2015, EALA passed a Resolution urging EAC Partner States to sign,

ratify and deposit the required instruments of the amended Protocol to the Constitutive Act of the African Union, in order to enable the PAP to achieve one of its important pillars of legislation. The Resolution has been shared with the Council of Ministers and the Assembly is making due follow-up.

Generally, Parliaments across regions face similar hurdles – it is thus vital for PAP to continue harnessing its relationships with other like-minded Assemblies.

7.0 Congruency of Rules of Procedures to the Revised Protocol

The Rules of Procedure may address certain gaps to bring about an effective and efficient legislature. Research undertaken by Messrs Selemani Kinyunyu and Dismas Nkunda in publication of the State of Union 2016 Report entitled: **Strengthening the Peoples' Parliament in Africa: A Legal and Policy Analysis of the New PAP Protocol**, show that there is little information on financing and operation of the PAP and on its electoral processes among other areas of its jurisdiction.

In the Revised Protocol, the composition and roles of new critical organs such as Committees and Regional Groups do not stand out. Perhaps, its Rules of Procedure and other Parliamentary regulations should optimally address the issues.

Last year, EALA revised the Rules of Procedure to strengthen its governance and institutional systems.

My role today is to speak to the plan of action towards legislative powers. However, permit me to say a few words about the issue of elections of Members to the Assembly and to that of separation of powers which are critical to an effective Assembly:

8.0 Election of Members

This is a critical area for the transformation of PAP. It is pleasing that the Protocol does provide for the eventual universal suffrage and direct election of Members.

In the Plan of Action, it is vital for PAP to establish an electoral code to enable citizens direct mandate to the electorate as soon as is possible.

Of essence also is the *proviso* in Article 5 (1) a) which provides that national legislatures or deliberative bodies shall elect **from outside** its Membership, 5 Members. This is good for the Assembly as it cures the current issue of dual Membership and *inter alia* improves processes of legislation, promotes integration of RECs and enhances impartiality in making model laws for the Continent.

EALA whose Members are currently elected through the National Assemblies, is similarly looking towards universal suffrage as the preferred mode of elections.

9.0 Separation of Powers

This is key and **may make or break** the autonomy and independence of the legislature as it undertakes the processes/plans of action towards achieving legislative powers. Critical areas include:

- The need to provide Oversight of the programmes and projects of the AU
- The need for legislative role in formulating, reviewing and adoption of the AU budget.
- -It may be necessary in future to revise Article 5(d) on the elections of the President. Elections of the President of the PAP for example should in **my individual and consistent** view NOT be presided over by the Chairperson of the Assembly to avoid a situation where the Assembly seemingly fuses

with the Executive. The election of the Speaker in the case of the EALA is presided over by the Clerk to the Assembly, I believe this is the case in many other Parliaments around this room today.

As EALA, we are open to hosting PAP as part of enhancing collaboration with REC Parliaments should it at an opportune time decide so.

10.0 CONCLUSION

Excellencies, The PAP has a noble task of ensuring dialogue, consultation and consensus for the peoples of the African community in order to effectively promote integration. I am therefore very pleased and congratulate PAP for passage of the Protocol but reiterate that we must ensure ratification and deposit of the instrument is realised in the near future. At EALA, we cherish the long-held dream of a continental bloc.

The PAP Parliament is also best placed to enable citizens to realise their aspirations. I encourage you to continue to be steadfast in advocating for a strong continent and the African Union by creating awareness among citizens.

At this juncture, let me acknowledge the recent decision by the African Union Heads of State to introduce the African passport. The AU has indeed been overwhelmed by calls from Africans wanting the new passport and nations should accept the challenge to issue the African passports to their respective nationals.

The process of African integration in the Parliamentary perspective, calls for sustained dialogue, collaboration, confidence building and learning. I want to emphasise that **complimentarily** and not **competition** between the Parliaments is the way to keep such dialogue alive.

Finally, I wish you fruitful deliberations during the entire period. I thank you all for your kind attention.